

ALLEN COUNTY CODE TITLE 1 GENERAL PROVISIONS

ARTICLE 3 DEFERRED COMPENSATION PLAN

1-3-1 Chapter 1: Coverage

The following deferred compensation plan is established and shall be binding on all employees who hereafter contract with the County of Allen for a deferred compensation plan.

1-3-2 Chapter 2: Definitions

1-3-2-1-Compensation

Compensation shall mean any payments for normal or contracted services rendered by the Participants to the County.

1-3-2-2 Includible Compensation

Includible Compensation is the compensation that results after deferred compensation or Tax Deferred Annuity reduction amounts have been reduced from Original compensation and which will be shown on the IRS form W-2.

1-3-2-3 Compensation Reduction

Compensation Reduction shall mean that amount deferred which results from the Participant's election to reduce has compensation under the Joinder Agreement and which the Participant and County mutually agree shall be deferred in accordance with this plan.

1-3-2-4 Participant

Participant shall mean any employee, elected, appointed, or under the contract, receiving compensation from the County whom also fulfills the eligibility requirements of the plan.

1-3-2-5 County

County shall mean the County of Allen, Indiana.

1-3-2-6 Beneficiary

Beneficiary shall mean the beneficiary or beneficiaries designated in the Joinder Agreement by the Participant.

1-3-2-7 Normal Retirement

Normal Retirement for the purposes of this Plan shall mean a retirement from service with the County which becomes effective on the first day of the calendar month after which the Participant attains age 65.

1-3-2-8 Early Retirement

Early Retirement for purposes of this Plan shall mean a retirement from service with the County which is effective prior to age 65, provided the Participant has attained age 55.

1-3-2-9 Late Retirement

Late Retirement for purposes of this Plan shall mean a retirement from service with the County which becomes effective after the participant has attained 65.

- a. When any Participant is placed on extended service with the County after attaining age 65, the amount of compensation deferred by the Participant prior to age 65 plus any amount deferred under the Compensation Reduction subsequent to age 65 under this Plan will be continued for the period of such extended service.

1-3-2-10 Termination of Service

Termination of Service shall mean severance of the Participant's contract or employment with the County prior to the Participant's 55th birthday by reason other than death or disability.

1-3-2-11 Disability

Disability means total and permanent disability which prohibits the Participant from engaging in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long and indefinite duration.

1-3-2-12 Underutilized Deferrals

Underutilized Deferrals means the amount by which the compensation actually included in the Participant's income for the previous taxable years exceeded the amount which would have been included in income had the maximum deferral been utilized.

1-3-2-13 Joinder Agreement

Joinder Agreement means the attached Exhibit A, or similar form to be signed by the Participant.

1-3-3 Chapter 3: Eligibility

Any employee or independently contracted person of the County who, with the consent of the County, irrevocably elects to reduce and defer his compensation as specified in A.C.C. 1-3.4 and as elected through Joinder Agreement shall be a participant and eligible for participation.

1-3-4 Chapter 4: Reduction of Compensation

The County and Participant agree that the Participant's compensation which would otherwise be receivable during a period of employment subsequent to the effective date of the Joinder Agreement shall be irrevocably reduced and that portion of Compensation Reduction shall be deferred as specified in this agreement. It is further agreed that:

1-3-4-1 Annual Amount

The annual compensation reduction amount will not exceed the lesser of:

- a. 25% of compensation (33 1/3%) of includible compensation, or;
- b. \$7,500.00

1-3-4-2 Catch-Up Provision

An eligible Participant may utilize a limited "catch-up" provision for any, or all, of the last three taxable years of a participant immediately preceding the normal retirement age specified in A.C.C. 1-3-2.7

- a. The maximum that can be deferred in any taxable year through the utilization of both the defined contribution limits and the "catch-up" provision is \$15,000.00.
- b. The "catch-up" amount may not exceed the underutilized deferrals.

1-3-4-3 Time of Agreement

An eligible person, with the respect to participation commencing in the initial year of the plan, or an individual when he or she first becomes eligible to participate, may become a participant prior to or within 60 days after the plan becomes effective or the employee first becomes eligible, by agreeing to defer compensation not yet earned, but such

agreement must be made prior to the beginning of the period in which it is to become effective.

1-3-4-4 Increase or Decrease of Reduction

A Participant shall have the right, exercisable within 60 days prior to the beginning of any calendar year, to elect to increase or decrease the Compensation Reduction for the ensuing calendar year by executing another Joinder Agreement.

1-3-4-5 Waiver of Right to Increase or Decrease

For purposes of the Agreement, a Participant's failure to file written notice of his/her elective choice as provided in A.C.C. 1-3-4.4 shall constitute a waiver by the Participant of his/her right to elect a different reduction sum for the next succeeding calendar year and an affirmation and ratification to continue the stated Compensation Reduction as chosen in the prior period.

