

**CITY OF FRESNO**  
**DEFERRED COMPENSATION PLAN DOCUMENT**

Adopted by City Council on \_\_\_\_\_

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## CITY OF FRESNO

### DEFERRED COMPENSATION PLAN DOCUMENT

#### ARTICLE I PLAN ESTABLISHED

**1.1 Plan Established.** The Employer hereby amends and restates the City of Fresno Deferred Compensation Plan Document (hereinafter referred to as the "Plan") effective [\_\_\_\_\_, 2021]. It is intended that the Plan shall qualify as an Eligible Deferred Compensation Plan within the meaning of Section 457(b)(1) of the Internal Revenue Code of 1986 as amended ("IRC"), and the regulations thereunder, and that the Plan is sponsored by an eligible governmental Employer in accordance with IRC 457(e)(1).

**1.2 Primary Purpose.** The primary purpose of the Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the IRC, and Government Code Sections 53212 *et seq.*

**1.3 Agreement.** The Plan shall be an agreement solely between the Employer and participating Employees. The Employer has established a Trust in the Trust Agreement, to hold all assets of the Plan for the exclusive benefit of Participants and Beneficiaries. The Trust shall comply with IRC 457(g) and constitute a valid trust under applicable state law. The powers and duties of the Trustee are set forth in the Trust Agreement.

#### ARTICLE II DEFINITIONS

**2.1 Accumulated Deferrals** means Compensation deferred under the Plan, adjusted until date of payment by income received, increases, or decreases in investment value, fees and any prior distributions made.

**2.2 Administrator** means the Deferred Compensation Board or, if applicable, the agent appointed by the Deferred Compensation Board that is responsible for administrative services for the Plan.

**2.3 Annual Deferral** means the amount of Compensation deferred in any Plan Year.

**2.4 Beneficiary** means the designated person, trust, corporation or firm (or, if none, the estate of the Participant), who is entitled to receive benefits under the Plan after the death of the Participant. Beneficiary may mean singular or plural, primary or contingent.

**2.5 Compensation** means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under IRC 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 3.2). Compensation shall be considered at its present

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value and its amount shall be determined without regard to any community property laws. Compensation shall include differential wage payments (as such term is defined in IRC 3401(h)(2)). To the extent permitted by Federal law and Treasury Regulations ("Treas. Reg.") or other similar guidance, payments of accrued bona fide sick, vacation, or other leave, which are paid by the later of 2½ months following (a) a Participant's Severance from Employment or (b) by the last day of the Plan Year during which the Severance from Employment occurred that are includible in the Participant's gross income for the applicable Plan Year under the Code and Treasury Regulations are Compensation. For purposes of Section 4.1, Compensation shall not include any amounts that are excludible from the Participant's gross income for each Plan Year pursuant to IRC 457(e)(5).

**2.6 Deferred Compensation Board** means the Deferred Compensation Board which shall administer the City of Fresno Deferred Compensation Plan.

**2.7 Eligible Deferred Compensation Plan Transfers Account** means the subaccount established within a Participation Account to which a Participant's Eligible Deferred Compensation Plan Transfers are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.

**2.8 Eligible Rollover Contribution** means the contribution of an Eligible Rollover Distribution on behalf of a Participant from an Eligible Retirement Plan (other than an eligible deferred compensation plan).

**2.9 Eligible Rollover Subaccount** means the subaccount established within a Participation Account to which a Participant's Eligible Rollover Contributions are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.

**2.10 Employee** means each natural person, whether appointed or elected, who is employed by the Employer as a common law employee or a permanent part time Employee, excluding any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan. Employee does not include independent contractors.

**2.11 Employer** means the City of Fresno, California.

**2.12 Includible Compensation** means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under IRC 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under IRC 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer Compensation under Section 3.2).

