

**MILWAUKEE COUNTY  
PLAN OF DEFERRED COMPENSATION**

1. **Name:** The name of this Plan is the Milwaukee County Plan of Deferred Compensation, hereinafter referred to as the "Plan". This restated Plan is effective January 1, 2004 and includes amendments adopted through August 1, 2011.
2. **Purpose:** The primary purpose of the Plan is to allow employees to receive federal and state income tax benefits while accumulating additional savings for retirement through payroll reduction. Deferred Compensation is a voluntary, supplemental long-term retirement program for public employees authorized by federal law. The program was implemented by Milwaukee County to attract and retain personnel by permitting them to enter into agreements with the County which will provide for the deferral of payment of a portion of their current Compensation until paid following termination of employment, in accordance with § 457(b) of the Internal Revenue Code of 1986 as amended, and other applicable laws and regulations of the United States and the State of Wisconsin. Effective August 1, 2011, the Plan is amended to include a qualified Roth contribution program pursuant to Code section 402A.
3. **Parties:** The parties of this Plan shall be Milwaukee County, hereinafter referred to as "County" and eligible Employees who have elected to participate, hereinafter referred to as "Participants".
4. **Definitions:**
  - a. **"Account"** shall mean the Account (including each sub-account) maintained for each Participant (or Beneficiary) which at all times shows: the amount of the Participant's Deferred Compensation (including any income or loss attributable to the Employer's investment of the Participant's Deferred Compensation); any amounts accepted as a transfer allowed by the Committee pursuant to Code section 457(e)(10); any rollover contributions accepted pursuant to Code sections 457(e)(16) and 402(c); any distributions to the Participant; and any fees or expenses charged against the Participant's Account.

To the extent that the Participant's Deferred Compensation is held in (and distributions and fees or expenses are charged against) the Investment Contract(s), the value of the Participant's Account is the value of the applicable sub-Account(s) under the Investment Contract(s).

The record of each Participant's interest in the Trust Fund shall be divided into the following subaccounts:

- Employee Contribution Account consisting of the following subaccounts:

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- Elective Pretax Contribution Subaccount to which shall be credited Elective Pretax Contributions
  - Elective Roth Contribution Subaccount to which shall be credited Elective Roth Contributions
  - Rollover Account consisting of the following subaccounts:
    - Non-Roth Rollover Subaccount to which shall be credited rollover contributions which are not Roth rollover contributions
    - Roth Rollover Subaccount to which shall be credited Roth rollover contributions
- b. **"Administrator"** shall mean the County including, as applicable, its governing body and the person or group of officials, officers, and employees (the Select Committee on Deferred Compensation) which is appointed by the governing body and is responsible for the administration of the Plan and for any investments and the accounting of amounts and property held under the Plan.

The Administrator may contract with an independent third party administrator to provide services to assist in the administration of the Plan. Any such agreement to administer the Plan shall be set forth in writing and shall be subject to County Board approval.

- c. **"Beneficiary"** shall mean the person(s) or other legal entity(s), including but not limited to a trustee, personal representative, or other fiduciary, designated (in the Participation Agreement) by the Participant to receive the undistributed portion of the Participant's Account payable upon or after the Participant's death ("primary" Beneficiary(s)), or upon or after the Participant's death if the primary Beneficiary predeceases the Participant (the "contingent" Beneficiary(s)).

Any statement in a Beneficiary designation referring to the Beneficiary's relationship to the Participant is for convenience or information only and shall have no effect on the construction or interpretation of the Beneficiary designation.

If the Participant designates more than one Beneficiary for either a "primary" or "contingent" status, all Beneficiaries of that status shall have equal share, unless the Participant specifies otherwise.

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If the participant fails to designate a Beneficiary, or if for any reason the Participant's Beneficiary designation is invalid or ineffective (including the absence of a surviving designated beneficiary), the Participant's estate is the Beneficiary to the extent of the failure or invalidity or ineffectiveness. If the Participant's probate estate was closed, the person(s) determined by a court of competent jurisdiction is the Beneficiary to the extent of the failure or invalidity or ineffectiveness.

- d. **"Benefit Commencement Date"** shall mean the date selected by the Participant, or by the Beneficiary; or the "default" date that results by operation of the provisions of the Plan from the payee's failure to make such an election.
- e. **"Code"** shall mean the Internal Revenue Code of 1986, as amended, including any regulations or rulings under the Code. Any reference to Regulations is a reference to Treasury Department regulations under the Code, unless otherwise indicated. Any reference to a Section of the Code shall be construed to include a reference to the corresponding provision of any successor law.
- f. **"Contributions"** shall mean Employee Contributions and (if any) employer contributions, rollover contributions and transfer contributions. Contributions under the Plan shall not be reduced because of the Participant's attainment of any age. Contributions shall be made according to the payroll methods of and at such times as may be determined by the County.
- g. **"Committee"** shall mean the Deferred Compensation Select Committee established under ¶ 11.b. of this Plan.
- h. **"Compensation"** shall mean the total amount of wages, salary, bonuses, overtime and other compensation that would be payable by the County to an Employee in the absence of any agreement to defer compensation under the Plan or under any other deferred compensation plan or arrangement of any kind. Contributions made to the Employees' Retirement System of the County of Milwaukee ("ERS") (including "pick-up" contributions) from any portion of the Compensation of the Employee shall not reduce the Compensation used in calculating the deferral to be made on behalf of the Employee under this Plan. If, however, the combination of deferred compensation under this Plan, plus contributions to ERS, are such that remaining wages of the Employee are insufficient to pay other required payroll deductions (including taxes), the deferred compensation under this Plan shall be limited accordingly.

