


MARIPOSA COUNTY RESOLUTION NO. 85-298


BE IT HEREBY RESOLVED by the Board of Supervisors of Mariposa County, a political subdivision of the State of California, that the Board of Supervisors hereby approved the following document: DEFERRED COMPENSATION PLAN DOCUMENT, attached hereto as Exhibit "A".

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 17th day of September, 1985, by the following vote:

AYES: BARRICK, DALTON, ERICKSON, RADANOVICH, TABER
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE


EUGENE P. DALTON, Jr., Chairman
Mariposa County Board of Supervisors

ATTEST:


GERALD MC CARTHY, County Clerk and
Ex Officio Clerk of the Board

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


JEFFREY D. GREEN
County Counsel

DEFERRED COMPENSATION PLAN DOCUMENT1. NAME:

The name of the Plan is MARIPOSA COUNTY DEFERRED COMPENSATION PLAN, State of California Deferred Compensation Plan hereinafter referred to as the "Plan".

2. PURPOSE:

The primary purpose of the Plan is to attract and hold personnel by permitting them to enter into agreements with the County of Mariposa which will provide future payments in lieu of deferred current income upon death, disability, retirement, or other termination of employment. The Plan is intended to qualify as an eligible State Deferred Compensation Plan within the meaning of Section 457 of the Internal Revenue Code of 1954, as amended, hereinafter referred to as the "Code".

3. DEFINITIONS:

For the purposes of this Plan, certain words or phrases used herein will have the following meanings:

- A. "Employer" shall mean the County of Mariposa, State of California.
- B. "Employee" shall mean any officer, employee or elected official of the County of Mariposa, California.
- C. "Participant" shall mean an Employee who has elected to participate in the Plan. Only individuals who perform service for the Employer may be Participants.
- D. "Participation Agreement" shall mean the agreement executed and filed by an Employee with the Employer, pursuant to Section 4, in which the employee elects to become a Participant in the Plan.
- E. "Compensation" shall mean the salary or wages which would be paid by the Employer to or for the benefit of an Exmployee, if he/she were not a Participant in the Plan, for actual services performed.
- F. "Includible Compensation" shall mean Compensation received from the Employer that is attributable to services performed for the Employer and that is includible in the Participant's gross income for the taxable year. Accordingly, a Participant's Includible Compensation for a taxable year does not include any amount payable by the Employer that is excludable from the Participant's gross income under Section 457, Section 403(b), Section 105(d), or Section 911 of the Code.

A Participant's Includible Compensation for a taxable year is determined without regard to any community property laws.

- G. "Deferred Compensation" shall mean the amount of Compensation which the Participant and the Employer mutually agree shall be deferred in accordance with the provisions of this Plan.
- H. "Disability" means the inability of a Participant to engage in his or her usual occupation by reason of a medically determinable physical or mental impairment as determined by the Employer on the basis of advice from a physician or physicians.
- I. "Normal Retirement Age" shall mean, as to each Participant, the age designated by the Participant within the range of ages ending with 70 1/2 and beginning not earlier than the earliest age at which the Participant has the right to retire under the retirement plan of the Employer and receive benefits without actuarial or similar reduction for early retirement. For a Participant who continues in the service of the Employer after age 70 1/2, normal retirement age shall be the age at which the Participant separates from service with the Employer.
- J. "Termination of Employment" shall mean the severance of the Participant's employment with the Employer prior to Normal Retirement Age.
- K. "Beneficiary" shall mean the person or persons designated by the Participant to receive the death benefits under this Plan, or if no such person has been designated or no designated person survives the Participant, the Participant's estate.

4. PARTICIPATION:

- A. Any eligible employee may elect to become a Participant in the Plan and defer payment of part of his/her Compensation by executing and delivering to the Employer a written Participation Agreement.
- B. Compensation shall be deferred for any calendar month only if a Participation Agreement providing for such deferral has been entered into and is effective before the beginning of such month. With respect to a new Employee, however, compensation may be deferred for the calendar month during which the Participant first becomes an Employee if a Participation Agreement providing for such deferral is entered into on or before the first day on which the Participant becomes an Employee. A Participation Agreement shall remain in full force and effect from month to month unless revoked or superseded by a new Participation Agreement.

