

**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 \_\_\_\_\_. 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).

#### ARTICLE II PURPOSE

**2.1 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.

**2.2 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 Section 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.

**2.3 Tax Status not Guaranteed.** The Employer, and the Deferred Compensation Board which administers the Plan, do not, and cannot, represent or guarantee that any particular federal and state income, payroll, or other tax consequences will occur by reason of an Employee's participation in this Plan. The Participant shall consult with his own attorney or other representative regarding all tax or other consequences of participation in this Plan.

#### ARTICLE III DEFINITIONS

The following terms when used herein, shall have the following meaning:

**3.1 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.

**3.2 Administrator** means the Deferred Compensation Board or the duly authorized representative contracted to provide administrative services for the Plan.

**3.3 Annual Deferral** means the amount of Deferred Compensation for a Participant in a Plan Year.

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**3.4 Beneficiary** means any person, trust, corporation or firm, or the estate of the Participant, or any combination of the foregoing designated by the Participant to receive benefits under the Plan. Beneficiary may mean singular or plural, primary or contingent.

**3.5 Compensation** means all payments made to the Employee by the Employer as remuneration for services rendered including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Participant's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Participant's gross income for the calendar year but for a compensation reduction election under IRC Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Article 4). Compensation shall be taken into account at its present 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 Section 3401(h)(2)). To the extent permitted by Federal law and Treasury Regulations ("Treas. Reg.") or other similar guidance, Compensation also includes accrued bona fide sick, vacation, or other leave pay which may be paid to a Participant by the later of two and one-half (2½) months after a Participant's Separation from Employment or by the end of the calendar year that includes the date of such Separation from Employment so long as the Employee would have been able to use the leave if employment had continued.

**3.6 Deferred Compensation** means the amount of Participant's Compensation which the Participant and the Employer mutually agree to defer in accordance with the provisions of this Plan, or any other amount which the Employer agrees to credit to a Participant's Account under this Plan. "Deferred Compensation" means the aggregate Pre-Tax Deferrals and Roth Contributions made from a Participant's Compensation, which said Participant has elected to defer in accordance with the provisions of this Plan. When used in the context of deferrals of Compensation, "defer(s)", "deferral" or "deferred" means, individually or collectively, Pre-Tax Deferrals and Roth Contributions, as applicable.

**3.7 Deferred Compensation Board** means the Deferred Compensation Board which shall administer the City of Fresno Deferred Compensation Plan. The Deferred Compensation Board shall consist of five members selected as follows:

- (a) Two members from any City department(s) appointed by the City Manager with the approval of the City Council; and
- (b) Two members elected by and from the plan Participants who have a nonzero balance in their Deferred Compensation Account (active or any other status); and
- (c) A fifth member chosen by the previously designated four members from the qualified electors of Fresno County not connected with the City of Fresno or the Plan.

The members elected by and from the Plan Participants shall serve a term of four years, whose terms shall be staggered. The remaining members shall serve at the pleasure of the appointing or electing authority.

**3.8 Eligible Deferred Compensation Plan Transfer** means a transfer to the Plan on behalf of a Participant from another eligible deferred compensation plan.

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**3.9 Eligible Deferred Compensation Plan Transfer Subaccount** 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.

**3.10 Eligible Employee** means any full time permanent Employee or City Councilmember of the City or any other Employee eligible for the City's pension system. Permanent part time City Employees are also eligible to participate in this Deferred Compensation Plan.

**3.11 Employee** means any individual who performs services for the Employer for Compensation on a regular basis, including elected and appointed officials. Employee does not include independent contractors.

**3.12 Eligible Retirement Plan** means any account, annuity, plan or trust as defined in IRC Section 402(c)(8)(B).

**3.13 Eligible Rollover Distribution** means any distribution as defined in IRC Section 402(c)(4)(E).

**3.14 Employer** means the City of Fresno.

**3.15 Includible Compensation** means Compensation for services performed for the Employer, as defined in IRC Section 457(e)(5). Includible Compensation shall be limited in accordance with IRC Section 401(a)(17).

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

**3.17 Normal Retirement Age** means age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Deferred Compensation Board prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation set forth in Article VI. Once a Participant has to any extent utilized the catch-up limitation in Article VI, his or her Normal Retirement Age cannot be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under his or her respective City of Fresno Retirement System (Fire and Police Retirement System or Employees' Retirement System), 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 elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall be 70 ½ for purposes of the Special 457 Catch-Up provisions.

If the Participant will not become eligible to receive benefits under his or her respective City 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



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System, and age 55 for Participants who are members of the City Employees' Retirement System or are Permanent Part time Employees.