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Compensation earned through the final paycheck and paid within the later of 2-1/2 months after Termination of Service or the end of the calendar year that includes the date of severance from employment, i.e., the "Permissible Period," shall be Compensation if the payments, absent Termination of Service, would have been paid to the Employee while the Employee continued in employment with the County and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation.

Effective January 1, 2009, Compensation shall include payments to an individual who does not currently perform services for the County by reason of qualified military service (within the meaning of Code section 414(u)(1)) while on active duty for a period of more than 30 days to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the County rather than entering qualified military service. The individual who receives a differential wage payment shall be treated as the Employee of the County.

- i. **"County"** shall mean Milwaukee County, Wisconsin.
- j. **"Death Benefit Distribution"** shall mean any distribution that begins after the death of a Participant.
- k. **"Deferred Compensation"** shall mean the amount of Compensation which the Participant elects to defer under the Participation Agreement and which the Participant and County mutually agree shall be deferred in accordance with the Plan. The Plan does not require or permit Participants to make after-tax elective deferrals to the Plan other than Elective Roth Contributions pursuant to ¶ 4.m.
- l. **"Employee"** shall mean any employee of the County who receives Compensation.
- m. **"Employee Contributions"** shall mean "elective deferrals" made pursuant to a salary reduction agreement as specified by a Participation Agreement. Effective August 1, 2011, Employee Contributions shall include Elective Pretax Contributions or Elective Roth Contributions, as defined below:
  - (1) Elective Pretax Contributions. Employee contributions made to the Plan at the election of the Participant which are not includable in

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the Participant's gross income at the time deferred and which would otherwise be payable to the Participant in cash.

- (2) Elective Roth Contributions. Employee contributions made to the Plan at the election of the Participant that are includable in the Participant's gross income at the time deferred and have been irrevocably designated as Elective Roth Contributions by the Participant in the Participant's deferral election.

Elective Roth Contributions shall be treated as "elective deferrals" for all Plan purposes.

- n. **"Hardship Distribution"** shall mean a distribution in the event that the Participant is faced with an Unforeseeable Emergency and as provided below.
- o. **"Includible Compensation"** shall have the meaning given to the term "participant's compensation" by Code section 415(c)(3), provided, however, that for periods prior to January 1, 2002, Includible Compensation shall mean the amount of an Employee's Compensation from the County for a taxable year attributable to services rendered for the County, and that is currently includible in the Employee's gross income within the meaning of Code section 457(e)(5) prior to 2002. Includible Compensation shall be determined without regard to any community property laws.

Includible Compensation includes payments after Termination of Service as described in paragraph 4.h.

- p. **"Investment Contract"** shall mean any annuity contract or custodial account holding regulated investment company stock or other insurance or investment of any kind that the Trustee may (but is not required to) hold for the purposes of the Plan. The Trustee shall hold all Investment Contracts under the Plan on behalf of the Plan and in the name of the Plan.

The provisions of the Investment Contracts are set forth by contracts and described in prospectuses provided by the issuers of the Investment Contracts and those provisions (to the extent not inconsistent with the provisions of the Plan) are incorporated by reference only to the extent necessary to apply the provisions of the Plan.

- q. **"Normal Retirement Age"** shall mean age 70½, unless the Participant has elected an alternate "Normal Retirement Age" for purposes of the catch-up limitation in ¶ 7.c. by written instrument delivered to the County prior to Termination of Service. Once a Participant has to any extent

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utilized the catch-up limitation, his/her "Normal Retirement Age" may not be changed.

A Participant's alternate "Normal Retirement Age" may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under any other County sponsored retirement system covering the Participant and may not be later than the date the Participant will attain age 70½. If a Participant continues County employment after attaining age 70½, not having previously elected an alternate "Normal Retirement Age", the Participant's alternate "Normal Retirement Age" shall be the age at which the Participant actually terminates from County service. If the Participant will not become eligible to receive benefits under a County sponsored retirement system, the Participant's alternate "Normal Retirement Age" may not be earlier than age 65 and may not be later than age 70½.

- r. **"Participant"** shall mean an Employee (or former Employee) who has elected to participate in the Plan by entering into an Participation Agreement, who has Deferred Compensation under the Plan and who has not yet received all of the distribution of his/her Account to which s/he may be entitled under the Plan.
- s. **"Participation Agreement"** shall mean the agreement (in whatever form[s] prescribed by the Committee), as amended from time to time, entered into by and between the Participant and the County which shall incorporate by reference the provisions of the Plan and which specifies (1) the amount of Deferred Compensation, (2) the Participant's investment selection, and (3) the Participant's Beneficiary. The Participation Agreement must be entered into before the first day of the month in which the Compensation is paid or made available, or for a new Employee, on or before the first day on which the Participant performs services for the County. Participants who selected Payment Options in their Participation Agreement before 2002 shall be allowed to change the selected Payment Option at any time before payment commences. The Participation Agreement will remain in effect until the Participant revokes or alters the terms of the Participation Agreement.
- t. **"Payment Option"** shall mean, except as limited below, any of the annuity options or income options or settlement options or other options for payment that are available under the applicable Investment Contract(s) held under the Plan, or that may otherwise be made available by the Committee on a non-discriminatory basis. The Committee shall not permit the use of any Payment Option that is based on gender-distinct actuarial tables or that otherwise unlawfully discriminates against any person.

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The Administrator shall not permit the Participant or Beneficiary to elect any Payment Option that (at the time the distribution begins) does not satisfy the provisions of the Plan, including the applicable requirements of the Internal Revenue Code.

