

COUNTY OF SAN DIEGO
INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

Amended and Restated

Effective July 1, 2011

COUNTY OF SAN DIEGO

INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. ESTABLISHMENT AND PURPOSE OF THE PLAN.....	1
SECTION 2. <u>ELIGIBILITY AND PARTICIPATION</u>	1
(a) Eligibility	1
(b) Participation Upon Reemployment.....	1
(c) Participation Upon Transfer to Eligible Employee Status.....	1
(d) Suspension of Active Participation.....	1
(e) Termination of Participation	2
SECTION 3. <u>MANDATORY EMPLOYEE CONTRIBUTIONS</u>	2
(a) Amount of Mandatory Employee Contribution.....	2
(b) Withholding and Crediting to Accounts	2
SECTION 4. <u>EMPLOYER CONTRIBUTIONS</u>	2
(a) Employer Contributions.....	2
(b) Allocation of Employer Contributions.....	3
(c) Timing of Contributions	3
SECTION 5. <u>ROLLOVER CONTRIBUTIONS AND TRANSFERS</u>	3
(a) Rollover Contributions.....	3
(b) Direct Transfers	3
(c) Rollover Account	3
SECTION 6. <u>INVESTMENTS AND INVESTMENT DIRECTIONS</u>	4
(a) Fund	4
(b) Investment of Contributions	4
(c) California Government Code Section 53213.5.....	4
(d) Investment of Account Balance of Terminated Participant.....	4
(e) Default Investment.....	4
(f) The Fund; No Reversion.....	5
SECTION 7. <u>ACCOUNTS, VALUATIONS AND STATEMENTS</u>	5
(a) Accounts	5
(b) Valuation of Accounts	5
(c) Quarterly Statement	5

COUNTY OF SAN DIEGO

INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

TABLE OF CONTENTS (continued)

	<u>Page</u>
SECTION 8. <u>VESTING OF PLAN BENEFITS</u>	5
SECTION 9. <u>FORM OF DISTRIBUTION OF PLAN BENEFITS TO PARTICIPANTS</u>	5
(a) Forms Available.....	5
(b) Election of Form of Payment.....	6
(c) Effect of Failure to Elect a Form of Benefit	6
(d) Use of Plan Benefit to Pay Qualified Health Insurance Premiums	6
SECTION 10. <u>TIME OF DISTRIBUTION OF PLAN BENEFITS</u>	7
(a) Time of Distribution: General Rule	7
(b) Valuation of Plan Benefit.....	7
(c) Latest Time of Distribution.....	7
(d) Investment of Deferred Benefit or Unpaid Installments.....	7
(e) Employer Contributions Allocated After Prior Distribution	8
(f) Payments to Alternate Payees.....	8
(g) Direct Rollovers of Distributions from the Plan.....	9
(h) Service Credit.....	10
SECTION 11. <u>BENEFITS UPON DEATH</u>	10
(a) Death While Employed.....	10
(b) Death Following Termination of Employment.....	10
(c) Form and Time of Commencement of Benefits to Beneficiaries	11
(d) Beneficiary Designations	11
SECTION 12. <u>LOANS</u>	11
(a) Amount of Loans	11
(b) Terms of Loans	12
(c) Disbursement of Loans	12
(d) Loan Fees.....	13
(e) Withholding and Application of Loan Payments.....	13
(f) Suspension of Repayments During an Unpaid Non-Military Leave of Absence.....	13
(g) Suspension of Repayments During a Military Leave of Absence	13
(h) Default.....	14

COUNTY OF SAN DIEGO

INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

TABLE OF CONTENTS (continued)

	<u>Page</u>
SECTION 13. <u>ADMINISTRATION OF THE PLAN</u>	14
(a) Plan Sponsor and Administrator	14
(b) Administrative Responsibilities	14
(c) Powers and Duties of Deferred Compensation Administrator	14
(d) Management of Plan Assets.....	15
(e) Delegation of Fiduciary Responsibilities.....	16
(f) Restrictions on Transfers of Investments.....	16
(g) Service in Multiple Fiduciary Capacities.....	16
(h) Bonding.....	16
(i) Indemnification	17
SECTION 14. <u>PLAN EXPENSE AND BENEFIT PAYMENTS</u>	17
(a) Expenses of the Plan	17
(b) Benefit Payments	17
SECTION 15. <u>CLAIMS, INQUIRIES AND APPEALS</u>	17
(a) Application for Benefits.....	17
(b) Hearing.....	18
(c) Notice of Denial	18
(d) Request for Review.....	19
(e) Decision on Review	19
(f) Exhaustion of Administrative Remedies; Limitations.....	20
SECTION 16. <u>AMENDMENT AND TERMINATION OF THE PLAN</u>	20
(a) Future of the Plan.....	20
(b) Amendments to the Plan	20
(c) Termination of the Plan	20
(d) Allocation of Fund on Plan Termination	21
SECTION 17. <u>GENERAL PROVISIONS</u>	21
(a) No Assignment of Property Rights	21
(b) Incompetence	21
(c) No Employment Rights.....	21
(d) Lost Participant or Beneficiary	21
(e) Choice of Law.....	22

COUNTY OF SAN DIEGO

INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

TABLE OF CONTENTS (continued)

	<u>Page</u>
(f) Military Leave.....	22
SECTION 18. <u>DEFINITIONS</u>	22
(a) “Accounts”	22
(b) “Alternate Payee”	22
(c) “Beneficiary”	22
(d) “Code”	22
(e) “Deferred Compensation Administrator”	22
(f) “Differential Pay”	22
(g) “Earnings”	22
(h) “Eligible Employee”	23
(i) “Employee”	23
(j) “Employee Account”	24
(k) “Employer”	24
(l) “Employer Account”	24
(m) “Employer Contributions”	24
(n) “Entry Date”	24
(o) “Fund”	24
(p) “Hour of Service”	24
(q) “Investment Option”	24
(r) “Mandatory Employee Contributions”	24
(s) “Normal Retirement Age”	24
(t) “Normal Retirement Date”	24
(u) “Participant”	24
(v) “Plan”	24
(w) “Plan Benefit”	24
(x) “Plan Year”	25
(y) “QDRO”	25
(z) “Registered Domestic Partner”	25
(aa) “Rollover Account”	25
(bb) “Rollover Contribution”	25
(cc) “Spouse”	25
(dd) “Trust Agreement”	25
(ee) “Trustee”	25
(ff) “Valuation Date”	25

COUNTY OF SAN DIEGO
INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

TABLE OF CONTENTS (continued)

	<u>Page</u>
SECTION 19. <u>EXECUTION</u>	26
Appendix I – Limitations on Contributions	

COUNTY OF SAN DIEGO

INCENTIVE RETIREMENT DEFERRED COMPENSATION PLAN

SECTION 1. ESTABLISHMENT AND PURPOSE OF THE PLAN.

The County of San Diego (the “Employer”) established the County of San Diego Incentive Retirement Deferred Compensation Plan (the “Plan”), effective July 1, 2000. The Plan was previously amended and restated effective January 1, 2002. The Plan is hereby amended and restated effective July 1, 2011 except as otherwise provided in the Plan. The Plan is intended to provide Eligible Employees with retirement benefits under a profit sharing plan qualified under Section 401(a) and related Sections of the Code. The Plan may be amended or terminated as provided in Section 16.

Certain capitalized terms used in the Plan text are defined in Section 18 in alphabetical order.

SECTION 2. ELIGIBILITY AND PARTICIPATION.

(a) Eligibility. Each Eligible Employee may become a Participant by making an election to contribute to the Plan pursuant to Section 3(a) within 90 days of the date the Employee completes one Hour of Service as an Eligible Employee. The Eligible Employee shall then enter the Plan on the next Entry Date. To enroll, the Eligible Employee must complete an enrollment form on which he or she agrees to make Mandatory Employee Contributions pursuant to Section 3(a), designate a Beneficiary and choose from among the Investment Options applicable to contributions made under the Plan.

(b) Participation Upon Reemployment. A reemployed Employee shall be a Participant upon reemployment, provided he or she then qualifies as an Eligible Employee. Any prior election made pursuant to Section 3(a) with respect to the percentage of contribution shall remain in effect upon reemployment.

(c) Participation Upon Transfer to Eligible Employee Status. An Employee who is ineligible to become a Participant solely because he or she is not an Eligible Employee on the date he or she would otherwise become a Participant under Section 2(a) may become a Participant on the Entry Date following the date the person elects to participate in the Plan (which election must be made within 90 days of the date the person becomes an Eligible Employee).