**3.18 Participant** means any member of the Plan who has elected, pursuant to the Plan, to defer a portion of his Compensation, and who fulfills the requirements of participation in the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.

**3.19 Participation Agreement** means the agreement, including any amendments and modifications thereof, executed and filed by an Eligible Employee with the Administrator pursuant to Article V, in which the Eligible Employee elects to become a Participant in the Plan.

**3.20 Participation Account** means the account and subaccounts established and maintained for a Participant under the Plan to which there is recorded, as applicable, the Participant's Pre-Tax Deferrals, Roth Contributions, Eligible Deferred Compensation Plan Transfers, Rollover Contributions and Roth In-Plan Rollover Contributions, if any, and any interest, dividends, gains, losses, earnings or expenses or the like thereon. A Participant's Participation Account shall be divided into the following subaccounts, as applicable: the Pre-Tax Deferrals Subaccount, the Roth Contribution Subaccount, the Eligible Deferred Compensation Plan Transfer Subaccount, the Rollover Subaccount and the Roth In-Plan Rollover Subaccount.

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

**3.22 Pre-Tax Deferrals** means the amount of a Participant's Compensation deferred on a pre-tax basis.

**3.23 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.

**3.24 Qualified Domestic Relations Order or "QDRO"** means any judgment, decree or order as defined in IRC Section 414(p).

**3.25 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.

**3.26 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.

**3.27 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).

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

**3.29 Roth Contribution(s)** means contributions made pursuant to the Participant's Participation Agreement that (i) the Participant irrevocably designates at the time of the contribution election as post-tax Roth contributions that are being made from Compensation on an after-tax basis; and (ii) the Employer treats as includible in the Participant's gross income in the year deferred.

**3.30 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.

**3.31 Roth In-Plan 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.

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

**3.33 Severance Event** means severance of the Participant's employment with the Employer that constitutes a separation of service within the meaning of IRC Sections 414(u)(12)(B), and 457(d)(1)(A)(ii) or on account of the Participant's death or retirement. In general, a Participant will be deemed to have severed his or her employment as of the date of his or her last payroll.

**3.34 State Law** means any statutes, court decisions, executive orders, administrative rulings, regulations or other proclamations having the force of law in the State of California.

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

**3.36 Trust Agreement** means the agreement by and between the City of Fresno, as the Sponsor, and the Trustee which governs the operation of the Trust

**3.37 Trustee** means such individual(s) or entity designated by the City of Fresno or the Deferred Compensation Board with the duties and responsibilities set forth in the Trust Agreement.

## ARTICLE IV ADMINISTRATION

**4.1 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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### 4.2 Deferred Compensation Board Duties and Responsibilities.

- (a) Deferred Compensation Board to Adopt Rules and Regulations. 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.
- (b) Deferred Compensation Board Action Fair and Reasonable. 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.

### 4.3 Deferred Compensation Board Powers.

- (a) Plan Prevails. In the event any form or other document used in administering this Plan, including but not limited to Participation Agreement and marketing materials, conflicts with the terms of the Plan, the terms of the Plan shall prevail.
- (b) Decision Binding. The Deferred Compensation Board is authorized to determine any matters concerning the rights of any Participant under this Plan, and such determination shall be binding on the Participant and any Beneficiary thereof.
- (c) Deferred Compensation Board to Interpret. 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 Section 457, as amended, and the regulations of the Treasury Department promulgated thereunder.
- (d) Deferred Compensation Board May Require Court Order. The Deferred Compensation Board or the Employer, if in doubt concerning the correctness of their action in making a payment of Accumulated Deferrals, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment or to allow the filing in any state court of competent jurisdiction of a civil action seeking a determination of the amounts to be paid and the persons to receive them. The Deferred Compensation Board and the Employer shall comply with the final orders of the court in any such suit, and the Participant, or the Participant and the Participant's Beneficiary, consent to be bound thereby. Whenever payment of Accumulated Deferrals is suspended pursuant to this Section, the time for a Participant or Beneficiary making any election under Article VIII of this Plan, shall not begin until amount(s) and person(s) entitled are determined either by written agreement of all parties concerned or by a court judgment that has become final.
- (e) Delegation of Authority. The Deferred Compensation Board may delegate to the staff, an individual, committee or organization certain functions to be

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performed under this Plan. The Deferred Compensation Board retains the discretion to revoke any designation.

- (f) Employment of Service Provider(s). The Deferred Compensation Board may employ one or more service providers to perform such functions as delegated under Section 4.3(c) of this Plan.