- u. **"Plan"** shall mean the Milwaukee County Plan of Deferred Compensation as established and implemented herein, as well as any rules promulgated by the Committee. This Plan is intended to qualify as an "eligible deferred compensation plan" within the meaning of Code section 457(b).
- v. **"Retirement Distribution"** shall mean any distribution other than a Hardship Distribution that begins before the death of the Participant.
- w. **"Termination of Service"** shall mean the permanent severance of the Participant's employment with the County, within the meaning of Code section 457(d)(1)(A)(ii), for any reason.
- x. **"Third Party Administrator"** shall mean an independent administrator retained by the Committee (with County Board approval) to administer the Plan.
- y. **"Trust Fund"** shall mean the assets of the Plan as described in Code section 457(g) which are held in trust by a Trustee and/or the assets of the Plan which consist of insurance contracts or policies issued by an insurance company.
- z. **"Trustee"** shall mean the person, persons or entity holding the assets of the Plan in trust or, in the case of a Trust Fund consisting solely of insurance contracts, the insurer. The use of the term Trustee to refer to the insurer is not intended to indicate that the insurer is a trustee within the meaning of state or federal statutory or common law, but merely for convenience of reference in the Plan.
- aa. **"Unforeseeable Emergency"** shall mean a severe financial hardship of the Participant resulting from an illness or accident of the Participant or the Participant's spouse or dependent (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1),(b)(2), and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to repair or rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may

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constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. Finally, the need to pay for the funeral expenses of a spouse or dependent child of a Participant may also constitute an Unforeseeable Emergency. Except as otherwise specifically provided in this provision, the purchase of a home and the payment of college tuition are not Unforeseeable Emergencies under this paragraph. The Third Party Administrator shall determine in his or her sole discretion whether a hardship of the Participant constitutes an Unforeseeable Emergency.

- bb. **"Year"** shall mean the calendar year. For the purposes of administering the Plan, the Administrator shall be entitled to rely on the assumption that a Participant's taxable year is the calendar year, unless the Participant gives written notice specifying his/her taxable year.
5. **Eligibility:** An Employee of the County shall be eligible to participate in the Plan, provided that members of any collective bargaining units may participate only if the bargaining agreement under which they are covered specifically provides for participation in this Plan.
6. **Enrollment:**
- a. **Enrollment.** An eligible Employee may enroll in the Plan and become a Participant by completing, executing and delivering a Participation Agreement as required by the Plan Administrator. Specified enrollment periods may be established by the Committee so that employees may only enroll during specified periods during the year. Such periods will be made known to all eligible Employees.

Effective as of August 1, 2011, the Participant shall specify Employee Contributions as either Elective Pretax Contributions, Elective Roth Contributions or a combination of both. Employee Contributions contributed to the Plan as one type, either Elective Pretax Contributions or Elective Roth Contributions, may not later be reclassified as the other type. If a Participant fails to specify, then all of his Employee Contributions shall be treated as Elective Pretax Contributions. A Participant's election authorizing Employee Contributions shall remain in effect until amended or discontinued.

- b. **Continuation of Participation Agreement.** Except as otherwise provided in this paragraph, the maximum amount of Deferred Compensation for any Participant for any taxable year shall not exceed the limitations set forth in accordance with ¶ 7.b., c., d. and f. below. The Participant's Participation

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Agreement shall remain in effect and Compensation shall continue to be deferred thereunder until the Participant's Termination of Service, unless the Participation Agreement is modified or terminated by the Participant. A Participant may modify his/her Participation Agreement at any time with the restriction that the effective date of such modification shall not be less than 6 months after the effective date of initial enrollment and shall be in accordance with ¶ 7.a. below. Notwithstanding the foregoing, a Participant may terminate his/her Participation Agreement at any time without restriction. However, a Participant who terminates his/her Participation Agreement may re-enroll only during an enrollment period which is at least 6 months after his/her effective date of termination.

- c. Effect of Participation on Other Benefits. The Participant's election to defer Compensation under this Plan shall not have any effect in determining the Participant's compensation or average compensation for purposes of any other retirement plan or employee benefit plan maintained by the County and such compensation or average compensation shall be determined in the same manner as if the Participant had not elected to defer Compensation under this Plan.

7. **Reduction of Compensation and Limitation:**

- a. Reduction of Compensation. The Participant shall specify in his/her Participation Agreement the amount of Compensation to be deferred under the Plan for each payroll period, subject to the limitation set forth in subparagraphs b., c., d., e. and f. below. The Participant may increase or decrease the amount of Deferred Compensation with respect to future payroll periods by amending his/her Participation Agreement within the enrollment periods specified in ¶ 6.a., provided that such an increase or decrease in Deferred Compensation shall not be allowed on more than four occasions during any calendar year. Notwithstanding the foregoing, the Participant may terminate his/her Participation Agreement and be restored to full Compensation as of the beginning of the payroll period which commences after written notice of such termination is received by the Administrator. An election to defer Compensation under this Plan, or any modification of such election, shall be entered into before the first day of the month in which Compensation is paid or made available or, for a new Employee, on or before the first day on which the Participant performs services for the County.

Effective August 1, 2011, the Plan includes a qualified Roth Contribution program pursuant to Code section 402A, and Employee Contributions shall be designated in accordance with ¶ 6.a. The Administrator shall allocate the Participant's Elective Pretax Contributions to the Elective

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Pretax Contribution Subaccount of the Participant for whom such contributions were made, and the Participant's Elective Roth Contributions to the Elective Roth Contribution Subaccount of the Participant for whom such contributions were made. No contributions other than Elective Roth Contributions and properly attributable earnings shall be credited to a Participant's Elective Roth Contribution Subaccount, and gains, losses and other credits, withdrawals or charges shall be allocated on a reasonable and consistent basis to such Account. For each Participant who contributes Elective Roth Contributions, the Administrator shall record a five-taxable-year period beginning with the first taxable year for which the Participant made a Roth Elective Contribution and comply with other recordkeeping requirements that may be required pursuant to Treasury Regulations under Code section 402A.

b. Maximum Deferral -- General Limitation.