**2.13 IRC** means the Internal Revenue Code of 1986, as amended from time to time.

**2.14 Normal Retirement Age** means any age designated by a Participant beginning no earlier than the earliest date at which a Participant is eligible to retire and receive immediate unreduced retirement benefits under his or her respective City of Fresno Retirement System (the Fire and Police Retirement System or the City Employees' Retirement System), or in the case of a Participant who will not become eligible to receive benefits under his or her respective City of

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Fresno Retirement System, the Participant's alternate Normal Retirement Age may not be earlier than attainment of age 50 for Participants who are members of the Fire and Police Retirement System, and age 55 for Participants who are members of the City Employees' Retirement System or are permanent part time Employees and may not be later than the date the Participant will attain age 70½. If a Participant continues employment after attaining age 70½, not having previously made the catch-up election provided for under Section 4.2, the Normal Retirement Age shall be the age designated by the Participant, which shall not be later than the age at which the Participant has a Severance from Employment. Once a Participant has to any extent utilized the catch-up limitation in Section 4.3, his or her Normal Retirement Age cannot be changed.

**2.15 Participant** means an Employee who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

**2.16 Participation Account** means the account established and maintained for a Participant. The Administrator may establish the following subaccounts for each Participant:

- (a) Pre-Tax Account;
- (b) Roth Contribution Account;
- (c) Eligible Deferred Compensation Plan Transfers Account; and
- (d) Eligible Rollover Contribution Account.

**2.17 Plan Year** means the calendar year.

**2.18 Pre-Tax Deferrals Subaccount** means the subaccount established within a Participation Account to which a Participant's Pre-Tax Deferrals are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.

**2.19 Required Beginning Date** means April 1 of the calendar year following the later of: (a) the calendar year in which the Participant attains age 72 (if the Participant was born after June 30, 1949) or age 70½ (if the Participant was born before July 1, 1949); or (b) the calendar year in which the Participant retires or leaves City service.

**2.20 Rollover Amount** means that portion of an Eligible Rollover Distribution from this Plan that, by election of the prospective distributee, is transferred directly or indirectly to an Eligible Retirement Plan.

**2.21 Roth Contribution(s)** means after-tax contributions allocated to a Participant's Roth Contribution subaccount.

**2.22 Roth Contribution Subaccount** means the subaccount established within a Participation Account to which a Participant's Roth Contributions are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.

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**2.23 Roth In-Plan Eligible Rollover Contribution** means the portion of an Eligible Rollover Distribution from the Plan that a Participant elects to have allocated to the Roth In-Plan Rollover Subaccount within the Participant's Participation Account.

**2.24 Roth In-Plan Rollover Subaccount** means the subaccount established within a Participant's Participation Account to which a Participant's Roth In-Plan Eligible Rollover Contributions are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.

**2.25 Severance from Employment** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the IRC). In general, a Participant will be deemed to have had a Severance from Employment as of the date of his or her last payroll date.

**2.26 Trust** means the funding vehicle established pursuant to IRC 457(g) which shall consist of all assets of the Plan held by the Trustee pursuant to the terms of the Trust Agreement.

**2.27 Trust Agreement** means the written agreement (or declaration) made by and between the Employer and the Trustee under which the Trust Fund is maintained.

**2.28 Trust Fund** means the trust fund created under and subject to the Trust Agreement.

**2.29 Trustee** means the Trustee duly appointed and currently serving under the Trust Agreement.

### ARTICLE III PARTICIPATION IN THE PLAN

**3.1 Eligibility.** Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder on the first day of the first month immediately upon employment with the Employer.

#### **3.2 Deferral and Contribution Elections.**

- (a) An Employee may elect to become a Participant by executing an election to defer a portion a portion of his or her Compensation (and having that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount and may change such minimums from time to time. The participation election shall also include designation of investment funds and a designation of Beneficiary.
- (b) Any election shall remain in effect until a new election is filed. If a Participant does not have a valid and complete investment direction on file, deferrals may be invested in a default fund selected by the Administrator in its sole discretion, until



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the Participant makes an affirmative election regarding the investment of his or her Participation Account.

- (c) Unless otherwise designated by the Participant in the participation election, any Accumulated Deferrals under the Plan shall be treated as pre-tax deferrals.
- (d) Roth Contributions. Roth Contributions will be credited and debited to the Roth Contribution Account maintained for each Participant. The Plan will maintain a separate record of the amount of Roth Contributions in each Participant's Participation Account. No contributions other than Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Account.

