



## Inter Office Memo

DEPARTMENT OF  
HUMAN RESOURCES

# ITEM 7

DATE: June 14, 2018

TO: Deferred Compensation Management Council

FROM: Hollis Magill, Human Resources Manager *Hollis Magill*

SUBJECT: Amendment and Restatement of the County of Fresno 457(b) Deferred Compensation Plan Document

### **Background**

At the February 25, 2016 meeting, your Deferred Compensation Management Council (Council) directed staff to update the County of Fresno 457(b) Deferred Compensation Plan Document to ensure that it remains in compliance with applicable federal and state laws and regulations. Staff subsequently retained the services of law firm Best, Best & Krieger to complete the review, amendment and restatement of the Plan Document.

### **Issue**

Attachment A includes the proposed amended and restated Plan Document. Attachment B includes the current Plan Document. Staff has summarized the substantive changes from the current Plan Document below.

#### **1. In-Plan Distributions (Section 8.7 of Attachment B)**

Currently, participants may take an "In-Plan De Minimis" distribution, if their account balance is less than \$5,000 and they have not contributed in at least two (2) years. This provision is recommended for removal as it is only allowed once per career, making it hard to track and enforce. Elimination of this provision will have no effect on participants who elect to take a loan or emergency distribution from their account.

#### **2. Prohibition on Deferrals after Emergency Withdrawal (Section 8.3 of Attachment B)**

Currently, participants who receive an Unforeseeable Emergency distribution are subject to a contribution prohibition period of two (2) years. The proposed amended and restated Plan would eliminate this prohibition period, as the Plan is not obligated to enforce such a provision and the provision is difficult to track and enforce.

#### **3. The Roth Option (Articles 2, 3, 5, and 8 of Attachment A)**

This provision was approved by your Council at the August 25, 2016 DCMC meeting and allows participants to make after-tax contributions (Roth Option) as well as execute in-Plan rollovers to a Roth Option, which re-characterizes their Plan balances from pre-tax to after-tax. Please note that an out-of-Plan Roth IRA is not currently eligible to be rolled into the Plan pursuant to IRS rules.

#### **4. Participant-Directed Individual Accounts (Article 6 of Attachment A)**

This provision, although not presently operative, was added in the event that your Council

and/or the Board of Supervisors (Board) elects to offer the option to participants by making it operative at some future date. The proposed language requires that your Council establish a procedure governing Participant-Directed Individual Accounts in order to activate this option.

**5. Beneficiary Policy (Article 7 of Attachment A)**

This article provides for the revocation of a spousal beneficiary upon dissolution of marriage (Article 7.2) and details who will receive a deceased participant's account if the participant does not designate a beneficiary (Article 7.3).

**6. Distribute Small-Balance Accounts (Article 8.02.B of Attachment A)**

This provision allows the Plan to distribute account balances of less than \$1,000 to participants upon separation from service, but does not create an obligation to do so. This will reduce the overall number of accounts, which will streamline administration. This will also ensure that separated participants will receive their funds instead of possibly forgetting about and never claiming their funds.

**7. Lost Participant or Beneficiary (Article 8.15 of Attachment A)**

This article details the process for finding lost beneficiaries and how an account is handled if the beneficiary is not found.

**8. Powers and Responsibilities of the Council (Article 9.02 of Attachment A)**

- a. Investment Options (Paragraph B). Your Council shall have the authority to execute documents necessary to implement changes to the Plan investment options. In addition, your Council shall have the authority to outsource the selection of Plan investment options to a qualified investment advisor, but does not create an obligation to do so.

Currently, there are investment agreements with Great-West Trust Company, LLC (Great-West Trust), and BlackRock Institutional Trust Company, N.A. (BlackRock), executed by the Board, to offer collective investment trusts for target retirement date investments and various stock and bond indices. In addition, the Board executed an agreement with Great-West Life & Annuity Insurance Company (Great-West Life) to manage the assets of the County of Fresno Stable Value Fund. Notwithstanding the Council's anticipated new authority to execute investment agreements (see Article 9.2 of Amended/Restated Plan), any amendments to the existing Great-West Life, BlackRock, and Great-West Trust agreements would still need to be brought to the Board for approval/execution due to the Board having signed these agreements. Therefore, Staff is recommending that your Council direct staff to take the existing investment agreements with Great-West Life, BlackRock, and Great-West Trust (included in Attachment C for reference) to the Board for termination, pending Board approval of the recommended changes in signing authority in the Amended/Restated Plan and then bring new Great-West Trust, and BlackRock agreements to your Council for approval and execution. Staff will also bring a new investment management agreement related to the County of Fresno Stable Value Fund, pending the outcome of the ongoing investment manager search.

- b. Plan Expenses (Paragraph F). Your Council shall have the authority to determine the reasonable Plan expenses and the administrative fee charged to Participants to pay for reasonable Plan expenses on an annual basis. This change formally codifies your Council's

authority with regard to determining reasonable Plan expenses and setting the administrative fee. Your Council currently has the authority to set the administrative fee pursuant to Section 4.C of Agreement #14-710 with Nationwide Retirement Solutions, Inc. Your Council currently determines reasonable Plan expenses as part of the annual budget approval and review process. Therefore, these changes will have no practical effect on operations and will instead clarify your Council's role in the process.

**9. Claims Procedures (Article 10 of Attachment A)**

This Article provides procedures by which claimants, such as ex-spouses or beneficiaries of participants, may appeal the Plan's determination of benefits.

**10. Normal Retirement Age Ranges (Appendix A of Attachment A)**

Normal Retirement Ages (for purposes of Special Section 457 Catch-up – see Article 5.3 of Attachment A) have been updated pursuant to clarification from the Fresno County Employees Retirement Association.

**Recommended Actions**

- 1. Approve the proposed amended and restated Plan Document and direct staff to submit the Plan Document to the Board of Supervisors for approval.**
- 2. Pending Board of Supervisors approval of the proposed amended and restated County of Fresno 457(b) Deferred Compensation Plan Document, direct staff to take Agreement #09-530 with Great-West Life & Annuity Insurance Company, Agreement #09-531 with BlackRock Institutional Trust Company, N.A., and Agreement #13-417 with Great-West Trust Company, LLC to the Board of Supervisors for authorization to terminate.**

# **Item 7 – Attachment A**

**Proposed Amended & Restated County of Fresno 457(b) Deferred  
Compensation Plan Document**



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

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

**Amended and Restated as of \_\_\_\_\_, 2018**

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

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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 \_\_\_\_\_, 2018, 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 \_\_\_\_\_, 2018, 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.

The Employer further wishes to amend and restate the Plan effective as of \_\_\_\_\_, 2018 to allow post-tax Roth accounts, in-Plan Roth conversions, and accept rollover contributions from Roth accounts.

## 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 \_\_\_\_\_, 2018.

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.

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 Administrator on behalf of a Participant:

A. Deferred Compensation Account.

"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 Administrator 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 Administrator 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 Administrator 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. 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.

C. Roth Rollover Account.

"Roth Rollover Account" means the account maintained by the Administrator 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 Sections 3.06 and 3.07.

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.

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 Sections 3.06 and 3.07.

2.20. 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.

2.21. 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.

2.22. Plan.

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

2.23. 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.

2.24. 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.

2.25. 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.

2.26. 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.

2.27. 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).

2.28. 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.

2.29. 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).

2.30. USERRA.

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

2.31. 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 subsection, 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 3.02.C.1 above.
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 3.02.C.1 above.
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 Article 5. 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. 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.

3.04. 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.

3.05. Timing Of Contributions.

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.

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

In accordance with the Compensation Reduction Agreement Requirements Subsection (3.02.C) 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.

3.07. 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.

## **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 Article 7 of this Plan.

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. 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.

## **ARTICLE 5 – CONTRIBUTIONS**

5.01. Minimum Contributions.

The minimum amount that a Participant may contribute to their 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., eighteen thousand five hundred dollars (\$18,500) for 2018); 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-seven thousand dollars (\$37,000) for 2018); 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 Section 5.03, 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 Section 5.02, 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 Article 5 (Excess Deferred Compensation), 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.
- 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 – PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNTS**

### **6.01. Directed Individual Accounts Permitted.**

The Administrator may, in its sole and absolute discretion, permit each Participant or Beneficiary to direct the Trustee as to the investment of all or a portion of the Participant's Accounts in any one or more of the investment options made available under the Plan by the Administrator. If such authorization is given by the Administrator, in compliance with California Government Code Section 53213.5 and all other applicable state and federal laws, each Participant and Beneficiary may, subject to a procedure established by the Administrator, in a uniform, nondiscriminatory manner, direct the Trustee in writing to invest all or any portion of the Participant's Accounts in the one or more of the investment options made available by the Administrator.

6.02. Separate Account Established.

A separate participant-directed individual account shall be established for each Participant (or Beneficiary) who has directed an investment. Transfers between the Participant's other accounts and the Participant's participant-directed individual account shall be charged and credited as the case may be to each account. The participant-directed individual account shall not share in the Trust investment results, but it shall be charged or credited as appropriate with the net earnings, gains, losses, expenses, taxes and unrealized appreciation or depreciation in market value, during each calendar year attributable to such account, and it shall be subject to all of the other provisions of the Plan and this Trust. Neither shall the investment results of the participant-directed individual accounts be included in the calculation of the Trust investment results generally. Participant Account values shall be maintained on a daily valuation basis using the most recent values provided by the Trustee.

6.03. Fiduciary Duty.

Notwithstanding any other provisions of law, a Participant's choosing individually directed investments shall relieve the Trustee, the Employer and the Administrator 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 Administrator'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 law.

## **ARTICLE 7 – BENEFICIARIES**

7.01. 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.

7.02. 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.

7.03. 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 8 – PAYMENT OF BENEFITS**

8.01. 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 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.

8.02. 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 the 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.

#### 8.03 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.

#### 8.04. 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 subsection 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 the 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 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, 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.

8.05. 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.

8.06. 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.

#### 8.07. Payment Of Death Benefits.

##### A. Death After Benefit Commencement.

If the Participant dies after having begun to receive installment payments in accordance with Section 7.02, 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 Section 7.02, 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 Section 7.02, 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 Section 8.07 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.