- C. The Participation Agreement shall state the amount of Compensation to be deferred pursuant to the Plan, which shall not exceed the amounts provided in Section 5 below. A Participant must agree to defer an amount not less than TEN DOLLARS (\$10.00) per payroll period for each investment.
- D. Additional Participation Agreements providing for deferral of additional Compensation not yet earned may be executed prior to the beginning of any month to become effective during such subsequent month. Prior Participation Agreements may not be revoked or modified except as elsewhere provided herein.
- E. A Participant may revoke the Participation Agreement by filing with the Employer an executed written notice of revocation. In the event a revocation has been filed, no further Compensation shall be deferred hereunder commencing as of the beginning of the first month that commences at least thirty (30) days after such notice is delivered to the Employer, and continuing until the Employee executes and delivers a new Participation Agreement in accordance with Section 4A. No amounts shall be payable to an Employee upon revocation of his/her Participation Agreement unless otherwise due pursuant to Section 10.
- F. The Participation Agreement may provide for one or more investment options, and if more than one investment option is provided, shall afford the opportunity for the Participant to select from among them. As more fully set forth below, the Employer shall not be obligated to invest funds in accordance with the investment options, but the benefits to which each Participant shall become entitled shall include earnings allocated as if such investments were made.

5. DEFERRAL OF COMPENSATION:

- A. For each month in which a Participation Agreement of an Employee is in effect, the Employer shall not pay the Employee his or her full Compensation but shall defer payment of such part of the Compensation as is specified by the Employee in the Participation Agreement.
- B. Except as provided in Section 5C, the maximum amount that may be deferred under the Plan for any taxable year of a Participant shall not exceed the lesser of:
 - 1. \$7500, or
 - 2. 33 1/3% of the Participant's Includible Compensation for the taxable year, reduced by any amount excludable from the Participant's gross income for the taxable year under Section 403(b) of the Code on

account of contributions made by the Employer. If the Employer contributes additional amounts into the Plan, the maximum amount that may be deferred by the Participant shall be reduced by the amount of the Employer's additional contribution.

- C. For any one or more of a Participant's last three (3) taxable years ending before such Participant attains Normal Retirement Age, the maximum amount that may be deferred under the Plan for any taxable year of the Participant shall not exceed the lesser of \$15,000, reduced by any amount excludable from the Participant's gross income for the taxable year under Section 403(b) of the Code on account of contributions made by the Employer, or the sum of the maximum amount that could have been deferred for such taxable year under Section 5B above, without regard to this Section, plus so much of the maximum amount that could have been deferred for all prior taxable years under Section 5B above, without regard to this Section, as has not theretofore been deferred. In no event may the amount of Deferred Compensation for the year exceed the total amount of Compensation for the year. A prior taxable year can be taken into account only if such Participant was eligible to participate in the Plan during all or any portion of such taxable year, and the amount of Compensation deferred under the Plan during such taxable year was subject to a ceiling established under Section 457 of the Code and Section 1.457-2(e)(1) of the regulations thereunder. A prior taxable year includes a taxable year in which the Participant was eligible to participate in an eligible plan sponsored by a different entity, provided that the entities sponsoring the plans are located within the State of California.
- D. If an individual is a Participant in more than one eligible State Deferred Compensation Plan established pursuant to Section 457 of the Code, the amount of Compensation deferred under this Plan when added to the Compensation deferred under all such other Plans, may not exceed the maximum amounts set forth in Sections 5B and 5C above, taking into account for purposes of the percentage limits set forth in Section 5B(2) compensation from all sources.

6. ADMINISTRATION OF THE PLAN:

- A. The Plan shall be administered by an Advisory Committee appointed by the Employer. The Advisory Committee shall have the sole authority to enforce the Plan and shall be responsible for the operation of the Plan in accordance with its terms, and shall resolve all questions arising out of and in the course of the administration, interpretation and application of the Plan.