1. Pre-EGTRRA Limit. This provision shall be effective only for purposes of determining the catch-up limitation in section 7.c. for years prior to 2002. Except as otherwise provided in this paragraph, the maximum amount of Deferred Compensation and Employer contributions (if any) for any Participant for any taxable year shall not exceed the lesser of \$7,500.00 (or such greater dollar amount adjusted for the cost-of-living in accordance with Section 457 of the Code for calendar years beginning after December 31, 1996) or 33 1/3 percent of the Participant's Includible Compensation (as defined prior to 2002) for the taxable year.
2. EGTRRA Limit. This provision is effective January 1, 2002. Except as otherwise provided in this paragraph, the maximum amount of Deferred Compensation and Employer contributions (if any) for any Participant for any taxable year shall not exceed the lesser of the Applicable Dollar Amount or 100% of the Participant's Includible Compensation (as defined on or after January 1, 2002) for the taxable year. For the purposes of this section, the "Applicable Dollar Amount" is, for taxable years beginning in calendar year 2002, \$11,000; for taxable years beginning in calendar year 2003, \$12,000; for taxable years beginning in calendar year 2004, \$13,000; for taxable years beginning in calendar year 2005, \$14,000; or for taxable years beginning in calendar year 2006 or thereafter, \$15,000 or such greater dollar amount resulting from an adjustment for cost of living increases in accordance with Code section 457(e)(15). Rollover contributions will not be taken into account when

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determining the maximum contribution amount under this paragraph, or any amounts transferred that had been deferred in prior calendar years.

c. Maximum Deferral -- Catch-up Limitation.

For any one or more of the Participant's last three taxable years that end before the taxable year in which Normal Retirement Age under the Plan is attained, the maximum deferral shall be the lesser of (1) twice the Applicable Dollar amount as set forth in ¶ b.2. above or (2) the sum of the limitation established under ¶ b.2. above for the taxable year and so much of the limitation established under ¶ b.2. above (or under the pre-EGTRRA limit of ¶ b.1. above for any year prior to 2002) for taxable years before the taxable year as has not been previously used. under this Plan or any other eligible Code section 457 Plan for which the Participant was eligible, limited to taxable years beginning after December 31, 1978, (disregarding any annual deferrals permitted under the age 50 catch-up under ¶ d. below.) For years prior to 2001, amounts excludable from a Participant's gross income in any taxable year under Code sections 403(b), 401(k), 402(h)(1)(B), 408(p) or which are deductible by reason of being contributed to an entity described in Code section 501(c)(18) shall reduce the limitation amount determined under this provision. An eligible Participant who did not defer any Compensation under an eligible 457 plan in any year before 2002, is not required to reduce the limitation amount due to deferrals under the Code sections noted above.

The catch-up limitation in this provision is available to a Participant of this Plan only during one three-year period. If a Participant uses the catch-up limitation and then postpones Normal Retirement Age or returns to work after retiring, the limitation in this provision shall not be available again before a subsequent retirement.

Catch-up contributions that are Elective Roth Contributions shall be allocated to the Participant's Elective Roth Contribution Subaccount, and catch-up contributions that are Elective Pretax Contributions shall be allocated to the Participant's Elective Pretax Contribution Subaccount.

d. Maximum Deferral -- Additional Catch Up Deferrals. A Participant who has attained age 50 prior to the end of a taxable year shall be eligible to make additional catch up deferrals to the Plan in that taxable year (and subsequent taxable years) in accordance with, and subject to, the limitations of Code section 414(v) and its Regulations. Under Code Section 414(v), an eligible Participant can make additional catch up deferrals in the following amounts for each applicable taxable year:

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2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 and later	\$5,000 (as increased for cost of living)

These additional catch up deferrals shall not be taken into account when determining the Participant's compliance with the limitation described in ¶ b.2. or ¶ c. above. During the Participant's last three taxable years ending before the taxable year in which the Participant attains Normal Retirement Age, the Participant may defer, in addition to the maximum general limit established under ¶ b.2., the larger of (i) the age-50 catch-up limitation described in ¶ d. or (ii) the catch-up limitation described in ¶ c.

- e. Minimum Deferral. In order to participate in the Plan, an Employee must agree to defer a minimum of one percent of Compensation, and if amounts in excess of the minimum are deferred, such amounts must be in multiples of one percent of Compensation.
  - f. Further Limitation on Deferral -- Committee Rules. The Committee may from time to time prescribe rules which further limit the dollar amount or percentage of Compensation that may be deferred by Participants, provided that any such rules shall not permit deferrals in excess of the limitations set forth under ¶ b., c. and d. above.
  - g. Excess Deferrals. Any amounts deferred for a Participant that exceed the maximum limitations described in ¶ b.2., ¶ c., or ¶ d. above either by failure of the Plan or from the failure of a Participant to comply with an individual limitation will be distributed to the Participant with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. If a Participant made both Elective Pretax Contributions and Elective Roth Contributions for the taxable year in which the excess deferrals were made, distribution of excess deferrals shall be made first to the extent possible from the Participant's Elective Pretax Contribution Subaccount, unless the Participant specifies otherwise.
8. **Accounts and Investments:**
- a. Participant's Account. An Account shall be maintained for the Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, expenses or increases

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or decreases in market value attributable to the investment of the Participant's Deferred Compensation, as well as any distributions, transfers or rollovers. Each Participant shall be entitled to a report as of the end of each calendar quarter reflecting the amount of Deferred Compensation credited to his/her Account, earnings or losses on investments, expenses and distributions, if any. Such report shall be made within fifteen (15) days after the close of the preceding calendar quarter. When a Participant has commenced receiving distributions under a payment option described in ¶ 10., and the Plan has provided for such payments by applying the Participant's Account balance under a contract issued by a life insurance company, no further reports of Account balances shall be made.