8.08. 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.

8.09. 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).

8.10. 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.

8.11. 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.

8.12. 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.

8.13. 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 Article 8.

8.14. 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.

8.15. 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 8.15.B below, 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 the previous subsection 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 9 – PLAN ADMINISTRATION**

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

- A. The Employer shall approve any and all changes to the Plan, pursuant to Article 11, 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.

9.02. 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 shall select Plan Investments Options. The Council shall have the authority to execute necessary documents to implement said investments. Alternatively, the Council shall have the authority to outsource the selection of Plan Investment Options to a qualified investment advisor.
- 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 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.
- 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 Article 9.

- 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.

9.03. 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 Article 9.02 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 Sections 9.01 and 9.02, above.

9.04. 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.

9.05. 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.

9.06. 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 10 CLAIMS PROCEDURES**

10.01. 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.

10.02. 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.

10.03. 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.

10.04. 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.

10.05. 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.

#### 10.06. 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 11 – AMENDMENT AND TERMINATION**

### **11.01. 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.

### **11.02. Complete Termination.**

In the event of the complete termination of the Plan by the Employer under Section 11.01, 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 Section 11.01 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.

### **11.03 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.

### **11.04. Reversions.**

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

## **ARTICLE 12 – MISCELLANEOUS**

### **12.01. 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.

12.02. 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 Beneficiary section (Article 6), 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.

12.03. 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.

12.04. 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.

12.05. 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.

12.06. 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.

12.07. 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.

12.08. 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.

12.09. 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.

12.10. 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.

12.11. 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.

12.12. 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.

12.13. Uniformity.

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

12.14. 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.

12.15. 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.

12.16. 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.

12.17. 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 of 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.

12.18. 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

COUNTY OF FRESNO

By: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX A

### Normal Retirement Age Ranges

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

# **Item 7 – Attachment B**

**Current County of Fresno 457(b) Deferred Compensation Plan  
Document**

**COUNTY OF FRESNO**

**457(b) DEFERRED COMPENSATION PLAN**

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

**Amended and Restated as of April 17, 2012**



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**COUNTY OF FRESNO**  
**457(b) DEFERRED COMPENSATION PLAN**  
**AMENDED AND RESTATED PLAN DOCUMENT**

**Effective as of April 17, 2012**

**Section 1. Name:** The name of this Plan is the County of Fresno 457(b) Deferred Compensation Plan, hereinafter referred to as the “Plan.”

**Section 2. Purpose:** The 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. Except as otherwise stated herein, this amended Plan shall become effective as of April 17, 2012.

**Section 3. Definitions:** For the purposes of this Plan when used and capitalized herein the following words and phrases shall have the meanings set forth below.

3.1 “Account” means the book account maintained in accordance with Section 7.4 for the purpose of recording Compensation deferred by a Participant pursuant to his Participant Agreement, transfers of funds into the Plan as a result of Rollover Contributions and investment gains or losses allocated thereto.

3.2 “Administrator” means the third party service provider or providers with whom the County contracts either investment, record-keeping or other management services for the Plan.

3.3 “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.

3.4 “Applicable Dollar Amount” means the “applicable dollar amount” determined pursuant to Section 457(e)(15) of the Code and in effect for the calendar year, as adjusted for cost-of-living increases in accordance with Treasury Regulation Section 1.457-4(c)(4).

3.5 “Beneficiary” means the person or persons a Participant designates to receive his interest under the Plan after the Participant’s death. The designation may be made, revoked, or changed only by a written instrument (in a form acceptable to the County) signed by the Participant and filed with the County or the Administrator prior to the Participant’s death. If no such designation is in effect at the time of the Participant’s death, or if no designated Beneficiary survives the Participant, the County shall direct said interest to be paid to the individual who makes a claim in accordance with procedures established by the County.

3.6 “Code” means the Internal Revenue Code of 1986, as amended.

3.7 “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.

3.8 “County” means the County of Fresno.

3.9 “Council” means the Deferred Compensation Management Council that has been delegated by the County 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 Personnel Services (or Deputy Director of Personnel Services), One (1) department head appointed by the County Administrative Officer (Three-Year Term), Two (2) members at-large appointed by the Board of Supervisors (Three-Year Term). The two members at-large appointed by the Board of Supervisors must be Participants in the Plan.

3.10 “Custodian” means a bank, trust company or a financial institution appointed by the County to have custody of assets of the Plan, as custodian or as trustee.

3.11 “Domestic Relations Order” means a domestic relations order described in Section 414(p)(1)(A)(i) of the Code.

3.12 “Employee” means any officer or permanent full-time employee of the County. Employee also means any permanent part-time employee of the County, but does not include extra-help or seasonal employees. In addition, Employee does not include independent contractors, or contract employees whose specific contract does not provide for participation in the Plan.

3.13 “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.

3.14 “Includable Compensation” means Compensation which is currently includable in gross income for federal income tax purposes, taking into account the provisions of, and adjustments specified in, Section 457 of the Code.

3.15 “Investment Options” means the vehicles available for investment under the Plan, as determined by the County or its authorized designee.

3.16 “Limited Catch-Up Deferral” means the additional amount of Compensation that may be deferred in accordance with Section 5.1(b).

3.17 “Normal Retirement Age” means the date a Participant attains age 70 ½ 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.

3.18 “Participant” means any Employee who fulfills the participation requirements under Section 4.

3.19 “Participant Agreement” means the agreement executed and filed by an Employee with the County or the Administrator pursuant to Section 4, under which the Employee elects to become a Participant in the Plan and to defer Compensation thereunder.

3.20 “Regulation” means a regulation promulgated under the Code by the U.S. Treasury Department.

3.21 “Rollover Contribution” means a direct rollover to this Plan of an eligible rollover distribution as defined in Section 402(c)(4) of the Code, of pre-tax amounts, made on behalf of a Participant by an Eligible Retirement Plan as defined in Section 8.8(b)(ii).

3.22 “Special Age 50 Catch-Up Deferral” means the additional amount of Compensation that may be deferred in accordance with Section 5.1(c).

#### **Section 4. Participation in the Plan:**

4.1 Participation. Each Employee may elect to become a Participant in the Plan and defer payment of Compensation not yet earned by executing a written Participant Agreement and filing it with the County or the Administrator at any time during active employment. It shall become effective in accordance with rules established by the Council. However, in accordance with Treasury Regulation Section 1.457-4(b), the Participant Agreement (and any modification thereto) shall not be effective earlier than the first day of the next calendar month following its execution and filing, except that a Participant Agreement of a newly hired Participant, executed and filed on or before his or her hire date, may be effective on or at any time after such hire date.

4.2 Modification of Deferral. A Participant Agreement shall remain in effect until it is terminated or modified. During each Employment Period, a Participant may modify an existing Participant Agreement to effect subsequent deferrals in accordance with rules established by the Council. Subject to the last sentence of Section 4.1, such modification must be filed by the Participant with the County prior to the date on which the modification is to be effective (in accordance with rules established by the Council). Subject to Treas. Reg. Sec. 1.457-4(d)(1), upon severance from employment, a Participant may defer accrued annual leave, vacation pay, compensatory pay, holiday pay, retirement incentive pay or back pay if the agreement providing for the deferral is entered into before the amount is currently available.

4.3 Termination of Deferral. A Participant may terminate further deferral of Compensation under the Plan by filing with the County an executed notice of termination of his Participant Agreement prior to the effective date of termination (in accordance with rules established by the Council). Once further deferral of Compensation is terminated, a Participant may rejoin the Plan in accordance with rules established by the Council. 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 8 hereof.

4.4 Selection of Investment Option. The Participant Agreement shall also provide for the selection, pursuant to Section 7.3, of one or more Investment Options to which the Participant's deferred Compensation shall be allocated; provided that any amounts so allocated equal or exceed a minimum of \$10 or 1% of Compensation per biweekly pay period, except as provided in Section 5.1(a).

## **Section 5. Amount of Deferrals:**

5.1 Limitations. The amount of Compensation which may be deferred by a Participant is subject to the following limitations:

(a) Annual Limitation. Except as provided in Paragraph (b) or (c) below, the maximum amount that a Participant may defer during an Employment Period shall not exceed the lesser of the Applicable Dollar Amount or 100% of the Participant's Includable Compensation, excluding any Rollover Contributions received by the Plan under Section 9.4 below. The minimum amount that a Participant may defer is \$10 or 1% of Compensation per biweekly pay period, provided, however, that a Participant who elected to defer less than \$10 or 1% of Compensation per biweekly pay period in accordance with the terms of the Plan in effect prior to the date of this restatement may continue to defer such amount.

(b) Limited Catch-Up Deferral. For one or more of a Participant's last three Employment Periods ending before the Participant attains Normal Retirement Age, the maximum amount a Participant may defer during the Employment Period shall not exceed the lesser of:

(i) twice the Applicable Dollar Amount; or

(ii) the amount determined under the immediately following sentence; provided, however, that if the Special Age 50 Catch-Up Deferral of Paragraph (c) would result in a greater amount of Compensation deferred, the participant may elect to defer any amount up to the sum of the amount specified in Paragraph (a) and the amount specified in Paragraph (c). The amount referred to in Section 5.1(b)(ii) is the sum of:

(I) the maximum amount of Compensation that may be deferred for the Employment Period as determined under Section 5.1(a) above; *plus*

(II) (A) the maximum amount of Compensation that may be deferred for any prior Employment Period or Employment Periods as determined under Section 5.1(a) above (or, for years prior to 2002, under Code Section 457(b)(2) as in effect for the applicable year); *less* (B) the Compensation deferred under the Plan for such Employment Period

or Employment Periods (disregarding any annual deferrals under the Plan permitted under Paragraph (c) of this Section 5.1).

In determining the Includable Compensation of a Participant for purposes of calculating the amount described in Section 5.1(b)(ii)(I), Includable Compensation is not reduced by contributions of the amounts described in Section 5.1(b)(ii)(II).