1-3-4-6 Discontinuance of Reduction

A Participant may elect to discontinue compensation reductions for any subsequent calendar year following the effective date of his/her Joinder Agreement; provided, however, the Participant shall notify the County of such discontinuance at least 60 days prior to the subsequent calendar year.

1-3-5 Chapter 5: Coordination with Tax Deferred Annuity 403(B) Plan TDA

If an individual participates in a tax deferred annuity 403(b) plan (TDA), these TDA contributions reduce both the \$7,500.00 and the 25% of gross compensation (33 1/3% of includible compensation) limitations explained in A.C.C. 1-3-4.1(a) and (b), and 1-3-4.2 (a) and (b).

1-3-5-1 Maximum

The maximum combined annual contribution to both TDA and deferred compensation plans shall not exceed the lesser of 25% of compensation or \$7,500.00.

1-3-5-2 Exception

The only exception to this normal rule is where the participant is using the "catch-up" provision explained in A.C.C. 1-3-4.2(b).

1-3-6 Chapter 6: Benefits

1-3-6-1 Types of Benefits

The following alternative types of benefits shall be available to the Participants under this Plan:

a. Retirement Benefits

These elections include those mentioned at A.C.C. 1-3-6.1 (e). Such payments will begin not later than 30 days after said retirement.

b. Termination Benefits

Should the Participant terminate services other than by retirement, disability, or death, the County shall make payment to the Participant so qualifying as elected in the Joinder Agreement. These elections include any of those mentioned in A.C.C. 1-3-6.1 e) which follows. Such payment(s) will begin not later than 30 days after receipt of proof of said disability.

c. Disability Benefits

In the event the Participant shall, prior to his/her normal retirement date, become totally and permanently disabled as defined in A.C.C. 1-3-2.11, the County shall pay benefits to the Participant so qualifying as elected in the Joinder Agreement. These elections include any of those mentioned in A.C.C. 1-3-6.1(e) which follows. Such payment(s) will begin not later than 30 days after receipt of proof of said disability.

d. Death Benefits

(1) In the event the Participant dies prior to his/her retirement date, the County agrees to pay death benefits to the Participant's beneficiary or to the Participant's estate as elected in the Joinder Agreement. These elections include any of those mentioned in A.C.C. 1-3-6.1(e) which follows. Such payment(s) will begin not later than 30 days after receipt of proof of death.

(2) If the Participant dies after he/she has begun receiving any benefits to which he/she is entitled but before the receipt of all payments, the County agrees to continue to pay the balance of such payments to the Participant's designated beneficiary, if living, otherwise to the Participant's estate.

e. Joinder Agreement Settlement Options

(1) Lump Sum,

- (2) Life Annuity,
- (3) 60, 120, 180, or 240 months certain and life,
- (4) Unit Refund Life Annuity
- (5) Installment Refund Life Annuity,
- (6) Installments for a designed period or amount, or
- (7) Any other mutually agreeable payout option.

1-3-6-2 Factors of Age and Amounts Determine Benefits

The age at the time compensation is deferred; the amounts of reduced compensation deferred; and the age at the time of retirement, termination, disability or death are the factors determining the benefits under this Plan.

- a. In determining the benefits hereunder, the Participant's age at the time compensation is reduced and deferred shall be that of the Participant's birthday nearest to the date of commencement of his/her election to defer compensation.
- b. The benefits under this Plan shall be dependent upon that amount which has accumulated in the County's general account with respect to the Participant or Beneficiary for whom such payments are being determined under the funding medium selected.

1-3-6-3 Designation of Beneficiary

Each Participant shall have the right to designate a beneficiary to receive any benefits which may be payable upon the death of the Participant and Participant shall have the right to change any beneficiaries designated under this Plan.

1-3-6-4 County's Responsibility

- a. The County shall have no obligation to set aside, earmark, or entrust any fund, policy or money with which to pay its obligations under this Plan, other than as required by State law.
- b. The Participant and any successor in interest to him/her shall be and remain simply a general creditor of the County with respect to the compensation deferred under this Plan in the same manner as any other creditor who has a general claim for an unpaid liability.
- c. The County shall be the sole owner and beneficiary of any assets acquired for its general account under this Plan.
- d. The County shall not make any substantial loans or extend substantial credit to a Participant or his/her designated Beneficiary which will be offset by benefits payable under this Plan.

1-3-7 Chapter 7: Withdrawal for Hardship

A Participant may request a withdrawal under this Agreement prior to retirement or termination of service, but such a request will not be honored unless great hardship conditions exist.

1-3-7-1 Emergency

Hardship conditions must be the result of a real emergency beyond the control of a Participant or his/her Beneficiary.

1-3-7-2 Withdrawals Limited

Withdrawals must be limited to amounts necessary to meet the hardship.

1-3-7-3 Payment

The withdrawal shall be effective upon approval by the County and shall be paid in lump sum to the Participant.