**3.3 Commencement of Participation.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 3.2. Such election shall become effective no earlier than the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

**3.4 Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under IRC 457(b).

**3.5 Contributions Made Promptly.** Annual Deferrals by the Participant shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Participation Account. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

**3.6 Amendment of Annual Deferrals Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, the amount designated as pre-tax deferrals or Roth Contributions, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month, or as soon as administratively practicable if later, and be equal at least \$5.00 dollars per pay period. A change in the investment direction shall take effect as of the date provided by the Administrator. A change in the Beneficiary designation shall take effect at the earliest possible payroll period which allows sufficient time for the order to be processed through the City payroll.

**3.7 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

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**3.8 Disability.** A disabled Participant may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

**3.9 Employer Contributions.** The Employer may add additional deferred Compensation for services that will be rendered by the Employee to the Employer during any calendar month, provided:

- (a) The Employee has elected to have such additional Compensation deferred, invested, and distributed, pursuant to this Plan, prior to the calendar month in which the Compensation is earned; and
- (b) Such additional deferred Compensation, when added to all other Annual Deferrals under the Plan, does not exceed the maximum deferral permitted under Article IV.

### ARTICLE IV LIMITATION ON DEFERRALS

**4.1 Basic Annual Limitation.** Except as provided in Section 4.2, relating to catch-up provisions, the maximum amount of the Annual Deferral under the Plan for any calendar year, shall not exceed the lesser of (a) 100% of the Participant's Includible Compensation or (b) the Applicable Dollar amount established under IRC 457(e)(15) (\$19,500 in the year 2021), adjusted for the cost-of-living, to the extent provided under the IRC.

**4.2 Age 50 Plus Catch-up Annual Deferral Contributions.** Pursuant to IRC 414(v), a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals adjusted for cost-of-living to the extent provided under the IRC (\$6,500 for 2021).

**4.3 Special Section 457 Catch-up Limitation.** If the applicable year is one of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 4.3 exceeds the amount computed under Sections 4.1 and 4.2, then the Annual Deferral limit under this Section 4.3 shall be the lesser of:

- (a) An amount equal to twice the Section 4.1 Applicable Dollar Amount for such year or
- (b) The sum of:
  - (i) An amount equal to (A) the aggregate Section 4.1 limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

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- (ii) An amount equal to (A) the aggregate limit referred to in IRC 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Section 4.2 and 4.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

### **4.4 Special Rules.** For purposes of this Article IV, the following rules shall apply:

- (a) Participant Covered by More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of IRC 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article IV. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) Pre-Participation Years. In applying Section 4.3, a year shall be taken into account only if the Participant was eligible to participate in this Plan during all or a portion of the year was subject to the Basic Annual Limitation described in Section 4.1 or any other plan ceiling required by IRC 457(b).
- (c) Pre-2002 Coordination Years. For purposes of Section 4.3(b)(2)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in IRC 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.3(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in IRC 457(b)(2) for that year.

**4.5 Disregard Excess Deferral.** For purposes of Sections 4.1, 4.2 and 4.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 4.6. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

**4.6 Correction of Excess Deferrals.** If the Annual Deferral amount on behalf of a Participant for any calendar year exceeds the limitations described in this Article IV, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described in this Article IV when combined with other amounts deferred by the Participant under another eligible deferred compensation plan described under IRC 457(b) for which the Participant provides

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information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant, with allocable net income, as soon as practicable after the Administrator determines that such amount was an excess deferral or contribution. Excess Amounts shall first be distributed from pre-tax deferrals, and second from Roth Contributions, as determined in accordance with methods and procedures established by the Administrator.

**4.7 Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under IRC 414(u) or who is on a leave of absence for qualified military service under IRC 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals 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 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).