(d) Suspension of Active Participation. A Participant’s active participation in the Plan shall be suspended for any period during which the Participant is an Employee but not an Eligible Employee, the Participant does not receive any Earnings, or ceases contributions in the case of hardship as provided in Section 3(a). A suspension in the case of hardship will be for a minimum of six months. A Participant shall not receive any allocation of Employer

Contributions made or arising with respect to any such period. Such Participant's Accounts shall, however, continue to share in the income, gains and losses of the Fund.

(e) Termination of Participation. A Participant's participation in the Plan shall terminate as of the later of (i) the date he or she ceases to be an Employee or (ii) if the Participant is entitled to a Plan Benefit hereunder, the earlier of the date of the Participant's death or the date no further benefits are payable to the Participant hereunder.

SECTION 3. MANDATORY EMPLOYEE CONTRIBUTIONS.

(a) Amount of Mandatory Employee Contribution. Each Eligible Employee, on a one-time basis through an irrevocable election, may make Mandatory Employee Contributions to the Plan of 2.5%, 5%, 10%, 15%, 20% or 25% (whichever he or she elects) of his or her Earnings. The election made pursuant to this paragraph shall be made within 90 days of the date an Eligible Employee first completes one Hour of Service, or when an Employee is not an Eligible Employee and transfers to Eligible Employee status, within 90 days of the date the Employee becomes an Eligible Employee. The election shall be irrevocable except to the extent of hardship (as determined by the Deferred Compensation Administrator). Such election shall apply to all periods of employment with the Employer, including periods following reemployment with the Employer when a prior election had been made under this Plan. Effective January 1, 2008, such election shall also apply to Earnings payable after termination of employment.

(b) Withholding and Crediting to Accounts. Except to the extent the Employer "picks up" the contribution under the principles of Section 414(h) of the Code, Mandatory Employee Contributions made pursuant to Section 3(a) shall be withheld only through regular payroll deductions on an after-tax basis from the Participant's Earnings. Mandatory Employee Contributions shall be deposited with the Trustee as soon as practicable after they are withheld and shall be credited to the respective Participants' separate Employee Accounts and invested as provided in Section 6.

SECTION 4. EMPLOYER CONTRIBUTIONS.

(a) Employer Contributions. For each Plan Year the Employer will make Employer Contributions to the Plan equal to the sum of the amounts elected to be contributed by its Participants as Mandatory Employee Contributions for such Plan Year, in accordance with the following sentence. The Employer Contribution with respect to any Participant shall equal the percentage of Mandatory Employee Contribution elected by the Participant under Section 3(a); provided, however, that such Employer Contribution shall not be made for any Plan Year in amounts which cannot be allocated to any Participant's Accounts by reason of the limitation described in Section 2.1 of Appendix I. All Mandatory Employee Contributions will be paid by the Employer, and as provided in Section 414(h) of the Code, in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions,

the contributions so picked up shall be treated as Employer Contributions. All Employer Contributions shall be invested in accordance with the provisions of Section 6 and shall be made in cash.

(b) Allocation of Employer Contributions. Subject to the limitations contained in the Plan, Employer Contributions available as of each pay period shall be allocated to the Employer Account of each Participant who made Mandatory Employee Contributions during such pay period.

Employer Contributions shall be allocated to each Participant in an amount equal to the contribution made for the Participant pursuant to Section 4(a).

(c) Timing of Contributions. The Employer Contributions shall be paid to the Trustee as soon as administratively possible following each pay period.

SECTION 5. ROLLOVER CONTRIBUTIONS AND TRANSFERS.

(a) Rollover Contributions. With the consent of the Deferred Compensation Administrator, the Plan may receive Rollover Contributions from a qualified plan described in Section 401(a) or 403(a) of the Code on behalf of an Eligible Employee if the following conditions are satisfied:

(i) The contribution is made entirely in the form of U.S. dollars; and

(ii) The Eligible Employee demonstrates to the Deferred Compensation Administrator's satisfaction that the contribution is a qualifying rollover contribution under Section 402(c)(4), 403(a)(4) or 408(d)(3) of the Code, as applicable.

Notwithstanding the foregoing, the Plan shall not accept any portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code ("IRA") other than an IRA that is a conduit IRA consisting solely of assets attributable to amounts received by the IRA from a qualified plan described in Section 401(a) or 403(a) of the Code and that is eligible to be rolled over and would otherwise be includible in gross income.

(b) Direct Transfers. With the consent of the Deferred Compensation Administrator, amounts excluding employee after-tax contributions may be transferred directly from a qualified plan described in Section 401(a) or 403(a) of the Code by an Eligible Employee, provided the transfer will not jeopardize the tax exempt status of the Plan. No amount may be directly transferred to this Plan if such amount is subject to the joint and survivor annuity requirements of Section 417 of the Code.

(c) Rollover Account. Rollover Contributions and amounts directly transferred to this Plan shall be credited to the Eligible Employee's separate Rollover Account and shall be invested as provided in Section 6. The Eligible Employee's Rollover Account shall be 100% vested and nonforfeitable at all times.

SECTION 6. INVESTMENTS AND INVESTMENT DIRECTIONS.

(a) Fund. All contributions to the Plan shall be held by the Trustee for investment and reinvestment as part of the Fund and as provided under the terms of the Trust Agreement and this Plan.

(b) Investment of Contributions. A Participant may, subject to Section 13(f), elect to have the contributions to his or her Employer Account, Employee Account and Rollover Account invested in one or more Investment Options designated by the Deferred Compensation Administrator. A Participant shall direct the investment of such contributions among such Investment Options in accordance with procedures established by the Deferred Compensation Administrator. A Participant's initial investment directions shall be filed with or as part of the Participant's enrollment form. A Participant may direct the reinvestment of existing balances credited to his or her Accounts, as well as change the Investment Options applicable to future contributions, in accordance with procedures established by the Deferred Compensation Administrator. If, at any time, a Participant does not have a valid election on file with the Deferred Compensation Administrator, the Participant's Accounts shall be invested as described in Section 6(e) except as otherwise determined by the Deferred Compensation Administrator.

The selection among the available Investment Options is the sole responsibility of each Participant. Neither the Employer or the Deferred Compensation Administrator nor any representative of the Employer or the Deferred Compensation Administrator is authorized to make any recommendation to any Participant with respect to Investment Option selection.

(c) California Government Code Section 53213.5. The Plan is intended to comply with California Government Code Section 53213.5 which provides the Employer and Trustee relief from fiduciary liability in the event of investment losses where Participants have directed their investment choices. This relief applies where a Participant individually directs the investment of his or her Accounts and the Deferred Compensation Administrator (or the Employer, as applicable) complies with communication and education requirements similar to those prescribed in regulations promulgated under Section 404(c) of the federal Employee Retirement Income Security Act of 1974, as amended.

(d) Investment of Account Balance of Terminated Participant. In the event a Participant's employment with the Employer is terminated and the Participant elects to leave his or her Accounts in the Plan, such Accounts shall continue to be invested pursuant to the provisions of this Section 6. In the event any Investment Option ceases to be offered as an Investment Option under the Plan, the portion of the Participant's Accounts invested in such Investment Option shall be liquidated and reinvested in an available Investment Option as directed by the Participant or, in the absence of such direction, as described in Section 6(e) except as otherwise directed by the Deferred Compensation Administrator.

(e) Default Investment. If a Participant (or Beneficiary) does not have a valid election on file with the Deferred Compensation Administrator as described in Section 6(b) (or the election does not apply to all of the Participant's or Beneficiary's Account), the Participant's

(or Beneficiary's) Account (or the portion as to which such election does not apply) shall be invested in target date life cycle funds that qualify as a "qualified default investment alternative" under Section 404(c)(5) of the federal Employee Retirement Income Security Act of 1974, as amended, and regulations issued thereunder.

(f) The Fund; No Reversion. Except as provided in the following paragraph, the assets of the Plan shall be held for the exclusive purpose of providing benefits to Participants or their Beneficiaries and of defraying the reasonable expenses of administering the Plan.

In the case of an Employer Contribution that was made by virtue of a mistake of fact, this Section 6(f) shall not prohibit the return of such Employer Contribution to the Employer within 12 months after the payment thereof.

SECTION 7. ACCOUNTS, VALUATIONS AND STATEMENTS.

