

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF FRESNO  
STATE OF CALIFORNIA

IN THE MATTER OF AMENDING AND	)	RESOLUTION AMENDING AND
RESTATING THE COUNTY OF FRESNO	)	RESTATING THE COUNTY OF FRESNO
457(b) DEFERRED COMPENSATION PLAN	)	457(b) DEFERRED COMPENSATION PLAN

WHEREAS, Section 457 of the Internal Revenue Code provides that employers may offer a retirement savings plan which allows its officers and employees to defer compensation presently earned to a future date, thereby deferring the payment of taxes until the compensation is actually received, and

WHEREAS, on January 20, 1976, the County of Fresno adopted Resolution No. 76-102 which established the terms and conditions of the County of Fresno 457(b) Deferred Compensation Plan (hereinafter referred to as "the Plan"), and

WHEREAS, on April 17, 2012, the County of Fresno adopted Resolution No. 12-154, which amended and restated the Plan, and

WHEREAS, the County of Fresno has conducted an extensive review of the Plan and the Board of Supervisors is desirous to amend and restate the Plan to incorporate changes which will ensure compliance with the Internal Revenue Code and all other applicable regulations, and

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1 NOW, THEREFORE BE IT RESOLVED THAT:

2 1. The amended and restated County of Fresno 457(b) Deferred Compensation Plan,  
3 attached hereto as Attachment A, is hereby approved effective June 4, 2019.

4 THE FOREGOING, was passed and adopted by the following vote of the Board of  
5 Supervisors of the County of Fresno this 4<sup>th</sup> day of June, 2019, to wit:

6  
7 AYES: Supervisors Brandau, Magsig, Mendes, Pacheco, Quintero

8 NOES: None

9 ABSENT: None

10 ABSTAINED: None

11 

12 Nathan Magsig, Chairman of the Board of  
13 Supervisors of the County of Fresno

14 **ATTEST:**

15 Bernice E. Seidel

16 Clerk of the Board of Supervisors

17 County of Fresno, State of California

18 By: 

19 Deputy

# **Attachment A**

**COUNTY OF FRESNO  
457(b) DEFERRED COMPENSATION PLAN**

**Originally Effective as of January 20, 1976**

**Amended and Restated as of June 4, 2019**

**COUNTY OF FRESNO  
457(b) DEFERRED COMPENSATION PLAN**

Table Of Contents

	<u>Page</u>
<b>ARTICLE 1 – GENERAL</b> .....	2
1.01. <u>Plan Name</u> .....	2
1.02. <u>Effective Date</u> .....	2
1.03. <u>Exclusive Benefit</u> .....	2
1.04. <u>Income Tax And ERISA Status</u> .....	2
1.05. <u>Assets Held In Trust</u> .....	2
1.06. <u>Defined Terms</u> .....	2
1.07. <u>Tax Status Not Guaranteed</u> .....	3
<b>ARTICLE 2 – GENERAL DEFINITIONS</b> .....	3
2.01. <u>Account</u> .....	3
2.02. <u>Administrator</u> .....	4
2.03. <u>Alternate Payee</u> .....	4
2.04. <u>Beneficiary</u> .....	4
2.05. <u>Code</u> .....	5
2.06. <u>Compensation</u> .....	5
2.07. <u>Council</u> .....	5
2.08. <u>Deferred Compensation</u> .....	5
2.09. <u>Designated Beneficiary</u> .....	6
2.10. <u>Distributee</u> .....	6
2.11. <u>Distribution Calendar Year</u> .....	6
2.12. <u>Domestic Relations Order</u> .....	6
2.13. <u>Eligible Retirement Plan</u> .....	6
2.14. <u>Eligible Rollover Distribution</u> .....	7
2.15. <u>Employee</u> .....	7
2.16. <u>Employment Period</u> .....	7
2.17. <u>Employer</u> .....	8
2.18. <u>ERISA</u> .....	8
2.19. <u>Includible Compensation</u> .....	8
2.20. <u>Nonelective Deferred Compensation</u> .....	8
2.21. <u>Normal Retirement Age</u> .....	8
2.22. <u>Participant</u> .....	8
2.23. <u>Plan</u> .....	9
2.24. <u>Post-Tax Roth Contribution</u> .....	9
2.25. <u>Pre-Tax Contribution</u> .....	9
2.26. <u>Required Beginning Date</u> .....	9
2.27. <u>Rollover Contribution</u> .....	9
2.28. <u>Severance From Employment</u> .....	9
2.29. <u>Trust</u> .....	10
2.30. <u>Trustee</u> .....	10

2.31.	<u>USERRA</u> .....	10
2.32.	<u>Valuation Calendar Year</u> .....	10
<b>ARTICLE 3 – PARTICIPATION</b>	.....	10
3.01.	<u>Eligibility</u> .....	10
3.02.	<u>Compensation Reduction Agreements</u> .....	11
3.03.	<u>Employer Contributions – Nonelective Deferred Compensation</u> .....	12
3.04.	<u>Rollover Contributions</u> .....	13
3.05.	<u>Transfers From Other Plans</u> .....	13
3.06.	<u>Timing Of Contributions</u> .....	13
3.07.	<u>Deferral Of Sick Pay, Vacation Pay And Back Pay</u> .....	14
3.08.	<u>Contributions After Severance From Employment</u> .....	14
<b>ARTICLE 4 – INVESTMENTS</b>	.....	15
4.01.	<u>Investments</u> .....	15
4.02.	<u>Election Of Investment Options</u> .....	15
4.03.	<u>Default Investment</u> .....	16
4.04.	<u>Self-Directed Brokerage Accounts</u> .....	16
4.05.	<u>Statements Of Accounts</u> .....	16
4.06.	<u>Fiduciary Duty</u> .....	16
<b>ARTICLE 5 – CONTRIBUTIONS</b>	.....	16
5.01.	<u>Minimum Contributions</u> .....	16
5.02.	<u>Contribution Limitations In General</u> .....	17
5.03.	<u>Contribution Limitations – Last Three Years Of Participation</u> .....	17
5.04.	<u>Contribution Limitations – Age Fifty Catch-Up Contributions</u> .....	18
5.05.	<u>Distribution Of Excess Deferred Compensation</u> .....	18
<b>ARTICLE 6 – BENEFICIARIES</b>	.....	19
6.01.	<u>Beneficiaries In General</u> .....	19
6.02.	<u>Revocation Of Spousal Beneficiary</u> .....	19
6.03.	<u>No Designated Beneficiary</u> .....	19
<b>ARTICLE 7 – PAYMENT OF BENEFITS</b>	.....	20
7.01.	<u>Commencement Of Payment Of Benefits</u> .....	20
7.02.	<u>Payment Of Benefits After Severance From Employment</u> .....	20
7.03.	<u>Distribution From Post-Tax Roth Accounts</u> .....	22
7.04.	<u>Required Minimum Distributions</u> .....	23
7.05.	<u>Payment Of Death Benefits</u> .....	24
7.06.	<u>In-Plan Roth Conversions</u> .....	25
7.07.	<u>Distributions Upon An Unforeseeable Emergency</u> .....	26
7.08.	<u>Loans</u> .....	28
7.09.	<u>Purchase Of Service Credit</u> .....	28
7.10.	<u>Distributions To Incapacitated Participants</u> .....	28
7.11.	<u>Qualified Domestic Relations Order Payments</u> .....	29
7.12.	<u>Nonliability</u> .....	29
7.13.	<u>Mechanics Of Payment</u> .....	29
7.14.	<u>Withholding</u> .....	29
7.15.	<u>Lost Participant Or Beneficiary</u> .....	29
<b>ARTICLE 8 – PLAN ADMINISTRATION</b>	.....	30
8.01	<u>Powers And Responsibilities Of The Employer</u> .....	30

8.02.	<u>Powers And Responsibilities Of The Council</u> .....	31
8.03.	<u>Powers And Responsibilities Of The Administrator</u> .....	32
8.04.	<u>Settlement Of Disputes</u> .....	32
8.05.	<u>Compensation Of Council And Administrator</u> .....	32
8.06.	<u>Use Of Electronic Media</u> .....	32
<b>ARTICLE 9</b>	<b>CLAIMS PROCEDURES</b> .....	33
9.01.	<u>Request For Information</u> .....	33
9.02.	<u>Claims For Benefits</u> .....	33
9.03.	<u>Filing Claims</u> .....	33
9.04.	<u>Initial Determination Of Claim</u> .....	33
9.05.	<u>Claims Appeals</u> .....	34
9.06.	<u>Resolution Of Disputes</u> .....	35
<b>ARTICLE 10</b>	<b>– AMENDMENT AND TERMINATION</b> .....	37
10.01.	<u>Action To Amend Or Terminate</u> .....	37
10.02.	<u>Complete Termination</u> .....	37
10.03.	<u>Scrivener's Error</u> .....	37
10.04.	<u>Reversions</u> .....	37
<b>ARTICLE 11</b>	<b>– MISCELLANEOUS</b> .....	37
11.01.	<u>No Effect On Employment</u> .....	37
11.02.	<u>Vesting</u> .....	38
11.03.	<u>Nonalienation Of Benefits</u> .....	38
11.04.	<u>Plan Expenses</u> .....	38
11.05.	<u>Military Leaves</u> .....	39
11.06.	<u>Employee Plans Compliance Resolution System</u> .....	39
11.07.	<u>Limitation Of Rights; Employment Relationship</u> .....	39
11.08.	<u>Limitation Of Rights Of Participants And Others</u> .....	40
11.09.	<u>Release From Liability</u> .....	40
11.10.	<u>Performance Of Duties</u> .....	40
11.11.	<u>Construction</u> .....	40
11.12.	<u>Headings</u> .....	41
11.13.	<u>Uniformity</u> .....	41
11.14.	<u>Gender And Number</u> .....	41
11.15.	<u>Controlling Law</u> .....	41
11.16.	<u>Severability</u> .....	41
11.17.	<u>Waiver</u> .....	41
11.18.	<u>Entire Document</u> .....	42

COUNTY OF FRESNO  
457(b) DEFERRED COMPENSATION PLAN

County of Fresno ("Employer" or "County") hereby amends and restates the County of Fresno 457(b) Deferred Compensation Plan (Plan), effective as of June 4, 2019, for the exclusive benefit of its eligible employees and their beneficiaries.