### ARTICLE V PARTICIPATION IN THE PLAN

**5.1 Eligibility.** Except as set forth in Section 5.2 of this Plan, each Eligible Employee shall be eligible to participate in the Plan on the first day of the first month immediately following commencement of employment or reemployment with the Employer.

**5.2 Enrollment in the Plan.** An Eligible Employee may enroll in the Plan to become a Participant by executing and delivering a Participation Agreement approved by the Deferred Compensation Board or its designee, not less than fifteen (15) days (or such other period as the Deferred Compensation Board may designate) prior to the effective date of the Participation Agreement. In accordance with Treas. Reg. §1457-4(b), an eligible Employee may defer compensation for any calendar month only if the Eligible Employee enters into a Participation Agreement before the first day of the month in which the Compensation is paid or made available. A new Eligible Employee may become a Participant and may defer Compensation payable in the calendar month during which the Participant first becomes an Eligible Employee if a Participation Agreement is entered into on or before the first day on which the Participant performs services.

**5.3 Investment Options.** As part of the Participation Agreement, the Participant shall be responsible for contacting the Trustee directly to select his/her investment option(s) from among those selected by the Deferred Compensation Board in its sole discretion from time to time, and to designate the amount of compensation to be deferred and whether such deferral is a Pre-Tax Deferral or a Roth Contribution or consists of both Pre-Tax Deferrals and Roth Contributions. The amount(s) requested must equal at least ten (\$10.00) dollars per pay period and shall continue until changed or revoked pursuant to Section 5.7 of this Plan.

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 Deferred Compensation Board in its sole discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

**5.4 Deferral.** By executing the Participation Agreement, the Participant consents to the Employer taking the necessary actions to defer that portion of his or her Includible Compensation which the Participant has specified is to be deferred from the Participant's gross Compensation for each pay period. The Participant shall indicate whether such deferral is a Pre-Tax Deferral, a Roth Contribution, or consists of both Pre-Tax Deferrals and Roth Contributions, in which case the Participant shall designate specific amounts for each, as applicable. Deferral of Compensation shall occur as soon as administratively possible after completing the Participation Agreement, or on such other date as may be permitted under the IRC. Compensation for any calendar month will be deferred only if the Participation

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Agreement providing for such deferral has been entered into before the beginning of such month.

### 5.5 Investment Vehicle Election and Direction of Investments.

- (a) Investment Options. The Deferred Compensation Board shall establish such Investment Options as it deems necessary to provide Participants with a diversified range of alternatives. Each Investment Option shall be based upon its investment performance as well as its ability to provide a range of investment diversification under the Plan. The Deferred Compensation Board shall specify the investment objectives and characteristics of each Investment Option and the corresponding investment portfolio or portfolios and shall provide Eligible Employees with a written description of each available Investment Option. The Deferred Compensation Board, in its sole discretion, may add, eliminate, or consolidate Investment Options and corresponding investment portfolios from time to time. In the event that an Investment Option is eliminated, the Deferred Compensation Board shall provide prior notice of such elimination, and if the Participants whose accounts were wholly or partially allocated to that Investment Option do not make a reallocation, the Deferred Compensation Board shall reallocate such amounts to the available Investment Option or Investment Options that the Deferred Compensation Board in its sole discretion deems most comparable to the eliminated Investment Option.
- (b) Experience of Loss. In the event that the selected investment vehicle experiences a loss, the Participant's Accumulated Deferrals payable hereunder shall likewise reflect a loss, rather than income, for the period.
- (c) Actions of Deferred Compensation Board. Any such action by the Deferred Compensation Board in investment funds, or approving of any such investment funds, shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to attest to financial soundness or the suitability of any investment for the purpose of meeting future obligations.

**5.6 Designation of Beneficiary.** A Participant may designate a Beneficiary subject to Federal and California law, to receive any benefits which may be payable under the Plan upon the death of such Participant. A Participant may at any time update his or her Beneficiaries using online access provided by the Plan. Any change in the Beneficiary designation, filed in proper form, shall become effective as of the date of delivery.

**5.7 Modification of Deferral or Investment Option(s).** A Participant may on a prospective basis change his/her deferral amount, change the deferrals designated as Pre-Tax Deferrals or Roth Contributions, change investment options, suspend or revoke participation in the Plan, or reinstate participation at any time. The Participant shall be responsible for contacting and notifying the Administrator of any modifications. Changes in the amount of the deferral must equal at least five (\$5.00) dollars per pay period. Investment changes may be made at any time subject to the terms of the Administrator/mutual fund provider(s). The requested change shall become effective at the earliest possible payroll period which allows sufficient time for the order to be processed through the City payroll.