(a) Accounts. The following Accounts, as appropriate, shall be maintained for a Participant:

- (i) An Employer Account;
- (ii) An Employee Account; and
- (iii) A Rollover Account

(b) Valuation of Accounts. Each Account shall be revalued at fair market value and adjusted as of each Valuation Date to reflect the Participant's proportionate share of any realized or unrealized investment income, gains, losses and expenses of each Investment Option in which the Account was invested which have accrued since the preceding Valuation Date.

(c) Quarterly Statement. On at least a quarterly basis, there shall be prepared and delivered to each Participant a written statement showing the status of such Participant's Accounts, including the respective fair market values of such Accounts.

SECTION 8. VESTING OF PLAN BENEFITS.

Each Employee is 100% vested in the value of his or her Accounts at all times.

SECTION 9. FORM OF DISTRIBUTION OF PLAN BENEFITS TO PARTICIPANTS.

(a) Forms Available. Except as provided in Section 10(c), a Participant may elect to have his or her Plan Benefit paid in one of the following forms of benefit payment:

- (i) Lump Sum. A single payment of the entire balance in the Participant's Accounts.
- (ii) Payment for a specified period. Substantially non-increasing periodic payments over a specified period of years, but not in excess of the Participant's allowable life expectancy, and in accordance with procedures established by the Deferred Compensation Administrator.

(iii) Equal Installments. Amounts generally payable in equal installments, which may be paid monthly, quarterly, semi-annually or annually (or such other period permitted by the Deferred Compensation Administrator) and in accordance with procedures established by the Deferred Compensation Administrator.

(iv) Partial Payment. Lump sum payment of partial balance of Accounts. If this payment method is selected, an additional payment(s) must also be selected for the balance remaining in the Participant's Accounts in accordance with procedures established by the Deferred Compensation Administrator.

(v) Other Payment Options. Any form of distribution elected by the Participant and approved by the Deferred Compensation Administrator, provided that such option must provide for substantially non-increasing payments for any period after the commencement date and meet the requirements of Section 10(c).

(b) Election of Form of Payment. A Participant may elect to have his or her Plan Benefit paid in a form described in Section 9(a) by filing the prescribed form(s) with the Deferred Compensation Administrator within the 90-day period ending on the date benefits are to be paid. A Participant who has made an election pursuant to this Section 9(b) may change or revoke such election at any time, including a date after benefits have commenced under the Plan.

(c) Effect of Failure to Elect a Form of Benefit. If a Participant has not elected the form in which his or her Plan Benefit is to be paid by the date payment is to be made, payment will be made in the form of a lump sum cash payment.

(d) Use of Plan Benefit to Pay Qualified Health Insurance Premiums. This Section 9(d) shall be effective July 28, 2011. A Participant who is an Eligible Retired Public Safety Officer (defined in (ii), below) and has elected to receive a distribution of his or her Plan Benefit under Section 9(b) may also elect, in accordance with procedures established by the Deferred Compensation Administrator, that an amount of the Plan Benefit be used to pay Qualified Health Insurance Premiums (defined in (iv), below). The maximum annual amount that an Eligible Retired Public Safety Officer may elect to be used to pay Qualified Health Insurance Premiums is \$3,000 (or such other amount permitted under Section 402(1)(2) of the Code). For purposes of this Section 9(d):

(i) "Disability" means that a determination has been made by the San Diego County Employees Retirement Association that the Participant is eligible to receive a disability retirement benefit.

(ii) "Eligible Retired Public Safety Officer" means a Participant who has separated from service with the Employer as a Public Safety Officer either: (1) by reason of his or her Disability; or (2) on or after the date that he or she attains Normal Retirement Age.

(iii) "Public Safety Officer" has the meaning set forth in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

(iv) “Qualified Health Insurance Premiums” means premiums for coverage under an accident or health insurance plan (either an insured or a self-insured plan) or a qualified long-term care insurance contract (as defined in Code Section 7702B(b)) for the Eligible Retired Public Safety Officer or his or her Spouse or dependents (as defined in Code Section 152) that are paid directly by the Plan to the provider of the accident or health insurance plan or qualified long-term insurance contract.

SECTION 10. TIME OF DISTRIBUTION OF PLAN BENEFITS.

(a) Time of Distribution: General Rule. Subject to Sections 10(c) and (e), payment of the Plan Benefit of a Participant is payable as soon as practicable following the termination of his or her employment from the Employer. If any Plan Benefit is to be distributed before the Participant attains Normal Retirement Age, the Participant must consent in writing to the receipt of the distribution.

(b) Valuation of Plan Benefit. The Participant’s Plan Benefit equals the value of the Participant’s Accounts at the time when such Plan Benefit is paid. The value shall be determined as of a Valuation Date which precedes the date of distribution and which is administratively feasible.

(c) Latest Time of Distribution. If a Participant fails to file a claim for benefits or there is no proper consent to an earlier distribution under Section 10(a), the Participant’s Plan Benefit shall be distributed no later than the 60th day after the later of (i) the last day of the Plan Year in which the Participant’s termination of employment with the Employer occurs or (ii) the last day of the Plan Year in which the Participant attains age Normal Retirement Age. Notwithstanding the foregoing, a Participant’s Plan Benefit will begin to be paid at the time described in the following paragraph unless he or she files a claim for benefits or consents to an earlier distribution under Section 10(a).

Distribution of a Participant’s Plan Benefit shall occur by April 1 of the calendar year following the later of (1) the calendar year in which the Employee attains age 70 ½ or (2) the calendar year in which the Employee retires. Notwithstanding any provisions herein to the contrary, and for all Plan Years to which Section 401(a)(9) of the Code applies, all distributions under the Plan shall be made in accordance with a reasonable and good faith interpretation of Section 401(a)(9), including the incidental death benefit requirement of Section 401(a)(9)(G) of the Code, and Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9, and such Code and Treasury Regulation provisions shall override any distribution options under the Plan that are inconsistent with such provisions.

(d) Investment of Deferred Benefit or Unpaid Installments. If distribution of a Participant’s Plan Benefit is deferred or is payable in installments pursuant to this Section 10, the Participant’s Accounts (to the extent not distributed) shall be retained in the Fund and held, valued and invested in the same manner as the Accounts of active Participants until fully distributed.

(e) Employer Contributions Allocated After Prior Distribution. Any Employer Contributions that are allocated to a former Participant after the former Participant has received his or her Plan Benefit shall be distributed to the former Participant as soon as practicable after such allocation.

(f) Payments to Alternate Payees.

(i) Distributions. In the cases described below, any distribution to an Alternate Payee pursuant to a domestic relations order, including any interest in a Participant's Accounts awarded to an Alternate Payee by a domestic relations order, shall be made as soon as practicable after such order is determined by the Deferred Compensation Administrator to be a QDRO and otherwise acceptable under the terms of the Plan:

(A) The QDRO has specified such time of distribution; or

(B) The Alternate Payee has consented in writing to such time of distribution.

(ii) Alternate Payee Accounts. If distributions are not made under Subsection (f)(i) above, any interest in a Participant's Accounts assigned or made payable or distributable to the Alternate Payee by the QDRO shall be transferred to a separate account (the "Alternate Payee Account") established for such Alternate Payee. If a single amount or a single percentage of the vested portion of such Participant's Accounts is assigned or made payable or distributable to the Alternate Payee by the QDRO, the transfers to the Alternate Payee Account shall be made pro rata from such Participant's Accounts except as otherwise provided by the QDRO. Alternate Payees may direct the investment of their Alternate Payee Accounts as provided in Section 6(b).

(iii) Beneficiary Designation. An Alternate Payee may, on the form prescribed by and filed with the Deferred Compensation Administrator, designate a Beneficiary to receive the benefits assigned to the Alternate Payee by a QDRO in the event of the Alternate Payee's death prior to receipt of all or any portion of such benefits. If the Alternate Payee has not made an effective designation of Beneficiary or if the designated Beneficiary is not living when a distribution is to be made, such benefits shall be paid to the Alternate Payee's estate, except as a QDRO may otherwise provide.

(iv) Latest Time of Distribution. Distribution to an Alternate Payee of his or her Alternate Payee Account shall be made as of the date specified in the QDRO, or if earlier, the time described under this Section 10 if the Alternate Payee so elects. However, payment will be made no later than the date the Participant's Plan Benefit is distributed or commences to be distributed.

(g) Direct Rollovers of Distributions from the Plan.