A prior Employment Period shall be taken into account under Section 5.1(b)(ii)(II) only if such Employment Period begins after December 3, 1978, the Participant was eligible to participate in the Plan during all or any portion of the Employment Period, and Compensation deferred (if any) under the Plan during the Employment Period, was subject to the maximum deferral provisions of Section 5.1(a) above.

A Participant may not elect to have the provisions of this Section 5.1(b) apply more than once, whether or not such provisions are utilized in less than all of the three Employment Periods ending before that Participant attains Normal Retirement Age, and whether or not that Participant or former Participant rejoins the Plan or participates in another qualifying Code Section 457 plan after retirement.

The provisions of this Section 5.1(b) shall be interpreted and administered in accordance with Regulations issued under Code Section 457 including, without limitation, special rules concerning application of the coordination limits in effect under Code Section 457(c)(2) prior to 2002 for purposes of determining the amounts referred to in Section 5.1(b)(ii) for years prior to 2002.

(c) Special Age 50 Catch-Up Deferral. A Participant who attains age 50 by the last day of an Employment Period and who does not utilize a Limited Catch-Up Deferral for such Employment Period may make a deferral in excess of the limitation specified in Paragraph (a) above, up to the amount specified in, and subject to any other requirements of, Section 414(v) of the Code.

(d) Multiple Plans. In applying Paragraphs (a), (b) and (c) above, the amount that may be deferred by a Participant under the Plan for any Employment Period shall be reduced by the amount deferred by the Participant for such Employment Period under any other “eligible deferred compensation plan” within the meaning of Section 457(b) of the Code, as required by Section 457(c) of the Code, or any other plan to the extent required by Regulation. The Participant shall inform the County of his participation in any such other plan and is solely responsible for any violation of this Paragraph (d).

5.2 Excess Deferrals. The County shall have the right to modify or disallow the periodic deferral of Compensation elected by the Participant:

- (a) in excess of the limitations stated in Section 5.1.
- (b) in excess of the Participant's net Compensation for any pay period;

(c) upon any change in the length of pay period utilized by County. In such case the periodic deferral shall be adjusted so that approximately the same percentage of pay shall be deferred on an annual basis;

(d) in order to round periodic deferrals to the nearest whole dollar amount; or

(e) to reduce the future deferrals in the event that the amount actually deferred for any pay period exceeds, for any reason whatsoever, the amount elected by the Participant. In the alternative, such amount of excess deferral may be refunded to the Participant.

The County shall distribute the amount of a Participant's deferral in excess of the distribution limitations stated in Section 5.1, together with allocable net income or loss, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. For purposes of determining whether there is an excess deferral under Section 5.1, all plans under which a Participant participates as a result of his employment with the County shall be treated as a single plan.

#### **Section 6. Deferral of Compensation:**

6.1 During each Employment Period in which the Employee is a Participant in the Plan, the County shall defer payment of such part of the Participant's Compensation as is specified by the Employee in the Participant Agreement which the Participant has executed and filed with the County. The County shall remit such deferred Compensation to the Administrator within 15 business days following the date on which these amounts would otherwise have been paid to the participant.

6.2 Notwithstanding any other provision of this Plan, the County, subject to the limitations of Section 5, may make additional deposits to a Participant's Account as additional Compensation for the services rendered by the Employee to the County during any Employment Period; provided that 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. The County may make such further deposits to the Plan as the County may deem advisable, subject, however, to the limitations set forth in Section 5.

6.3 Notwithstanding any other provision of this Plan, contributions and benefits with respect to qualified military service shall be provided in accordance with Code Section 414(u). If a Participant dies on or after January 1, 2007 while performing qualified military service (as defined in Section 414(u) of the Code), the Beneficiary of that Participant is entitled, to the extent required by Section 401(a)(37) of the Code, to any additional benefits provided under the Plan as if the Participant had resumed employment on the date immediately before his date of death and then terminated employment on account of death.

#### **Section 7. Investments:**

7.1 Investments. The County, or its authorized designee, shall establish one or more Investment Options for the purpose of investing amounts of Compensation credited to Participants' Accounts. Any action by the County in investing deferred compensation or

approving of any such investment of funds, shall not be considered to be either an endorsement 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 Section 8 of this Plan.

7.2 Assets. The Investment Options shall be comprised of mutual fund shares, guaranteed investment accounts with one or more insurance companies or other assets as specified from time to time by the County or its authorized designee. The County may appoint an independent investment advisor who shall also act as fiduciary with respect to the selection of the investment options. The assets constituting any Investment Option shall be held at the discretion of the County by one or more Custodians appointed for this purpose, for the exclusive benefit of Participants and their Beneficiaries and shall not be available for the payment of the County's debts. Neither the existence of an Investment Option nor the appointment of a Custodian, Administrator, or independent investment advisor shall be deemed to entitle any Participant or Beneficiary or creditor of a Participant or Beneficiary to a claim or lien against the assets of the Investment Option, except with respect to the claim by Participants and Beneficiaries for their benefits hereunder.

7.3 Election of Investment Options. Each Participant may allocate the Compensation deferred by him under his Participant Agreement among the Investment Options. A Participant may change his Investment Option choices 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.

7.4 Account. The County shall maintain an Account for each Participant to which shall be credited such Participant's deferred Compensation at such times as it would have been payable but for the terms of his Participant Agreement, and Rollover Contributions, and reduced by the amount of distributions. In addition, each Participant's Account shall be revalued to reflect the investment gains and losses in accordance with the performance of the Investment Options selected by the Participant pursuant to Sections 4.4 and 7.3. Such investment gains and losses shall mean the actual earnings, gains and losses of any Investment Option allocated on a pro-rata basis among the Accounts of those Participants who selected that Investment Option.

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

## **Section 8. Distribution of Benefits:**

### **8.1 Payments on Separation from Service.**

(a) Subject to the provisions of Section 8.5, upon a Participant's severance from employment with the County, as defined by Treasury Regulation Section 1.457-6(b), (and as determined by the County in its sole discretion), the entire amount credited to his Account (less any federal, state or local income tax required to be withheld therefrom) shall be



paid to him as soon as administratively practicable after the payment date elected by Participant. For purposes of this Section 8.1, severance from employment will not include a Participant's change in employment status from permanent full-time or part-time status to an extra help or seasonal status. The payment will be made in a single lump sum unless the Participant elects a different method of payment as provided in Section 8.2 by filing the appropriate form with the Administrator no later than thirty (30) days prior to the Participant's elected payment date.

(b) Subject to the provisions of Sections 8.5 and 8.6, upon an active Participant's attainment of age 70 ½, such Participant may elect to commence distributions of his or her Participant account in accordance with the payment options available under the Plan.

8.2 Optional Forms of Benefit Payment. Subject to the provisions of Section 8.5, as an alternative to (or in combination with) payment in a lump sum, a Participant may elect to receive payment under the Plan in the form of substantially equal monthly, quarterly, or semiannual or annual installments for a period not to exceed the life expectancy of the Participant or the joint life expectancy of the Participant and his Beneficiary, or any ad hoc payment arrangement elected by the Participant, subject to IRC Section 401(a)(9). Alternatively, such a Participant may elect an annuity under any one of the settlement options offered in a commercial annuity contract purchased by the Custodian using the Participant's Account balance for the purpose of providing benefit payments for the life of the Participant or the joint lives of the Participant and his Beneficiary.

8.3 Emergency Withdrawals. Except as otherwise provided in Section 8.5, distributions to or on behalf of a Participant shall be made only in the event of his qualified severance from employment with the County, unless such Participant experiences an Unforeseeable Emergency. "Unforeseeable Emergency" means a severe financial hardship to the Participant resulting from (a) an illness or accident of the Participant, the Participant's spouse, or a dependent of the Participant, (b) the Participant's loss of property due to casualty, or (c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Examples of events which may cause an "Unforeseeable Emergency" are catastrophic illness, flood, fire, earthquake, death in the family or disabling injury. The need to pay for the funeral expenses of the Participant's spouse, a Participant's domestic partner who is named as a primary beneficiary under the Plan and is formally registered with the California Secretary of State, or dependent, or the need to pay for medical expenses, including non-refundable deductibles and the cost of prescription drug medication, may constitute an Unforeseeable Emergency. For purposes of this paragraph, the term "dependent" means a dependent as defined in Section 152 of the Code but without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code. Withdrawals will not be permitted for expenditures normally budgetable, such as, but not limited to, a down payment on a home, purchase of an automobile, or education expenses. Withdrawal will not be allowed to the extent that the hardship may be relieved (i) through reimbursement or compensation by insurance or otherwise, (ii) by liquidation of the Participant's assets (to the extent such liquidation would not itself cause severe financial hardship), or (iii) by cessation or temporary suspension of deferrals under the Plan. Withdrawals of amounts because of an Unforeseeable Emergency will be permitted only to the extent reasonably needed to satisfy the emergency. A Participant who experiences such an Unforeseeable Emergency may apply to the County for a withdrawal which shall be permitted, in accordance with rules established by the Administrator, who makes the final decision, only to the

extent it complies with the requirements of this Section 8.3. A Participant who has experienced an Unforeseeable Emergency must first apply for a Plan Loan under Section 8.4 before an emergency withdrawal will be permitted. Any amount approved hereunder for emergency withdrawal shall be paid to the Participant in a single lump sum (less any applicable withholding taxes). The withdrawal shall be effective at the later of the date specified in the Participant's application or the date approved by the Administrator. If a Participant elects to receive a withdrawal from the Plan as a result of the application of this section, the Participant cannot defer Compensation into the Plan during the 2-year period beginning on the date of such withdrawal.

8.4 Loans. The Council is authorized to adopt rules permitting a Participant to take a loan against his Account.

8.5 Payments on the Death of a Participant.

(a) Death After Benefit Commencement. If the Participant dies after having begun to receive installment payments in accordance with Section 8.2, 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 Section 8.2, 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, his Beneficiary shall receive distribution of such Participant's Account as provided under Sections 8.1 and 8.2, treating the Beneficiary as if he were the Participant; provided, however:

(i) if the Beneficiary is not the Participant's surviving spouse, the Beneficiary must either 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 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.