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**5.8 Payment of Elective Deferrals to the Trust.** Elective Deferrals shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trustee by the Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than fifteen (15) business days following the end of the month in which such amount is withheld from the Compensation of the Participant.

### ARTICLE VI LIMITATION ON DEFERRALS

**6.1 Deferral Limitation.** Except as provided in Section 6.2, 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 (1) 100% of the Participant's Includible Compensation or (2) \$19,500 in the year 2020 (and \$19,000 in 2019), and thereafter adjusted for the calendar year to reflect increases in the cost-of-living, in accordance with IRC Section 457(e)(15) and 415(d). The Participant acknowledges the right of the Deferred Compensation Board to disallow deferral of Compensation under the Plan in excess of the limitations set forth in this Section.

However, the Deferred Compensation Board shall have no duty or assume or incur any liability for failure to assure that amounts deferred are in compliance with such limitations.

#### 6.2 Catch-up Provisions

- (a) Age 50 Plus Catch-up Provision. Pursuant to IRC Section 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 for the year, up to the maximum age 50 catch-up Annual Deferrals for the year, which is:
  - (i) A specified dollar limit as provided in IRC Section 414(v). Those dollar limits are an additional \$6,500 in the year 2020 (\$6,000 in 2015-2019), thereafter adjusted for the calendar year to reflect increases in the cost of living in accordance with IRC Sections 457(e)(15) and 415 (d).
  - (ii) The age fifty plus catch-up contributions can be made beginning in the year in which the Participant reaches age fifty and for as many years as the Participant desires; however, the age fifty plus catch-up contribution may not be used in the same year as the special Section 457 catch-up provision for which the additional contributions permitted under IRC Section 457(b)(3) applies to such Participant, to the extent required by applicable statute or regulations.
- (b) Special Section 457 Catch-up Provision. Special 457(b) catch-up contributions, permitted by the plan, shall be in accordance with Treas. Reg. § 1.457-4(c)(3) which allows a Participant on one or more of the Participant's last three taxable years prior to Normal Retirement Age to contribute the lesser of: (1) twice the annual limit (\$39,000 in 2020 and \$38,000 in 2019) or (2) the basic annual limit plus the amount of the basic limit not used in prior years (the underutilized maximum amounts for prior years are only allowed if not using age 50 plus catch-up contributions).

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Notwithstanding any provision in this Article to the contrary, with respect to any one or more of the three (3) taxable years ending before the date of the Participant's Normal Retirement Age, such Participant may elect to have Deferred Compensation contributed to the Plan in an amount not to exceed the lesser of (1) twice the dollar amount of the Deferral Limitation established in Section 6.1, or (2) the Underutilized Limitation. For purposes of this subsection, the Underutilized Limitation with respect to a Participant shall be equal to the sum of: the Deferral Limitation for the taxable year, and the excess of (i) less (ii) where:

- (i) equals the sum of the limitations set forth in IRC Section 457(b)(2) for all taxable years on or after December 31, 1978 in which the Participant was eligible to participate in this Plan or any other eligible deferred compensation plan sponsored by an entity within the State of California, and
- (ii) equals the sum of all Deferred Compensation made on behalf of such Participant for such taxable years plus his/her deferred compensation under any other eligible deferred compensation plan sponsor by an entity within the State of California.

**6.3 Excess Deferrals.** If the Annual Deferral amount on behalf of a Participant for any calendar year exceeds the limitations described in this Article VI, or the Annual Deferral amount on behalf of a Participant for any calendar year exceeds the limitations described in this Article VI when combined with other amounts deferred by the Participant under another eligible deferred compensation plan described in IRC Sections 457(a) and (b) for which the Participant provides information that is accepted by the Deferred Compensation Board, then the Deferral amount, 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, and the Participation Agreement may be amended or modified to comply with the requirements of this Article VI, IRC Section 457, and Treasury Regulation Section 1.457-4(e). A Participant shall receive a distribution of Excess Deferrals from any other eligible deferred compensation plan in which the Participant participated in the calendar year prior to receiving a distribution of Excess Deferrals from this Plan.