(i) Direct Rollovers to Eligible Recipients. An Eligible Recipient may elect, at the time and in the manner prescribed by the Deferred Compensation Administrator, to have any portion of an Eligible Rollover Distribution from the Plan paid directly to an Eligible Retirement Plan in a Direct Rollover, as described in Section 401(a)(31) of the Code. As used herein, the following terms have the following meanings:

(A) “Eligible Recipient” means a Participant, the Participant’s surviving Spouse, and the Participant’s Spouse or former Spouse who is an Alternate Payee under a QDRO with regard to the interest of such Alternate Payee.

(B) “Eligible Rollover Distribution” is any distribution of all or any portion of the Participant’s Accounts, except that an Eligible Rollover Distribution does not include: (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Eligible Recipient or the joint lives (or joint life expectancies) of the Eligible Recipient and his or her Beneficiary, or for a specified period of ten years or more; or (2) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code. Such distribution may include amounts not includible in gross income, but only if the distribution is (1) directly transferred to another qualified retirement plan or an annuity contract described in Section 403(b) of the Code which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which represents the amounts not includible in gross income, (2) rolled over to individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract), or (3) rolled over directly to a Roth individual retirement account described in Section 408A of the Code.

(C) “Eligible Retirement Plan” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, a qualified trust described in Section 401(a) of the Code, or an annuity contract described in Section 403(b) of the Code, that accepts the distributee’s Eligible Rollover Distribution. An Eligible Retirement Plan also means an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, including separately accounting for the portion of such distribution that represents the amounts not includible in gross income. An Eligible Retirement Plan also means a Roth individual retirement account described in Section 408A of the Code. The definition of Eligible

Retirement Plan also applies in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a QDRO.

(D) “Direct Rollover” means a payment by the Plan to an Eligible Retirement Plan specified by the Eligible Recipient, including payment effected by delivering to the Eligible Recipient a check made payable to the Eligible Retirement Plan’s custodian or trustee.

(ii) Direct Rollovers by Nonspouse Beneficiaries. A “designated beneficiary” within the meaning of Section 401(a)(9)(E) of the Code who is not the Participant’s surviving Spouse may elect, at the time and in the manner prescribed by the Deferred Compensation Administrator, to have any portion of a distribution that meets the requirements of the following sentence paid to an individual retirement account described in Section 408(a) of the Code, a Roth individual retirement account described in Section 408A of the Code, or individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract) established on behalf of the designated beneficiary and treated as an inherited individual retirement account or annuity in accordance with Section 401(c)(11) of the Code. Such a distribution must satisfy the requirements for treatment as an Eligible Rollover Distribution under Section 10(g)(i)(B) other than the requirement it be distributed to an Eligible Recipient (as defined in Section 10(g)(i)(A)). If the designated beneficiary is a trust, such trust may also qualify for a Direct Rollover to an inherited individual retirement account or annuity provided the beneficiaries of such trust otherwise meet the requirements to be designated beneficiaries under Section 401(a)(9)(E) of the Code.

(h) Service Credit. A Participant may direct the transfer of his or her Accounts (or portion thereof) to a governmental defined benefit plan (as defined in Section 414(d) of the Code) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan in a direct trustee-to-trustee transfer.

SECTION 11. BENEFITS UPON DEATH.

(a) Death While Employed. If a Participant dies while he or she is employed by the Employer, his or her Beneficiary shall be entitled to a Plan Benefit equal to 100% of the value of the Participant’s Accounts, determined as of a Valuation Date preceding the date of distribution and which is administratively feasible.

(b) Death Following Termination of Employment.

(i) Before Full Distribution. If a Participant dies after his or her employment by the Employer has terminated but before his or her Plan Benefit has commenced or been fully distributed, his or her Beneficiary shall be entitled to a Plan Benefit equal to the value of the Participant’s Accounts as of a Valuation Date preceding the date of distribution to the Beneficiary and which is administratively feasible. If the Plan Benefit has commenced in the form of installment payments, the remaining interest will be

distributed to the Beneficiary at least as rapidly as under the method in effect before the Participant's death.

(ii) After Full Distribution. If a Participant dies after his or her employment by the Employer has terminated and after he or she has received a distribution of his or her entire Plan Benefit, no further amount shall be payable to any individual hereunder.

(c) Form and Time of Commencement of Benefits to Beneficiaries. The Plan Benefit payable to a Beneficiary under Section 11(a) or 11(b)(i) shall be payable in a single lump sum in cash not later than 12 months after the date of the Participant's death; except, however, if installment payments have begun they may continue to be paid in accordance with the method of payment in effect. However, if the Beneficiary is the deceased Participant's Spouse, the Spouse may elect to delay receipt of the Accounts to a date no later than December 31 of the later of the calendar year following the calendar year in which the Participant died or the calendar year in which the Participant would have attained age 70 ½ . If the surviving Spouse dies before distributions to such Spouse have begun, distribution of the Plan Benefit shall be made as if the surviving Spouse were the Participant.

(d) Beneficiary Designations. Upon commencement of participation, each Participant shall, by filing the prescribed form with the Deferred Compensation Administrator, name a person or persons as the Beneficiary who will receive any distribution payable under the Plan in the event of the Participant's death. If the Participant has not named a Beneficiary or if none of the named Beneficiaries is living when any payment is to be made, then (i) the Spouse or, effective October 1, 2007, the Registered Domestic Partner of the deceased Participant shall be the Beneficiary or (ii) if the Participant has no Spouse or Registered Domestic Partner living at the time of such payment, the then living children of the deceased Participant shall be the Beneficiaries in equal shares or (iii) if the Participant has neither Spouse, Registered Domestic Partner or children living at the time of such payment, the estate of the Participant shall be the Beneficiary. The Participant may change the designation of a Beneficiary from time to time in accordance with procedures established by the Deferred Compensation Administrator. Any designation of a Beneficiary (or an amendment or revocation thereof) shall be effective only if it is made in writing on the prescribed form and is received by the Deferred Compensation Administrator prior to the Participant's death.

SECTION 12. LOANS.

(a) Amount of Loans. A Participant who is not on an unpaid leave of absence and is an Eligible Employee may borrow an amount from his or her Accounts, subject to the following restrictions:

(i) The amount of the loan shall not be less than \$1,000;

(ii) The amount of the loan shall not exceed the least of:

(A) \$50,000, less the highest outstanding principal balance of any loan to the Participant from this Plan or any other qualified plan maintained by the

Employer during the 12-month period ending on the day before the new loan is to be made;

(B) 50% of the balance credited to all of the Participant's Accounts.

(iii) Only one loan to the Participant may be outstanding at any time. A loan in default shall be treated as an outstanding loan until the earlier of such time as:

(A) the balance of the loan secured by the Participant's Account is recovered and Participant's promissory note is distributed to the Participant as described in Subsection (h) below; or

(B) the full amount of the unpaid loan (including any accrued interest) is repaid.

(b) Terms of Loans. All loans shall be on such terms and conditions as the Deferred Compensation Administrator may determine, provided that all loans shall:

(i) Be evidenced by a promissory note or other legally enforceable agreement signed by the Participant and secured by the Participant's Accounts that fund the loan;

(ii) Be subject to a substantially level amortization schedule with payments to be made by payroll deduction whenever possible and by check when not possible; but in no event shall payment be made less frequently than quarterly;

(iii) Except as otherwise provided in this Section 12, bear interest equal to the "prime rate" plus 1% or such other interest rate as the Deferred Compensation Administrator may determine. The "prime rate" shall be the prime rate published by The Wall Street Journal two weeks prior to the end of the most recent calendar-year quarter.

(iv) Provide for repayment in full on or before the earlier of (I) five years after the date when the loan is made (or 10 years after the date the loan is made if the loan is used to acquire any dwelling which within a reasonable time is to be used as the Participant's primary residence) or (II) termination of employment.

(c) Disbursement of Loans. The amount of a Participant's loan shall be disbursed to the Participant from the Participant's Accounts as soon as reasonably practicable after the Participant's loan application is processed by the Deferred Compensation Administrator. The Participant's Accounts shall be liquidated as necessary to fund the loan in the following order:

(i) Rollover Account;

(ii) Employer Account; and

(iii) Employee Account.

The liquidation of the applicable Accounts shall be pro rata among the Investment Funds in which such Accounts are invested unless the Participant otherwise directs in accordance with procedures established by the Deferred Compensation Administrator.

(d) Loan Fees. The Participant will pay such fees as the Deferred Compensation Administrator or its agent may impose in order to defray the cost of originating and administering loans from the Plan.