### ARTICLE V LOANS TO PARTICIPANTS

**5.1 Loans to Participants.** A Participant who has a minimum Participation Account of \$2,000 who is an Employee may apply for and receive a loan from his or her Participation Account subject to the terms and conditions of this Section 5.1 and the IRC. Any such loan may not be for an amount less than the minimum amount specified by the Administrator. If not specified by the Administrator, the minimum loan amount shall be \$1,000. If a Participant's Severance from Employment occurs after he or she has requested a loan but before the loan is distributed to the Participant, the Participant's request for a loan shall automatically be cancelled. A loan shall be made from the Participant's pre-tax deferrals, and may not be made from a Roth Contribution Account.

**5.2 Maximum Loan Amount.** No loan to a Participant hereunder may exceed the lesser of:

- (a) \$50,000 reduced by the greater of (i) highest outstanding balance of any other loan from the Plan during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period) or (ii) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or
- (b) 50% of the value of the vested Participation Account (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 5.2, any loan from any other plan maintained by a participating employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to

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allow the amount of a loan under this Section 5.2 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

- (c) Loan Terms. The terms of the loan shall:
- (i) require level amortization with payments not less frequently than by monthly automatic deduction (ACH) from the Participant's personal bank account throughout the repayment period except that alternative arrangements for repayment may apply in the event that the borrower is on an bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of IRC 414(u) or for the duration of a leave which is due to qualified military service;
  - (ii) require that the loan be repaid within five years from the date of the loan, unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and
  - (iii) provide for interest charged at prime plus 1%, designed to provide the Plan with a return commensurate with interest rates charged by persons in the business of lending money under similar circumstances.
- (d) Security for Loan; Default.
- (i) Security. Any loan to a Participant shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.
  - (ii) Default. In the event that a Participant fails to make a loan payment under this Section 5 within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, (A) all remaining payments on the loan shall be immediately due and payable, (B) effective as of the first day of the calendar month next following the month in which any such loan default occurs, the interest rate for such loan shall be (if higher than the rate otherwise applicable) the rate being charged on loans from the Plan that are approved by the Administrator in the month in which default occurs, (C) no contributions shall be made on such Participant's behalf prior to the first payroll period that follows by 12 calendar months the date of repayment in full of such loan, and (D) the Participant shall be permanently ineligible for any future loans from the Plan.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Participation Account of the Participant.

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Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

- (e) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (f) Loan Procedures. All Plan loans shall be made and administered by the Administrator in accordance with the rules and procedures the Administrator may establish from time to time, which are hereby incorporated into the Plan by reference.
- (g) Payment of Fees. The Participant shall be responsible for the payment of fees to cover the cost of administering his/her loan. Payment shall be made by deduction from the Participant's Participation Account.
- (h) Repayment. The Participant shall be required, as a condition to receiving a loan, to enter an irrevocable, written agreement authorizing the City to make payroll deductions from the Participant's paycheck until the loan plus interest is paid in full, as long as the Participant is still employed with the City. Payroll shall = transfer the amount collected each pay period to the Trustee in payment of the loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed. In any event, a Participant may prepay the entire outstanding balance of the loan at any time (but may not make a partial prepayment). If any installment of payroll deductions described in this subsection cannot be made in full because a Participant is on an unpaid leave of absence, is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose), or the Participant's paycheck is insufficient to allow for collection of the agreed-upon installment for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which in which the amount would have been deducted.
- (i) Suspension of Repayment. Notwithstanding the foregoing to the contrary, loan repayments may be suspended as permitted under IRC 414(u)(4).
  - (i) Military Service and Disaster Relief. Loan repayment shall be suspended by the Administrator without penalty for any period during which a Participant is serving on active duty in the uniformed services of the United States or for periods specified by the IRC for any given disaster relief efforts.

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- (ii) Other Leaves of Absence. In the event of an Employer-approved unpaid leave of absence for any other reason, the Participant may suspend principal installments and interest payments otherwise due for the duration of the leave or one year, whichever is shorter. Interest shall continue to accrue during the leave of absence
- (iii) Interest shall continue to accrue during the suspension of repayment. Upon termination of a repayment suspension, the Participant may either: (1) make a one-time payment equal to the total amount that accumulated during the suspension, or (2) reamortize the loan.

