



DEFERRED COMPENSATION PLAN

Revised 2008

SECTION 1. NAME: The name of this Plan is the County of Fresno Deferred Compensation Plan (hereinafter referred to as the Plan).

SECTION 2. PURPOSE: The primary purpose of the Plan is to attract and retain employees by permitting them to enter into agreements with the County of Fresno which will provide future payments in lieu of deferred current income upon death, retirement, or other termination of employment with the County.

SECTION 3. DEFINITIONS: For the purpose of this Plan, certain words or phrases used herein will have the following meanings:

- 3.1 "Employer" shall mean the County of Fresno.
- 3.2 "Employee" shall mean any County officer or employee who is occupying a permanent position and is designated in the County personnel and payroll records as a permanent employee, and any Superior Court Judge of the Fresno County Courts.
- 3.3 "Participant" shall mean an Employee who has elected to participate in the Plan.
- 3.4 "Participant Agreement" shall mean the agreement executed and filed by an Employee with the Employer, pursuant to Section 4, in which the Employee elects to become a Participant in the Plan.
- 3.5 "Compensation" shall mean the total of all amounts which would be paid by the Employer to or for the benefit of an Employee (if Employee were not a Participant in the Plan) for actual service for the period that Employee is a Participant.

- 3.6 “Gross Compensation” shall mean the total Compensation payable to an Employee before any deduction is made for payment of taxes, retirement system contributions, or any other deduction the employee may authorize, and before reduction of salary pursuant to participation in the Plan.
- 3.7 “Includible Compensation” shall mean compensation from the Employer, within the meaning of Code Section 415(c)(3) and the regulations thereunder.
- 3.8 “Employment Year” means the year beginning with January 1 and ending with the next following December 31, except that the first year for an Employee hired in “mid-year” shall be a short year beginning with the date of employment and ending the next following December 31.
- 3.9 “Retirement” means a termination of active service with the Employer and, after attainment of the age and service requirements of the County Employees’ Retirement Law of 1937, approval by the Fresno County Retirement Board of payment of benefits as provided in said Law. Retirement may also mean that period of time after separation from County service, but before initiation of retirement benefits, usually referred to as deferred retirement.
- 3.10 “Normal Retirement Age” means the earliest age at which the Participant may separate service from Employer and immediately receive an unreduced pension benefit. Normal retirement age must be indicated by a Participant in a written statement to be filed with the Employer as defined in the applicable retirement system sponsored by the Employer.
- 3.11 “Book Account” shall mean a bookkeeping record of Compensation deferred by each Participant and of interest, capital gains or losses, and other income attributable to said deferred compensation. Book Accounts shall be maintained in the name of each Participant.
- 3.12 “Council” shall mean the Deferred Compensation Management Council established in accordance with Section 6.2.
- 3.13 “Code” shall mean the Internal Revenue Code of 1986, as amended.

SECTION 4. PARTICIPATION IN THE PLAN:

- 4.1 Each Employee may elect to become a Participant in the Plan and defer payment of Compensation not yet earned by executing a Participant Agreement and filing it with the Employer prior to the beginning of the month for which the deferral is to be applied.
- 4.2 The amount of Compensation which may be deferred by a Participant is subject to the following limitations:
 - 4.2(a) The minimum deferral per pay period at the time of entering into a Participant Agreement hereunder to defer compensation, or at the time of reentry following a withdrawal, or at the time a change in the amount to defer is made, shall be \$10.00 or 1% of Gross Compensation. The maximum amount of deferred income a Participant may defer during the Employment Year shall not exceed the lesser of the applicable dollar amount as set forth in section 457(e)(15) of the Code; or 100 percent of the Participant's Includable Compensation; or as otherwise provided by law.
 - 4.2(b) For one (1) or more of a Participant's last three (3) Employment Years ending before Participant attains Normal Retirement Age, the maximum amount a Participant may defer during the Employment Year shall not exceed the lesser of: (1) twice the applicable dollar limit as set forth in Section 457(e)(15) of the Code; or (2) the applicable dollar limit as set forth in Section 457(e)(15) of the Code plus any Employer provided compensation eligible for deferral that was not deferred for any prior taxable year which began after December 31, 1978. This Section 4.2(b) may be utilized one time only by any Participant.
 - 4.2(c) Employees who are or who become Participants in this Plan and a tax shelter annuity program, and Employees who are or who become Participants in this Plan and any other plan authorized by Section 457 of the Code of shall be solely responsible for complying with the maximum limitations and coordination provisions of the law and shall hold the Employer harmless from any violation of any such provisions.