**6.4 Coordination of Limits.** Participant shall be responsible for ensuring coordination of these limits.

## ARTICLE VII TRANSFERS AND ELIGIBLE ROLLOVERS

### 7.1 Rollover Contributions.

- (a) Eligible Deferred Compensation Plans. The direct transfer and/or rollover contribution of an Eligible Rollover Distribution from another eligible deferred compensation plan (as defined in IRC Section 457(b)) shall be accepted and allocated to a Participant's Eligible Deferred Compensation Plan Transfer Subaccount under this Plan provided that such amounts are in cash or other property acceptable to the Deferred Compensation Board. The Deferred

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Compensation Board may request proof that the prior plan is an eligible deferred compensation plan under IRC Section 457(b). Direct transfer and/or rollover contribution amounts shall not be subject to the limitations of Article VI; provided, however, that the actual amount deferred during the calendar year under both the prior plan and the Plan shall be taken into account in calculating the deferral limitations for that year. For purposes of determining the limitations set forth in Article VI, years of eligibility to participate in the prior plan and deferrals under the prior plan shall be taken into account to the extent required by IRC Section 457.

- (b) Other Eligible Retirement Plans. The direct transfer and/or rollover contribution of an Eligible Rollover Distribution from another Eligible Retirement Plan (other than an eligible deferred compensation plan) shall be accepted and allocated to a Participant's Rollover Subaccount under this Plan provided that such amounts are in cash or other property acceptable to the Deferred Compensation Board. The Deferred Compensation Board may request verification that the prior plan is an Eligible Retirement Plan. Direct transfer and rollover contribution amounts shall not be subject to the limitations of Article VI.

In addition, in order for Eligible Rollover Distributions to be accepted by this Plan, the Deferred Compensation Board may request verification that (1) the amounts to be transferred are not subject to a QDRO, and (2) spousal consent, if required, to transfer such amounts from the prior plan, has been obtained.

Amounts shall be identified as to source and nature (such as non-deductible Employee contributions, elective deferral amounts and deemed elective deferral amounts subject to the provisions of IRC Section 401(k), employer contributions, etc.) Any amounts accepted for contribution under this Section 7.1(b) shall be allocated to the Rollover Subaccount, and will share in the investment gains and losses experienced by the account as a whole; however, it will have separate accounting for taxation and distribution purposes as required under IRC Section 457.

### **7.2 Transfers to Certain Plans for the Purchase of Service Credit.**

- (a) Direct Trustee to Trustee Transfer. Any Participant who is also a Participant in a defined benefit governmental plan (as defined in IRC Section 414(d)) may have a direct trustee to trustee transfer made from this Plan to the defined benefit governmental plan if the transferred assets are used for:
- (i) the purchase of permissive service credit (as defined in IRC 415(n)(3)(A)) in the defined benefit governmental plan; or
  - (ii) a repayment of a cash out from the defined benefit governmental plan which meets the requirements of IRC Section 415(k)(3).
- (b) Application for Transfer. If the conditions in subsections (i) or (ii) of this Section are met and the Participant wishes to transfer his/her account, he/she



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shall complete any application form and/or other documents as may be required by the Deferred Compensation Board.

- (c) Administrative Rules. The Deferred Compensation Board shall prescribe such rules consistent with the provisions of Subsections (i) and (ii) of this Section concerning plan-to-plan transfers as in its sole judgment it deems desirable for the orderly administration of the Plan.

**7.3 Roth In-Plan Rollover Contributions.** The Plan, to the extent permitted by the IRC and otherwise pursuant to procedures established by the Plan, will accept Roth In-Plan Rollover Contributions with such amounts to be credited to the Participant's Roth In-Plan Rollover Subaccount. The Participant shall, in the time and manner prescribed by the Plan, specify the amount to be rolled over as a Roth In-Plan Rollover Contribution.

### ARTICLE VIII DISTRIBUTION OF BENEFITS

#### 8.1 Inactive De Minimis Accounts.

- (a) Voluntary Withdrawals. A Participant currently employed with the City of Fresno shall be entitled to request a withdrawal of his/her account, other than that portion attributable to a rollover of contributions, provided that:
  - (i) the total amount credited to the Participant's account does not exceed \$5,000 (or the amount as may be revised by the Internal Revenue Service and/or Department of Labor);
  - (ii) the Participant has not authorized Deferred Compensation under the Plan during the two (2) year period immediately preceding such request; and
  - (iii) the Participant has not previously applied for a withdrawal under this Section.

The amount of the Participant's account attributable to rollover contributions shall not be considered in determining whether the Participant's account is less than \$5,000.

**8.2 Distribution upon the Death of Participant or Beneficiary.** Should the Participant or Beneficiary die at any time, Accumulated Deferrals shall be paid to the Beneficiary designated by the Participant or Beneficiary. If no Beneficiary is designated, or if the designated Beneficiary does not survive a period of thirty days, then a lump sum shall be paid, to the surviving spouse, or if none, a lump sum shall be paid to the estate of the Participant (or to the estate of the Beneficiary if the Beneficiary survives for a period of longer than thirty days after the death of the Participant).