### ARTICLE VI DISTRIBUTION OF BENEFITS

**6.1 Benefit Distribution at Retirement or Other Severance from Employment.** Upon retirement or the Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Participation Account under any form of distribution permitted under Section 6.3. If the Participant does not elect otherwise, the distribution will be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and commencing on the date elected under Section 6.2 and payment shall be made in monthly installments of the minimum annual payments described in Section 6.3(b).

**6.2 Election of Benefit Commencement Date.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed at least 30 days before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Section 6.7.

**6.3 Forms of Distribution.** In an election to commence benefits under Section 6.2, a Participant entitled to a distribution of benefits under this Article VI may elect to receive payment in at least annual, quarterly, or monthly payments as requested by the Participant. A Participant electing to commence distribution shall be the opportunity to designate the extent to which the distribution should be taken in whole or in part from subaccounts within the Participant's Participation Account in which Roth Contributions, eligible deferred compensation plan transfers, and eligible rollover contributions are held, as applicable. In the absence of such designation, the distribution shall be taken pro rata from the subaccounts within the Participant's Participation Account. Any amount payable to an organization, estate, or trust shall be paid in a lump sum as prescribed in Sections 6.4

**6.4 Death Benefit Distributions.** Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Participation Account shall be paid to the Beneficiary in a lump sum. Alternatively, if the Beneficiary with respect to the Participant's Participation Account is a natural person, at the Beneficiary's election, distribution can be made in annual installments (calculated in a manner that is similar to installments under Section 6.3) with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in Treas. Reg. 1.401(a)(9)-9, A-1 for the spouse's age on the spouse's birthday for

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that year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in Treas. Reg. 1.401(a)(9)-9, A-1 for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Participation Account) in lieu of the amount calculated using this formula.

**6.5 Amount of Participation Account.** Except as provided in Section 6.3, the amount of any payment under this Article VI shall be based on the amount of the Participation Account on the preceding Valuation Date.

**6.6 Revocation of Prior Election.** Any election made under this Article VI may be revoked at any time.

**6.7 Latest Distribution Date.** In no event shall any distribution under this Article VI begin later than the later of:

- (a) April 1 of the year following the calendar year in which the Participant attains age 72 (if the Participant was born after June 30, 1949) or age 70½ (if the Participant was born before July 1, 1949); or
- (b) April 1 of the year following the calendar year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 72 (if the Participant was born after June 30, 1949) or age 70 ½ (if the Participant was born before July 1, 1949) or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Section 5.3 and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph (b) of Section 6.3 must also be paid before the end of the calendar year of commencement.

**6.8 In-Service Distributions from Rollover Account.** If a Participant has a separate account attributable to eligible rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

**6.9 Unforeseeable Emergency Distribution.**

- (a) Distribution. If a Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.9.
- (b) Unforeseeable emergency defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined



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in IRC 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, *e.g.*, as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in IRC 152(a)); or other similar extraordinary and unforeseeable circumstances arising as a result of an event beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may 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. Except as otherwise specifically provided in this Section 6.9, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

- (c) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.
- (d) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

### **6.10 Voluntary Distributions for Certain Participation Accounts of \$5,000 or Less.**

At the direction of the Participant, the Participant's total Participation Account may be paid in a lump sum as soon as practical following the direction if (a) the total Participation Account does not exceed \$5,000 (or the dollar limit under IRC 411(a)(11), if greater), (b) the Participant has not previously authorized a distribution of the total amount payable to the Participant under this Section 6.10 and (c) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of distribution. The amount of the Participant's Participation Account attributable to eligible rollover contributions shall not be considered in determining whether the Participant's Participation Account is less than \$5,000.

### **6.11 Eligible Rollover Distributions.**

- (a) Election Procedure. A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in IRC 414(p)) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.
- (b) For purposes of this Section 6.11, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit, except that an eligible

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rollover distribution does not include (a) any installment payment under Section 6.3 for a period of 10 years or more, (b) any distribution made under Section 6.9 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in IRC 408(a), an individual retirement annuity described in IRC 408(b), a qualified trust described in IRC 401(a), an annuity plan described in IRC 403(a) or 403(b), or an eligible governmental plan described in IRC 457(b), that accepts the eligible rollover distribution.