(e) Withholding and Application of Loan Payments. Principal and interest payments shall be made each pay period from the Participant's Earnings. Principal and interest payments shall be credited to the Participant's Accounts in the reverse order that each such Account funded the loan (the reverse of Section 12(c)) and shall be invested as provided in Section 6 as if such payments were current contributions.

(f) Suspension of Repayments During an Unpaid Non-Military Leave of Absence. If a Participant with an outstanding loan goes on an unpaid leave of absence that is not a military leave of absence, loan repayments may be suspended during the leave for a period of up to one year. When the person returns from the leave, the Deferred Compensation Administrator will increase the loan's remaining loan repayments to take into account the missed payments in a manner which will cause the loan to be repaid within five years of the date the loan was made (or 10 years if for a principal residence).

(g) Suspension of Repayments During a Military Leave of Absence. If the Participant is on a military leave of absence, the Participant may suspend loan repayments during the entire period of military service, regardless of length. Generally, the full amount of the loan (including the suspended payments) must be repaid by the Participant in full by the end of the original loan term (described in subsection (b)(iv) above) plus the length of the military service. Loan repayments shall resume upon completion of the period of military service, and the frequency and amount of such payments may not be less than the frequency and amount of payments in effect prior to the leave. The Participant may increase the amount of each monthly payment to be made following his or her return from a leave of absence in order to avoid having an outstanding lump sum balance due at the end of the loan term. Additionally, if, within 180 days after the date the Participant's military service ends, the Participant provides the Deferred Compensation Administrator with written notice and a copy of the military orders calling the Participant to military service (and, if applicable, any orders further extending the Participant's military service), then notwithstanding the provisions of subsection (b)(iii) above, the maximum amount of interest that can be charged on a Participant's loan during a period of suspension for military service is 6% or such other amount required by applicable law.

However, if the Participant's original loan term was less than five years, then the Participant may extend the term of repayment to the end of five years from the date of the Participant's original loan term plus the length of the military service, provided that payments resume in substantially level installments (including any interest that accrued during the leave of absence), so that the loan is repaid by the Participant no later than the end of the maximum permitted loan term.

(h) Default. Any loss caused by the nonpayment or other default on a Participant's loan obligation shall be borne solely by the Participant's Accounts.

(i) Definition of Default. If a Participant fails to make full payment of principal or interest on any Plan loan when such payment is due, and if such failure continues for 30 days, then the Deferred Compensation Administrator shall treat the loan as in default.

(ii) Suspension of Payments. Upon default, payments under a Participant's loan shall be suspended for a period not to exceed 60 days or until 30 days before the scheduled end of the loan term, whichever occurs first. If the Participant is unable to or does not resume payments and does not fully repay the outstanding loan before the expiration of the suspension period, then the Deferred Compensation Administrator shall report the full amount of the unpaid loan balance in default to the Participant and the Internal Revenue Service on Form 1099-R (or its equivalent) as a deemed distribution, or actual distribution (as applicable). The Deferred Compensation Administrator shall then cause the Plan to recover the full amount of the unpaid loan balance secured by the Participant's Account by involuntarily withdrawing such amount from the Participant's Account and by distributing the Participant's promissory note to the Participant at such time as a distribution of the note is permissible under the Plan.

SECTION 13. ADMINISTRATION OF THE PLAN

(a) Plan Sponsor and Administrator. The Employer is the "plan sponsor" of the Plan. The San Diego County Treasurer, or such other person or entity appointed by the Board of Supervisors of the Employer, is the "Deferred Compensation Administrator" of the Plan who shall operate the Plan on a day-to-day basis.

(b) Administrative Responsibilities. The Deferred Compensation Administrator is the named fiduciary which has the authority to control and manage the operation and administration of the Plan. The Deferred Compensation Administrator shall make such rules, regulations and computations and shall take such other actions to administer the Plan as the Deferred Compensation Administrator may deem appropriate. Such rules, interpretations, computations and actions shall be final, conclusive and binding on all persons. The Deferred Compensation Administrator shall have sole discretion to interpret the terms of the Plan and to determine eligibility for benefits pursuant to the objective criteria set forth in the Plan. In administering the Plan, the Deferred Compensation Administrator shall act in a nondiscriminatory manner to the extent required by Section 401 and related Sections of the Code and shall at all times discharge its duties with respect to the Plan in accordance with the applicable fiduciary standards under California state law.

(c) Powers and Duties of Deferred Compensation Administrator. The powers and duties of the Deferred Compensation Administrator shall include, but not be limited to, the following:

- (i) Construe and interpret this Plan in accordance with uniform rules and regulations;
- (ii) Decide the eligibility of any person to be covered under this Plan, determine the right of any person to a benefit and determine the amount, manner and time of any benefit, in accordance with the provisions of this Plan;
- (iii) Determine the qualified status of domestic relations orders and to administer distributions under QDROs (in accordance with Section 414(p) of the Code);
- (iv) Prescribe procedures to be followed by Participants and Beneficiaries in filing applications for benefits;
- (v) Prescribe procedures for redress of denied claims to be afforded to Participants and Beneficiaries under this Plan, pursuant to Section 15;
- (vi) Maintain, or cause to be maintained, records showing this Plan's fiscal operations and Employees' employment, service, benefits and vesting;
- (vii) Issue directions to the Trustee in connection with all benefits that are to be paid in accordance with the provisions of this Plan;
- (viii) Require from the Employer and Eligible Employees such information as shall be necessary for the proper administration of this Plan;
- (ix) Furnish to the Employer appropriate periodic reports covering this Plan's administration;
- (x) Secure one or more fidelity bonds;
- (xi) Appoint or remove advisors to this Plan, accountants or consultants, to render advice or to perform services with regard to its responsibilities under this Plan, as it shall determine to be necessary or desirable and may request County Counsel to engage the services of expert outside counsel;
- (xii) File necessary reports with the Internal Revenue Service; and
- (xiii) Designate by written instrument (signed by both parties) one or more persons to carry out, where appropriate, fiduciary responsibilities under this Plan.

(d) Management of Plan Assets. The Deferred Compensation Administrator is the named fiduciary with respect to control over and management of the Plan's assets only to the extent that (i) after the initial appointment of Trustee by the Employer, the Deferred Compensation Administrator may appoint one or more Trustees to hold all assets of the Plan and may enter into a Trust Agreement with each Trustee it appoints, (ii) it shall designate one or more Investment Options for the investment of Plan assets, (iii) it shall determine whether an

expense may be paid out of the Fund and, if so, how such expense will be allocated among Accounts of Participants and Beneficiaries, and (iv) it shall determine how any Revenue Share Amount (as defined in Section 14(a)) will be allocated among Accounts of Participants and Beneficiaries. After the initial appointment of Trustee, the San Diego County Treasurer shall have the sole responsibility and power to appoint and remove any Trustee managing assets of the Plan.

(e) Delegation of Fiduciary Responsibilities. The Deferred Compensation Administrator may engage such attorneys, actuaries, accountants, consultants, investment advisors or other persons to render advice or to perform services with regard to its responsibilities under the Plan as it shall determine to be necessary or appropriate. The Deferred Compensation Administrator may designate by written instrument signed by both parties one or more persons to carry out, where appropriate, fiduciary responsibilities of the Deferred Compensation Administrator. The duties and responsibilities under the Plan of the Deferred Compensation Administrator not delegated to other fiduciaries pursuant to the foregoing sentence shall be carried out by the agents of the Deferred Compensation Administrator, acting on behalf of and in the name of the Deferred Compensation Administrator in their capacities as agents and not as individual fiduciaries. Without limiting the generality of the foregoing, the Deferred Compensation Administrator shall designate the persons, groups of persons or committees who shall carry out the responsibilities of the Deferred Compensation Administrator under the Plan as the agents of the Deferred Compensation Administrator, and the Deferred Compensation Administrator as principal shall be responsible for the acts of such agents.

(f) Restrictions on Transfers of Investments. Notwithstanding any other provision of the Plan to the contrary, the Deferred Compensation Administrator may take any action and adopt such rules and procedures as it deems necessary or appropriate to govern all Participant investment elections and directions in order to protect the interests of all Participants investing in mutual funds offered through the Plan and the integrity of the Plan including, but not limited to, imposing restrictions on transfers between mutual funds or other Plan investments, rejecting requests for transfers into or out of a mutual fund, establishing limitations on the number of transfers that may be made into or out of a mutual fund and imposing fees or penalties on transfers into or out of a mutual fund which the Deferred Compensation Administrator or mutual fund provider determines to be excessive. Such action may be taken by the Deferred Compensation Administrator or by the mutual fund provider as set forth in the prospectus for the fund or other information.