**8.3 Elections Regarding Distribution.** Each participant (or in the event of death, each Beneficiary other than an organization, estate, or trust) shall direct the Trustee regarding the details of paying out his/her account. A Participant electing to commence distribution shall have 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

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Contributions, Roth In-Plan Rollover Contributions or Eligible Deferred Compensation Plan Transfers or Rollover Contributions from Qualified Roth Contribution Programs 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. The Participant/Beneficiary may change this direction from time to time within the distribution rules that apply to all qualified plans and within the constraints of the Trustee. Any amount payable to an organization, estate, or trust shall be paid in a lump sum as prescribed in Sections 8.2 and 8.4(c).

### 8.4 Distribution of Deferrals.

- (a) General Rule. Upon the occurrence of a Severance Event, and assuming a request is made to the Trustee, payment will be made in at least annual, quarterly, or monthly payments as requested by the Participant.
- (b) Distribution to Participant. The Participant's Participation Account will be distributed, or begin to be distributed, to the Participant not later than the Participant's Required Beginning Date.
- (c) Distribution to Beneficiary.
  - (i) When distribution begins prior to the Participant's death payments must be made at least as rapidly as they were as being made to the Participant. When the Beneficiary is an organization, estate or trust, then payment will be payable in a lump sum.
  - (ii) When distribution does not begin prior to the Participant's death, and is to be made:
    - (1) To an organization, estate or trust, then payment will be payable in one lump sum.
    - (2) To the Participant's surviving spouse, whether as designated Beneficiary, or by default, then payment will be made by the Trustee as directed by the spouse within the minimum distribution rules under the IRC regulations.
    - (3) Notwithstanding anything in this Plan to the contrary, distributions from the Plan will be made in compliance with a good faith interpretation of the minimum distribution requirements of IRC Section 401(a)(9).

### 8.5 Eligible Rollover Distributions.

- (a) Election Procedure. If all or any portion of a prospective distribution is an Eligible Rollover Distribution, the prospective distributee shall have the right to elect to have all or any portion of the Eligible Rollover Distribution treated as a Rollover Amount. Subject to satisfaction of the requirements of IRC Section

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457(e)(16) and this Section, Rollover Amounts shall be delivered directly by this Plan to an Eligible Retirement Plan as designated by the distributee. The Plan permits non-spouse rollovers described in IRC Section 402 (c)(11). Any such transfers shall also comply with all applicable rules and regulations issued by the Internal Revenue Service.

- (b) Effect of Delivery of Rollover Amounts. Each prospective distributee, by electing to have any portion of his/her Eligible Rollover Distribution treated as a Rollover Amount, agrees that, upon transmittal as instructed of the funds to which such election applies, the Deferred Compensation Board shall be released from all duties, obligations responsibilities, and liabilities in connection with the amount so transmitted. The Deferred Compensation Board shall not be responsible for the crediting or application of the funds so transferred.

**8.6 Unforeseeable Emergency – General.** In the event an unforeseeable emergency occurs, a Participant may apply to the Deferred Compensation Board to request a withdrawal of a portion of his/her account as necessary to satisfy the emergency need. If the application is approved by the Deferred Compensation Board, the Participant shall be paid only such amount as the Deferred Compensation Board deems reasonably necessary to meet the emergency need. Payment shall not be made to the extent that the financial hardship may be relieved (1) through reimbursement or compensation by insurance or otherwise, (2) by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship), or (3) by cessation of Deferred Compensation under the Plan.

An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from an illness or accident of the Participant, spouse, or a dependent (as defined in IRC Section 152) of the Participant; loss of the Participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of an event beyond the control of the Participant .

The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case. Examples of what shall not be considered to be unforeseeable emergencies include the wish to finance a child's college education or the desire to purchase a home.

**8.7 Qualified Domestic Relations Orders – General.** 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. Upon receipt of the final judgment, decree or order which is made pursuant to a state domestic relations and/or community property law ("Court Order"), the Trustee, within a reasonable period after receipt of such Court Order will make the appropriate changes on the Plan data base in accordance with such Order as a Qualified Domestic Relations Order ("QDRO").

- (a) Segregation of Account/Payment. The Trustee, upon receipt of instructions from the Deferred Compensation Board, will segregate in a separate account in the Plan, the amounts which are payable to the alternate payee pursuant to the QDRO.