- b. Investment Options. With respect to Compensation deferred, the Participant may elect in his/her Participation Agreement to have his/her Deferred Compensation invested and credited to his/her Account under one or more investment categories offered under the Plan pursuant to the Plan's Statement of Investment Policy, as amended from time to time. The Committee will assure that a minimum of three investment categories that are well diversified from each other, with respect to risk exposure and return potential, will be available to Participants.

All Investment Contracts under the Plan shall be held in the name of the Plan.

Participants shall have no right to require the County, the Trustee, the Plan or the Committee to select or retain any investment option. If an investment option is eliminated, all Participants who had chosen that investment will select another option within a reasonable time, or the Committee will elect such replacement option, including a default fund or fund(s) for Participants who fail to direct the investment of all or any portion of their Accounts.

The County does **not** guarantee the financial soundness, investment performance, fitness or suitability for meeting a Participant's objective, future obligations under the Plan, or any other purpose of any investment option offered under the Plan or any investment vehicle in which amounts deferred under the Plan are actually invested.

- c. Committee Discretion. The Committee shall have complete discretion to approve, change or eliminate the specified insurance companies, financial institutions, or other carriers with whom Accounts shall be invested within each investment category, or limit or expand the investment categories, and to prescribe rules limiting the percentage or amount of a Participant's Account that may be allocated among the investment categories.

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- d. Appointment of Trustee. The Committee shall appoint one or more Trustees to receive and hold in trust all Contributions (and earnings on such Contributions) that are paid into the Trust Fund. The Committee shall enter into an agreement with the Trustee to provide for the administration of the Trust Fund. In accordance with the provisions of the agreement, the Committee shall have the right at any time, and from time to time, to amend the agreement. The exclusive purpose of the Trust Fund is to provide benefits for Participants and their Beneficiaries and to defray reasonable expenses of administering and operating the Plan and Trust Fund. No part of the Trust Fund shall be used for, or diverted to, another purpose. Amounts deferred shall be transferred to the Trust Fund within 15 business days following the month in which the amounts would have otherwise been paid to the Participant.
- e. Rollovers. Any Participant may, with approval of the Administrator, directly transfer to the Plan any portion of an eligible rollover distribution or a rollover contribution which he received personally from a qualified retirement plan described in Code section 401(a), a qualified plan described in Code section 403(a), an annuity contract described in section 403(b) or an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state or an agency or an instrumentality of a state or political subdivision of a state. Amounts not transferred in a direct rollover must be deposited in the Plan within the time limits required by law. An "eligible rollover distribution" will be determined under Code section 402(c)(4). The Administrator may require such documentation and information as it deems necessary to determine whether the rollover contribution is valid and may refuse or accept the contribution. The Plan's Third Party Administrator shall separately account for any rollover contributions and allowable income (including separate accounting for amounts rolled over from eligible 457(b) plan). To the extent possible, distributions (including hardship and in-service distributions) are made from amounts deferred under the Plan and then from rollover contributions. Rollover contributions will not be taken into account when determining the maximum deferral limitations.

The Plan will not accept a direct rollover of any after-tax employee contributions. Effective August 1, 2011, the Plan will accept a direct rollover from a designated Roth account under an applicable retirement plan described in Code section 402A(c)(1). Contributions from a designated Roth account will be accepted only to the extent the rollover is permitted under Code section 402A(c). A direct rollover of after-tax employer contributions from a designated Roth account shall be allocated to a Participant's Roth Rollover Subaccount. All other rollover

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contributions shall be allocated to the Participant's Non-Roth Rollover Subaccount. No contributions other than Roth rollover contributions and properly attributable earnings shall be credited to a Participant's Roth Rollover Subaccount, and gains, losses and other credits, withdrawals or charges shall be allocated on a reasonable and consistent basis to such subaccount. The Administrator shall record a five-taxable-year period beginning with the first taxable year for which the Participant made a Roth rollover contribution and comply with other recordkeeping requirements that may be required pursuant to Treasury Regulations under Code section 402A.

9. **Designation of Beneficiary:** The Participant's Participation Agreement shall designate the Beneficiary or Beneficiaries who are to receive distributions under ¶ 10. in the event of the Participant's death. In the event that the Participant has not properly designated a Beneficiary or Beneficiaries, or if for any reason such designation shall be legally ineffective, or if said Beneficiary or Beneficiaries shall predecease the Participant, then the Participant's estate shall be treated as the Beneficiary. A Participant may change his/her Beneficiary designation at any time by amending his/her Participation Agreement.

10. **Deferred Compensation Distributions:**

Conditions for Distribution: Payments from the Plan to the Participant or Beneficiary shall be made only upon one or more of the following events:

- (1) The Participant's Termination of Service (¶'s 10.a. - 10.e.);
- (2) The Participant's attainment of age 70½ after his/her Termination of Service (¶ 10.d.);
- (3) The Participant's death (Death Benefit Distribution ¶'s 10.f. - 10.i.);
- (4) The Participant incurs an approved unforeseeable emergency (Hardship Distribution) pursuant to ¶ 10.j.;
- (5) The Participant's Account meets the requires of ¶ 10.k. (In-Service Distribution); or
- (6) If a Participant has rolled over amounts into the Plan pursuant to ¶ 8.e., the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

In addition to any other provisions of the Plan, any distribution shall conform to the applicable requirements of the Code section 457(d) and a good faith interpretation of Code section 401(a)(9) and its Regulations as

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set forth in the final and temporary Treasury Regulations issues April 17, 2002 and subsequent guidance for governmental plans under Code section 401(a)(9).

If a Participant made both Elective Pretax Contributions and Elective Roth Contributions and/or has a Roth Rollover Subaccount, any withdrawal of his Account shall be made first to the extent possible from the Elective Pretax Contribution Subaccount and/or Non-Roth Rollover Subaccount, unless the Participant specifies otherwise.