(g) Service in Multiple Fiduciary Capacities. Nothing herein shall prohibit any person or group of persons from serving in more than one fiduciary capacity with respect to the Plan.

(h) Bonding. The Employer shall secure fidelity bonding for the fiduciaries of the Plan. The Employer shall indemnify the Deferred Compensation Administrator and any employee of the Employer who acts at the direction of the Deferred Compensation Administrator, against any personal liability or expense, except such liability or expense as may result from his own willful misconduct.

(i) Indemnification. To the fullest extent permitted by law, the Employer agrees to indemnify, defend and hold harmless the Deferred Compensation Administrator, the Plan individuals described in Section 13(d), and the employees of the Employer who administer the Plan, individually and collectively, against any liability whatsoever for any action taken or omitted by them in good faith in connection with this Plan and Trust or their duties hereunder and for any expenses or losses for which they may become liable as a result of any such actions or non-actions unless resultant from their own willful misconduct; and the Employer may purchase a bond and liability insurance to cover any of their potential liabilities with regard to this Plan and Trust.

SECTION 14. PLAN EXPENSE AND BENEFIT PAYMENTS.

(a) Expenses of the Plan. All expenses of administering the Plan shall be paid out of the Fund, except for such expenses as are paid by the Employer. The Deferred Compensation Administrator shall have complete and unfettered discretion to determine whether an expense of the Plan shall be paid by the Employer, and the Deferred Compensation Administrator's discretion and authority to pay expenses of the Plan shall not be limited in any way by any prior decision or practice regarding payment of the expenses of the Plan. Notwithstanding the foregoing, any Revenue Share Amount (as defined in this Section 14(a)) that is paid to the Plan shall first be used to pay expenses of administering the Plan. If any Revenue Share Amount is remaining after the payment of expenses, it shall be allocated to the Account of each Participant (or his or her Beneficiary) who is entitled to an allocation pursuant to the terms of the administrative services agreement between the Employer and the service provider under which the Revenue Share Amount was paid to the Plan. Such allocation shall be made at the time and in the manner described in the administrative services agreement. A Revenue Share Amount is an amount that is paid to the Plan pursuant to: (1) Section 13.14 of the Administrative Services Agreement between the Employer and Hartford Life Insurance Company, dated January 14, 2005, or (2) any other agreement with a Plan service provider under which revenue or other amounts received by such service provider are paid to the Plan.

(b) Benefit Payments. All benefits payable pursuant to the Plan shall be paid by the Trustee out of the Fund pursuant to the directions of the Deferred Compensation Administrator and the terms of the agreement with the Trustee.

SECTION 15. CLAIMS, INQUIRIES AND APPEALS.

(a) Application for Benefits. All claims for benefits and all inquiries concerning the Plan, or concerning present or future rights to benefits under the Plan, shall be submitted in writing to the Deferred Compensation Administrator. Applications for benefits must be made on the forms prescribed by the Deferred Compensation Administrator and signed by the Participant

or the Participant's Beneficiary, as applicable. Any application for benefits under this Plan shall be submitted to the Deferred Compensation Administrator addressed as follows:

County Treasurer – Tax Collector
Deferred Compensation Administrator
County of San Diego Incentive Retirement Deferred Compensation
Plan
1600 Pacific Highway, Room 102
San Diego, California 92101

(b) Hearing. The Deferred Compensation Administrator may rule on the benefits application solely on the basis of the application of the Participant or Beneficiary. In the event the Deferred Compensation Administrator determines it is necessary to hold a hearing regarding any benefit determination, the Deferred Compensation Administrator may appoint either one of its agents or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the Deferred Compensation Administrator his proposed findings of fact and recommended decision.

(i) The proposed findings of fact and recommendations of the referee shall be served on the parties who shall have 10 days to submit written objections thereto which shall be incorporated in the record considered by the Deferred Compensation Administrator.

(ii) Upon receiving the proposed findings of fact and the recommendations of the referee, the Deferred Compensation Administrator may:

(A) Approve and adopt the proposed findings and the recommendations of the referee; or

(B) Require a transcript or summary of all the testimony, plus all other evidence received by the referee.

(iii) Upon the receipt of the information described in Subsection (ii)(B) above the Deferred Compensation Administrator shall:

(A) Take such action as in its opinion is indicated by such evidence; or

(B) Refer the matter back with or without instructions to the referee for further proceedings; or

(C) Set the matter for hearing before itself. At such hearing the Deferred Compensation Administrator shall hear and decide the matter as if it had not been referred to the referee.

(c) Notice of Denial. In the event that any application for benefits is denied in whole or in part, the Deferred Compensation Administrator shall notify the applicant in writing of his or

her right to an independent review of the denial. Such written notice shall set forth, in a manner calculated to be understood by the applicant, specific reasons for the denial, specific references to this Plan's provisions on which the denial is based, a description of any information or material necessary to perfect the application, an explanation of why such material is necessary, and an explanation of this Plan's review procedure.

An application shall be granted or written notice of a denial shall be given to the applicant within ninety (90) days after the Deferred Compensation Administrator receives a proper application, unless special circumstances require an extension of time for processing the application. In no event shall such an extension exceed a period of 90 days from the end of the initial 90-day period. If such an extension is required, written notice thereof shall be furnished to the applicant before the end of the initial 90-day period. Such notice shall indicate the special circumstances requiring an extension of time and the date by which the Deferred Compensation Administrator expects to render a decision. If an application is neither granted nor denied within the time period prescribed by this Section 15(c), such application shall be deemed denied for purposes of Section 15(d).

(d) Request for Review. Any person whose application for benefits is denied in whole or in part (or such person's duly authorized representative) may appeal from the denial by submitting to the Deferred Compensation Administrator a request for an independent review of such application within six months after receiving written notice of the denial. The Deferred Compensation Administrator shall give the applicant or such representative an opportunity to review pertinent documents (except legally privileged materials) in preparing such request for review and to submit issues and comments in writing. The request for review shall be in writing and shall be addressed as follows:

County Treasurer – Tax Collector
Deferred Compensation Administrator
County of San Diego Incentive Retirement Deferred
Compensation Plan
1600 Pacific Highway, Room 102
San Diego, California 92101

The request for review shall set forth all of the grounds on which it is based, all facts in support of the request and any other matters which the applicant deems pertinent. The Deferred Compensation Administrator may require the applicant to submit such additional facts, documents or other material as he or she may deem necessary or appropriate in making a review.

Any review of a denied application shall be conducted by a panel of three or more individuals who did not take part in the initial denial of such application. Such individuals shall be designated by the Deferred Compensation Administrator.

(e) Decision on Review. The Deferred Compensation Administrator shall act upon each request for review within sixty (60) days after receipt thereof, unless special circumstances require an extension of time for processing, but in no event shall the decision on review be

rendered more than 120 days after the Deferred Compensation Administrator receives a proper request for review. If such an extension is required, written notice thereof shall be furnished to the applicant before the end of the initial sixty (60) day period. The Deferred Compensation Administrator shall give prompt, written notice of the decision to the applicant. In the event that the denial of the application for benefits is affirmed in whole or in part, such notice shall set forth, in a manner calculated to be understood by the applicant, the specific reasons for such denial and specific references to this Plan's provisions on which the decision is based.

(f) Exhaustion of Administrative Remedies; Limitations. No legal or equitable action for benefits under this Plan shall be brought unless and until the claimant

(i) has submitted a written application for benefits in accordance with Section 15(a),

(ii) has been notified that the application is denied as provided in Section 15(c),

(iii) has filed a written request for an independent review of the application in accordance with Section 15(d), and

(iv) has been notified in writing that the denial of the application was affirmed as provided in Section 15(e); provided, however, that such an action may be brought if the claim has not been acted upon within the time period prescribed by Section 15(e).

SECTION 16. AMENDMENT AND TERMINATION OF THE PLAN.

(a) Future of the Plan. The Employer expects to continue the Plan indefinitely. Future conditions, however, cannot be foreseen, and the Employer, through resolution of its duly authorized representatives, reserves the right to amend or terminate the Plan at any time retroactively or prospectively; notwithstanding, the Deferred Compensation Administrator shall have the authority to amend the Plan as necessary or desirable to maintain the qualified status of the Plan under Sections 401(a) and 501(1) of the Code or to facilitate the administration or operation of the Plan to the extent such amendment would not materially increase the cost of the Plan or significantly alter the benefits payable under the Plan.