RECITALS

Whereas:

The Employer first established for the benefit of its employees the Plan as a deferred compensation plan that qualified as a deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (Code) under which the eligible employees may defer a portion of their compensation, effective January 20, 1976;

The Employer certifies that it is an employer who is eligible to sponsor the Plan under the terms of section 457(b) of the Code;

The Employer most recently amended and restated the Plan, under section 457(b) of the Code of 1986, as amended, and the regulations thereunder, effective April 17, 2012;

The Employer intends that the Plan comply with the requirements of section 457(b) of the Code and the Treasury regulations pertaining to Code section 457(b) plans as may be amended from time to time, and California laws ("State Law");

The Employer or its designee is authorized and directed to act on behalf of the Employer and to develop appropriate procedures and to install necessary controls to insure that the Plan is operated in conformance with the Code and State Law;

The Employer's primary purpose of the Plan is to attract and retain personnel by permitting them to enter into agreements with the County that will provide for deferral of payment of a portion of their current compensation until death, retirement, termination of employment, or other events as provided herein, in accordance with the provisions of sections 53212 – 53214 of the Government Code of the State of California, section 457(b) of the Code, the Treasury regulations promulgated under section 457(b) of the Code and other applicable sections of the Code;

Effective as of June 4, 2019, the Employer desires to amend and restate the Plan further to continue a deferred compensation plan that is an eligible deferred compensation plan pursuant to Code section 457(b), under which the eligible employees may defer a portion of their compensation and comply with the requirements of section 457(b) of the Code and the Treasury regulations pertaining to Code section 457(b) plans as may be amended from time to time, and State Law.



## OPERATIVE PROVISIONS

Now, therefore, the Employer hereby adopts the Plan upon the following terms and conditions:

### **ARTICLE 1 – GENERAL**

1.01. Plan Name.

The name of this Plan is the "County of Fresno 457(b) Deferred Compensation Plan."

1.02. Effective Date.

The effective date of this amended and restated Plan is June 4, 2019.

1.03. Exclusive Benefit.

It is the intention of the Employer that the Plan and the Trust are created and maintained for the exclusive benefit of the eligible Employees and their Beneficiaries.

1.04. Income Tax And ERISA Status.

The Plan is intended to qualify as a governmental plan that is exempt from the provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, the Plan is subject to the fiduciary standards set forth in Article 16 of the California Constitution and in the California Government Code applicable to Code section 457(b) plans.

1.05. Assets Held In Trust.

In accordance with Code section 457(g), all amounts of compensation deferred under this Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, shall be held in trust, in a custodial account described in Code section 401(f), or an annuity contract described in Code section 401(f) for the exclusive benefit of the participating Employees and their Beneficiaries.

1.06. Defined Terms.

All initially capitalized terms (other than headings) are defined terms and will be defined in the General Definitions article, below.

1.07. Tax Status Not Guaranteed.

The Employer, the Council, and the Administrator, 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 2 – GENERAL DEFINITIONS**

For purposes of this Plan, the following definitions shall apply:

2.01. Account.

"Account" means the following separate accounts maintained by the Trustee on behalf of a Participant:

A. Elective Deferred Compensation Account.

"Elective Deferred Compensation Account" means the Participant's Pre-Tax Account, the Participant's Post-Tax Roth Account, and the Participant's In-Plan Roth Conversion Account as defined below:

1. Pre-Tax Account.

"Pre-Tax Account" means the account maintained by the Trustee for each Participant representing Pre-Tax Contributions, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

2. Post-Tax Roth Account.

"Post-Tax Roth Account" means the account maintained by the Trustee for each Participant representing Post-Tax Roth Contributions by the Participant, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

3. In-Plan Roth Conversion Account.

"In-Plan Roth Conversion Account" means the account maintained by the Trustee for each Participant representing the amounts, if any, that the Participant has converted to Roth contributions described in Code section 402A pursuant to the In-Plan Roth Conversions section, below, adjusted for withdrawals, income,

expenses, and realized and unrealized gains and losses attributable thereto.

B. Nonelective Deferred Compensation Account.

"Nonelective Deferred Compensation Account" means the account maintained by the Administrator for each Participant representing Nonelective Deferred Compensation, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

C. Rollover Account.

"Rollover Account" means the account maintained by the Trustee for each Participant representing the rollover of distributions received by the Participant from another plan, if any, or the direct transfer of an Eligible Rollover Distribution (excluding rollover contributions from a Roth elective account) from another plan, if any, adjusted for withdrawals, income, expenses and realized and unrealized gains and losses attributable thereto.

D. Roth Rollover Account.

"Roth Rollover Account" means the account maintained by the Trustee for each Participant representing the direct transfer of an Eligible Rollover Distribution that consists of Roth contributions described in Code section 402A from another plan, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

2.02. Administrator.

"Administrator" means the Director of Human Resources or his/her designee.

2.03. Alternate Payee.

"Alternate Payee" means any spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under this Plan with respect to such Participant.

2.04. Beneficiary.

"Beneficiary" means any one or more person(s) entitled under the provisions of this Plan to receive benefits after the death of a Participant.

2.05. Code.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

2.06. Compensation.

"Compensation" means the total of all amounts which would be paid by the County to or for the benefit of an Employee (if he were not a Participant in the Plan) for services performed during the period that the Employee is a Participant, including any amounts that may be credited to the Participant's Account. Compensation shall be taken into account at its present value and its amount shall be determined without regard to any community property laws. Compensation also includes differential pay, if any is paid by the County, that 1) is made by the County to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) while on active duty for a period of more than 30 days; and 2) represents all or a portion of the wages the individual would have received from the County if the individual had remained actively employed. Compensation shall also include amounts referenced in the Deferral Of Sick Pay, Vacation Pay And Back Pay and Contributions After Severance From Employment sections, below.

2.07. Council.

"Council" means the Deferred Compensation Management Council that has been delegated by the Employer to make certain decisions with respect to the Plan as described herein. Membership shall include: County Administrative Officer, Auditor-Controller/Treasurer-Tax Collector, Retirement Administrator (or Assistant Retirement Administrator), Director of Human Resources (or Deputy Director of Human Resources), One (1) department head appointed by the County Administrative Officer (three (3)-year term), two (2) members at-large appointed by the Board of Supervisors (three (3)-year term). The two (2) members at-large appointed by the Board of Supervisors may be current or former employees and must be Participants in the Plan.

2.08. Deferred Compensation.

"Deferred Compensation" means the amount of the Participant's compensation, not yet earned by the Participant that the Participant designates as the amount that shall be deferred in accordance with the provisions of this Plan. Deferred Compensation may consist of Pre-Tax Contributions or Post-Tax Roth Contributions. Deferred Compensation may also consist of Nonelective Compensation.

2.09. Designated Beneficiary.

"Designated Beneficiary" relates to the Required Minimum Distributions section and means the individual who is designated as the Participant's Beneficiary and is the designated beneficiary under Code section 401(a)(9) and Treasury regulations section 1.401(a)(9)-4.

2.10. Distributee.

"Distributee" means an Employee or former Employee who receives a distribution from the Plan. "Distributee" also means (i) the Employee's or former Employee's surviving spouse, (ii) the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), with regard to the interest of the spouse or former spouse, and (iii) the Employee's designated Beneficiary who is not the Employee's spouse.

2.11. Distribution Calendar Year.

"Distribution Calendar Year" relates to the Required Minimum Distributions section and means a calendar year for which a minimum distribution is required under Code section 401(a)(9), the Treasury regulations promulgated thereunder, and the provisions of the Plan that implement these requirements. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under the Payment Of Death Benefits section, below.

2.12. Domestic Relations Order.

"Domestic Relations Order" means a domestic relations order described in section 414(p)(1)(A)(i) of the Code.

2.13. Eligible Retirement Plan.

"Eligible Retirement Plan" means a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an individual retirement account described in Code section 408(a), a Roth individual retirement account described in Code section 408A, an individual retirement annuity described in Code section 408(b) other than an endowment contract, or an eligible deferred compensation plan described in Code section 457(b) that is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State and that agrees to separately account for amounts

transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution.

However, in the case of an Eligible Rollover Distribution to a designated Beneficiary who is not the Employee's surviving spouse, an Eligible Retirement Plan shall be (i) an individual retirement account described in Code section 408(a), a Roth individual retirement account described in Code section 408A, or an individual retirement annuity described in Code section 408(b) other than an endowment contract and (ii) a direct trustee-to-trustee transfer is made to such an account or annuity.