(ii) 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 70 ½. 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 Subparagraph, 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.

8.6 Provisions Required Pursuant to Code Section 401(a)(9).

(a) Timing and Amount of Required Distributions.

(i) Notwithstanding any provision of the Plan to the contrary, to the extent required by Section 401(a)(9) of the Code, distribution of a Participant's entire Account shall commence not later than April 1 following the calendar year in which he attains age 70-1/2, provided the Participant has separated from service with the County. Unless the form of distribution is a single lump sum payment, distributions shall be made over a period not exceeding the life expectancy of the Participant, or the joint life expectancy of the Participant and his Beneficiary.

(ii) If the Participant's entire Account is to be distributed in a form other than a single lump sum payment, then the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire Account balance (determined as of the last valuation date of the preceding calendar year) by the life expectancy of the Participant or (if applicable) the joint life expectancy of the Participant and his designated Beneficiary. Life expectancy and joint life expectancy shall be computed by the use of the return multiples contained in Section 1.72-9 of the Treasury Regulations. For purposes of this computation, life expectancies may not be recalculated.

(b) Interpretation. To the extent required by Code Section 401(a)(9), the provisions of this Section 8.6 shall override any distribution options in the Plan that are inconsistent with this Section. All distributions under the Plan shall be made in accordance with Regulations issued under Section 401(a)(9) of the Code.

8.7 Inactive Accounts. Notwithstanding any other provision herein to the contrary, a Participant may elect distribution of his or her entire Account balance (less any required federal or state taxes to be withheld) prior to a qualified severance from employment in the event that all of the following conditions apply:

(a) The Account balance does not exceed \$5,000;

(b) No deferral of Compensation has been made by the Participant within the two-year period ending on the date of the distribution; and

(c) There has been no previous distribution to the Participant from the Plan pursuant to this Section 8.7.

8.8 Direct Rollover Distributions.

(a) Availability. 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 County, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee in a Direct Rollover.

(b) Definitions.

(i) Eligible Rollover Distribution. An Eligible Rollover Distribution is 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; and any distribution to the extent such distribution is required under Section 401(a)(9) of the Code and any distribution described in Section 8.3. In accordance with the Regulations, a new determination of whether a distribution is an Eligible Rollover Distribution shall be made whenever a Participant who is receiving payments changes his or her distribution schedule or amount such that subsequent payments are not substantially equal to prior payments.

(ii) Eligible Retirement Plan. An Eligible Retirement Plan 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, a Roth individual retirement account described in Section 408A of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) 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, or an annuity contract described in Section 403(b) that accepts the Distributee's Eligible Rollover Distribution.

(iii) Distributee. 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, are distributees with regard to the interest of the spouse or former spouse. A Distributee also includes a non-spouse designated Beneficiary but solely for purposes of making a direct rollover to an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code or a Roth individual retirement account described in Section 408A of the Code established as an inherited individual retirement account on behalf of the non-spouse designated Beneficiary.

(iv) Direct Rollover. A Direct Rollover is a payment by the Plan to an Eligible Retirement Plan specified by the Distributee.

(c) Purchase of Service Credit. At the discretion of the County, a Participant may use all or a portion of an account balance 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 the transfer is to a governmental plan (as defined in IRC Section 414(d)) and 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).

8.9 Nonassignability. The interest of a Participant in the contractual obligation of the County, established by the Plan, shall not be assignable in whole or in part, directly or by operation of law or otherwise, in any manner. Notwithstanding the foregoing, the right to benefits payable with respect to a Participant pursuant to a Domestic Relations Order may be created, assigned or recognized. The Council shall establish reasonable procedures to determine the qualified status of Domestic Relations Orders and to administer distributions under such orders, including the establishment of a separate Account for the Alternate Payee. In the event a Domestic Relations Order exists with respect to a benefit payable under the Plan, such benefits otherwise payable to a Participant as are determined under the Domestic Relations Order will be payable to the Alternate Payee specified in the Domestic Relations Order. In addition, anything in the Plan to the contrary notwithstanding, the Council shall follow any distribution requirement contained in a Domestic Relations Order that provides for an earlier lump sum distribution to the Alternate Payee than would otherwise be permitted under the Plan, without regard to whether the Participant has terminated employment with the County.

8.10 Rollover Contributions. A Participant may withdraw Rollover Contributions made pursuant to Section 9.4 below at any time in accordance with procedures established by the Council.

## **Section 9. Miscellaneous:**

9.1 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 County and the Custodian or 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 County 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.

9.2 Assets of Plan. It is a condition of this Plan, and each Employee by participating herein expressly agrees, that he shall look solely to the assets of the Plan for the payment of any benefit to which he is entitled under the Plan.

9.3 Construction. Except to the extent that federal law controls, this Plan shall be construed, administered and enforced according to the Constitution and laws of the State of California.

9.4 Rollover Contributions. A Participant may direct an Eligible Retirement Plan to make a direct Rollover Contribution to this Plan in his or her behalf. The Council may require the Participant to certify, either in writing or in any other form permitted under the rules promulgated by the Internal Revenue Service (IRS), that the contribution qualifies as a Rollover Contribution. If it is later determined that all or a part of a Rollover Contribution was ineligible to be contributed to the Plan, the Council shall direct that any ineligible amounts, plus earnings or losses attributable thereto, be distributed from the Plan to the Participant as soon as administratively feasible. Separate accounting shall be maintained by the Administrator for any Rollover Contribution not attributable to an eligible Section 457 plan maintained by a governmental employer.

9.5 Expenses. The reasonable expenses incident to the operation of the Plan, including but not limited to the internal cost to the County of Plan administration, the compensation of auditors and attorneys and such other technical and clerical assistance as may be required shall be charged to the Accounts of the Participants, to the extent not paid directly by the County.

9.6 Changes in Law. If the law governing the substantive or administrative provisions of the Plan is amended after the adoption of the Plan, the Plan provision(s) affected by such change in the law shall no longer be operative, to the extent that such provision(s) no longer accurately reflect the relevant governing law, and the Council shall administer the Plan in accordance with the applicable legal requirements.

## **Section 10. Amendment and Termination:**

10.1 Action to Amend or Terminate. The County 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 County modify, amend, suspend, 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 or of a notice that it shall cease deferring Compensation; provided, however, that the County 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.

10.2 Complete Termination. In the event of the complete termination of the Plan by the County under Section 10.1, no additional deferrals of Compensation shall be contributed to the Plan, 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 County.

## **Section 11. Plan Administration:**

11.1 Administrative Authority. The Council may adopt rules and procedures for the administration of the Plan consistent with the authority delegated to the Council from the County and consistent with the terms of the Plan which shall be final and conclusive.

11.2 Powers of the Council. The Council shall have all powers to perform all duties necessary to exercise its functions, which have not otherwise retained by the County, including, but not limited to, the:

- (a) Interpretation and construction of the provisions of the Plan;
- (b) Direction of the County (or the Custodian or trustee on behalf of the County) to make disbursement of benefits under the Plan;
- (c) Selection and review of any investment currently offered or under consideration to be offered as an Investment Option under the Plan;
- (d) Make recommendations to the County, as appropriate, regarding the appointment of such agents, advisors, counsel and delegates including an Administrator as may be

necessary and appropriate for the administration and operation of this Plan and the delegation to such agent, advisors, counsel and delegates of any of its discretionary and ministerial powers and duties in accordance with this Section 11; and

11.3 Revocability of Council Action. Any action taken by the Council with respect to the rights or benefits under the Plan of any person shall be revocable by the Council as to payments or distributions not theretofore made pursuant to such actions and appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary to offset any excess payment or underpayment theretofore made to such Participant or Beneficiary.

**Section 12. Gender and Plurals:** The masculine gender shall include the feminine and neuter gender, the masculine pronoun shall include the feminine and neuter, the singular number the plural, and conversely, whenever appropriate.

## Appendix A

### Normal Retirement Age Ranges by Retirement Benefit Tier

<b>Retirement Benefit Tier</b>	<b>Normal Retirement Age Range</b>
Tier I - General	60 – 70 ½
Tier I - Safety	55 – 70 ½
Tier II - General	63 – 70 ½
Tier II - Safety	55 – 70 ½
Tier III - General	65 – 70 ½



## **Item 7 – Attachment C**

**Agreement #09-530 with Great-West Life & Annuity Insurance Company, Agreement #09-531 with BlackRock Institutional Trust Company, N.A., and Agreement #13-417 with Great-West Trust Company, LLC.**

**Important Note:** Annuity Contract, Service Agreement, Investment Guidelines, Pricing Change Agreements, and other contractual documents must be duly executed by both parties prior to the effective date of the changes. Backdating contracts or funding agreements is in violation of our corporate governance and regulatory requirements. Changes cannot be implemented prior to the date all documents are fully executed, even if that requires the effective date to be postponed. There are no exceptions to the rule that the effective date must follow the date all documents are execute

**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY  
HOME OFFICE - GREENWOOD VILLAGE, COLORADO  
ADMINISTRATIVE OFFICES  
GREENWOOD VILLAGE, COLORADO**

**GROUP POLICYHOLDER** County of Fresno  
**GROUP POLICY NUMBER** 98957-01  
**GROUP ANNUITY CONTRACT DATE** November 19, 2009

Group Deferred Stable Asset Fund Annuity Contract, Non-Participating

The provisions on the following pages, together with the Application for this Group Annuity Contract, are part of this Group Annuity Contract.

For the purposes of this Group Annuity Contract, "Plan" means the plan and adoption agreement that the Group Policyholder has designated as the County of Fresno IRC 457 Deferred Compensation Plan.

Signed for the Great-West Life & Annuity Insurance Company on the issuance of the Group Annuity Contract on the Annuity Contract Date.

General Counsel and Secretary

President and Chief Executive Officer

For the Actuary

This Group Annuity Contract is a legal contract between the Group Policyholder and the Great-West Life & Annuity Insurance Company. PLEASE READ THIS ANNUITY CONTRACT CAREFULLY. IT IS A CONTRACT WHICH MAY PROVIDE FOR PAYMENTS OR VALUES WHICH ARE NOT GUARANTEED AS TO FIXED-DOLLAR AMOUNT BUT MAY INCREASE OR DECREASE ACCORDING TO THE INVESTMENT EXPERIENCE OF A VARIABLE ANNUITY ACCOUNT.