(b) Amendments to the Plan. No amendment of the Plan shall (i) reduce the benefit of any Participant accrued under the Plan prior to the date the amendment is adopted, except to the extent that a reduction in accrued benefits may be permitted by the Code, or (ii) divert any part of the assets of the Plan to purposes other than the exclusive purposes of providing benefits to Participants and Beneficiaries who have an interest in the Plan and of defraying the reasonable expenses of administering the Plan and the Fund.

(c) Termination of the Plan. On termination or partial termination of the Plan, no part of the Fund shall revert to the Employer or be used for or diverted to purposes other than the exclusive purposes of providing benefits to affected Participants, surviving Spouses or Registered Domestic Partners and Beneficiaries who have an interest in the Plan and of defraying

the reasonable expenses of administering the Plan and such termination. On termination of the Plan or on the complete discontinuance of Employer Contributions to the Plan, each affected Participant's Employer Account shall remain 100% vested and nonforfeitable. On termination of the Plan, the Trust shall continue until the Fund has been distributed as provided in Section 16(d). Any other provision hereof notwithstanding, the Employer shall have no any obligation to continue making Employer Contributions to the Plan after its termination. After such termination, neither the Employer nor any other person shall have any liability or obligation to provide benefits hereunder in excess of the value of the Fund. Upon such termination, Participants and Beneficiaries shall obtain benefits solely from the Fund. In the event of a partial termination of the Plan, this Section 16(c) shall apply only with respect to the Participants and Beneficiaries who are affected by such partial termination.

(d) Allocation of Fund on Plan Termination. On termination or partial termination of the Plan, the Accounts of each Participant shall be distributed as provided in Sections 9 and 10.

SECTION 17. GENERAL PROVISIONS.

(a) No Assignment of Property Rights. The interest and property rights of any person in the Plan, in the Fund or in any distribution to be made under the Plan shall not be subject to option nor be assignable either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment or other creditor's process, and any act in violation of this Section 17(a) shall be void. The foregoing notwithstanding, the creation, assignment, or recognition of a right to all or a portion of a Participant's Plan Benefit pursuant to a QDRO shall not constitute a violation of this Section 17(a), provided such order is determined by the Deferred Compensation Administrator to be acceptable as provided under Section 10(f).

(b) Incompetence. If, in the opinion of the Deferred Compensation Administrator, any person becomes unable to handle properly any amounts distributable under the Plan, the Deferred Compensation Administrator may make any arrangement for distribution on such person's behalf that it determines will be beneficial to such person, including (without limitation) payment to such person's guardian, conservator, Spouse, Registered Domestic Partner or dependent. Payments made pursuant to this Section 17(b) shall completely discharge the Employer and the Trustee.

(c) No Employment Rights. Nothing in the Plan shall be deemed to give any person any right to remain in the employ of the Employer or affect any right of the Employer to terminate a person's employment with or without cause, which right is hereby reserved.

(d) Lost Participant or Beneficiary. If the Deferred Compensation Administrator is unable to locate a Participant or Beneficiary who is entitled to receive any property which constitutes all or part of a Plan Benefit, then such property shall be forfeited (on a date determined by the Deferred Compensation Administrator and applied in a uniform manner to all Participants) and used to reduce subsequent Employer Contributions to the Plan. In the event that such Participant or Beneficiary thereafter makes a claim for such property prior to the date

final distributions are made from the Fund following termination of the Plan, the Employer shall reinstate such property (without income, gains or other adjustment) by making a special contribution as soon as reasonably practicable after such claim is made. However, if any property which constitutes all or part of a Plan Benefit would have been lost by reason of escheat under applicable state law, then such property shall not be subject to reinstatement by the Employer.

(e) Choice of Law. The Plan and all rights hereunder shall be construed in accordance with the Code and, to the extent not preempted by the Code, the law of the State of California.

(f) Military Leave. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

SECTION 18. DEFINITIONS.

(a) “Accounts” means, to the extent applicable to a Participant, one or more of the accounts listed in Section 7(a).

(b) “Alternate Payee” means any Spouse, former Spouse, child or other dependent of a Participant who is recognized by a QDRO as having a right to receive all, or a portion of, the Participant’s Plan Benefits.

(c) “Beneficiary” means the person or persons described in Section 11(d).

(d) “Code” means the Internal Revenue Code of 1986, as amended from time to time.

(e) “Deferred Compensation Administrator” means the San Diego County Treasurer or its delegate or such other person or entity appointed by the Board of Supervisors of the Employer as provided in Section 13.

(f) “Differential Pay” means any payment that (i) is made by the Employer to an individual with respect to any period during which he or she is performing “qualified military service”(as defined in Section 414(u) of the Code) while on active duty for a period of more than 30 days; and (ii) represents all or a portion of the wages the individual would have received from the Employer if he or she were performing services for the Employer.

(g) “Earnings” means, for any Plan Year, an Employee’s total salary or wages paid to a Participant by the Employer, including overtime and bonuses, as reported on IRS Form W-2, and shall also include amounts contributed under a “cafeteria plan” pursuant to Section 125 of the Code, if any, and amounts contributed by the Employer under this Plan which are “picked up” under principles of Section 414(h) of the Code. Except as otherwise provided in this Section 18(g), Earnings shall exclude all other amounts of deferred compensation (whether or not includable in the gross income of the Employee for federal income tax purposes).

Effective for Plan Years beginning on or after January 1, 2011, the annual Earnings of each Participant taken into account in determining allocations under the Plan for any Plan Year shall not exceed \$245,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. This limit shall be applied based on a Participant's Earnings during the Plan Year or such other consecutive 12-month period over which Earnings are otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

Effective January 1, 2008, a Participant's Earnings shall include the following:

(i) An amount paid to a Participant by the later of (a) 2 ½ months after the Participant's severance from employment with the Employer or (b) the end of the Limitation Year which includes the date of severance if such amount would otherwise have been included in Earnings had it been paid prior to severance of employment and is described in Treasury Regulation Section 1.415(c)-2(e)(3)(ii) or (iii). Under this paragraph, Earnings do not include (a) contributions to the County of San Diego Defined Benefit Pension Plan ("Terminal Pay Pension Plan"), the County of San Diego Defined Contribution Savings Plan ("Terminal Pay Savings Plan"), the County of San Diego Excess Benefit Savings Plan ("Excess Benefit Savings Plan"), or the County of San Diego Excess Benefit Pension Plan ("Excess Benefit Pension Plan") or (b) distributions from the Terminal Pay Pension Plan, the Terminal Pay Savings Plan, the Excess Benefit Savings Plan or the Excess Benefit Pension Plan.

(ii) Payments of Differential Pay to a Participant.

(h) "Eligible Employee" means any Employee who is classified by the Employer as either a permanent full time Employee or a permanent part time Employee other than: (i) any individual who is a "leased employee" within the meaning of Section 414(n) of the Code, (ii) an Employee who is a nonresident alien with respect to the United States and who derives no earned income with a United States source from the Employer, or (iii) any individual subject to a written agreement that provides that such individual shall not be eligible to participate in the Plan.

An individual's status as an Eligible Employee shall be determined by the Employer, and such determination shall be conclusive and binding on all persons. An Eligible Employee may become a Participant in the Plan pursuant to the requirements of Section 2.

(i) "Employee" means any individual who is classified as an "employee" on the payroll records of the Employer. The term "Employee" does not include any individual: (i) whose compensation from the Employer is reported on Form 1099; (ii) who is classified or treated by the Employer as a consultant or independent contractor; or (iii) who performs services pursuant to an agreement between the Employer and a third-party leasing or professional employment organization, staffing firm or other similar third-party organization. An individual who is not classified as an "employee" on the payroll records of the Employer for a particular period shall not be considered an Employee for the period, even if a court or administrative

agency determines that such individual is or was an employee of the Employer during such period for purposes of payroll taxes, labor or employment law or any other purpose, and shall remain ineligible to participate in the Plan unless the Plan is amended specifically to provide that the individual is an Employee who is eligible for Plan participation. An individual's status as an Employee shall be determined by the Employer and such determination shall be conclusive and binding on all persons.

(j) "Employee Account" means the separate account maintained for each Participant to which are credited the Participant's Mandatory Employee Contributions.

(k) "Employer" means the County of San Diego.

(l) "Employer Account" means the separate account maintained for each Participant to which is credited the Participant's share of Employer Contributions described in Section 4.

(m) "Employer Contributions" means contributions made by the Employer described in Section 4.