1-3-8 Chapter 8: Amendment or Termination

1-3-8-1 Amendment

The County reserves the right to amend any provision of this Plan at any time to the extent that it may deem advisable without the consent of the Participant or any Beneficiary.

1-3-8-2 Termination

The County reserves the right to terminate this Plan at any time. Upon termination, the County shall pay to each Participant an amount of money which would have been available had the Participant terminated his service at that time. The County may make payments in a lump sum.

1-3-9 Chapter 9: Non-Assignability Clause

No benefits under this 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 Beneficiary.

1-3-10 Chapter 10: Right of Off-Set

If at any time when payments are to be made in accordance with provisions of this Plan, the Participant is indebted to the County, then the payments remaining to be made to the Participant and/or the Beneficiary designated in the Joinder Agreement may, at the discretion of the County, be reduced by the amount of such indebtedness. An election by the County not to reduce such payments shall not constitute a waiver of its claim for such indebtedness.

1-3-11 Chapter 11: Headings

Headings and subheadings in the Plan are inserted for convenience of reference only and constitute no part of this Plan.

1-3-12 Chapter 12: Waiver

Notwithstanding any other provision of this Plan, including any annuity contract issued under the plan, in accordance with section 457 (g) of the Internal Revenue code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in section 401 (g) of such Code, issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the Plan. For this purpose, the term “annuity contract” does not include a life, health or accident, property, casualty, or liability insurance contract.

All amounts of compensation deferred under the plan shall be transferred to an annuity contract described in section 401 (f) of the Internal Revenue Code within a period that is no longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, all amounts of compensation deferred under the Plan shall be transferred a contract described in section 401 (f) of such Code nor later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

1-3-13 Chapter 13: Administration

This Plan shall be administered by a Special Deferred Compensation Committee of the Board of Commissioners, with the assistance and cooperation of the Allen County Auditor.

1-3-13-1 Distribution of Descriptions and Outlines

The Special Deferred Compensation Committee and the Commissioners shall see the descriptions of this Plan, and outlines of the options and opportunities available to

County employees, are prepared and distributed from time to time to all County employees.

1-3-13-2 Funding of Plan

At this time, the Board of Commissioners and its Special Deferred Compensation Committee have chosen to fund this Plan with life insurance or annuity contracts available through Lincoln National Life Insurance Company and the American United Life Insurance, pursuant to the proposals which those two companies have presented to the Commissioners and the Commissioners' Special committee between May, 1980, and September 1980. If appropriate, further funding mechanisms and companies may be chose for the County.

1-3-14 Chapter 14: Applicable Law

This Agreement shall be construed under the law of the State of Indiana.

Adopted on the 16th day of March, 1979, by the Board of Commissioners of Allen County (as amended on May 28, 1980, and September 29, 1980).

*(Includes Exhibit A – Joinder Agreement)

Exhibit A Joinder Agreement

Application for Participation and Beneficiary Designation Under the County Master Deferred Compensation Agreement.

The undersigned hereby agrees to the terms and conditions of the County Master Deferred Compensation Agreement as such Agreement now exists, and as it may be amended, and applies for participation thereunder effective as of

_____.

The undersigned agrees that the County's payroll department shall have the irrevocable right to reduce his/her income by \$_____ each pay period. This election to reduce income shall continue until the undersigned makes a subsequent election as provided by the Master Agreement.

The Participant hereby elects to have benefit payments described in A.C.C. 1-3-6 as follows:

- | | |
|--------------------------------|--|
| 1. Lump Sum | 8. Installment Refund Life Annuity |
| 2. Life Annuity | 9. Joint and Full Survivor |
| 3. 60 Months Certain and Life | 10. Joint and 2/3 Survivor |
| 4. 120 Months Certain and Life | 11. Installments for Designated Period |
| 5. 180 Months Certain and Life | 12. Installments for Designated Amount |
| 6. 240 Months Certain and Life | 13. _____ |

7. Unit Refund Life Annuity

Retirement Benefit _____ above is elected under A.C.C. 1-3-6(a)
Termination Benefit _____ above is elected under A.C.C. 1-3-6(b)
Disability Benefit _____ above is elected under A.C.C. 1-3-6(c)
Death Benefit _____ above is elected under A.C.C. 1-3-6(d)

The undersigned acknowledges that the County is under no obligation to continue the Deferred Compensation Agreement and that being a Participant thereunder in no way guarantees his employment. Until further notice, the undersigned requests that any death benefits be payable to:

Name

Address Relationship

however, if there be no surviving beneficiary than to the Participant's estate.

This application shall become effective as of the effective date above stated with further notice upon receipt by the County.

This application shall become effective as of the effective date above stated with further notice upon receipt by the County.

Date Signature of Participant

The consent of the Participant's spouse is required in the event that the designated Beneficiary is other than said spouse. (Applies only to community property states.)

I hereby consent to the Beneficiary designation set forth above.

Date Signature of Participant's Spouse

Application for Participation and Beneficiary Designation received this _____ day of _____, 20 _____.