4.2(d) In applying paragraphs 4.2(a) and 4.2(b), an amount excluded during a taxable year under tax sheltered annuities for exempt organizations shall be treated as an amount deferred for limitation purposes.

4.2(e) All Participants who have attained age 50 before the close of the plan year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such contributions shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 457 of the Code, or be taken into account in applying such limitations to other contributions or benefits under this Plan or any other plan. This provision shall not apply for any year in which Section 457(b)(3) of the Code applies.

4.2(f) An Employee may contribute a Rollover Contribution to the Plan. A Rollover Contribution is a Participant contribution or a direct rollover of an eligible rollover distribution as defined under Section 402(c)(4) of the Code. The Plan Administrator may require the Employee to certify, either in writing or in any other form permitted under rules promulgated by the IRS, that the contribution qualifies as a Rollover Contribution under the applicable provisions of the Code. If it is later determined that all or part of a Rollover Contribution was ineligible to be contributed to the Plan, the Plan Administrator shall direct that any ineligible amounts, plus earnings or losses attributable thereto (determined in a uniform and nondiscriminatory manner) be distributed from the Plan to the Employee as soon as administratively feasible. Separate accounting shall be maintained by the Plan Administrator for any Rollover Contribution not attributable to an Eligible Deferred Compensation Plan. Rollover Contributions will be nonforfeitable at all times.

4.3 A Participant Agreement shall remain in effect until it is terminated, amended, or superceded by a new Participant Agreement. During each Employment Year, an existing Participant Agreement may be amended to effect subsequent deferrals in accordance with the provisions of the Plan and the rules established by the Council. The amended Participant Agreement must be filed with the Employer in the pay period for which the deferral is to be applied.

- 4.4 A Participant may terminate further deferral of Compensation under the Plan by filing with the Employer an amended Participant Agreement terminating deferral of compensation in the pay period for which termination is to apply. To resume deferral of Compensation, a Participant must file with the Employer an amended Participant Agreement resuming deferral of compensation in the pay period for which referral is to apply. No previously deferred amounts shall be payable to an employee upon terminating further deferral of Compensation under the Plan unless otherwise due pursuant to Section 7 hereof.
- 4.5 Notwithstanding any provision of this 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).

SECTION 5. DEFERRAL OF COMPENSATION: During each Employment Year in which the Employee defers Compensation, the Employer shall not pay the Employee full Compensation as is specified by the Employee in the Participant Agreement which has been executed and filed with the Employer. Compensation shall be deferred in amounts of not less than ten dollars (\$10) or one percent (1%) of Gross Compensation each pay period of the Employee's Employment Year.

SECTION 6. ADMINISTRATION OF THE PLAN:

- 6.1 The Plan shall be administered by the Council appointed in accordance with Section 6.2, which shall have the sole authority to enforce the Plan and shall be responsible for the operation of the Plan in accordance with its terms. The Council shall determine all questions arising out of the administration, interpretation, and application of the Plan, which determinations shall be conclusive and binding on all persons.
- 6.2 The Deferred Compensation Management Council shall be comprised of the Auditor-Controller/Treasurer-Tax Collector, the County Administrative Officer, the Director of Personnel Services and three (3) members-at-large to be appointed by the County Administrative Officer, subject to the review of the Council. Members-at-large shall be selected from Plan Participants. Each Council member shall designate an alternate to serve on the Council in the member's absence. Alternates designated by members-at-large must be Plan Participants. The duty of the Council shall be to perform the following:

- 6.2(a) establish procedural rules and regulations facilitating operation of the Plan, and arrange for its administration by outside organizations if the Council deems it necessary;
 - 6.2(b) review requests for emergency withdrawal of funds and determine the propriety of such withdrawals;
 - 6.2(c) review periodically the condition of the deferred compensation fund and make changes in investment vehicles and media as appropriate.
- 6.3 The Employer shall establish a deferred compensation fund to which all deferred Compensation will be credited at such times as the Compensation would have been payable to an individual Employee if not a Participant in the Plan. At least annually, each Participant will be notified of the amount of Compensation deferred. Separate Book Accounts will be established for each Participant which will show all accumulated deferrals, administrative costs charge against said deferrals each year, interest accumulations and/or other investment performance, and the current balance of the account. The value of said account shall be reported as of December 31 of each year, no later than ninety (90) days following December 31, or as soon thereafter as possible.
- 6.4 On executing a Participant Agreement, the Employee shall designate the Employee's investment objective. The investment objective shall be used to measure the increase or decrease in value of the Participant's deferred compensation Book Account. A Participant may change the investment objective by filing a new Participant Agreement, or by direct electronic access. Such investment objective shall apply to (i) all amounts credited to the Participant's deferred compensation Book Account after the date of filing the revised investment objective and/or (ii) any or all amounts credited to the Participant's deferred compensation Book Account before the date of filing the revised investment objective, but in such case only with respect to periods after the date the revised investment objective is filed.

The deferred amount shall be held for the exclusive benefit of Participants and their Beneficiaries under one or more annuity contracts (within the meaning of Code Section 401(f)) which may provide for guaranteed rates of interest or variable investment options.

As used herein, "investment objective" means any investment specified as an option for the Employee for the purpose of measuring the value of the Participant's deferred compensation Book Account and may include the following: mutual fund shares, interest deposits with a savings and loan association or banking institution, investments in debt and/or equity installments, an annuity contract with an insurance company, a trust deeds notes fund, or a pooled mortgage fund.

- 6.5 All amounts of compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributed to such amounts, property or rights shall be held in trust or under one or more annuity contracts described in Section 401(f) of the Internal Revenue Code. Except as may otherwise be permitted or required by law, no assets or income of the Plan shall be used for, or diverted to, purposes other than for the exclusive purpose of providing benefits for Participants and their Beneficiaries or defraying reasonable expenses of administration of the Plan.

SECTION 7. DISTRIBUTION OF BENEFITS:

7.1 Time and Form of Distribution

Installment Payments - Upon becoming eligible for a distribution, a Participant may elect to receive so much of his or her Participant Account in installment payments made at least annually. A Participant may elect to vary the amount or frequency of any such payments at least once each calendar quarter. However, at no time may the installment payment period exceed the Participant's life expectancy.

Distribution On or After Age 70-1/2 or Severance From Employment - Upon becoming eligible for a distribution, a Participant may elect to commence distribution of his or her Participant Account in accordance with the payment options available under the Plan. A Participant who wishes to receive a distribution must submit a request to the Plan Administrator. Upon a valid request, distribution will commence as soon as administratively feasible.

- 7.2 Retirement – In event of retirement, the full amount credited to a Participant's Book Account, plus or minus subsequent investment earnings, gains or losses, but less any Federal or State Income Taxes required to be withheld, shall be distributed to Participant in any one or more of the following ways:

7.2(a) In a lump sum.

7.2(b) In monthly, quarterly, semi-annual or annual installments over a period not greater than the joint life expectancies of the Participant and the Participant's spouse. Life expectancy shall be determined on the date of the initial installment distribution. Installment distributions shall be made in substantially equal payments, but no payment shall have a value of less than (the smaller of) fifty dollars (\$50) or the balanced credited to the Participant's Book Account.

7.2(c) For any amount of deferred compensation, the Participant may elect to have benefits under the Plan attributable thereto paid in the form of an annuity under any option agreed to by the Council.

Participant's Book Account balances may be continued to be invested until cash is to be withdrawn for payment of benefits.

Minimum Distribution Requirements - Notwithstanding anything in this Plan to the contrary, distribution from the Plan shall commence and be made in accordance with Section 401 (a)(9) of the Code and, until the last calendar year beginning before the effective date of the final regulations under section 401 (a)(9) or such other date as may be published by the Internal Revenue Service, the regulations under section 401 (a)(9) that were proposed on January 17, 2001. Participants must commence distribution no later than April 1st following the later of (i) the calendar year in which the Participant attains age 70-1/2 or (ii) the calendar year in which the Participant retires.

7.3 Other Termination – In event of termination of employment for reasons other than those specified in Section 7.2, the full benefits credited to the Participant's Book Account, plus or minus investment gains or losses, less any administrative costs assessed by the media, less any Federal or State Income Taxes required to be withheld, shall be distributed to Participant in one of the ways described in Section 7.2. In those cases where the total amount credited to the Participant's Book Account(s) is less than \$500, the Plan will pay them to the Participant immediately.