Group Deferred Stable Asset Fund Annuity Contract

Form No. STAC 1-95

# Great-West Life & Annuity Insurance Company

## Application for Group Deferred Stable Asset Fund Annuity Contract

The Group Policyholder indicated below (hereinafter called the Applicant) hereby applies to Great-West Life & Annuity Insurance Company (hereinafter called the Company) for a Group Deferred Stable Asset fund Annuity Contract, form number STAC 1-95, (hereinafter called the Group Annuity Contract). The Group Annuity contract is not in force until this application is accepted by the Company at its Home Office in Greenwood Village, Colorado.

The effective date of the Group Annuity Contract is the Group Annuity Contract Date, which is: NOVEMBER 19, 2009.

**PLEASE NOTE, THE ANNUITY CONTRACT MAY PROVIDE FOR PAYMENTS OR VALUES WHICH ARE NOT GUARANTEED AS TO FIXED DOLLAR AMOUNT, BUT MAY INCREASE OR DECREASE ACCORDING TO THE INVESTMENT EXPERIENCE OF A VARIABLE ANNUITY ACCOUNT.**

### Basic Applicant Information

Full Legal Name of Applicant: County of Fresno

Full Legal Name of Plan: County of Fresno IRC 457 Deferred Compensation Plan

State of Situs: CA

Check one of the following:

☒ IRC 457 Plan, or

☐ IRC 401(a) or 401(k) Plan Federal Tax I.D. #: 94-6000512

**PLEASE NOTE, IRC sec. 401(a)/401(k) plans are subject to the provisions of ERISA. It is suggested that a Plan Document, and if applicable, an Application for Determination, be submitted to the Internal Revenue Service prior to enrollment. It is required that you provide Great-West Life & Annuity Insurance Company with a copy of the Plan document and Application for Determination submitted to the Internal Revenue Service when the Determination is received.**

Affiliated Corporations, Groups or Service Organizations:

ATTEST: \_\_\_\_\_

Applicant's Address: 2220 Tulare Street  
Fresno, CA 93721

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By Kelly McCune  
Deputy

Susan B. Anderson  
Signature of Applicant: Susan B. Anderson

10/6/09  
Dated

Gregory E. Soller  
Print Name of Applicant  
Great-West Life & Annuity Representative Signature

Title: Chairman, Board of Supervisors

9.25.09  
Dated

Gregory E. Soller  
Senior Vice President  
Great-West Life & Annuity Representative Name (Printed)

0A 99572  
License ID Number

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**PERIODIC PAYMENT OPTION RIDERS**

## SECTION 1. DEFINITIONS

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*Accumulation Period* - the period during which the Participant is covered under this Group Annuity Contract prior to the Participant's Annuity Commencement Date.

*Administrative Offices* - 8515 East Orchard Road, Greenwood Village, Colorado 80111.

*Annuitant* - the person upon whose life the payment of an annuity is based.

*Annuity Commencement Date* - the date on which annuity payments commence under a payment option, which for any Participant is the date required under the Group Policyholder's Plan.

*Annuity Payment Period* - the period during which the Participant is covered under this Group Annuity Contract after the Participant's Annuity Commencement Date.

*Book Value of Participant Annuity Accounts* - the sum of the Participant Annuity Account Values on any date during the Accumulation Period.

*Book Value of the Separate Account* - is determined monthly and defined in greater detail in Section 5.5 of the Contract.

*Company* - Great-West Life & Annuity Insurance Company.

*Competing Fund* - any of the following types of funds offered by the Group Policyholder:

- a) any fund with a known or periodically declared rate of interest, or
- b) any money market fund, or
- c) any bond fund with a duration of 3 years or less.

*Deposit* - contributions, transfers and other amounts deposited to the Stable Asset Fund.

*Group Annuity Contract Date* - the effective date indicated by the Group Policyholder on the Application for this Group Annuity Contract, or such other date which is acceptable to the Company.

*Group Policyholder* - the employer of a Participant and the applicant for this Group Annuity Contract.

*Interest Rate(s)* - an annual effective rate of interest to be determined by the Company prior to the last day of each calendar quarter, effective for Deposits in the next calendar quarter and money already included in the Participant Annuity Account Value. This annual effective rate will never be less than the Minimum Guaranteed Interest Rate and will be compounded daily. Should the interest crediting method be modified by the Company, the Company will provide the Group Policyholder with notice of the changes.

*Letter Agreement* - a formal written agreement signed by the Company and the Group Policyholder which is used to clarify or modify certain provisions of the Contract and will be attached to and form a part of this Group Annuity Contract.

*Market Value of the Separate Account* - is determined monthly and defined in greater detail in Section 5.4 of the Contract.

*Minimum Guaranteed Interest Rate* - equal to 0%.

*Participant* - an employee who has met the eligibility requirements under the Plan and for whom the Group Policyholder has applied for coverage.

*Participant Annuity Account* - a separate record in the name of each Participant which reflects his or her pro-rata share in the Stable Asset Fund.

*Participant Annuity Account Value* - the dollar value of the Participant Annuity Account.

*Participant Effective Date* - the date on which the first Deposit is credited to a Participant Annuity Account.

*Payee* - the Group Policyholder or the person, including the Participant, designated to receive the value of the Participant Annuity Account.

*Plan* - the underlying plan document of the Group Policyholder written in accordance with Section 457, Section 401(a), or Section 401(k) of the Internal Revenue Code. Although the Company may have knowledge of certain provisions of the Plan, the legal sufficiency of the Plan remains solely the responsibility of the Group Policyholder.

## **SECTION 1. DEFINITIONS (continued)**

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*Premium Tax* - the amount of tax, if any, charged by a state or other governmental authority on premiums.

*Request* - any request in a form, either written, telephoned or computerized, satisfactory to the Company and received by the Company at its Administrative Offices from the Owner, or the Owner's designee, as required by any provision of this Contract, or as required by the Company.

*Rollover* - Amounts moved from or into the Stable Asset Fund in connection with an eligible plan under Section 401(a) or 401(k) of the Internal Revenue Code. Such amounts shall be moved only upon Request from the Group Policyholder, on behalf of a Participant.

*Stable Asset Fund* - is the Stable Asset Fund separate account, a segregated investment account established by Great-West Life & Annuity Insurance Company under Colorado law. Assets within the Stable Asset Fund will be invested in either securities backed by the full faith and credit of the U.S. government or its agencies or instrumentalities or in investment grade corporate bonds at the time of purchase according to the investment guidelines agreed to by the Group Policyholder and the Company.

*Transaction Date* - Deposits and Requests will be processed on the date received by the Company at its Administrative Offices provided that its offices are open. Deposits and Requests received after 4:00 p.m. EST/EDT shall be deemed to have been received on the next business day.

*Transfer to Other Companies* - amounts moved from the Stable Asset Fund to another company upon each Request from the Group Policyholder on behalf of the Participant.



## **SECTION 2. OWNERSHIP PROVISIONS**

---

### 2.1 Ownership of the Stable Asset Fund

The Company has absolute ownership of the assets of the Stable Asset Fund. The portion of the assets of the Stable Asset Fund equal to the reserves and other contract liabilities of the Stable Asset Fund are not chargeable with liabilities arising out of any other business the Company may conduct.

### 2.2 Ownership of the Group Annuity Contract

Upon the Group Policyholder's Application for this Group Annuity Contract, the Group Policyholder becomes the owner of the Group Annuity Contract. It alone has all rights, remedies and recourses given in the Group Annuity Contract, and, while the Group Annuity Contract and the Participant Annuity Accounts are held in respect of Participants, there is no contractual relationship between the Company and the Participants. While the Group Policyholder may request the opinion of the Participant on matters and transactions affecting the Participant Annuity Account, the Group Policyholder may act according to the dictates of its own judgment and discretion.

Subject to the Plan participation provisions, each employee for whom Deposits have been made is a Participant for whom a Participant Annuity Account is kept.

### 2.3 Transfer and Assignment

The interest of the Group Policyholder in this Group Annuity Contract may not be transferred, sold, assigned, pledged, charged, encumbered, or in any way alienated without the prior written consent of the Company.

## **SECTION 3. GENERAL PROVISIONS**

---

### 3.1 The Group Annuity Contract

The Group Annuity Contract is issued by the Company to the Group Policyholder.

### 3.2 No Competing Funds

The Group Policyholder may not offer Competing Funds, as defined in Section 1 of the Contract.

### 3.3 Entire Contract

This Group Annuity Contract, its Application, Tables and /or Letter Agreements, if any, form the entire contract between the Group Policyholder and the Company. A copy of the Application is attached to the Group Annuity Contract when issued to the Group Policyholder....

After issue, modifications to the Group Annuity Contract under the Contract Modification provisions become part of the Group Annuity Contract.

All statements in the Application, in the absence of fraud, have been accepted as representations and not as warranties.

Only the President, a Vice-President, or the Secretary of the Company can modify or waive any provisions of the Group Annuity Contract.

### 3.4 The Plan

The terms and provisions of the Plan do not for any purpose form any part of this Group Annuity Contract and are not binding on the Company.

Notwithstanding the fact that the Company may have knowledge of the terms of the Plan, the obligations of the Company are measured and determined solely by the terms and provisions of this Group Annuity Contract.

### 3.5 Non-Participating

This Group Annuity Contract is non-participating, meaning that it is not eligible to share in the Company's divisible surplus.

## **SECTION 3. GENERAL PROVISIONS (continued)**

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### **3.6 Currency and Payment of Deposits**

All amounts to be paid to or by the Company must be in the currency of the United States of America. All Deposits to this Group Annuity Contract must be made payable to the Company or its designated agent.

### **3.7 Age**

If the age of the Participant or Payee has been misstated, the payments established for him/her under the Participant Annuity Account will be made on the basis of his/her correct age.