2.14. Eligible Rollover Distribution.

"Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee; provided, however, that an Eligible Rollover Distribution does not include:

- A. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more;
- B. Any distribution to the extent such distribution is required under Code section 401(a)(9);
- C. Any distribution that is a deemed distribution under the provisions of Code section 72(p); or
- D. Any distribution that is made upon hardship of the Employee.

2.15. Employee.

"Employee" means an individual who is employed by the Employer as a common law employee of the Employer on a permanent, full-time or part-time basis. "Employee" does not mean seasonal and extra-help employees, independent contractors, and contract employees whose specific contract does not provide for participation in the Plan.

2.16. Employment Period.

"Employment Period" means a period from January 1 through December 31 of the same year, except that the first Employment Period of an Employee hired on any date other than January 1 shall be the period beginning with the date of employment and ending on December 31 of the same year.

2.17. Employer.

"Employer" means the County of Fresno.

2.18. ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

2.19. Includible Compensation.

"Includible Compensation" means the Employee's "compensation" as determined under Code section 415(c)(3). Compensation also includes differential pay, if any is paid by the County, that 1) is made by the County to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) while on active duty for a period of more than thirty (30) days; and 2) represents all or a portion of the wages the individual would have received from the County if the individual had remained actively employed. Includible Compensation shall also include amounts referenced in the Deferral Of Sick Pay, Vacation Pay And Back Pay and Contributions After Severance From Employment sections, below.

2.20. Nonelective Deferred Compensation.

"Nonelective Deferred Compensation" means the amount, if any, of Compensation deferred by the Employer under the Plan for the Participant that is not subject to an election by the Participant to receive such amount in cash or property.

2.21. Normal Retirement Age.

"Normal Retirement Age" relates to Code section 457(b)(3) and means the date a Participant attains age seventy and one-half (70-1/2) or, at the election of the Participant, any earlier date that is no earlier than the earliest age at which the Participant would have the right to retire under the County's pension plan based on their membership status and benefit tier, and to receive immediate retirement benefits calculated without actuarial or similar reduction because of retirement before some later specified age. Normal Retirement Age Ranges by Retirement Benefit Tier are included in Appendix A.

2.22. Participant.

"Participant" means any Employee or former Employee who has met the Plan's eligibility requirements, commenced participation in the Plan, and is or may

become eligible to receive a benefit under the Plan, or whose Beneficiary(ies) may be eligible to receive any such benefit.

2.23. Plan.

"Plan" means the Code section 457(b) eligible deferred compensation plan as set forth herein and any amendments hereto.

2.24. Post-Tax Roth Contribution.

"Post-Tax Roth Contribution" means a Participant's elective deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Post-Tax Roth Contributions under §402A by the Participant in his or her participation agreement. A Participant's Post-Tax Roth Contributions, and any investment gains or losses thereon, will be accounted for separately from the Participant's Pre-Tax Contributions and will be held in the Participant's Post-Tax Roth Account.

2.25. Pre-Tax Contribution.

"Pre-Tax Contribution" means a Participant's elective deferrals that are not includible in the Participant's gross income at the time deferred. A Participant's Pre-Tax Contributions, and any investment gains or losses thereon, will be accounted for separately from the Participant's Post-Tax Roth Contributions and will be held in the Participant's Pre-Tax Account.

2.26. Required Beginning Date.

"Required Beginning Date" relates to the Required Minimum Distributions section, and means April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age seventy and one-half (70-1/2) or (ii) the calendar year in which the Participant retires.

2.27. Rollover Contribution.

"Rollover Contribution" means a direct rollover to this Plan of an Eligible Rollover Distribution, of pre-tax amounts, made on behalf of a Participant by an Eligible Retirement Plan.

2.28. Severance From Employment.

"Severance From Employment" means the Employee ceases to be an Employee of the Employer within the meaning of Code section 457(d)(1)(A)(ii). A Participant shall be deemed to have severed employment with the Employer for purposes of this Plan on the date the employee's termination of employment is entered in the County's personnel records. Severance From Employment does



not mean a reduction in work hours or a change to extra-help status (as defined in the Fresno County Personnel Rules).

2.29. Trust.

"Trust" means the deferred compensation trust, the custodial account described in Code section 401(f), or the annuity contract described in Code section 401(f), created by the Employer pursuant to Code section 457(g) and the Assets Held In Trust section (Section 1.05 above) for purposes of holding all amounts of compensation deferred under this Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights for the exclusive benefit of the Participants and their Beneficiaries.

2.30. Trustee.

"Trustee" means the trustee(s) signing the deferred compensation trust, the custodian(s) of the custodial account(s) described in Code section 401(f), or a bank, trust company or a financial institution appointed by the Employer to have custody of assets of the Plan, as custodian or as trustee, or the insurance company(ies) providing the annuity contract(s) described in Code section 401(f), established by the Employer pursuant to Code section 457(g) and the Assets Held In Trust section, above, and any successors to such trustee(s), custodian(s) or insurance company(ies).

2.31. USERRA.

"USERRA" means the Uniformed Services Employment And Reemployment Rights Act of 1994, as it may be amended from time to time.

2.32. Valuation Calendar Year.

"Valuation Calendar Year" relates to the Required Minimum Distributions section and means the calendar year immediately preceding the Participant's Distribution Calendar year.

### **ARTICLE 3 – PARTICIPATION**

3.01. Eligibility.

- A. All Employees are eligible to participate in the Plan. An Employee shall become a Participant upon entering into a compensation reduction agreement with the Employer in accordance with the requirements of the Compensation Reduction Agreement Requirements section, below.
- B. The Administrator, using employment dates certified by the Employer, shall determine which Employees are eligible to participate, and the

Administrator shall furnish such information and attendant data to the Trustee. The Administrator shall notify each eligible Employee of the Employee's eligibility and of any application or other requirements for participation. By becoming a Participant, the Employee agrees to be bound by all terms, conditions and covenants of this Plan as then in effect or as thereafter amended.

3.02. Compensation Reduction Agreements.

A. Compensation Reduction Agreements In General.

A Participant may elect to enter into a written compensation reduction agreement with the Employer whereby the Participant agrees to accept a reduction in cash compensation from the Employer and to have the Employer contribute such amount to this Plan and the Trust. Such amount shall be equal to either (i) any percentage of such Participant's compensation per payroll period or (ii) a fixed dollar amount per payroll period as specified on the Participant's compensation reduction agreement.

B. Compensation Reduction Agreements For Extraordinary Compensation.

If any extraordinary compensation is payable to a Participant (such as a one-time payment of compensatory or holiday leave, overtime, etc.), the Participant may elect to enter into a separate written compensation reduction agreement with the Employer whereby the Participant agrees to accept a reduction in cash compensation from the Employer with respect to such extraordinary compensation equal to either (i) any percentage of such extraordinary compensation or (ii) a fixed dollar amount of such extraordinary compensation. A compensation reduction agreement with respect to any extraordinary compensation shall apply only to that extraordinary compensation and shall not affect the Participant's compensation reduction agreement then in effect with respect to each payroll period.

C. Compensation Reduction Agreement Requirements.

A Participant's compensation reduction agreement or extraordinary compensation reduction agreement shall be subject to the following:

1. A compensation reduction agreement shall become effective on the later of: i) the first pay date of the calendar month next following the execution of the compensation reduction agreement or, if later, ii) the first pay date of the calendar month for which the Employer can reasonably process the request. If the compensation reduction agreement has been executed on or before the Employee's first

day of employment, the compensation reduction agreement shall become effective no earlier than the Employee's first day of employment with the Employer or, if later, the first pay date for which the Employer can reasonably process the request.

2. Thereafter, the compensation reduction agreement shall apply to each payroll period during which an effective compensation reduction agreement is on file with the Employer.
3. Except as provided below, a Participant's compensation reduction agreement with respect to each payroll period may be entered into or amended by a Participant in accordance with Paragraph 1 of this Subsection C.
4. A Participant may revoke their compensation reduction agreement then in effect with respect to each payroll period at any time, thereby ceasing Deferred Compensation on the later of: i) the next pay date or ii) the next pay date for which the Employer can reasonably process the request. A Participant who has revoked their compensation reduction agreement may again become an active Participant by submitting an effective compensation reduction agreement in accordance with Paragraph 1 of this Subsection C.
5. The aggregate amount of a Participant's Deferred Compensation during a calendar year shall not exceed the amount that would cause the Plan to violate the provisions of the Contributions article, below. The Employer may modify or revoke the Participant's compensation reduction agreement with any Participant at any time if the Employer determines, solely at the Employer's discretion, that such revocation or amendment is necessary to ensure that the Plan will not exceed this limitation.
6. Except as provided above, a compensation reduction agreement applicable to any given calendar year, once made, may not be revoked or amended by the Participant or the Employer.

3.03. Employer Contributions – Nonelective Deferred Compensation.

The Employer may establish, in its sole and absolute discretion, the amounts, if any, of the Nonelective Deferred Compensation under this Plan for some or all of the Participants for any calendar year.