TERMINATION OF SERVICE

- a. Retirement Distribution. Upon his/her Termination of Service, the Participant shall be entitled to receive his/her Account under any Payment Option that satisfies the provisions of the Plan.
- b. Election of Benefit Commencement Date.
  - (1) At any time after the date of his/her Termination of Service (and not later than his/her required beginning date, as specified in ¶ 10.d.), the Participant may elect to receive payment of his/her Account in one of the available Payment Options. Payment shall commence as soon as practicable after the election.
  - (2) Default Benefit Commencement Date. If the Participant does not elect otherwise, the Participant shall receive payment of his/her Account in a single lump sum on the date that is necessary to satisfy the requirements of ¶ 10.d. below.
- c. Change in Distribution Form. Once payment of a Participant's Account has commenced, the Participant shall have the right to change his/her form of benefit (including the right to suspend payment of his/her Account), but only to the extent allowed under the applicable Investment Contract, the Payment Option and a good faith interpretation of Code section 401(a)(9) and its Regulations as set forth in the final and temporary Treasury Regulations issued April 17, 2002 and subsequent guidance for governmental plans under Code section 401(a)(9).
- d. Required Beginning Date. Consistent with the requirements of Code § 401(a)(9)(C), a Retirement Distribution shall begin not later than April 1 of the Year following the Year during which the Participant attains age 70½, or following the Year during which the Participant has a Termination of Service, whichever occurs later.

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- e. Required Distribution Amounts. Any Retirement Distribution shall be made according to a Payment Option that complies with Code sections 457(d) and a reasonable and good faith interpretation of Code section 401(a)(9) as set forth in guidance for governmental plans within Treasury Regulation section 1.401(a)(9)-1, A-2(d).

**DEATH BENEFIT DISTRIBUTION**

- f. Death Benefit Distribution. Upon the Participant's death before a distribution has begun under ¶ 10.a. above, each Beneficiary shall be entitled (except as limited by ¶ 10.h. and 10.i. below) to receive his/her/its portion of the Participant's Account under any Payment Option that satisfies the provisions of the Plan.
- g. Election of Benefit Commencement Date.
  - (1) At any time after the date of the Participant's death, each Beneficiary may elect to receive payment of his/her/its interest in the Account in one of the available Payment Options. Payment shall commence as soon as practicable after the election.
  - (2) Default Benefit Commencement Date. If the Beneficiary does not elect a form of payment as allowed under the preceding paragraph, then the Beneficiary shall receive payment of the Participant's Account in a single lump sum on the first business day of the calendar month that commences not earlier than ninety (90) days and not later than one hundred twenty (120) days after the date of the death.
- h. Change in Distribution Form. Once payment of a Beneficiary's Account has commenced, the Beneficiary can change his/her form of benefit, but only to the extent allowed under the applicable Investment Contract and Payment Option.
- i. Required Beginning Date and Distribution Amounts. Any Death Benefit Distribution shall comply with Code sections 457(d) and a good faith interpretation of Code section 401(a)(9) and its Regulations as set forth in the final and temporary Treasury Regulations issued April 17, 2002 and subsequent guidance for governmental plans under Code section 401(a)(9).

**HARDSHIP DISTRIBUTION**

- j. Hardship Distribution. If the Participant is faced before his/her Termination of Service with an Unforeseeable Emergency that is recommended by the Third Party Administrator for approval and

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concurrent upon by the chairperson of the Committee, the Participant shall be entitled to receive a distribution (as a cash lump sum) of the amount determined by the Third Party Administrator to be the amount that is reasonably needed to satisfy the emergency need. The distribution may include any amounts necessary to pay federal, state or local taxes or penalties reasonably anticipated to result from the distribution.

For an Unforeseeable Emergency, a Hardship Distribution shall not be paid to the extent that the financial hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by borrowing from commercial sources on reasonable commercial terms to the extent that this borrowing would not itself cause a severe financial hardship, by cessation of deferrals under the Plan for a period of at least 12 months, or by liquidation of the Participant's other assets (including the assets of the Participant's Spouse and minor children that are reasonably available to the Participant) to the extent that this liquidation would not itself cause severe financial hardship.

IN-SERVICE DISTRIBUTION (De Minimis Accounts)

- k. The Participant may elect to receive (in forms prescribed by the Third Party Administrator), the Participant's entire Account at any time provided that all of the following conditions are met:
- (1) The value of the Participant's Account does not exceed \$5,000;
  - (2) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution; and
  - (3) There has been no prior distribution under the Plan to the Participant pursuant to this section.

The Committee may distribute pursuant to "Committee Election Option" below) without the consent of the Participant, the Participant's entire Account at any time provided that all of the following conditions are met:

- (1) The value of the Participant's Account does not exceed \$1,000;
- (2) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution; and
- (3) There has been no prior distribution under the Plan to the Participant pursuant to this section.

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Committee Election Option - De Minimis Accounts: At the discretion of the Committee and only upon a vote of majority of all members, the Committee may exercise the option whenever a Participant's Account does not exceed \$1,000 and no amount has been deferred under the Plan with respect to the Participant during the immediately preceding two-year period to make distribution of the Participant's Account to the Participant in a lump sum, without the Participant's consent, provided that there has been no prior distribution to the Participant pursuant to this section.

TRANSFER

1. Transfer of Deferred Compensation to another eligible employer Plan. Consistent with Code § 457(e)(10), a Participant may elect (in the forms prescribed by the Third Party Administrator) to transfer his/her Account and his/her right in and to the Plan to another eligible deferred compensation plan maintained by governmental employer (within the meaning of Code section 457(e)(1)(A)), provided that the Third Party Administrator is satisfied that the other plan will accept the transferred amount and obligation, the Participant has a severance of employment with the County and is performing services for the governmental entity maintaining the receiving plan; and the Participant will have an amount deferred immediately after the transfer at least equal to the amount that was deferred under the Plan prior to the transfer.