If payments were too large because of misstatement, the difference with interest may be deducted by the Company from the next payment or payments. If payments were too small, the difference with interest may be added by the Company to the next payment. This interest will be not less than 4% per year.

### **3.8 Notice and Proof**

Any notice or demand by the Company to or upon the Group Policyholder or any Payee may be given by mailing it to that person's last known address as stated in the Company's file.

An application, report, Request, election, direction, notice or demand by the Group Policyholder or Payee will be made in a form satisfactory to the Company. When the Company requires it, the Group Policyholder will obtain the signature of the Participant's or Payee's spouse on forms provided by the Company.

The Company may require adequate proof of the age and death of any Payee before it admits a claim for or pays any payment.

Written materials developed by the Group Policyholder to describe this Group Annuity Contract must first be approved by the Company.

## **SECTION 4. PURCHASE PROVISIONS**

---

### **4.1 Commencement and Termination of Coverage**

The Group Policyholder may make application for coverage of any employee if the Company is then accepting applications for coverage under this Group Annuity Contract, unless a Date of Cessation of Deposits has been declared.

An employee for whom an adequate application has been made becomes covered as a Participant as of the Participant Effective Date. Coverage of a Participant terminates upon a total or partial distribution which results in a Participant Annuity Account Value of \$0.

### **4.2 Deposits**

Unless a Date of Cessation of Deposits has been declared, the Group Policyholder may from time to time pay Deposits in cash in respect of a Participant until the earlier of his/her death, Annuity Commencement Date, or the termination of the Participant Annuity Account.

The amount of Deposits to be paid by the Group Policyholder in respect of any Participant will be determined by the Group Policyholder.

The Group Policyholder will report the amount paid as Deposits on forms acceptable to the Company. The Group Policyholder's report is conclusive and binding on it and any person or entity claiming an interest under the Group Annuity Contract or any Participant Annuity Account. When the Group Policyholder's report does not coincide with the Deposits received, the Company may return them.

### **4.3 Allocation of Deposits**

After an adequate application on behalf of a Participant has been made, Deposits, less Premium Tax, if any, will be allocated in the Participant Annuity Account when received by the Company at its Administrative Offices.

Deposits on behalf of the Participant will be allocated to the Stable Asset Fund.

## **SECTION 5. CONTRACT VALUE PROVISIONS**

---

### **5.1 Stable Asset Fund Deposits**

From time to time, the Group Policyholder, on behalf of a Participant, will make Deposits to the Stable Asset Fund. The Company may offer the Stable Asset Fund to any Participant who, by Request, may allocate any Deposit to the Stable Asset Fund.

### **5.2 Interest Crediting Method**

Interest Rates are calculated quarterly by equating the Book Value of the Separate Account to the Book Value of the Participant Annuity Accounts over the average remaining life of the assets in the separate account unless otherwise agreed to by the Company and the Group Policyholder. Deposits will commence earning interest on the day the Deposit is allocated to the Stable Asset Fund.

### **5.3 Contract Value**

The contract value, at any given time, will either be the Book Value of the Separate Account or the Market Value of the Separate Account, as defined below. The Book Value will apply to Cessation Option #1 when it is elected under Section 11 of this Contract. The Market Value will apply to Cessation Option #2 when it is elected under Section 11 of this Contract.

### **5.4 Market Value of the Separate Account**

The Market Value of the Separate Account is determined monthly or on the Premium Cessation Date. This value is based on the closing market price for each security in the account, less the outstanding balance, if any, of amounts borrowed from the Company's General Account as described in Section 5.6 below, and less the Investment Management Fee described in Section 5.8.

### **5.5 Book Value of the Separate Account**

The Book Value of the Separate Account is determined monthly or on the Premium Cessation Date. This value is the amortized cost of the securities owned by the separate account, plus cash, plus accrued interest, less the outstanding balance, if any, of amounts borrowed from the Company's General Account as described in Section 5.6 below, and less the Investment Management Fee described in Section 5.8.

### **5.6 Loan from the General Account of the Company**

If the amount of any transfer or distribution exceeds the Cash Balance in the Stable Asset Fund, the Stable Asset Fund may borrow such deficiency from the General Account of the Company. The General Account may, but is not obligated to, make loans to the Stable Asset Fund. In the event that a loan is made from the General Account to the Stable Asset Fund, excess funds investments shall not be made in a loan to any one borrower, including all affiliates which shall be treated as one borrower, in an amount exceeding 10% of the capital stock and surplus or 1% of the admitted assets of the lending insurer, whichever amount is greater. All subsequent Deposits and proceeds from the maturities of Stable Asset Fund assets will first be applied to reduce the outstanding balance of this loan. Interest will be charged monthly by the Company's General Account at an annual effective rate equal to the 30 day LIBOR rate, plus .35%, or such other current market rate that is fair and acceptable to the General Account.

### **5.7 Amortization of Bond Defaults**

In the event that any bonds in the Stable Asset Fund go into default, losses will be amortized through the setting of a lower credited Interest Rate.

### **5.8 Investment Management Fee**

An Investment Management Fee will be assessed and deducted against the Stable Asset Fund each calendar quarter. In no event will the Investment Management Fee exceed an annual effective rate of 1.5% of the assets in the Stable Asset Fund.

## **SECTION 6. TRANSFERS ON BEHALF OF INDIVIDUAL PARTICIPANTS**

---

### **6.1 Transfers**

Except as noted below, the Group Policyholder may make transfers to other non-Competing Funds offered by the Company under another contract, or Transfers to Other Companies by Request on behalf of individual Participants. Such individual Participant Transfers will be based upon the individual Participant's Participant Annuity Account Value.

### **6.2 Transfer Terms**

- a. A transfer will take effect on the Transaction Date.
- b. No transfers are permitted after the Annuity Commencement Date.
- c. When the Group Policyholder is effecting Transfers on behalf of all Participants under the Group Annuity Contract, the Market Value of the Separate Account and the provisions of Section 11 of the Contract shall apply.
- d. When and if the Group Policyholder encourages Participants to transfer out of the Group Annuity Contract, the Market Value of the Separate Account and the provisions of Section 11 of the Contract shall apply.

### **6.3 Transfers to Other Companies**

At any time prior to the Annuity Commencement Date, the Group Policyholder on behalf of the Participant may by Request transfer all or a portion of the Participant Annuity Account Value to an account currently offered by another company under the terms of the Plan and in accordance with the appropriate provisions of the Internal Revenue Code of 1986, as amended. Such individual Participant transfers will be based upon the Participant Annuity Account Value.

### **6.4 Transfers to the Company**

Amounts transferred to the Company shall be treated as Deposits under Section 4 of this Contract.

### **6.5 Non-Taxable Distribution**

No amount transferred pursuant to Section 6 of this Contract will be treated as a taxable distribution to the Participant.

### **6.6 Business Hardship Withdrawal**

For IRC 401(a) and IRC 401(k) Group Policyholders only, in the event of a 20% or more reduction in the work force in one calendar year, the first 20% of the Book Value of the Separate Account on the first day of the calendar year may be paid at the Book Value of the Separate Account. Reductions in the work force of less than 20% in one calendar year will be paid at the Book Value of the Separate Account. Transfers in excess of the above noted 20% will always be paid at the Market Value of the Separate Account.

## SECTION 7. DISTRIBUTIONS TO A BENEFICIARY

---

### 7.1 Death of Participant after Annuity

#### Commencement Date

If the Participant dies after the Annuity Commencement Date and before his/her entire interest has been distributed, payments will continue to the Beneficiary under the distribution method applicable to the Participant on the Participant's date of death. However, if the Plan allows the Beneficiary to change the method of distribution, a new Payment Option may be elected by Request by the Group Policyholder on behalf of the Beneficiary only so long as payments are made to the Beneficiary not less rapidly than under the Payment Option effective on the Participant's date of death.

### 7.2 Death of Participant before Annuity

#### Commencement Date

- a. 5-Year Rule If the Participant dies before the Annuity Commencement Date, the entire interest of the Participant must be distributed on or before December 31 of the year containing the fifth anniversary of the Participant's death. This Rule will always apply to non-individual entities.
- b. 1-Year Rule If the Plan provides that any portion of the Participant's interest is payable to a designated Beneficiary, such portion may be distributed over the lesser of (1) the life of the designated Beneficiary, or (2) over a period not extending beyond the life expectancy of the designated Beneficiary or (3) 15 years. Such distributions to a designated Beneficiary must begin not later than December 31 of the year following the date of the Participant's death. The Group Policyholder on behalf of the designated Beneficiary may elect by Request to take distributions either under the 5-Year Rule or under this 1-Year Rule.

If no election is received by the Company by November 1 of the year following the year of the Participant's death, distributions will be made pursuant to the 5-Year Rule described in subsection a. of Section 7.2.

For purposes of this section, a designated Beneficiary is any individual named as a Beneficiary by the Participant.

- c. Special Rule for Surviving Spouse. If the designated Beneficiary is the surviving spouse of the Participant, the date on which the distributions are required to begin shall not be earlier than the date on which the Participant would have attained age 70 1/2. Distributions may be elected at any time pursuant to Section 9 of this Contract; but in any event must commence on or before the later of (1) December 31 of the year immediately following the Participant's death and (2) December 31 of the calendar year in which the Participant would have attained age 70 1/2.
- d. Any payments made under an IRC Section 457 Plan which are made over a period greater than one year can only be made in substantially non-increasing amounts paid not less frequently than annually.

### 7.3 Amount Payable on Death of Participant

If the Participant dies before the Annuity Commencement Date the Amount Payable on death will be:

- a. Where death occurs before the Participant's 70th birthday, the greater of:
  - (i) the Participant Annuity Account Value, less Premium Tax, if any, and
  - (ii) the sum of Deposits paid to, less any Partial Distributions made from, the Participant Annuity Account, less Premium Tax, if any.
- b. Where death occurs on or after the Participant's 70th birthday, the Participant Annuity Account Value, less Premium Tax, if any.

### 7.4 Requests For Distributions

Subject to the 5-Year rule, the 1-Year rule or the Special Rule for Surviving Spouse, as applicable, set forth in Section 7.2, an election to receive the amount described in Section 7.3 must be made pursuant to Section 9 of this Contract.