7.4 Death – In the event of the Participant's death, if distribution has not commenced prior to the death of the Participant:

7.4(a) A non-spousal Beneficiary must either;

- (i) elect a distribution payable over a period not extending beyond the life expectancy of the non-spousal Beneficiary, commencing no later than the end of the calendar year following the calendar year in which the Participant died; or
- (ii) elect a single-sum payment to be made no later than the end of the calendar year which contains the fifth anniversary of the date of death of the participant, otherwise, such single-sum payment shall be made by the end of such calendar year.

7.4(b) A spousal Beneficiary may elect a single-sum payment or a distribution payable over a period not extending beyond the life expectancy of the spousal Beneficiary. Distribution to the spousal Beneficiary must commence on or before the later of:

- (i) the calendar year immediately following the calendar year in which the Participant died; or
- (ii) the year the deceased Participant would have reached age 70-1/2.

7.5 Emergency Withdrawal – In the event of financial conditions imposing great hardship upon a Participant which are beyond the Participant's control, the Participant may apply for withdrawal of a portion or all of the amount credited to the Participant's Book Account. Participants are required to exercise the Loan provisions prior to applying for an emergency withdrawal under this Section as outlined in Section 8. The Council or its appointed designee shall review the requests and recommend withdrawal of funds in an amount Council or its appointed designee judges to be sufficient to resolve the financial crisis described by the Participant. Foreseeable financial needs for which a Participant may set aside funds, such as college tuition, will not qualify for emergency withdrawal. The kind of occurrence for which emergency withdrawals will be granted include serious health problems, sudden losses as may be caused by fire or other disaster, imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses and the need to pay for funeral expenses of a spouse or dependent (as defined in Code Section 152(a)). If such application for withdrawal is approved by the Council or its appointed designee, the

withdrawal will be effective on date approved. Distribution shall be made in lump sum cash unless the Council determines it is in the interest of the Plan to distribute the funds in a different manner.

Distribution of all or a portion of a Participant's Book Account under this section shall disqualify said Participant from participating in the Plan for two (2) years.

7.6 Emergency Withdrawal After Distribution Begins – In the event of financial conditions imposing great hardship upon a Participant which are beyond the Participant's control, and which occur after the Participant has begun to receive payments of Compensation deferred at an earlier time, Participant may apply for withdrawal of all or a portion of the amount credited to the Participant's Book Account. The criteria established in Section 7.5 shall regulate administration of this section.

7.7 Transfer of Value of Participant's Account/Plan to Plan Transfers – In the event a Participant terminates employment with the Employer and accepts employment with a new employer, the Employer may propose to the new employer that the funds, assets and accumulations of said Participant's account be transferred to the new employer's eligible Deferred Compensation Plan. Transfer of any funds under this section will be subject to the following conditions:

7.7(a) The Plan receiving such amounts provides for the acceptance of the amounts;

7.7(b) The Plan provides that if the Participant separates from service in order to accept employment with another such entity, payout will not commence upon separation from service, regardless of any other provision of the plan, and amounts previously deferred can be transferred upon request; and

7.7(c) That the Employee will agree, in writing, to release the present Employer from any and all contractual obligations under the provisions of this Plan upon completion of the transfer of funds to the new employer.

The Employer shall also accept funds from other eligible deferred compensation plans provided that items listed above are met.

7.7 (d) Direct Rollovers - A distributee may elect to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee.

For purposes of this section an Eligible Rollover Distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include: 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 years or more; any distribution to the extent such distribution is required under Section 401 (a)(9) of the Code; or any amount that is distributed on account of hardship.

For purposes of this section an Eligible Retirement Plan means an eligible retirement plan that is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, or a qualified trust described in Section 401 (a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined under section 414(p) of the Code.

For purposes of this section, a distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined under Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

For purposes of this section a Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the distributee.

7.7(e) Transfers In - If a transfer is associated with a distributable event and the Employee is eligible to receive an eligible rollover distribution as defined under Section 402(c)(4) of the Code, such transfer will be considered a Rollover Contribution.