### **ARTICLE VII ROLLOVERS TO THE PLAN AND TRANSFERS**

#### **7.1 Eligible Rollover Contributions to the Plan.**

- (a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with IRC 402 and to confirm that such plan is an eligible retirement plan within the meaning of IRC 402(c)(8)(B).
- (b) For purposes of Section 7.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (a) any installment payment for a period of 10 years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in IRC 408(a), an individual retirement annuity described in IRC 408(b), a qualified trust described in IRC 401(a), an annuity plan described in IRC 403(a) or 403(b), or an eligible governmental plan described in IRC 457(b), that accepts the eligible rollover distribution.
- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under IRC 457(b).

**7.2 Plan-to-Plan Transfers to the Plan.** At the direction of the Employer, the Administrator may permit a Participant or Beneficiary who are participants in another eligible governmental plan under IRC 457(b) to transfer assets to the Plan as provided in this Section 7.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may

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require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with IRC 457(e)(10) and Treas. Reg. 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treas. Reg. 1.457-2(f). The amount so transferred shall be credited to the Participant's Eligible Deferred Compensation Plan Transfers Account and shall be held, accounted for, administered, and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article IV.

**7.3 Roth Rollover Contribution.** Notwithstanding any other provisions in the Plan to the contrary, the Plan will accept a rollover contribution to the Participant's Roth Contribution Account if it is a direct rollover from another Roth account under an applicable retirement plan in accordance with IRC 402A(e)(1), and only to the extent the rollover is permitted under the rules of IRC 402(c).

### **7.4 Plan-to-Plan Transfers from the Plan.**

- (a) At the direction of the Employer, the Administrator may permit a Participant or Beneficiary to elect to have all or any portion of their Participation Account transferred to another eligible governmental plan within the meaning of IRC 457(b) and Treas. Reg. 1.457-2(f). A transfer is permitted under this Section 7.4(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 7.4(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participant and Beneficiary and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Section 7.4, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.4 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 7.4, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. 1.457-10(b).

### **7.5 Permissive Service Credit Transfers.**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in IRC 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Participation Account transferred to the defined benefit governmental plan. A transfer under this Section 7.5(a) may be made before the Participant has had a Severance from Employment.

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- (b) A transfer may be made under Section 7.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in IRC 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which IRC 415 does not apply by reason of IRC 415(k)(3).

### 7.6 In-Plan Roth Transfers

- (a) Any amounts held in a Participant's Participation Account (other than an amount held in a Roth Account) is eligible for direct rollover or transfer to the Participant's Roth Account under the Plan, even if the amount is not otherwise distributable (pursuant to IRC 402A(c)(4)(E)) under Article VI, and the transfer shall be treated as a qualified eligible rollover contribution (within the meaning of IRC 408A(e)).
- (b) A Participant's election under this Section 7.6 shall be subject to the reasonable administrative procedures established by the Administrator, IRC 402A(c)(4), the Treasury Regulations thereunder, and any subsequent guidance from the Internal Revenue Service.
- (c) The taxable portion of the Participant's Participation Account transferred to a Roth Account under this Section 7.6 shall be included in the Participant's gross income in the tax year in which the transfer occurs.
- (d) The Administrator shall provide written information regarding in-plan Roth rollovers under this Section, for amounts that are otherwise distributable under this Section to the extent required by IRC 402(f).

## ARTICLE VIII TRUST FUNDS

**8.1 Trust Fund.** All amounts of Annual Deferrals, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan and the Trust Agreement, pursuant to IRC 457(g)(3). The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of California. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

## ARTICLE IX MISCELLANEOUS PROVISIONS

**9.1 Non-Assignability.** Except as provided in Sections 9.2 and 9.3, neither the Participant nor any Beneficiary shall have any right to sell, transfer, assign, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and

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interest are expressly declared to be non-assignable and non-transferable. The rights of the Participant and Beneficiary under this Plan shall not be subject to the claims of the Participant's or Beneficiary's creditors and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of any creditors or other third persons having claims against the Participant.