If the Participant has an Elective Roth Contribution Subaccount and/or a Roth Rollover Subaccount, the Participant must substantiate to the Administrator that the eligible deferred compensation plan of the other governmental employer maintains a designated Roth account pursuant to Code section 402A(e)(1).

ADMINISTRATION OF DISTRIBUTION PROVISIONS

- m. Direct Rollovers. Within 30 days of being notified of the right to a direct rollover, a Participant may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover. If a Participant elects a direct rollover as to only a portion of his distributable Account, the amount to be paid in a direct rollover must equal at least \$500. Notice of a Participant's right to a direct rollover shall be provided in accordance with Code section 402(f) no more than 180 days before the date of distribution. Failure to elect a direct rollover within 30 days from the date the notice is provided to the Participant shall be deemed an election not to make a direct rollover.

The terms used in this subsection shall have the following meaning:

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- (1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Participant, except that an eligible rollover distribution does not include: (A) 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 Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent such distribution is required under Code section 401(a)(9); (C) the portion of any distribution that is not includable in gross income; or (D) any distribution made upon hardship of the Participant.

A distribution shall not fail to be an eligible rollover distribution merely because the distribution includes the Participant's Elective Roth Contribution Subaccount and Roth Rollover Subaccount which are not includable in gross income.

- (2) Eligible Retirement Plan. An individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), a qualified trust described in Code section 401(a), an eligible deferred compensation plan described in Code section 457(b) which is maintained by an eligible employer described in Code section 457(e)(1)(A) or an annuity contract described in Code section 403(b) that accepts the distributee's eligible rollover distribution.

An eligible retirement plan for purposes of a direct rollover of a designated Elective Roth Contribution Subaccount and a Roth Rollover Subaccount shall be only another designated Roth account under an eligible retirement plan described in Code section 402A(e)(1) or a Roth IRA described in Code section 402A(e)(1) or a Roth IRA described in Code section 408A, and only to the extent the rollover is permitted under the rules of Code section 402(c).

- (3) Participant. A Participant, for purposes of this subsection, includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a domestic relations order pursuant to ¶ 18. are Participants with regard to the interest of the spouse or former spouse.

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- (4) Direct Rollover. Payment by the Plan to the eligible retirement plan specified by the Participant.
  - (5) Effective for eligible rollover distributions made on or after January 1, 2008, a Participant may request a direct rollover of any eligible rollover distribution to a Roth IRA subject to the adjusted gross income limits of Code section 408A(c)(3)(B) and the distribution rules of Code section 408A(d)(3) for qualified rollover contributions.
  - (6) Non-Spouse Beneficiary Rollovers. Effective January 1, 2010, if a Beneficiary designated pursuant to ¶ 9. is an individual other than the surviving spouse of the Participant, the Beneficiary may elect a direct rollover, provided that the distributed amount is an eligible rollover distribution pursuant to subparagraph (1) above without regard to the requirement that the recipient of the distribution be a Participant. The direct rollover must be made to an individual retirement plan described in Code section 408(a) or 408(b) (an "IRA") that is established for the purpose of receiving the distribution on behalf of the Beneficiary and will be treated as an inherited IRA pursuant to the provisions of Code section 408(d)(3)(C). If the amount distributed from the Plan is received by the Beneficiary, the distribution is not eligible for rollover. Distributions made pursuant to this subparagraph (6) shall be subject to the direct rollover requirements of Code section 401(a)(31), the notice requirements of Code section 402(f) and the mandatory withholding requirements of Code section 3405(c) when not paid in a direct rollover.
  - (7) Right to Defer and Consequences of Not Deferring. The Participant shall receive notice upon application of his or her right to a defer a distribution and the consequences of failing to defer a Plan distribution.
- n. Transfer to Purchase Permissive Service Credit. Consistent with Code section 457(e)(17), and to the extent allowed by the receiving defined benefit governmental plan, a Participant may elect to transfer any portion of his/her Account to a defined benefit plan sponsored by the County to purchase "permissive service credit," as that term is defined in Code section 415(n)(3)(A).
  - o. Distribution to Minor or Incompetent Beneficiary. If a distribution is to be made to a minor Beneficiary or to a Beneficiary that the Third Party Administrator finds to be unable to care for his/her affairs, the Third Party

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Administrator, in its sole discretion, may direct (if no claim has been made by a duly appointed representative) that any payment(s) be made to the legal guardian of the Beneficiary, or if none, to a parent of the Beneficiary or a responsible adult with whom the Beneficiary maintains his/her residence, or to the custodian for the Beneficiary under the State Gift to Minors Act, or to any person determined by the Third Party Administrator to be a proper recipient for the Beneficiary. This payment(s) shall be in full satisfaction of all claims.

- p. Inability to Locate Payee. If a distribution is required to be paid under the Plan, and the payee cannot be located, the Third Party Administrator shall delay payment for the time provided by the State Unclaimed Property Law and upon the expiration of that time shall pay over any amount as directed by the law.
  - q. Dispute as to Proper Payee. If a dispute arises as to the proper payee of any payment(s), the Third Party Administrator, in its sole discretion, may withhold or cause to be withheld any payment(s) until the dispute is finally determined by a court of competent jurisdiction or is settled by all the parties concerned.
11. **Plan Administration:** The Committee has authority and discretion to control and manage the operation of and shall decide all matters under the Plan. The Committee has all powers as may be necessary or advisable so as to discharge its duties under the Plan.
- a. Third Party Administrator. The Committee shall enter into a contract with a third party administrator which shall represent the County and the Committee in all matters concerning the administration of the Plan, including but not limited to the enrollment of Employees as Participants, the maintenance of individual Accounts and other records, and the distribution of Accounts to Participants. Neither the Third Party Administrator nor its employees shall be eligible to participate in the Plan.
  - b. Committee. The Committee shall act on behalf of the County in all matters relating to the administration of the Plan. The Committee shall have supervisory authority and shall be responsible for all discretionary decisions in the administration of the Plan. Decisions of and actions by the Committee shall be conclusive and binding to all persons. Members of the Committee shall not be compensated beyond their regular compensation as employees of the County.