(n) "Entry Date" means the first day of each pay period.

(o) "Fund" means the total of all assets held by the Trustee pursuant to the terms of the Plan and the Trust Agreement for the benefit of Participants and their Beneficiaries.

(p) "Hour of Service" means each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of services.

(q) "Investment Option" means any investment vehicle designated by the Deferred Compensation Administrator.

(r) "Mandatory Employee Contributions" means contributions made by a Participant pursuant to Section 3(a).

(s) "Normal Retirement Age" means age 62.

(t) "Normal Retirement Date" means the first day of the month coinciding with or next following the date the Participant attains Normal Retirement Age.

(u) "Participant" means an individual who is or was an Eligible Employee and who participates in the Plan.

(v) "Plan" means the County of San Diego Incentive Retirement Deferred Compensation Plan, as set forth herein and as amended from time to time.

(w) "Plan Benefit" means the amount distributable to a Participant pursuant to Section 9.

(x) “Plan Year” means, for the first Plan Year, the period from July 1, 2000 to December 31, 2000; and beginning January 1, 2001, each calendar year.

(y) “QDRO” means a qualified domestic relations order, as defined in Section 414(p) of the Code.

(z) “Registered Domestic Partner” shall have the same meaning as in Section 297.5 of the California Family Code. Consistent with Section 297.5, it is intended that a Registered Domestic Partner have the rights and benefits afforded a “Spouse” under the Plan unless otherwise required by the Internal Revenue Code or other applicable law.

(aa) “Rollover Account” means the separate account maintained for each Eligible Employee who makes a Rollover Contribution as described in Section 5.

(bb) “Rollover Contribution” means a rollover contribution made by an Eligible Employee pursuant to Section 5.

(cc) “Spouse” means a person to whom the Participant is married within the meaning of the laws of the jurisdiction of the Participant’s domicile, provided that marriage is recognized as valid under the laws of the United States including, but not limited to, the Code. A couple is “married” if their relationship is recognized as a marriage under the laws of the state or country in which the Participant is domiciled and of the United States.

(dd) “Trust Agreement” means the trust agreement entered into pursuant to the Plan by the Employer or the Deferred Compensation Administrator and the Trustee, as amended from time to time.

(ee) “Trustee” means, effective July 1, 2000, the San Diego County Treasurer; and thereafter, at the discretion of the San Diego County Treasurer, any successor trustee(s) appointed by the San Diego County Treasurer pursuant to Section 13(d).

(ff) “Valuation Date” means each day on which the New York Stock Exchange is open for business.

SECTION 19. EXECUTION.

To record the adoption of the amendment and restatement of the Plan to read as set forth herein, effective as of July 1, 2011 (except as otherwise provided in the Plan), the Employer has caused its authorized officers to execute the same this ____ day of _____, 2011.

COUNTY OF SAN DIEGO

By: _____

Title: _____

Attest:

Secretary

APPENDIX I

LIMITATIONS ON CONTRIBUTIONS

SECTION 1. DEFINITIONS

1.1 “Annual Additions” means, for any Limitations Year, the sum of the following:

(a) The aggregate after-tax employee contributions that the Participant contributes during such year to all qualified retirement plans maintained by the Employer;

(b) The amount of Employer Contributions allocated to the Participant’s Employer Account under this Plan as of any date within such year; and

(c) The amount of employer contributions and forfeitures allocated to the Participant under any qualified defined contribution plan that may be maintained by the Employer, other than this Plan, as of any date within such year. Effective January 1, 2008, Annual Additions shall not include any amount described in Treasury Regulation Section 1.415(c)-1(b)(2)(ii)(A)-(D).

1.2 “Limitations Year” means the Plan Year.

1.3 “Section 415 Compensation” means any one of the definitions of compensation described in Subsections (a), (b), (c) or (d) below received by an Employee from the Employer. Any definition of Section 415 Compensation shall be used consistently to define the compensation of all Employees taken into account in satisfying the requirements of an applicable provision of this Appendix I for the relevant determination period.

“Section 415 Compensation” means any one of the following definitions of compensation received by an Employee from the Employer:

(a) Compensation as defined in Treasury Regulation Section 1.415(c)-2(b);

(b) “Wages”, as defined in Section 3401(a) of the Code for purposes of income tax withholding at the source, plus amounts that would be includible in wages, but for an election under Code Sections 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b), but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(23) of the Code);

(c) “Wages”, as defined in Section 1.3(b) above, plus all other payments of compensation reportable under Code Sections 6041(d), 6051(a)(3) and 6052 and the regulations thereunder, and modified, at the election of the Employer, to exclude amounts paid or reimbursed for the Employee’s moving expenses, to the extent it is reasonable to believe that these amounts are deductible by the Employee under Section 217 of the Code; or

(d) The definition of Section 415 Compensation set forth in Section 1.3(a) above, reduced by the items specified in Treasury Regulation Section 1.415(c)-2(c).

Each of the definitions of Section 415 Compensation set forth in Subsections (a), (b), (c) and (d) above shall include any elective contributions that are not includable in gross income under Sections 125, 402(a)(8), 402(h) or 403(b) of the Code. For Plan Years and Limitation Years beginning on and after January 1, 2003, for purposes of the definition of “Section 415 Compensation” set forth in Subsections (a), (b), (c) and (d), above, amounts under Section 125 of the Code described in the previous sentence include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Section 125 of the Code only if the Employer does not request or collect information regarding the Participant’s other health coverage as part of the enrollment process for the health plan. Effective January 1, 2001, each definition of “Section 415 Compensation” set forth in Subsections (a), (b), (c) and (d) above shall include any amount that is not includable in the gross income of the Employee by reason of Section 132(f)(4) of the Code. Effective for Limitations Years beginning on or after January 1, 2008, Section 415 Compensation of any Participant shall not include an amount in excess of the limitation set forth in Code Section 401(a)(17), as adjusted for cost of living increases in accordance with such Code Section.

Effective January 1, 2008, a Participant’s Section 415 Compensation shall also include the following:

- (i) An amount paid to a Participant by the later of (a) 2 ½ months after his or her severance from employment with the Employer or (b) the end of the Limitation Year that includes the date of severance, if such amount would otherwise have been included in Earnings had it been paid prior to the severance of employment and is described in Treasury Regulation Section 1.415(c)-2(e)(3)(ii) or (iii). Under this paragraph, Earnings include amounts contributed to the County of San Diego Excess Benefit Savings Plan (“Excess Benefit Savings Plan”). Under this paragraph, Earnings do not include (a) amounts contributed to the County of San Diego Defined Benefit Pension Plan (“Terminal Pay Pension Plan”), the County of San Diego Defined Contribution Savings Plan (“Terminal Pay Savings Plan”) or the County of San Diego Excess Benefit Pension Plan (“Excess Benefit Pension Plan”) or (b) amounts distributed from the Terminal Pay Pension Plan, the Terminal Pay Savings Plan, the Excess Benefit Savings Plan or the Excess Benefit Pension Plan.
- (ii) Payments of Differential Pay to a Participant.

SECTION 2. ALLOCATION LIMITATIONS.

2.1 Limitation on Contributions. Effective for Limitations Years beginning on or after January 1, 2011, except to the extent permitted under Section 414(v) of the Code, if applicable, the Annual Additions allocated to a Participant’s Accounts for any Limitations Year shall not exceed the lesser of the following:

(a) \$49,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or

(b) 100 percent of the Participant's Section 415 Compensation for the Limitations Year, provided, that the compensation limit referred to in this Subsection (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a Participant's Annual Additions would exceed the foregoing limitation which applies, then such Annual Additions shall be reduced by reducing the components thereof in the order in which they are listed in Section 1.1 of this Appendix I after all reductions have been made under the County of San Diego Defined Contribution Savings Plan. If after all reductions are taken from the Accounts listed in Section 1.1 of this Appendix I, excess Annual Additions shall be reduced as provided in Section 2.2 below.

2.2 Corrections. If the limitations of Section 415 of the Code would otherwise fail to be satisfied, corrections may be made, as determined in the discretion of the Deferred Compensation Administrator, pursuant to the Employee Plans Compliance Resolution System described in Revenue Procedure 2008-50 (or other guidance issued by the Internal Revenue Service), including corrections under former Treasury Regulation Section 1.415-6(b)(6), as in effect before the issuance of final Treasury Regulations under Code Section 415 in 2007 (if such corrections otherwise meet the requirements of Revenue Procedure 2008-50 or other Internal Revenue Service guidance).