7.7(f) Transfers Out - If a transfer is associated with a distributable event and the distribution is an eligible rollover distribution as defined under Section 402(c)(4) of the Code, such transfer will be considered a Direct Rollover.

7.7(g) Trustee to Trustee Transfers to Purchase Permissive Service Credit - A Participant may elect to have all or a portion of a his/her Participant Account directly transferred to a defined benefit governmental plan (as defined under Section 414(d) of the Code) if such transfer is:

- (i) for the purchase of permissive service credit (as defined under Section 415(n)(3)(A) of the Code) under such plan; or
- (ii) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof.

7.8 Participation Accounts Not Exceeding Dollar Limit Under Internal Revenue Code 411(a)(11)(A).

Notwithstanding any provision of the Plan to the contrary, if the total amount of a Participant's Book Account under the Plan does not exceed the dollar limit under Code Section 411 (a) (11) (A), the Participant may elect to receive (or the Employer may elect to pay to the Participant without the Participant's consent) the total amount in a lump sum payable within 60 days of such election; provided, however, such amount may be distributed pursuant to this Section 7.8 only if: (a) no amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of distribution, and (b) there has been no prior distribution under the Plan to such Participant to which this Section 7.8 applied.

SECTION 8. LOANS:

Code Section 72(p) provides for loans from qualified employer plans, including governmental plans. Plan participants may apply for a loan by completing a loan application.

- 8.1 To avoid being considered a distribution and includable in taxable gross income, loans under the Plan may not exceed an amount that is dependent upon the present value of the participant's nonforfeitable accrued benefit.
- 8.2 Loans will bear a reasonable rate of interest in order to satisfy the exclusive benefit requirement of Code Section 457(g)(1) and Code of Federal Regulations Section 1.457-8(a)(1).
- 8.3 Loans are repaid through payroll deduction. Repayments are returned to the Participant's Book Account according to his or her current investment election.
- 8.4 Loans need to be repaid in full within 90 ninety days of separation of employment or a default will occur. Loans in default will be considered distributions and are reportable income. In such event, Hartford Life will prepare the appropriate federal tax reporting forms.

SECTION 9. NON-ASSIGNABILITY: Subject to Section 11, the fullest extent permitted by law, the interest of a Participant in the contractual obligation of the Employer, established by the Plan, shall not be assignable, in whole or in part, directly or by operation of law or otherwise, in any manner, and no right or interest of a Participant in the Employer's contractual obligation shall be liable for or subject to any obligation or liability of such Participant.

SECTION 10. MISCELLANEOUS:

- 10.1 Status of Participants – Neither the establishment of the Plan nor any modifications thereof, nor the establishment of any Book Account, 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 any Employee or Participant be modified or in any way be affected hereby.

- 10.2 Condition of Plan – It is a condition of this Plan, and each Employee by participating herein expressly agrees, that the Participant shall look solely to the general assets of the Plan for the payment of any benefit to which the Participant is entitled under the Plan.
- 10.3 Governing Law – This Plan shall be construed, administered, and enforced according to the provisions of the California Government Code.
- 10.4 Employer Participation – Notwithstanding any other provisions of this Plan, the Employer may, subject to the limitations of Section 4.2, make additional deposits to a Participant’s deferred compensation Book Account as additional Compensation for the services rendered by the Employee to the Employer during any Employment Year, provided the Employee has elected to have such additional Compensation deferred, invested and distributed, pursuant to this Plan, prior to the period in which the Compensation will be earned. Also, the Employer may make other additional depositions to the Plan, as the Employer may deem advisable, subject, however, to the limitations on deferrals set forth in Section 4.

SECTION 11

AMENDMENT AND TERMINATION:

- 11.1 The Employer may at any time and from time to time modify, amend, or terminate the Plan in whole or in part (including retroactive amendments) or cease deferring Compensation pursuant to the Plan, by making available to each Participant a written or electronic copy of such modification, amendment, or termination upon request or of a notice that it ceases deferring Compensation; provided, however, that Employer shall not have the right to reduce or affect the value of any Participant’s Book Account or any rights accrued under the Plan prior to such modification, amendment, or termination, or cessation.
- 11.2 In the event of the termination of the Plan by the Employer under Section 11.1, the value of each Participant’s Book Account will be distributed to the Participant or the Participant’s beneficiary in the manner chosen by Participant in accordance with rules established by the Council.