### 3.04. Rollover Contributions.

- A. Any Participant in this Plan may transfer all or any of their assets to this Plan by means of a Rollover Contribution from an Eligible Retirement Plan. These assets shall be transferred to the Trustee, subject to the approval of the Administrator and Trustee. Prior to accepting any such rollover contribution, the Administrator may require that the Participant or Employee establish to the satisfaction of the Administrator that the amount to be rolled over to the Plan is an Eligible Rollover Distribution from an Eligible Retirement Plan. Except as provided in Subsection B, below, the Plan will not accept a rollover from an after-tax account.
- B. This Plan will accept a direct rollover from another Roth elective deferral account under another plan as described in Code section 402A(e)(1); provided, however, that:
  - 1. The rollover is permitted under the rules of Code section 402(c);
  - 2. The other plan must provide to the Administrator either (i) a statement indicating the first year of the five (5) taxable-year period described in Code section 402A(d)(2)(B) and the portion of the distribution that is attributable to investment in the contract under Code section 72 or (ii) a statement that the distribution is a qualified distribution as described in Code section 402A(d)(2); and
  - 3. The direct rollover shall be held in the separate Roth Rollover Account.

### 3.05. Transfers From Other Plans.

If (i) an Employee is entitled to benefits under this Plan, (ii) such Employee was previously covered by a Code section 457(b) eligible deferred compensation plan maintained by an employer that is an eligible employer within the meaning of Code section 457(e)(1)(A), and (iii) such plan provided for the transfer of such benefits pursuant to the provisions of Code section 457(e)(10) and the Treasury regulations promulgated thereunder, then this Plan will accept the transfer of such amounts if the Employer is satisfied, in its sole and absolute discretion, that such transfer and acceptance is permissible under Code section 457.

### 3.06. Timing Of Contributions.

- A. A Participant's share of the Nonelective Deferred Compensation for a year shall be credited to the Participant's Account as soon as administratively feasible after the last day of such year or at such other times as the Employer or the Administrator may direct in its sole and absolute discretion. If the contribution is accrued for the preceding calendar year,

and is actually made after the close of the calendar year, the Employer shall make such designation and such Nonelective Deferred Compensation shall be allocated to Participants' Nonelective Deferred Compensation Accounts as of the last day of the preceding calendar year.

- B. Elective Deferred Compensation accumulated through payroll deductions shall be paid to the Trustee as of the earliest date on which such contributions can reasonably be segregated from the Employer's general assets, but in any event within fifteen (15) business days following the pay date which such amounts would otherwise have been payable to the Participant in cash.

3.07. Deferral Of Sick Pay, Vacation Pay And Back Pay.

In accordance with Subsection C of the Compensation Reduction Agreement Requirements section, above and Treasury regulations section 1.457-4(d), a Participant who has not had a Severance From Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay. These amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the participant is an employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before Severance From Employment is treated as an amount that would otherwise be paid or made available before an employee has a severance from employment.

3.08. Contributions After Severance From Employment.

Former Employees may make a contribution from compensation paid after the Employee's Severance From Employment if paid by the later of (i) two and one-half (2-1/2) months after the Employee's Severance From Employment, or (ii) the end of the calendar year that includes the date of the Employee's Severance From Employment subject to the following requirements:

- A. The payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been made to the Employee prior to a Severance From Employment if the Employee had continued in employment with the Employer.
- B. The payment is for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment with the Employer continued.

3.09. Omission Of Eligible Employee.

If an Employee who should have been included as a Participant for a calendar year is erroneously omitted and discovery of the omission is made after the Nonelective Deferred Compensation is made and allocated, the Employer and the Administrator may correct the erroneous omission of the Employee in accordance with the requirements of the Internal Revenue Service through standards that are similar to those set forth in the Employee Plans Compliance Resolution System as described in Rev. Proc. 2013-12 and any subsequent guidance or standards similar to such requirements.

3.10. Inclusion Of Ineligible Individual.

If any individual is erroneously included as a Participant in the Plan and discovery of the erroneous inclusion is made after the Nonelective Deferred Compensation is made and allocated, the Employer and the Administrator may correct the erroneous inclusion of the individual in accordance with the requirements of the Internal Revenue Service through standards that are similar to those set forth in the Employee Plans Compliance Resolution System as described in Rev. Proc. 2013-12 and any subsequent guidance or standards similar to such requirements.

## **ARTICLE 4 – INVESTMENTS**

4.01. Investments.

The Council shall establish one or more investment options ("Investment Options") for the purpose of investing amounts of Compensation credited to Participants' Accounts. The selection of Investment Options shall be governed by a policy/rules established by the Council. Any action by the Council in selecting Investment Options and/or establishing a policy to govern the selection of Investment Options, shall not be considered to be either an endorsement of or guarantee of any investment, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided in the Plan Administration article, below.

4.02. Election Of Investment Options.

Each Participant may allocate the Compensation deferred by him/her under his/her compensation reduction agreement among the Investment Options. A Participant may modify his/her selection of Investment Options in accordance with rules established by the Council. Such modification may affect transfers of compensation already deferred from one Investment Option to another and/or may prospectively change the investments to which future deferrals of

compensation shall be allocated, effective as soon as practicable after the filing of the modification with the Trustee.

4.03. Default Investment.

In the event a Participant fails to make an affirmative selection of Investment Option(s) for his or her Account, the Participant's account balance will be placed in an Investment Option in accordance with an investment election policy established by the Council.

4.04. Self-Directed Brokerage Accounts.

In addition to the Investment Options provided herein and subject to approval by the Employer, the Council may establish a policy permitting a Participant to direct a portion of the Participant's Account to a self-directed full service brokerage account offered through a selected vendor for securities/investments not otherwise provided herein.

4.05. Statements Of Accounts.

Participants shall be given written statements of the balances of their Accounts with such frequency as the Trustee shall determine, in its sole discretion, but not less frequently than annually.

4.06. Fiduciary Duty.

Notwithstanding any other provisions of law, a Participant's choosing individually directed investments shall relieve the Trustee, the Employer and the Council of liability for any losses which are the direct and necessary result of the investment instructions given by a Participant or Beneficiary. However, such relief shall be conditioned upon the Employer's or the Council's compliance with communication and education requirements similar to those prescribed in ERISA section 404(c), as well as any such requirements under applicable State and Federal law, including California Government Code Section 53213.5.

## **ARTICLE 5 – CONTRIBUTIONS**

5.01. Minimum Contributions.

The minimum amount that a Participant may contribute to their Pre-Tax Account or their Post-Tax Roth Account per payroll period is the lesser of ten dollars (\$10.00) or one percent (1%) of compensation.

5.02. Contribution Limitations In General.

The maximum amount of Deferred Compensation under the Plan for any Participant for any calendar year, taken into account at its present value, shall not exceed the lesser of:

- A. The applicable dollar amount set forth in Code section 457(e)(15) as such amount has been adjusted by the Secretary of the Treasury pursuant to Code section 457(e)(15)(B) (e.g., nineteen thousand dollars (\$19,000) for 2019); or
- B. One hundred percent (100%) of the Participant's Includible Compensation for such calendar year.

5.03. Contribution Limitations – Last Three Years Of Participation.

In any of the Participant's last three (3) years ending before the Participant's Normal Retirement Age, instead of the amount set forth in the Contributions Limitations In General section, above, the maximum amount of Deferred Compensation under the Plan for the Participant for the calendar year, taken into account at its present value, shall not exceed the lesser of:

- A. Two (2) times the dollar amount set forth in Subsection A of the Contribution Limitations In General section, above (e.g., thirty-eight thousand dollars (\$38,000) for 2019); or
- B. The sum of:
  - 1. The limitation established for purposes of the Contribution Limitations In General section, above, for the year, determined without regard to this Contribution Limitations – Last Three Years Of Participation section; plus
  - 2. So much of the limitation established for purposes of the Contribution Limitations In General section, above, for years before the year that has not previously been used under the Contribution Limitations In General section, above, or this Contribution Limitation – Last Three Years Of Participation section; provided, however, that taxable years commencing before January 1, 1979 and taxable years when the Participant was not a Participant shall not be taken into account.



5.04. Contribution Limitations – Age Fifty Catch-Up Contributions.

If a Participant would be at least age fifty (50) by the end of a calendar year, and the limitations in the Contribution Limitation – Last Three Years Of Participation section, above, do not apply, then instead of the amount set forth in the Contribution Limitations In General section, above, the maximum amount of Deferred Compensation under the Plan for the Participant for the calendar year, shall not exceed the sum of:

- A. The limitation specified in the Contribution Limitations In General section, above; plus
- B. Six thousand dollars (\$6,000) or such larger amount as may be permitted by the Secretary of the Treasury pursuant to Code section 414(v)(2)(C).

5.05. Distribution Of Excess Deferred Compensation.

If a Participant's Deferred Compensation for the calendar year would be more than the amount permitted under this Contributions article, the following provisions shall apply:

- A. Any direction for such Excess Deferred Compensation consisting of Deferred Compensation shall be invalid and the directed deferral shall (i) not be made, and (ii) not be assigned to any such Participant's Account. Excess Deferred Compensation consisting of Nonelective Deferred Compensation shall not be assigned to any such Participant's Account.
- B. Notwithstanding any other provision of the Plan, Excess Deferred Compensation under the Plan and any other Code section 457(b) eligible deferred compensation plan(s) maintained by the Employer, computed without regard to any other Code section 457(b) eligible deferred compensation plan(s) maintained by any employer(s) other than the Employer, and any income allocable to such amount shall be distributed from the Plan or such other plan(s), as determined by the Administrator in its sole and absolute discretion, as soon as administratively practicable after the Administrator determines that the amount is Excess Deferred Compensation to the Participant to whose Account Excess Deferred Compensation was assigned.
- C. If Excess Deferred Compensation occurs solely because of combined Deferred Compensation under (i) the Plan and (ii) any other Code section 457(b) eligible deferred compensation plan(s) maintained by any employer(s) other than the Employer, the Plan may distribute the Excess Deferred Compensation and any income allocable to such amount, as soon as administratively practicable after the Administrator determines that the amount is Excess Deferred Compensation, to each Participant to

whose Account Excess Deferred Compensation was assigned for the preceding calendar year. Each such Participant shall notify the Employer or the Administrator of how much Excess Deferred Compensation the Administrator should distribute from the Plan in accordance with rules established by the Administrator.