Determinations of the Advisory Committee shall be conclusive and binding on all persons. Only members of the Advisory Committee who are otherwise Employees of the Employer may participate in the Plan. No member of the Advisory Committee shall be entitled to vote on decisions personal to his or her own participation in the Plan.

- B. The Advisory Committee shall have full authority and power to adopt the rules and regulations for the administration of the Plan, and to interpret, amend, alter, and revoke any rules and regulations so adopted.
- C. The Employer may, at its option, establish one or more Deferred Compensation Plan funds to which Deferred Compensation is credited at such times as the Compensation would have been payable to individual employees if they were not Participants in the Plan. If such a fund is established, it shall be invested in accordance with the investment directives set forth in the Participant's Participation Agreements.

7. EARNINGS OF THE FUND:

If a fund is established pursuant to Section 6C, the net earnings of such fund shall be accumulated and held in the fund, provided that such assets remain the unrestricted assets of the Employer as set forth in Section 8 below.

8. ASSETS OF THE PLAN:

All amounts of compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall remain solely the property and rights of the Employer, subject only to the claims of the Employer's general creditors, until made available to the Participant or other beneficiary. The obligation of the Employer to a Participant for payment of the Deferred Compensation and increments thereon referred to in this Plan is a contractual obligation only and Participants shall have no preferred or specific interest by way of trust, escrow, annuity or otherwise, in and to the specific assets or funds that may be established.

9. MAINTENANCE OF BOOK ACCOUNTS:

A book account shall be maintained for each Participant. There shall be credited to the book account all amounts of Compensation deferred under the Plan and all income attributable to such amounts. The income attributable to an amount shall mean the actual earnings of the fund established pursuant to Section 6C of the Plan, if such a fund is established by the Employer, allocated, as to each investment option, on a pro rata basis among the accounts of those

participants who selected that investment option, or if no such fund is established, the earnings that would have been earned in the amounts deferred had been invested in the investment option selected by the Participant from among those available as set forth in the Participation Agreement.

10. DISTRIBUTION OF BENEFITS:

Distribution of benefits to each Participant shall commence not later than sixty (60) days after the end of the calendar year following a distribution event. The Participant must elect a mode of distribution irrevocably not less than thirty (30) days prior to the date on which the distribution is to be made or is to commence. In the event a distribution event occurs prior to the date the Participant attains (or would have attained) Normal Retirement Age, the Participant may irrevocably elect, prior to the time any amounts become payable, to defer payment of some or all of such amounts until such time as the Participant attains Normal Retirement Age.

A. Retirement:

In the event of retirement, the amount credited to the Participant's book account shall be distributed to the Participant in any one or more of the methods stated in Section 11.

B. Termination of Employment:

In the event of the Participant's termination of employment with the Employer all amounts credited to the Participant's book account shall be distributed to the Participant in any one or more of the methods as stated in Section 11.

C. Disability:

In the event of termination of employment by reason of disability, distribution of all amounts in the Participant's book account shall be distributed to the Participant in any one or more of the methods as stated in Section 11.

D. Death:

In the event of the death of the Participant all amounts credited to his/her book account shall be distributed to the Beneficiary over a period not greater than:

1. The life expectancy of the Beneficiary, if the Beneficiary is the Participant's surviving spouse, or
2. Fifteen (15) years, if the Beneficiary is not the

Participant's surviving spouse.

11. MODE OF DISTRIBUTION:

The amount credited to a Participant's book account shall be distributed by any one or more of the following methods:

- A. In a lump sum.
- B. In consecutive periodic payments monthly, quarterly, semi-annually or annually over a period of years from the date distribution begins, not to exceed the Participant's life expectancy on such date.
- C. In monthly, quarterly, semi-annual or annual installments over the life expectancy of the Participant, or Participant and his/her spouse. Life expectancy shall be actuarially determined by the Employer based on the date the initial distribution shall begin.