## **SECTION 8. DISTRIBUTIONS TO A PARTICIPANT**

---

### **8.1 Requests for Distributions**

On the Company's receipt of a Request at least 30 days before the Annuity Commencement Date, the Group Policyholder on behalf of the Participant may:

- a. Elect or change a Payment Option.
- b. Elect or change the Participant's Annuity Commencement Date to any future date which is not later than the date required under the Internal Revenue Code of 1986, as amended. If any Annuity Commencement Date would be less than 30 days from the date the Request is received, the Company may delay the Annuity Commencement Date elected by 30 days.
- c. If the Group Policyholder on behalf of the Participant has failed to elect a Payment Option within 30 days of the Annuity Commencement Date, the Company will pay the Group Policyholder on behalf of the Participant a Fixed Life Annuity with 10 Year Guaranteed Period from the Participant Annuity Account Value.

### **8.2 Distribution at Annuity Commencement Date or Separation from Service**

Except as provided in Section 8.3, no distributions will be allowed prior to the Participant's Annuity Commencement Date or separation from service, as determined by the Group Policyholder in accordance with the provisions of the Plan. The distribution must be elected pursuant to Section 9 of this Contract and will take effect on the later of the date elected or the date the Request is received at the Administrative Offices of the Company.

### **8.3 Distribution Due to Unforeseeable Emergency or Hardship**

If the Participant incurs an unforeseeable emergency under an IRC Section 457 Plan, or a Hardship under an IRC Section 401(a) or 401(k) Plan, as determined by the Group Policyholder under the terms of the Plan, then the Group Policyholder on behalf of the Participant may by Request take a total or partial distribution from the Participant Annuity Account. The distribution will take effect on the later of the date elected or the date the Request is received at the Administrative Offices of the Company.

### **8.4 Amount Payable on Distribution**

If a total distribution is requested, the amount payable will be paid under the Payment Option provisions of Section 9 designated by the Group Policyholder on behalf of the Participant. Distributions to a Participant are based on the Participant Annuity Account Value and distributions will only be available to a Participant or Payee who is entitled to a distribution in accordance with the Plan, as determined by the Group Policyholder.

If a partial distribution is requested, the amount payable will be in one sum. In either event, the amount will be equal to:

- a. The amount of the distribution requested as of the effective date of the distribution, less
- b. Premium Tax, if any.

### **8.5 Conditions of Payment**

Payment will only be made if then available to the Payee under the terms and provisions of the Plan as determined by the Group Policyholder, and will only be made to the Group Policyholder or to the order of the person designated in Request by the Group Policyholder to receive payment.

### **8.6 Adequate Proof**

The Company may require adequate proof of age, separation from service, hardship (IRC 401(a) or 401(k)), or unforeseeable emergency (IRC 457) to establish that a benefit has become payable under the provisions of the Plan prior to making any payment under this Group Annuity Contract.

## SECTION 9. PAYMENT OPTIONS

### 9.1 Selection of Payment Options

- a. A total or partial lump sum or one of the fixed dollar payment options may be elected.
- b. If a lump sum option is elected, the amount to be distributed is the amount requested as a lump sum less the Premium Tax, if any, as of the date the amount is distributed.
- c. If a fixed dollar method of payment option is elected, the amount to be applied is the Participant Annuity Account Value, less Premium Tax, if any, as of the Annuity Commencement Date.

### 9.2 How to Elect Payment Options

A Request by the Group Policyholder on behalf of the Participant or Payee is required to elect, or change the election of, a Payment Option and must be received by the Company at least 30 days prior to the Annuity Commencement Date, or, if the Participant dies prior to the Annuity Commencement Date, within 60 days of the date the Company receives adequate proof of the Participant's death.

The Company will rely on the Group Policyholder's determination with respect to the timing and amount of any benefit payable to the Participant or Payee under this Contract. Nothing contained herein shall be construed to be tax or legal advice and the Company assumes no responsibility or liability for any costs, including but not limited to taxes, penalties or interest incurred by the Plan, the Group Policyholder, the Participant or any Payee arising out of such determination.

### 9.3 Fixed Dollar Payment Options

The following fixed dollar payment options are available:

- a. *Option 1: Income of Specified Amount*  
The Company will pay an income at 12-, 6-, 3-, or 1-month intervals, of an amount elected by the Payee for an Annuity Payment Period of not less than 36 months nor more than 240 months. Upon death of the Payee, any amounts remaining payable under this payment option will be paid to the Group Policyholder or other Payee designated by the Group Policyholder under Section 7 of this Group Annuity Contract. Table A is applicable to this option.

- b. *Option 2: Income for a Specified Period*  
The Company will pay an income at 12-, 6-, 3-, or 1-month intervals, for the number of years elected by the Payee for an Annuity Payment Period of not less than 36 months nor more than 240 months. Upon death of the Payee, any amounts remaining payable under this payment option will be paid to the Group Policyholder or other Payee designated by the Group Policyholder under Section 7 of this Group Annuity Contract. Table A is applicable to this option.

- c. *Option 3: Fixed Life Annuity with Guaranteed Period*

The Company will pay a monthly payment for the guaranteed Annuity Payment Period elected. Payments will continue for the lifetime of the Payee. Upon death of the Payee, any amounts remaining payable under this payment option will be paid to the Group Policyholder or other Payee designated by the Group Policyholder under Section 7 of this Group Annuity Contract. Table B is applicable to this option.

The guaranteed Annuity Payment Period elected may be 5, 10, 15 or 20 years, or may be a period referred to as "Installment Refund." Under the Installment Refund period, payments will be made until the total of the payments made equals the amount applied.

- d. *Option 4: Fixed Life Annuity*  
The Company will pay a monthly payment during the Payee's lifetime. Table B is applicable to this option.

- e. *Option 5: Joint and One-Half Survivor Fixed Annuity*

A joint and one-half survivor fixed annuity provides a fixed monthly payment to an Annuitant for his/her lifetime; thereafter, and upon receipt by the Company of adequate proof of the Annuitant's death, one-half of the fixed payment amount continues to a designated Payee, if living, and terminates upon his/her death. Table C is applicable to this option.

## SECTION 9. PAYMENT OPTIONS (continued)

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f. *Option 6: Periodic Payment Option*

(i) For IRC 457 Plans, a Periodic Payment Option is available in accordance with the provisions set forth in the Periodic Payment Option Rider - 457 Plans Rider attached to the back of this Contract.

(ii) For IRC 401(a)/(k) Plans, a Periodic Payment Option is available in accordance with the provisions set forth in the Periodic Payment Option Rider - 401(a)/(k) Plans Rider attached to the back of this Contract.

g. Fixed dollar payment options are subject to the following provisions:

(i) Payments under a fixed dollar payment option are guaranteed by the Company as to dollar amount throughout the Annuity Payment Period.

The amount of the payment under any fixed dollar payment option will be determined by applying the Company's then current non-participating group single premium rates for this class of group annuity contracts to the amount applied under the option.

Those current rates will not be less than the rate obtained from the Table which is applicable to the elected option.

(ii) If any payment to be made under the elected payment option will be less than \$50, the Company may make the payments in the most frequent interval which produces a payment of at least \$50. The minimum amount that may be applied under the elected payment option is \$2,000. If the amount is less than \$2,000, the Company may pay it in one sum. The maximum amount that may be applied under any elected payment option is \$1,000,000. For the application of any greater amount, the Company's consent is required.

(iii) No commutation of annuities will be permitted.



## **SECTION 10. CONTRACT MODIFICATION**

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### 10.1 Contract Modification

This Group Annuity Contract may be modified at any time by written agreement between the Company and the Group Policyholder. No such modification will, without the written consent of the Group Policyholder, affect the terms, provisions, or conditions of this Group Annuity Contract which are or may be applicable to Deposits paid in respect of Participants prior to the date of such modification.

However, the Company may at any time and without the consent of the Group Policyholder or any Participant or other person, but upon 30 days' written notice to the Group Policyholder, modify this Group Annuity Contract in any respect to conform it to changes in tax or other law, including applicable regulations or rulings.

### 10.2 Modification of Tables

The Company may at any time and without the consent of the Group Policyholder or any Participant or other person, but upon 30 days' written notice to the Group Policyholder, modify Tables A, B, and C, or any of them. However, no such modification will affect the terms, provisions or conditions of the Group Annuity contract which are or may be applicable to Deposits paid in respect of Participants prior to the date of such modification.

## **SECTION 11. CESSATION OF DEPOSITS, COMPLETE TRANSFERS, AND BUSINESS HARDSHIPS**

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### 11.1 Cessation of Deposits

Upon 60 days' written notice to the other, the Group Policyholder or the Company may declare that, as from the date stated in the notice (that date being called the Date of Cessation of Deposits), no further Deposits will be made to the Group Annuity Contract.

After the Date of Cessation of Deposits is declared, no new Participant Annuity Account will be established.

### 11.2 Options on Date of Cessation of Deposits

Upon the Date of Cessation of Deposits, the Group Policyholder may by Request elect Cessation Option (1) or Cessation Option (2) below. If the Group Policyholder has not elected a cessation option within 30 days of the Date of Cessation, the Company will make the election in its sole discretion. Such election shall be binding on the Group Policyholder.

#### *Cessation Option (1). Maintenance of each Participant Annuity Account Value:*

The Company will maintain each Participant Annuity Account Value until it is applied to a Payment Option or distributed to a Participant or Beneficiary. When such individual transactions are applied or paid, they will be calculated at the Book Value of the Participant Annuity Account.

#### *Cessation Option (2). Market Value of the Stable Asset Fund:*

If Cessation Option (2) is elected, the Group Policyholder must specify option A or B below at the same time it notifies the Company it is ceasing Deposits and the Company will pay the Market Value of the Stable Asset Fund within 30 days after the Date of Cessation of Deposits.

#### Option A

After notification of Cessation of Deposits, the Company will sell all non-cash assets in the account attributable to the terminating contract and convert them to cash assets or short-term money market instruments. The time when all non-cash assets have been converted to cash or short-term money market instruments will be no later than the Date of Cessation of Deposits.