- D. A Participant may designate the extent to which the Excess Deferred Compensation are composed of Pre-Tax Contributions and/or Post-Tax Roth Contributions, but only to the extent that both types of Deferred Compensation were made during the calendar year. If the Participant does not designate which type of Deferred Compensation are to be distributed, the Participant's Pre-Tax Contributions shall be distributed first.

## **ARTICLE 6 – BENEFICIARIES**

### 6.01. Beneficiaries In General.

Each Participant shall have the right to designate, in writing, a Beneficiary or Beneficiaries to receive the Participant's death benefits, and shall have the right, at any time, to revoke such designation or to substitute another such Beneficiary or Beneficiaries without the consent of any Beneficiary.

### 6.02. Revocation Of Spousal Beneficiary.

If a Participant has designated the Participant's spouse as the Participant's Beneficiary under this Plan, such designation shall be deemed to have been revoked in the event of a judgment, decree, order, or approval of a settlement agreement, issued either (i) by a court of competent jurisdiction, or (ii) through an administrative process established under State law having the force and effect of law under applicable State law, dissolving such marriage, unless the Participant designates the Participant's ex-spouse as the Participant's Beneficiary by a new designation signed by the Participant and delivered to the Trustee or the Administrator after the entry of such judgment, decree, order or approval of a settlement agreement and prior to the Participant's death.

### 6.03. No Designated Beneficiary.

If, upon the death of a Participant, there is no valid designation of Beneficiary on file with the Trustee or the Administrator, or the Participant's primary and contingent Beneficiaries are not alive, the Administrator shall designate as the Beneficiary, in order of priority:

- A. The surviving spouse;
- B. The surviving children, in equal shares;

- C. Surviving parents, in equal shares; or
- D. The Participant's heirs at law.

The determination of the Administrator as to which persons, if any, qualify within the aforementioned categories shall be final and conclusive upon all persons, but the Administrator may seek a declaratory judgment of a court of competent jurisdiction to determine the identity of Beneficiaries and their respective shares at the expense of the Participant's Account.

## **ARTICLE 7 – PAYMENT OF BENEFITS**

### 7.01. Commencement Of Payment Of Benefits.

The payment of a Participant's benefits under the Plan may not commence earlier than the earliest of:

- A. The calendar year in which the Participant attains age seventy and one-half (70-1/2); or
- B. When the Participant has a Severance From Employment; or
- C. When the Participant is faced with an unforeseeable emergency as provided in the Distributions Upon An Unforeseeable Emergency section, below; or
- D. For purposes of this Commencement Of Payment Of Benefits section, a Participant shall be treated as having a Severance From Employment during any period the Participant is performing service in the uniformed services described in Code section 3401(h)(2)(A) if the Participant elects to receive a distribution from the Plan during such period. However, as result of the application of this subsection, the Participant may not make Deferred Compensation to the Plan during the six (6)-month period beginning on the date of the distribution.

### 7.02. Payment Of Benefits After Severance From Employment.

The Trustee shall determine the amount of the Participant's Account. The Trustee shall distribute the Participant's Account in accordance with the method of payment of benefits selected by the Participant (or the Beneficiary of a deceased Participant) in accordance with the following provisions:

- A. Form Of Distribution.

The Participant or the Participant's Beneficiary shall receive the Participant's Account in the following form:

1. A single sum distribution;
2. Annual or more frequent (but not more frequently than monthly) installments as nearly equal as practicable over a fixed period of years not to exceed the Participant's life expectancy; provided, however, that the last annual installment shall be an amount equal to the remaining amount in the Participant's Account on the day of the distribution;
3. Annual or more frequent (but not more frequently than monthly) installments of a fixed amount; or
4. A combination of these methods.

B. Cash Outs.

If the value of the Participant's Account does not exceed one thousand dollars (\$1,000), the Trustee may distribute such benefit as soon as is administratively feasible after the Participant's Severance From Employment without such Participant's consent.

C. Eligible Rollover Distributions.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Plan, a Distributee may elect, at the time and in the manner prescribed by the Employer, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.

Notwithstanding any of the provisions of this Eligible Rollover Distributions subsection, a direct rollover of a distribution from a Post-Tax Roth Account, In-Plan Roth Conversion Account, or a Roth Rollover Account under the Plan will be made only to another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) or to a Roth IRA (as defined below) and only to the extent the rollover is permitted under the rules of Code section 402(c). For purposes of this subsection, a "Roth IRA" is defined as an individual retirement plan described in Code section 7701(a)(37) which is designated as a Roth IRA at the time of establishment in such manner as required by the Code and other regulations.

D. Transfers To Other Code Section 457(b) Plans.

If (i) a Participant has a Severance From Employment and (ii) such Participant is subsequently employed by another employer that is an eligible employer within the meaning of Code section 457(e)(1)(A), the Participant may request that the Participant's Account under the Plan be transferred to such employer's plan; provided that:

1. Such employer and such employer's plan will accept the transfer;
2. The value of the amount transferred immediately after the transfer shall be at least equal to the value of the amount transferred immediately before the transfer; and
3. Such transfer is accomplished in accordance with the requirements of Code section 457(e)(10) and the Treasury regulations promulgated thereunder.

The Employer may require such documentation as it deems necessary or appropriate, in its sole and absolute discretion, from the other employer in order to ensure that the requirements set forth above have been satisfied, and in order to effect the transfer.

Amounts transferred to another eligible deferred compensation plan shall be treated as distributed from this Plan and this Plan shall have no further responsibility to the Participant or any Beneficiary with respect to the amount transferred.

E. Distribution Elections.

Participants may make a new election, or amend or revoke a prior election under this Payment Of Benefits article in such form and manner as the Trustee may specify from time to time.

7.03. Distribution From Post-Tax Roth Accounts.

Any "qualified distribution" as defined below, from an Employee's Post-Tax Roth Account, In-Plan Roth Conversion Account, or Roth Rollover Account, other than a distribution of any Excess Deferred Compensation under Code section 402(g)(2) and any income on the Excess Deferred Compensation, shall not be includible in such Participant's gross income. A "qualified distribution" is a distribution in accordance with Code section 408A(d)(2)(A) (without regard to clause (iv) thereof). Furthermore, a distribution from an Employee's Post-Tax Roth Account, In-Plan Roth Conversion Account, or Roth Rollover Account shall not be treated as a qualified distribution if such distribution is made within the five (5) taxable year period beginning with the earlier of:

- A. The first taxable year for which the individual made Post-Tax Roth Contributions to this Plan;
- B. The first taxable year for which the Participant converted a portion of the Participant's Pre-Tax Account in an In-Plan Roth Conversion as described in the In-Plan Roth Conversions section, below; or
- C. If a rollover contribution was made to a Roth Rollover Account from a designated Roth elective deferral account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth elective deferral to such previously established account.

7.04. Required Minimum Distributions.

- A. Notwithstanding anything contained in the Plan to the contrary, the Participant's entire interest either (i) will be distributed to the Participant not later than the Required Beginning Date, or (ii) will begin to be distributed not later than the Required Beginning Date over a period not exceeding the life expectancy of the Participant, or the joint life expectancy of the Participant and the Participant's Designated Beneficiary.
- B. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- C. Unless the Participant's interest is distributed in the form of a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with this Required Minimum Distributions section or the Payment Of Death Benefits section, below, if applicable.
- D. All minimum distributions under this subsection will be made in accordance with the provisions of Code section 401(a)(9), the Treasury regulations promulgated under Code section 401(a)(9), and any other provisions reflecting Code section 401(a)(9) that are prescribed by the Commissioner of Internal Revenue in revenue rulings, notices and other guidance published in the Internal Revenue Bulletin.

- E. The provisions of this Required Minimum Distributions section will override any distribution options in the Plan inconsistent with Code section 401(a)(9).
- F. This Required Minimum Distributions section and the provisions under the Payment Of Death Benefits section, below, set forth the minimum required distributions pursuant to Code section 401(a)(9) and the Treasury regulations promulgated thereunder and shall not be construed as creating any payment method under the Plan not otherwise provided under the Form Of Distribution subsection of the Payment Of Benefits After Severance From Employment section, above, provided that the method or methods of payment under the Form Of Distribution subsection, above, meet or exceed the requirements of this Required Minimum Distributions section.

7.05. Payment Of Death Benefits.

A. Death After Benefit Commencement.

If the Participant dies after having begun to receive installment payments in accordance with the Payment Of Benefits After Severance From Employment section, above, payment of the remainder of such scheduled payments shall be suspended for a period of sixty (60) days after the Participant's death. During such sixty-day suspension period, the Beneficiary of such Participant may elect to receive the balance then credited to the Participant's Account in a single lump sum or in installments as specified under the Payment Of Benefits After Severance From Employment section, above, provided that the Participant's Account will be distributed to the Beneficiary at least as rapidly as under the method of distribution being used prior to the Participant's death. If no such election is made by the Beneficiary by the end of the sixty (60)-day suspension period, the remaining installment payments selected by the Participant shall be paid to the Beneficiary.