The Committee shall:

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- (1) establish procedural rules and regulations facilitating operation of the Plan, including recommendations of a third party administrator to the County;
  - (2) adopt, amend, or revoke rules, regulations and the Plan document for proper administration of the Plan;
  - (3) determine all questions which arise out of interpretation or application of Plan provisions or the rules and regulations established for its administration;
  - (4) review the Third Party Administrator's findings on those applications from Participants for Hardship Distribution denied by the Third Party Administrator, wherein the Participant is appealing the Third Party Administrator's decision;
  - (5) review periodically the condition of any Plan investments and make changes in investment vehicles and alternatives as deemed appropriate;
  - (6) monitor the administrative performance of the Third Party Administrator through the use of plan audits or other activities as the Committee deems appropriate; and
  - (7) establish and deduct appropriate Participant fee(s), annual maintenance fee, and/or other charges against a Participant's account to defray the reasonable and appropriate expenses of administering and investing the Plan consistent with ¶ 11.c. below.
- c. Administrative Costs. It is the intent of the Plan that the County shall not incur any expenses in the operation and administration of this Plan, other than incidental expenses. Therefore, all necessary, appropriate and reasonable expenses incurred in the administration and investment of the Plan and Trust Fund shall be paid by the Plan.

12. **Amendment or Termination:**

- a. Amendment of Plan. The County reserves the right to amend or modify any provisions of the Plan at any time to the extent that it may deem advisable without the consent of the Participants or any Beneficiary, provided that no amendment or modification shall impair the rights of Participants or Beneficiaries with respect to Compensation deferred prior to such amendment or modification.

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- b. **Termination of Plan.** The County reserves the right to terminate the Plan at any time and such termination shall act as termination as to all Participants. Upon termination of the Plan, the County reserves the right to make distributions of a Participant's Account as soon as administratively practicable pursuant to the distribution provisions in ¶ 10.a.-e. and the transfer provisions in ¶ 10.l.
13. **Non-assignability:** No benefits under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance. Any attempt to do so shall be void. Such benefits shall not be subject to or liable for the debts, contracts, liabilities, engagements or torts of the Participant or his/her Beneficiaries.
14. **Waiver:** Notwithstanding any other provision of the Plan, the County and the Committee shall not be liable to any Participant or any Beneficiary for any mistakes in judgment in the making or retaining of any investments, nor for any loss from investing any amounts so long as the County and the Committee perform their obligations hereunder in good faith. Any action by the County or the Committee in approving any investment choices shall not be considered to be either an endorsement or guarantee of such investment, nor shall it be considered to attest to the financial soundness or the suitability of such investment for purposes of meeting the future obligations of the Plan.
15. **Status of Participants:** Neither the establishment of the Plan nor any modification thereof, nor the establishment of any Account for a Participant, nor the agreement between the County and the Third Party Administrator, or the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the County except as herein provided; and, in no event, shall the terms of employment of any Employee be modified or in any way be affected hereby.
16. **Gender and Plural:** The masculine gender shall include the feminine and neuter gender, the masculine pronoun shall include feminine and neuter, the singular number the plural, and conversely, whenever appropriate.
17. **Applicable Law:** The Plan shall be construed under the laws of the State of Wisconsin.
18. **Domestic Relation Orders:** Notwithstanding ¶ 13., if a judgment, decree or order that relates to the provision of child support, alimony payments or the marital property rights of a spouse or former spouse, child or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account balance shall be paid in the manner and to the person or persons so directed, *i.e.*, an alternate

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payee, in the domestic relations order if the Administrator determines it meets the requirements of the Plan. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

19. **Qualified Military Service**. An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional elective deferrals upon resumption of employment with the Employer equal to the maximum deferral that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual elective deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). This provision shall be effective for all periods on and after December 31, 1994.
- a. **Heroes Earnings Assistance and Relief Tax Act of 2008**. To the extent required under the Heroes Earnings Assistance and Relief Act of 2008:
- (1) If a Participant dies on or after January 1, 2007, while performing qualified military service, the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant been reemployed on the day prior to death and then had a Termination of Service on the actual date of death; and
  - (2) Effective January 1, 2009, Compensation for Plan benefits and contributions includes any differential wage payments (as defined in section 3401(h)(2) of the Code) to an individual who does not currently perform services for the County by reason of qualified military service while on active duty for a period of more than 30 days and the payments represent all or a portion of the wages the individual would have received from the County if the individual was performing services for the County. Such individual receiving the differential wage payment shall be treated as an Employee of the County, the differential wage payment is treated as Compensation and the Plan is not treated as failing to meet the

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requirements of any provision described in Code section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

If an individual is receiving differential wage payments as defined in above, the individual is treated as having a Termination of Service during any period the individual is performing service in the uniformed services described in Code section 3401(h)(2)(A). If an individual elects to receive a distribution by reason of Termination of Service, including death or disability while receiving differential payments, the individual may not make Employee Contributions during the 6-month period beginning on the date of the distribution.

The Plan is treated as meeting the requirements of Code section 414(u) with regard to differential wage payments only if all Employees of the County performing service in the uniformed services described in Code section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the County, to make contributions based on the payments on reasonably equivalent terms.

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