**9.2 Domestic Relations Orders.** Parties to a divorce or termination of registered domestic partnership will be required to file a joinder with the Plan, notifying the Plan that a divorce or termination of registered domestic partnership is pending. Notwithstanding Section 9.1, in accordance with IRC 414(p), if a judgment, decree or order (including approval of a property settlement agreement) 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 Participation Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. 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. Any expense related to the administration of a domestic relations order shall be assessed against the Participant's account and the alternate payee's account, apportioned pursuant to the domestic relations order.

**9.3 IRS Levy.** Notwithstanding Section 9.1, the Administrator may pay from a Participant's or Beneficiary's Participation Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**9.4 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**9.5 Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**9.6 Procedure When Distributee Cannot Be Located.** If the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include (a) providing notice to the Participant at

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the Participant's last known address via certified mail; (b) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (c) attempting to contact any named Beneficiary of the Participant; and (d) searching for the missing Participant via free electronic search tools, such as internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them. In the event that the Administrator is unable to locate a Participant or Beneficiary entitled to benefits under the Plan, the Trustee shall continue to hold the benefits due to such person under the Plan in the Participant's Account.

**9.7 Termination of Plan.** The City of Fresno may, by appropriate action of the City Council, terminate this Plan. No such termination shall deprive a Participant or Beneficiary of any benefits to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such termination.

**9.8 Amendment of Plan.** The City of Fresno may, by action of the City Council, amend this Plan for any reason, including to the extent that may be necessary to conform the Plan to the requirements of IRC 457 and any other applicable law, regulation, or ruling. No amendment shall deprive any Participant or Beneficiary of any right or benefit to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such amendment.

**9.9 Participation by Deferred Compensation Board Members.** Members of the Deferred Compensation Board, who are otherwise eligible, may participate in the Plan under the same terms and conditions as apply to other Participants, but a Deferred Compensation Board member shall not participate in any Administrator action taken with respect to that member's participation.

**9.10 No Contract of Employment.** Neither the establishment of the Plan, nor the participation in the Plan, shall be construed as giving any Participant the right to be retained in the service of the City of Fresno.

**9.11 Heirs, Assigns and Personal Representatives.** This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties; including each Participant and Beneficiary, present and future.

**9.12 Equal Access to Benefits, Rights and Features.** Any determination made by the Administrator with respect to the availability of benefits, rights, and features under this Plan shall apply on a non-discriminatory basis allowing equal access for all Participants; provided, however, that such access may be limited by the terms of a collective bargaining agreement or individual employment contract.

**9.13 Administered by Deferred Compensation Board.** This Plan shall be administered by the City of Fresno Deferred Compensation Board which shall represent the Employer and all participants in all matters concerning the administration of this Plan.

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- (a) Deferred Compensation Board Duties and Responsibilities.
- (i) The Deferred Compensation Board shall have full power and authority to adopt rules and regulations for the administration of the Plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted.
  - (ii) Every action taken by the Deferred Compensation Board shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The Deferred Compensation Board and its individual members shall be deemed to have exercised their fiduciary duties with reasonable care, diligence, and prudence and to have acted impartially as to all persons interested, unless the contrary may be proven by affirmative evidence.
- (b) Deferred Compensation Board Powers.
- (i) In the event any form or other document used in administering this Plan, including, but not limited to, marketing materials, conflicts with the terms of the Plan, the terms of the Plan shall prevail.
  - (ii) The Deferred Compensation Board is authorized to determine any matters concerning the rights of any Participant under this Plan.
  - (iii) The Deferred Compensation Board is authorized to construe this Plan and resolve any ambiguity in the Plan. The Plan and any form or other document used in administering the Plan shall be interpreted, and this Plan shall be administered, so as to comply with IRC 457, as amended, and the regulations of the Treasury Department promulgated thereunder.
- (c) Delegation of Authority. The Deferred Compensation Board may delegate to the staff, an individual, committee or organization certain functions to be performed under this Plan. The Deferred Compensation Board retains the discretion to revoke any designation.
- (d) Employment of Service Provider(s). The Deferred Compensation Board may employ one or more service providers to perform such functions as delegated under Section 9.13(c).

**END OF DOCUMENT**