B. Death Prior To Benefit Commencement.

If the Participant dies before distribution of his Account commences, the Participant's Beneficiary shall receive distribution of such Participant's Account as provided under the Payment Of Benefits After Severance From Employment section, above, treating the Beneficiary as if they were the Participant; provided, however:

1. If the Beneficiary is not the Participant's surviving spouse, the Beneficiary must elect a distribution payable over a period not extending beyond the life expectancy of the Beneficiary,

commencing no later than the end of the calendar year following the calendar year in which the Participant died, or elect a lump sum to be made no later than the end of the calendar year which contains the fifth (5th) anniversary of the date of death of the Participant and in the event no election is made, a lump sum payment of the Account balance shall be made by the end of such calendar year.

2. If the Beneficiary is the Participant's surviving spouse, surviving spouse may elect a lump sum payment or installments payable over a period not extending beyond the life expectancy of the surviving spouse. Distributions to the surviving spouse must commence on or before the later of the calendar year immediately following the calendar year in which the Participant died or the year the Participant would have attained age seventy and one-half (70-1/2). If the surviving spouse dies before his or her payments begin, subsequent distributions shall be made as if the surviving spouse had been the Participant. For purposes of this paragraph, payments will be calculated by use of the return multiples specified in section 1.72-9 of the Treasury regulations, without recalculation of life expectancies.

C. Commencement Of Death Benefit Payments.

The Participant's benefits under the Plan shall be paid to the Participant's Beneficiary or Beneficiaries in a manner described in this Payment Of Death Benefits section as soon as administratively feasible after the Administrator or the Trustee has received the Participant's certified death certificate; such death certificate may be a copy of the certified death certificate.

7.06. In-Plan Roth Conversions.

A Participant may convert, in an "In-Plan Roth Conversion," any portion of the Participant's Account, other than a Post-Tax Roth Deferral Account or Roth Rollover Account to an In-Plan Roth Conversion Account pursuant to Code section 402A(c)(4) and the following:

- A. This section shall apply to a deceased Participant's Beneficiary if the Beneficiary is the Participant's surviving spouse and to an Alternate Payee who is a spouse or a former spouse of the Participant, as if such an individual were the Participant.
- B. A Participant loan may not be distributed as part of an In-Plan Roth Conversion.



- C. A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion in the taxable year when the conversion occurs.
- D. Any distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted as part of an In-Plan Roth Conversion.
- E. Any election to make an In-Plan Roth Conversion may not be changed after the In-Plan Roth Conversion is completed.

7.07. Distributions Upon An Unforeseeable Emergency.

- A. At any time, a Participant may apply in writing for a distribution upon an unforeseeable emergency in an amount equal to all or a portion of the Participant's Account.
- B. Except to the extent that the Trustee has been designated as the party responsible for the following, the Administrator shall determine, in its sole and absolute discretion, the amount of the distribution that is necessary to alleviate the unforeseeable emergency. The determination by the Administrator of the existence of an unforeseeable emergency and of the amount necessary to meet the need shall be made in a nondiscriminatory and uniform manner, pursuant to applicable statutes, regulations and guidelines. This determination by the Administrator shall be final and binding.
- C. A distribution is on account of an unforeseeable emergency only if the distribution is made on account of 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 in Code section 152 without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)), 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, such as damage that is the result of a natural disaster), death in family, or disabling injury, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.
- D. Except as otherwise specifically provided in the Treasury regulations, the purchase of a home or the payment of college tuition are not unforeseeable emergencies.
- E. The following may constitute an unforeseeable emergency:

1. A need to rebuild the Participant's home following damage to it not otherwise covered by insurance, such as damage that is the result of a natural disaster;
  2. The imminent foreclosure of or eviction from the Participant's primary residence;
  3. The need to pay for medical expenses, including non-refundable deductibles and the cost of prescription drug medication; or
  4. The need to pay funeral expenses of the Participant's spouse or a dependent (as defined in Code section 152 without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)).
- F. Whether a Participant is faced with an unforeseeable emergency permitting a distribution is to be determined pursuant to applicable statutes, regulations and guidelines and based on the relevant facts and circumstances of each case, but a distribution on account of an unforeseeable emergency of the Participant may not be made if such emergency can be relieved by:
1. Reimbursement or compensation by insurance or otherwise;
  2. Liquidation of the Participant's assets, to the extent that such liquidation of the Participant's assets would not itself cause a severe financial hardship;
  3. Cessation of deferrals under the Plan; or
  4. If allowed, by taking out a loan under the Plan, provided that the repayment of such loan does not in itself cause financial hardship.
- G. The amount of any unforeseeable emergency distribution shall not exceed the lesser of:
1. The amount reasonably necessary, as determined by the Employer, to satisfy the hardship (which may include any amounts necessary to pay any federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution); or
  2. The amount of the Participant's Account.
- H. Any distribution under this Distributions Upon An Unforeseeable Emergency section shall be made in a single sum.

7.08. Loans.

The Council is authorized to adopt a policy/rules permitting a Participant to take a loan against their Account.

A loan to a Participant shall be made solely from the assets of such Participant's own Account(s) and all interest paid shall be credited to said Account(s). Any loan from the Participant's Deferred Compensation Account shall be treated as coming first from the Participant's Pre-Tax Account and then from the Participant's Post-Tax Roth Account and/or In-Plan Roth Conversion Account, to the extent that funds are available.

7.09. Purchase Of Service Credit.

A Participant may use all or a portion of their Account as a direct trustee-to-trustee transfer to a retirement system to purchase permissive service credit or redeposit previously withdrawn contributions under a governmental plan (as defined in IRC section 414(d)), provided that:

- A. The retirement system permits such a transfer; and
- B. The Participant demonstrates to the Administrator's satisfaction that:
  - 1. The transfer is to a governmental plan (as defined in IRC section 414(d)); and
  - 2. The transfer involves the purchase of permissive service credits (as defined in Code section 415(n)(3)(A)) or for the repayment of service credits permissible by IRC section 415(k)(3).

7.10. Distributions To Incapacitated Participants.

If a parent, guardian, conservator, trustee, custodian (including under a Uniform Transfers of Gifts to Minors Act custodian) or attorney-in-fact or other legal representative of a Participant or Beneficiary who is entitled to a payment under the Plan, provide evidence satisfactory to the Administrator, in its sole discretion, that such Participant or Beneficiary is not able to care for his or her affairs due to a mental condition, a physical condition, or by reason of age, the Administrator may make all benefit distributions to the Participant's or Beneficiary's parent, guardian, conservator, trustee, custodian. Payments made pursuant to the terms of this Distributions To Incapacitated Participants section shall constitute a distribution to the Participant or Beneficiary entitled thereto, and shall immediately discharge the Employer, Administrator, Trustee, the Plan and the Trust of any further liability therefor. Neither the Administrator nor the Trustee

has a duty to inquire or investigate the competence of any Participant or Beneficiary entitled to receive payments under the Plan.

7.11. Qualified Domestic Relations Order Payments.

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order" as those terms are defined in Code section 414(p). Notwithstanding any other provision of this Plan, a distribution may be made to an "alternate payee" pursuant to a "qualified domestic relations order," as each term is defined in Code section 414(p), prior to the times otherwise specified in this Plan, if the qualified domestic relations order requires such a distribution, even if the Participant is not yet entitled to receive a distribution; provided, however, that nothing contained in this provision nor such qualified domestic relations order shall entitle a Participant to a distribution prior to the time as otherwise determined under the Plan.

7.12. Nonliability.

The Employer does not guarantee the Trust, the Participants or their Beneficiaries against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. All of the benefits payable hereunder shall be paid or provided for solely from the Trust.

7.13. Mechanics Of Payment.

The Trustee, with respect to any benefit, is authorized to pay benefits directly from the Trust pursuant to the applicable provisions in this Payment Of Benefits article.

7.14. Withholding.

The Employer, the Administrator or the Trustee may withhold from any benefit payable under the Plan all federal, State or local taxes that may be required to be withheld pursuant to applicable law.

7.15. Lost Participant Or Beneficiary.

A. If, according to the records of the Plan, the Participant or the Beneficiary of a deceased Participant has not made a claim for benefits, and the Participant or Beneficiary cannot be located in accordance with the procedures in Subsection B of this Lost Participant Or Beneficiary section, the Participant's Account balance shall be held in the Plan until such time that the Participant or the Beneficiary can be located or the Plan is terminated, if later.

- B. The Administrator shall take the following steps to locate a missing Participant or Beneficiary:
1. Mail a letter by certified mail to the Participant or Beneficiary's last known mailing address according to the Plan's records;
  2. Check related plan records to determine if one or more of the related plans may have more up-to-date information with respect to the Participant or Beneficiary;
  3. Attempt to identify and contact the individual(s) who the Participant has designated as a Beneficiary; and
  4. Use any other search method or methods, including Internet search tools, commercial locator services and credit reporting agencies that the Administrator determines is a prudent method to use to locate the Participant or Beneficiary based on the particular facts and circumstances.
- C. If after Plan termination and use of the search methods specified in Subsection B of this Lost Participant Or Beneficiary section, the Administrator is still unable to locate a missing Participant or Beneficiary, then the Administrator shall transfer the portion of the Participant's Account that is an Eligible Rollover Distribution to an individual retirement account described in Code section 408(a) or an individual retirement annuity described in Code section 408(b) designated by the Administrator.