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- (b) Status, Rights and Privileges of Alternate Payee. Except as otherwise provided herein, an alternate payee shall have the status and rights of a Beneficiary under this Plan to the exclusion of all other rights associated with Participants under this Plan.
- (c) Exceptions to General Rule. Notwithstanding the provisions of Section 8.7 (b), the alternate payee shall have the following rights and privileges under this Plan:
  - (i) The right to receive payment under the terms of the qualified domestic relations order at the time and manner specified in the QDRO; provided, however, that such payment may not be made in a form which is not available to Participants under the Plan; and
  - (ii) The right to direct the manner in which Plan amounts allocated to such alternate payee are invested.
- (d) Qualified Domestic Relations Order Expenses. Any expense related to the administration of a QDRO shall be assessed against the Participant's account and the alternate payee's account in percentages equal to the percentage split of assets in the QDRO.

### ARTICLE IX LOANS TO PARTICIPANTS

**9.1 Loans to Participants.** A Participant may take a loan from his/her Participation Account subject to the terms and conditions of this Section 9.1 and the IRC. Subject to subsection (a), the maximum amount that the Plan can permit as a loan is the lesser of (1) \$50,000 or (2) 50% of the vested Participation Account balance.

(a)

Amount That Can Be Borrowed. If no other Plan loan is outstanding (or has been outstanding at any time during the prior one-year period), a Participant may borrow up to the following amounts:

<u>Vested Participation Account Balance</u>	<u>Maximum Loan Amount</u>
Less than \$2,000	No Loan Available
\$2,000 - \$100,000	50% of Vested Participation Account Balance
Over \$100,000	\$50,000

If another Plan loan has been outstanding at any time during the prior one-year period, the maximum loan amount shall be the lesser of: (a) \$50,000 reduced by the highest outstanding balance of any other loan from the Plan during the one-year period ending the day before the newest loan is made; or (b) 50% of the vested Participation Account balance amount in the

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Plan, reduced by the current outstanding balance of any other loan from the Plan. However, no loan is available if the resulting tentative maximum loan amount is less than \$1,000.

A loan that has defaulted and is “deemed distributed” will be considered an outstanding loan for the purpose of calculating loan availability and the loan currently outstanding.

- (b) Equality of Borrowing Opportunity. Loans shall be made available on a reasonably equivalent basis to all Participants who are active City Employees who have a minimum balance of \$2,000 in their Participation Account. A loan may not be made to a Participant after his/her separation from City service. If a Participant’s date of separation from City service occurs after he/she has requested a loan but before the loan is actually made to the Participant, the Participant’s request for a loan shall automatically be cancelled. No loans may be made to a Beneficiary or an alternate payee as named by QDRO.
- (c) Pledge of Security. Each loan to a Participant shall be secured by the pledge of the amounts allocated to his/her Participation Account equal to initial outstanding balance of such loan.
- (d) Loan Forms. The Participant shall complete all forms required by the Deferred Compensation Board in order to process the loan including, but not limited to: pledge of security, spousal consent, and acknowledgement of loan terms. Participants shall submit paperwork for automatic electronic payments (ACH) from a personal bank account directly to the Plan administrator.
- (e) Interest Rate. Interest shall be 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.
- (f) Loan Term. Loans shall be for terms not to exceed five (5) years from the date of the loan, except that loans taken for the purpose of acquiring any dwelling unit which is to be used as a principal residence of the Participant may be for periods not to exceed fifteen (15) years. Loan payments may continue after the Employee leaves City service until such time as the loan is paid in full or until such time as a payment is in default, at which time the loan becomes payable in full. Loans shall be non-renewable and non-extendable.
- (g) Amortization. Loans shall provide for substantially level amortization of principal and interest by monthly automatic deduction (ACH) from the Participant’s personal bank account.
- (h) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (i) Defaults and Remedies. During the term of the loan, if no portion of a loan payment is made within 60 days of the date such payment is due, or if any balance remains outstanding 60 days after the end of the term of the loan, the loan shall be considered in default. In the event of default by a Participant, the outstanding balance of the loan shall be reported to the Internal Revenue Service

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as a deemed distribution. Interest accrued from the date of the last loan repayment to the deemed distribution date is also reported to the Internal Revenue Service. Once a Participant defaults on a loan, no future Plan loans will be allowed.

- (j) Loan Procedures. All Plan loans shall be made and administered by the Deferred Compensation Board in accordance with the rules and procedures that the Deferred Compensation Board may establish from time to time, which are hereby incorporated into the Plan by reference.
- (k) Outstanding Loans. A Participant may have no more than one loan outstanding at any time. Issuance of a new loan will be permitted 60 days after the full repayment of the prior loan.
- (l) 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.
- (m) **Suspension of Repayment.**
  - (i) Military Service and Disaster Relief. Loan repayment shall be suspended by Fidelity 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.
  - (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.
  - (iii) 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.
- (n) Other Terms and Conditions. The Deferred Compensation Board shall fix such other terms and conditions of the loan as it deems necessary to comply with the applicable laws, including maintaining the qualification of the Plan under IRC Section 457, and any applicable regulations.