12. EMERGENCY WITHDRAWALS:

If a Participant is faced with an unforeseeable emergency, the Participant may apply to the Employer for withdrawal of funds from the Plan. Such withdrawals shall be permitted, at the Employer's discretion, only in circumstances of any unforeseeable emergency.

An unforeseeable emergency is severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved by:

1. Reimbursement or compensation by insurance or otherwise,
2. Liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or
3. Cessation of deferrals under the Plan.

Withdrawals of amounts due to an unforeseeable emergency shall only be permitted to the extent reasonably needed to satisfy the emergency need.

13. PLAN TO PLAN TRANSFERS:

- A. The Employer shall accept funds from other eligible State Deferred Compensation Plans established pursuant to Section 457 of the Code to be transferred and added to the Participant's book account within the Plan provided that all of the following conditions exist:
 - 1. The funds so transferred were deferred by the Participant from Compensation while employed by a political subdivision located in the State of California and;
 - 2. The funds so transferred are from a plan that provides that if the Participant separates from service in order to accept employment with another political subdivision located in the State of California, payout will not commence upon separation from service, regardless of any other provision of the plan, and amounts previously deferred will automatically be transferred.
- B. Amounts deferred by a former Participant shall be transferred to another eligible plan of which the former Participant has become a participant provided that the other plan is sponsored by an entity within the same State as the Employer and the plan receiving such amounts provides for the acceptance of the amounts.
- C. Regardless of any other provision of the Plan, if the Participant separates from service with the Employer in order to accept employment with another political subdivision located in the State of California, payout will not commence upon separation from service and amounts previously deferred will automatically be transferred.

14. MISCELLANEOUS:

- A. Amounts deferred under the Agency Deferred Compensation Plan in taxable years beginning before January 1, 1979 are hereby made a part of this Plan.
- B. Each participant may from time to time redirect the investment of amounts credited to his book account as a result of past deferrals as well as current deferrals, as applicable, among the different investment options available within the Plan. The redirection of such amounts may occur before or after payments have commenced under the Plan.
- C. Compensation deferred under this Plan shall be taken into account at its value in the Plan year in which deferred.

D. This Plan shall be construed, administered and enforced in accordance with the laws of the State of California.

15. NON-ASSIGNABILITY CLAUSE:

It is agreed that neither a Participant nor a beneficiary, nor any other designee, shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable, and in the event of any attempted assignment or transfer, the Employer shall have no further liability hereunder nor shall any payments be transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise provided by law, notwithstanding the above clause.

16. COMMUNICATION:

Any notice, filing or communication directed to the Employer shall be mailed or delivered to the following address:

Evelyn N. Billings, Auditor/Recorder

4982 10th Street

P. O. Box 156

Mariposa, CA 95338

Any notice or communication directed to any Participant shall be mailed or delivered to the address provided in the Participation Agreement.

17. AMENDMENT OR TERMINATION OF PLAN:

The Employer may, at any time, terminate this Plan for all Participants. Upon such termination, each Participant in the Plan will be deemed to have revoked his Participation Agreement as of the date of such termination.

The Employer may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the rights of the Participants or their beneficiaries to the receipt of payment of benefits, to the extent of any compensation deferred at the time of the amendment as adjusted for income attributable to such Deferred Compensation prior to and subsequent to the amendment.

This Plan is intended to qualify as an eligible State Deferred Compensation Plan under Section 457 of the Code, and shall be interpreted and administered in a manner consistent with such qualification. The Employer reserves the right to amend the Plan to the extent that may be necessary to conform the Plan to

the requirements of Section 457 of the Code and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the Plan. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Section 457 of the Code, the Employer shall correct such administration within the period provided in Section 457 of the Code. The Employer reserves the right to take such action and do such things as are required to make the Plan, as administered, consistent with Section 457 of the Code. The Employer hereby established this Deferred Compensation Plan on the terms and conditions set forth herein.