## **ARTICLE 8 – PLAN ADMINISTRATION**

### **8.01 Powers And Responsibilities Of The Employer.**

- A. The Employer shall approve any and all changes to the Plan, pursuant to the Amendment And Termination article, below.
- B. The Employer shall approve the bylaws governing the Council and shall approve any and all changes to said bylaws.
- C. The Employer shall be empowered to appoint and remove members of the Council, from time to time, as it deems necessary for the proper administration of the Plan and to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.
- D. The Employer shall have the authority to hire and fire any fiduciary or agent, including the Trustee, appoint, engage and/or contract for one or more representatives, accountants, counsel, specialists, and other

advisory and clerical persons as it deems necessary or desirable to assist the Council in the administration of the Plan. The Employer may designate, as allowed by law, any person as its agent for any purpose. The designated representative of the Employer shall be responsible only for those specific powers, duties, responsibilities and obligations specifically given to it by the Employer. All usual and reasonable expenses of such representatives, accountants, counsel, specialists, and other advisory and clerical persons may be paid in whole by the Plan.

- E. The Employer shall maintain sufficient employment records to calculate benefits under this Plan for each Employee. The Employer shall make such records available to the Administrator, in a timely manner, and the Employer shall be responsible for the accuracy of such information upon which the Administrator is entitled to rely.

#### 8.02. Powers And Responsibilities Of The Council.

- A. The Council or its designee shall, in its discretion, interpret and construe the provisions of the Trust, shall resolve any ambiguities in the Trust, and shall resolve any conflicts between the Plan and the Trust.
- B. The Council exclusively has the authority to establish and shall establish all policies, procedures, and guidelines necessary or advisable to carry out the purpose of the Plan.
- C. The Council shall establish an investment policy or guidelines to ensure the prudent selection and monitoring of Plan investments or Investment Options. Such investment policy or guidelines shall be consistent with the objectives of this Plan and with the requirements of applicable State and/or Federal law.
- D. The Council shall select and monitor Plan investments or Investment Options pursuant to the investment policy or guidelines described in Paragraph C of this Powers And Responsibilities Of The Council section.
- E. The Council shall make recommendations to the Employer, as appropriate, regarding the appointment of such representatives, accountants, counsel, specialists, and other advisory and clerical persons as may be necessary and appropriate for the administration and operation of this Plan and the delegation, as allowed by law, to such representatives, accountants, counsel, specialists, and other advisory and clerical persons of any of its discretionary and ministerial powers and duties in accordance with this Plan Administration article.

- F. The Council shall determine the reasonable Plan expenses and the administrative fee charged to Participants to pay for reasonable Plan expenses on an annual basis.

8.03. Powers And Responsibilities Of The Administrator.

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan and any Council established policies, procedures and guidelines. The Administrator shall apply the policies, procedures and guidelines set forth by the Council pursuant to the Powers And Responsibilities Of The Council Section, above. The Administrator shall administer the Plan in accordance with its terms and shall have all powers that are not retained by the Employer or the Council, as enumerated in the Powers And Responsibilities Of The Employer and Powers And Responsibilities Of The Council Sections, above.

8.04. Settlement Of Disputes.

If any dispute arises between the Trustee and any other person, including, without limitation, the Administrator, the Employer or any Participant or Beneficiary under the Plan with respect to the interpretation of this Plan or the Trust or the duties of the Trustee, the Administrator or any other fiduciary, then neither the Trustee nor the Administrator shall be obligated to take any other action in connection with the matter involved in the controversy until such time as the controversy is resolved, unless this would clearly be imprudent or not in the best interest of the Participants and Beneficiaries. In addition, the Trustee may deposit (or the Administrator may direct the deposit of) the affected assets of the Trust in an interpleader action with the court of jurisdiction under applicable State law.

8.05. Compensation Of Council And Administrator.

Neither the Council nor the Administrator shall receive compensation from the Trust for acting as such, but the Trust shall reimburse the Council or Administrator for all necessary and proper expenses incurred in carrying out its duties under the Plan.

8.06. Use Of Electronic Media.

In accordance with Treasury regulations, the Administrator and the Trustee may use telephonic or electronic media to satisfy the notice requirements under this Plan.

## ARTICLE 9 CLAIMS PROCEDURES

### 9.01. Request For Information.

A Participant or Beneficiary may request such information concerning the Participant's or Beneficiary's rights or benefits under this Plan and the Trust as is required to be disclosed under applicable State law. The Administrator shall respond, in writing, within a reasonable time, not to exceed thirty (30) days, unless the failure to respond results from matters reasonably beyond the Administrator's control.

### 9.02. Claims For Benefits.

In order to receive benefits under this Plan, a Participant must submit satisfactory proof of entitlement to such a benefit as set forth in this Claims Procedures article.

### 9.03. Filing Claims.

A Participant, Beneficiary, or duly authorized representative of a Participant or Beneficiary (Claimant) may file a claim for benefits to which such Claimant believes he or she is entitled. Claims must be made in writing and delivered to the Administrator in accordance with this Claims Procedures article. Claimants shall provide the Administrator with such information and evidence, and shall sign such documents as may reasonably be requested from time to time for the purpose of administration of the Plan. The filing of claims or receipt of notices of rulings and any event starting a time period shall be deemed to commence with personal delivery signed for by the Claimant or by affidavit of personal service, or the date of actual receipt of certified mail or date returned if delivery is refused or a Claimant has moved without giving the Administrator a forwarding address.

### 9.04. Initial Determination Of Claim.

- A. The Administrator shall have full discretion to grant or deny a claim in whole or in part.
- B. The Administrator will notify the Claimant, in writing, of the granting or denying, in whole or in part, of such claim, within ninety (90) days after receipt of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed ninety (90) days from the end of the initial ninety (90)-day period.
- C. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial ninety (90)-day period, and the notice must indicate the special



circumstances requiring the extension and the date by which a decision will be made.

- D. If a claim is denied in whole or in part, the Administrator's notice denying such claim shall set forth, in a manner calculated to be understood by the Claimant, the following:
  - 1. The specific reason or reasons for the denial;
  - 2. Specific reference to pertinent Plan provisions on which the denial is based;
  - 3. A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material information is necessary; and
  - 4. An explanation of the Plan's claim review procedures.
- E. If notice of the granting or denying of a claim is not furnished in accordance with the preceding provisions, the claim shall be deemed denied and the Claimant shall be permitted to exercise the Claimant's right to review pursuant to the Claims Appeals section, below.

9.05. Claims Appeals.

- A. If a Claimant wishes to appeal a denial of a claim, the Claimant or the Claimant's duly authorized representative:
  - 1. May request a review upon written application to the Administrator;
  - 2. May submit written comments, documents, records and other information relating to the claim; and
  - 3. May obtain, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8) as if it applied to this Plan) to the Claimant's claim for benefits.
- B. The written request for review must be received by the Administrator no later than sixty (60) days after the Claimant receives notice that the Claimant's claim for Plan benefits has been denied.
- C. The decision on the review shall be made by the Administrator, who may, in its discretion, hold a hearing on the denied claim.

- D. The Administrator shall make its decision promptly, and not later than sixty (60) days after the Administrator's receipt of the request for a review, unless the Administrator determines that special circumstances require an extension of time for processing the claim. If the Administrator determines that an extension of time for processing is required, this period may be extended no more than sixty (60) days from the end of the initial sixty (60)-day period, in which case the Administrator shall give the Claimant a written notice to this effect prior to the expiration of the initial sixty (60)-day period and the notice shall indicate the special circumstances requiring the extension of time and the date by which a decision will be made on review.
- E. The decision on review must be written in a manner calculated to be understood by the Claimant. In the case of an adverse benefit determination, the notification to the Claimant shall set forth, in a manner calculated to be understood by the Claimant, the following:
1. The specific reason or reasons for the denial;
  2. Specific reference to pertinent Plan provisions on which the denial is based; and
  3. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8) as if it applied to this Plan) to the Claimant's claim for benefits.
- F. If the decision on review is not furnished to the Claimant within the time required in this section, the claim shall be deemed denied on review and the Claimant shall be permitted to exercise the Claimant's right to legal remedy pursuant to the remaining sections of this Claims Procedures article.

9.06. Resolution Of Disputes.

Any claim under this Plan that has not been resolved under the preceding provisions of this Plan shall be resolved pursuant to the provisions of this Resolution Of Disputes section.

A. Negotiation/Mediation.

If any dispute arises over performance under the terms of this Plan, the parties shall use their best efforts for a period of thirty (30) days to resolve the dispute by agreement through negotiation or mediation. To

commence the dispute resolution process, any party may serve written notice on the other parties specifically identifying the dispute and requesting that efforts at resolution begin. If the parties are unable to agree after reasonable negotiations among them, mediation shall be initiated upon written request by any party and a mediator shall be selected by the parties from the registry maintained by JAMS the American Arbitration Association (Mediator). The parties shall submit to the Mediator all written, documentary and other evidence and such oral testimony as is necessary for a proper resolution of the dispute. When and as requested by the Mediator, the parties shall meet promptly in good faith efforts to resolve the dispute. The parties shall equally bear all costs of negotiation or mediation.