## ARTICLE X MISCELLANEOUS PROVISIONS

**10.1 Leave of Absence.** If a Participant is on an approved leave of absence from the Employer, participation in this Plan shall continue.

**10.2 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

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of any benefits to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such termination.

**10.3 Amendment of Plan.** The City of Fresno may, by action of the City Council, amend this Plan. 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. To the extent there are legislative changes affecting IRC Section 457, this Plan shall be interpreted to allow implementation of mandatory changes.

**10.4 Non alienation of Benefits - Attachment.** Except as set forth in Section 8.7 with regard to Qualified Domestic Relations Orders, no Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments under this Plan, except the right to designate a Beneficiary as hereinabove provided. The rights of the Participant under this Plan shall not be subject to creditors of the Participant 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.

**10.5 Plan Assets.** All amounts of Compensation deferred under the Plan, all property and rights to property (including right as a beneficiary of a contract providing life insurance protection) purchased with such amounts, property or rights to property shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan and shall not be subject to the claims of general creditors of the Employer. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan.

**10.6 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 an individual member shall not participate in any Deferred Compensation Board action taken with respect to that member's participation.

**10.7 Employer Contributions.** The Employer may add additional Deferred Compensation for services to 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 Deferred Compensation under the Plan, does not exceed the maximum deferral permitted under Article VI.

**10.8 Controlling Law.** This Plan shall be construed and enforced according to state law, applicable local law and the IRC, and shall be interpreted in a manner consistent with the maintenance of its status as an "eligible deferred compensation plan" as defined in IRC Section 457(b). Reference to any section of the IRC, state law, or local law shall be deemed to incorporate any required amendments of such section as necessary to maintain the status of this

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Plan as an eligible deferred compensation plan. The Employer reserves the right to take such action and do such things as are required to make the Plan, as administered, consistent with IRC Section 457.

**10.9 Suspension of Contributions.** The Trustee may temporarily suspend the acceptance of Deferred Compensation as necessary to facilitate appropriate administration of this Plan or to comply with any federal, state or local law. Written notice of such suspension shall be provided to all Participants and may accompany the distribution of payroll check. No such suspension shall deprive a 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 suspension.

**10.10 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.

**10.11 Severability of Provisions.** If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

**10.12 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.

**10.13 Payments to Minors, Etc.** Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receiving therefore shall be deemed paid when paid to such person's guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the City of Fresno and the Deferred Compensation Board with respect thereto.

**10.14 Reliance on Data and Consents.** The Deferred Compensation Board, and all other persons or entities associated with the operation of the Plan, the administration, management of its assets, and the provision of benefits there may reasonably rely on the truth, accuracy and completeness of all data provided by a Participant, and/or Beneficiary, including, without limitation, data with respect to age, health and marital status. Furthermore, the Deferred Compensation Board, and all persons identified above may reasonably rely on all consents, elections and designations filed with the Plan or those associated with the operation of the Plan by any Participant or Beneficiary, or the representatives of such persons without duty to inquire into the genuineness of any such consent, election or designation.

None of the aforementioned persons or entities associated with the administration operation of the Plan, its assets and the benefits provided under the Plan shall have any duty to inquire into any such data, and all may rely on such data being current to the date of reference. It shall be the duty of the Participant or Beneficiary to advise the appropriate parties of any change in such data. The Deferred Compensation Board shall not be liable for the consequences of such change in data.



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**10.15 Equal Access to Benefits, Rights and Features.** Any determination made by the Deferred Compensation Board 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.

**10.16 Claim Procedures.** Any dispute over payment from Participation Accounts under the Plan shall be resolved by the Deferred Compensation Board pursuant to its written claims procedures. Such claims procedures shall comply with applicable state laws including, but not limited to, civil service rules and applicable collective bargaining agreements.

**10.17 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

**10.18 Qualified Military Service.** This Plan will be administered in accordance with IRC Section 414(u) for Eligible Employees who return to work after absences from employment due to qualified military service. This includes make-up contributions that were not made during the Eligible Employee's period of qualified military service. Contributions made up will be subject to the annual deferral limitations for the year in which they relate, rather than the year they are made.

**10.19 Entire Agreement.** This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No other communication or statement of any sort shall modify this Plan in any way or be relied upon by the parties to this Agreement.

**END OF DOCUMENT**

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