B. Binding Arbitration.

If the parties' good faith efforts at resolving the dispute by agreement through negotiation or mediation are unsuccessful, within the thirty (30)-day period set forth in the Negotiation/Mediation subsection, above, or such longer period as mutually agreed by the parties, such dispute between the parties shall be submitted to, and conclusively determined by, binding arbitration in accordance with this Binding Arbitration subsection.

1. The parties agree that the Mediator selected pursuant to the Negotiation/Mediation subsection, above, shall serve as the arbitrator (Arbitrator); provided, however, that if such Mediator is unable or unwilling to serve, then an Arbitrator shall be selected by the parties from the list of individuals affiliated with Judicial Arbitration and Mediation Services, Inc. If the parties are unable to agree upon an Arbitrator, each party shall select an Arbitrator and the Arbitrators so selected shall select a third Arbitrator.
2. Any arbitration hearing shall be conducted in the jurisdiction where the Employer's principal place of business is located. The law applicable to the arbitration of any dispute shall be the law of the State where the Employer's principal place of business is located, excluding its laws of evidence. Except as otherwise provided in this Plan, the arbitration shall be governed by the rules of arbitration of the American Arbitration Association.
3. In no event shall the Arbitrator's award include any component of punitive or exemplary damages. The parties shall equally bear all costs of arbitration.

## ARTICLE 10 – AMENDMENT AND TERMINATION

### 10.01. Action To Amend Or Terminate.

The Employer may at any time and from time to time by action of its appropriate body as evidenced by an instrument in writing duly executed by the Employer modify, amend, suspend, or terminate the Plan in whole or in part (including retroactive amendments) or cease deferring compensation pursuant to the Plan, provided, however, that the Employer shall not have the right to reduce or affect the value of any Participant's Account or any rights accrued under the Plan prior to such modification, amendment, termination or cessation.

### 10.02. Complete Termination.

In the event of the complete termination of the Plan by the Employer under the Action To Amend Or Terminate Section, above, no additional deferrals of compensation shall be contributed to the Plan and all compensation reduction agreements shall automatically and without notice be terminated immediately upon Employer's execution of the instrument in writing referenced in the Action To Amend Or Terminate Section, above, and existing Accounts shall be maintained and distributed in accordance with the Plan, or shall be distributed as soon as administratively practical, at the discretion of the Employer.

### 10.03 Scrivener's Error.

Notwithstanding any other provision of the Plan to the contrary, if there is a scrivener's error in properly transcribing the provisions of this Plan, it shall not be a violation of the Plan terms to operate the Plan in accordance with its proper provisions, rather than in accordance with the terms of the Plan, pending correction of the Plan through amendment. In addition, any provisions of the Plan improperly added as a result of scrivener's error shall be considered null and void as of the date such error occurred.

### 10.04. Reversions.

The Trustee may return a contribution that is made by the Employer, by a mistake of fact, to the Employer.

## ARTICLE 11 – MISCELLANEOUS

### 11.01. No Effect On Employment.

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any Account, nor any agreement between the Employer and the Trustee, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer

except as herein provided, and in no event shall the terms of employment of the Employee or Participant be modified or in any way affected hereby.

11.02. Vesting.

A Participant shall at all times have an unconditional, nonforfeitable right that is legally enforceable against the Plan in the Participant's Account. Except as provided in the Lost Participant Or Beneficiary section of the Payment Of Benefits article, above, the Plan does not permit divestment for cause. No benefit provided hereunder to a Participant or Beneficiary shall be forfeited or divested for any reason or cause whatsoever.

11.03. Nonalienation Of Benefits.

A. Subject to the exceptions provided below and as otherwise specifically permitted by law, no assets or benefits under the Plan and the Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge. Any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. Nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities or torts of the person entitled to such benefits.

B. The prohibitions contained in this Nonalienation Of Benefits section shall not apply to a "qualified domestic relations order" as defined in Code section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Council shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

11.04. Plan Expenses.

A. The expenses of administering the Plan shall be charged to the Accounts of the Participants, to the extent not paid directly by the Employer. Such expenses include:

1. The fees and expenses of the investment options and Trustee for the performance of their duties under the Plan, including any fees and expenses associated with a change, termination or addition of an Investment Option; and
2. The expenses incurred by the Council, Administrator, or any employee of the Employer in the performance of their duties under the Plan, including reasonable compensation for any legal counsel, certified public accountants, or consultants.

- B. Upon written instructions from the Administrator, the Trustee shall pay from the Trust the expenses necessary to carry out the administration of this Plan that are not paid by the Employer.

11.05. Military Leaves.

- A. Each period served by a person in the uniformed services shall, upon reemployment under USERRA, be deemed to constitute service with the Employer maintaining the Plan for the purpose of determining the accrual of benefits under the Plan, all to the extent required by and as provided under USERRA. Notwithstanding any provision in the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).
- B. The Plan specifically incorporates herein by reference the requirements of Code section 401(a)(37), the Treasury regulations thereunder and any subsequent guidance under Code section 401(a)(37) requiring that if a Participant dies while performing qualified military service (as defined in Code section 414(u)), the Beneficiary(ies) of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment on the date before the Participant's date of death and then had a Severance From Employment on account of death.

11.06. Employee Plans Compliance Resolution System.

In accordance with standards that are similar to those set forth in the Employee Plans Compliance Resolution System as described in Rev. Proc 2016-51 and any subsequent guidance, the Administrator has the authority to correct any Plan document, operational, demographic and Employer eligibility failures through self-correction (if applicable) or voluntary correction with Internal Revenue Service approval.

11.07. Limitation Of Rights; Employment Relationship.

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee or as a right of any Employee to be continued in the employment of the Employer, or as creating or modifying the terms of an Employee's employment, or as a limitation on the right of the Employer to discharge any Employee, with or without cause. Unless the law or this Plan explicitly provides otherwise, rights under any other employee benefit plan maintained by the Employer (for example, benefits upon an Employee's death, retirement, or other termination) do not create any rights under this Plan to benefits or continued participation. The fact that an individual is eligible to

receive benefits under this Plan does not create any rights under any other employee benefit plan maintained by the Employer, unless that plan or the law explicitly provides otherwise.

11.08. Limitation Of Rights Of Participants And Others.

Neither the establishment of the Plan or the Trust, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, the Administrator, or its designated representative, or the Trustee, except as expressly provided herein or as provided by law.

11.09. Release From Liability.

Any payment to any Participant, or to the Participant's legal guardian or Beneficiary, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan, the Employer, the Administrator, the Trustee and any Plan fiduciary, any of whom may require such Participant, legal guardian or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Employer, the Administrator or the Trustee, as the case may be.

11.10. Performance Of Duties.

The Administrator and his/her designee(s) shall, at all times, be employees of the County. The performance of all duties and responsibilities by the Administrator and his/her designees, as provided herein, shall be considered within the scope and duties of their employment with the County. The foregoing shall not apply to any authorized agent except when such agent is an employee of the County.

11.11. Construction.

No provision of this Plan shall be construed to conflict with any Treasury Department or Internal Revenue Service regulation, ruling, release or proposed regulation or other order which affects, or could affect, the terms of this Plan. If any provision is susceptible of more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan being in conformity with Code section 457 and administered in conformity with other federal or State laws that apply to the Plan.

11.12. Headings.

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

11.13. Uniformity.

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

11.14. Gender And Number.

Any reference in the masculine gender herein shall be deemed to also include the feminine gender, unless expressly provided otherwise. Wherever appropriate, any reference in this document in the singular shall include the plural and any reference in the plural shall include the singular.

11.15. Controlling Law.

Unless otherwise provided in this Plan, the Plan shall be construed and enforced according to the laws of the United States of America to the extent applicable, otherwise by the laws of California including California's choice-of-law rules, except to the extent those laws would require application of a State other than California.

11.16. Severability.

In the event that any provisions of this Plan shall be held illegal or invalid for any reason by operation of law or a court of competent jurisdiction, said illegality or invalidity shall not affect the remaining legal and valid provisions of this document. This Plan shall continue as if said illegal or invalid provisions had not been included herein either initially, or beyond the date it is first held to be illegal or invalid, but only if the basic purposes hereof can be effected through the remaining valid and legal provisions.

11.17. Waiver.

Failure to insist upon strict compliance with any provision of this Plan shall not be deemed to be a waiver of such provision or any other provision; waiver or breach of any provision of this Plan shall not be deemed to be a waiver of any other provision or subsequent breach of such provision. No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in a writing signed by the party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and such waiver shall operate only as to the specific term, condition, or provision waived.



11.18. Entire Document.

This document and any appendices or supplements hereto shall constitute the entire document and shall govern the rights, liabilities and obligations of the parties under the Plan, except as it may be modified by a duly authorized and adopted amendment. No statements contained in any other writing or communication, including, but not limited to, a summary plan description or a summary of material modifications, shall constitute the terms of the Plan.

**APPENDIX A**

**Normal Retirement Age Ranges**

<b><u>Retirement Benefit Tier</u></b>	<b><u>Normal Retirement Age Range</u></b>
Tier I - General	55 – 70 ½
Tier II - General	55 – 70 ½
Tier III - General	55 – 70 ½
Tier IV - General	57 ½ - 70 ½
Tier V - General	52 – 70 ½
Tier I - Safety	50 – 70 ½
Tier II - Safety	55 – 70 ½
Tier IV - Safety	50 – 70 ½
Tier V - Safety	50 – 70 ½