## **SECTION 11. CESSATION OF DEPOSITS, COMPLETE TRANSFERS, AND BUSINESS HARDSHIPS (continued)**

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### Option B

After notification of Cessation of Deposits is received, the Company will value the separate account on the Date of Cessation of Deposits and transfer the assets of the separate account attributable to the terminating contract to the successor insurer or the Group Policyholder.

### 11.3 Complete Transfers

When a Group Policyholder elects to transfer the aggregate of all Participant Annuity Accounts to another carrier at any one time, such transfers will be calculated at the Market Value of the Separate Account.

### 11.4 Business Hardships

In accordance with the provisions of Section 6.6 of the Contract, the Company may transfer funds for business hardships as described in the above noted section.

**TABLE A**      - Income of Specified Amount  
                          - Income of a Specified Period

Monthly Payment for Each \$1,000  
 of Participant Annuity Account Value

<u>Years</u>	<u>Payment</u>
3	28.61
4	21.82
5	17.75
6	15.04
7	13.10
8	11.66
9	10.54
10	9.63
11	8.90
12	8.30
13	7.78
14	7.34
15	6.96
16	6.63
17	6.34
18	6.08
19	5.85
20	5.64

To determine the payment for other frequencies of payment, multiply the above monthly payment by the following factors:

	<u>Factor</u>
Quarterly payment	2.99
Semi-annual payment	5.96
Annual payment	11.81

If payments are for an amount or duration different than that outlined above, the Company will determine the proper amount or duration using the actuarial basis used to determine the above Table.

**TABLE B - Fixed Life Annuity**

Monthly Payment for Each \$1,000  
of Participant Annuity Account Value

Age of Payee	Without Guaranteed Period	With Guaranteed Period			
		5 Years	10 Years	15 Years	20 Years
50	3.99	3.99	3.98	3.96	3.94
55	4.31	4.30	4.27	4.24	4.19
60	4.71	4.70	4.67	4.60	4.49
65	5.28	5.25	5.18	5.05	4.84
70	6.07	6.02	5.85	5.56	5.15
75	7.22	7.09	6.68	6.07	5.41

If payments commence on any other date than the exact age of the Payee as shown above, the amount of the monthly payment shall be determined by the Company on the actuarial basis used by it in determining the above amounts.

**TABLE C - Joint and One-Half Survivor Fixed Annuity**

Monthly Payment for Each \$1,000  
of Participant Annuity Account Value

Age of Annuitant	If Designated Payee is Age					
	50	55	60	65	70	75
50	3.88	3.91	3.94	3.96	3.97	3.98
55	4.09	4.15	4.19	4.23	4.25	4.27
60	4.34	4.43	4.51	4.58	4.63	4.66
65	4.64	4.77	4.90	5.01	5.10	5.16
70	4.99	5.17	5.36	5.55	5.70	5.83
75	5.40	5.65	5.91	6.19	6.46	6.69

If payments commence on any other date than the exact age of the Annuitant or designated Payee as shown above, the amount of the monthly payment shall be determined by the Company on the actuarial basis used by it in determining the above amounts.

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## PERIODIC PAYMENTS OPTION RIDER - 457 PLANS

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ATTACHED TO AND FORMING PART OF THE GROUP ANNUITY CONTRACT

WHEREAS, the Group Policyholder has previously entered into a Group Annuity Contract ("Contract") with Great-West Life - Annuity Insurance Company (hereinafter referred to as "the Company"),

AND WHEREAS, the Group Policyholder and the Company desire to make the Periodic Payment Option available under the Contract,

NOW THEREFORE, the Group Policyholder and the Company agree that the following provisions will be added to the Contract as of the date executed below.

### Election of Periodic Payment Option

If the Participant has separated from service with the Group Policyholder or has attained age 70 1/2, the Group Policyholder, on behalf of a Participant, may elect to apply all or a portion of the Participant Annuity Account to a Periodic Payment Option. The entire Participant Annuity Account must be applied to a Payment Option under which substantially equal payments are made as required by Sections 457(d) and 401(a)(9) of the Internal Revenue Code. Once payments have begun, they cannot be changed or stopped.

If the Participant wishes to take a partial withdrawal, such withdrawal must be taken prior to the selection of a Periodic Payment Option, and will be subject to any applicable charges.

### Payments to a Beneficiary

If the Participant is receiving Periodic Payments, any Periodic Payments remaining to be paid as of the Participant's date of death will be paid to the Participant's beneficiary. The Beneficiary will receive payments remaining under the payment option in effect as of the date of the Participant's death unless a lump sum is elected on the death claim.

If the Participant dies prior to the time payments have commenced, the Group Policyholder may elect to apply the entire Participant Annuity Account to a Periodic Payment Option for the Beneficiary. All payments to a Beneficiary must comply with the distribution requirements of Sections 457(d) and 401(a)(9) of the Internal Revenue Code.

### Periodic Payment Options Available

The Group Policyholder, on behalf of a Participant, must elect one of the three payment options listed below. If the Participant dies prior to the time any payments have been made, the Group Policyholder, on behalf of the Beneficiary, must elect one of the first two payment options listed below. (Minimum Distribution Payments are not available to Beneficiaries.) Payments must be elected over a period of at least 36 months.

1. *Payments for a Specified Period.* The period over which payments will be made is elected. The amount of each payment will be substantially equal but may vary slightly depending upon investment performance. The duration

period may not be changed and must result in a dollar amount, which meets the minimum distribution requirements.

2. *Payments of a Specified Amount.* The dollar amount of each payment is elected. The dollar amount may not be changed and must meet the minimum distribution requirements. Based on the amount elected, the duration of the payments may vary.
3. *Minimum Distribution Payments.* Payments will be made as required to meet the minimum distribution requirements of Internal Revenue Code section 401 (a) (9).

Payments will cease when the Annuity Account Value is zero.

### Frequency and Amount of Payments

The Request must specify:

1. the payment frequency of either 12-, 6-, 3-, or 1-month intervals;
2. the payment amount; a minimum of \$50 is required;
3. the month, day and year on which payments are to begin; and
4. the payment option.

## **PERIODIC PAYMENTS OPTION RIDER - 457 PLANS (continued)**

The amount of each payment will be prorated across all Variable and Guaranteed Sub-Accounts in proportion to the assets in each sub-account unless the fund from which the periodic payments are to be made is designated. Once a selected fund has been depleted, any amounts remaining to be paid by the Company will be prorated across all sub-accounts as described above, unless another fund has been selected.

### **Operation of Participant Annuity Account**

While periodic payments are being received:

1. no contributions may be made;
2. no partial withdrawals may be made except in the event of an Unforeseeable Emergency;
3. current Guaranteed and Variable Sub-Accounts may be continued or changed as allowed under the contract; and
4. charges and fees under the Contract, if applicable, continue to apply, except that the Contingent Deferred Sales Charge does not apply to a Periodic Payment Option of a minimum of 36 months.

Signed for Great-West Life - Annuity Insurance Company on the Issue Date.

President and Chief Executive Officer



AMENDMENT NO. 1-97C (STAC) ATTACHED TO AND FORMING PART OF  
THE GROUP DEFERRED COMPENSATION ANNUITY CONTRACT

WHEREAS, the Group Policyholder has either previously entered into a Group Deferred Stable Asset Fund Annuity Contract ( the "Group Annuity Contract") and Application for Group Deferred Stable Asset Fund Annuity Contract (the "Application") with Great-West Life & Annuity Insurance Company, or will be entering into such Group Annuity Contract and Application with the execution of this Amendment,

AND WHEREAS, the above noted Group Annuity Contract and Application require amendments to conform to recent changes made to the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"),

AND WHEREAS, immediately upon the Group Policyholder's amendment of the Plan document to place all assets in trust, the trust provisions described below will become effective,

AND WHEREAS, in order to maintain eligibility under Code Section 457, the Plan will continue to hold Plan assets in trust,

NOW THEREFORE, pursuant to Section 10.1 the Group Annuity Contract, the following amendments will be made to the Group Annuity Contract and Application.

1. The following sentence will be added to the Application:

"Notwithstanding any provision in this Application to the contrary, in no event shall the assets under the Group Annuity Contract be subject to the claims of general creditors of the employer after the Plan is amended to place plan assets in trust."

2. In Section 1 of the Group Annuity Contract, the definition following the term "Group Policyholder" is hereby deleted. In place thereof, the following definition of Group Policyholder will be added:

"the named trustee, or the governmental employer sponsoring the Plan, as trustee, and the applicant for this Group Annuity Contract."

3. Section 2.2 of the Group Annuity Contract is hereby deleted. In place thereof, the following Section will be added:

**2.2 Ownership of the Group Annuity Contract**

Upon the Group Policyholder's Application for this Group Annuity Contract, the Group Policyholder becomes the owner of the Group Annuity Contract. Effective the earlier of January 1, 1999 or the date the Plan is amended to meet the trust requirement, the Group Policyholder, as the trustee of the Plan, may exercise all rights hereunder for the exclusive benefit of Plan Participants and beneficiaries. There is no contractual relationship between the Company and the Participants.

The Group Policyholder, as owner of the contract, is deemed to be the trustee of the assets invested in the Group Annuity Contract, and such contract is intended to satisfy the trust requirements of Code Sections 457(g) and 401(f).

4. Section 2.3 of the Group Annuity Contract is hereby deleted. In place thereof, the following Section will be added:

**2.3 Transfer and Assignment**

No portion of the Plan's assets and the earnings thereon may be used for, or diverted to, any purpose other than for the exclusive benefit of plan participants and beneficiaries prior to the satisfaction of all liabilities with respect to employees and their beneficiaries.

5. A new Section 2.4 will be added to the Group Annuity Contract and shall read as follows:

**2.4 Trustee of the Group Annuity Contract and Plan Assets**

Notwithstanding any provision of this Group Annuity Contract or the Application to the contrary, the Group Policyholder, as owner of the Group Annuity Contract, is the trustee with respect to all Plan assets deposited into the Group Annuity Contract, and the earnings thereon, and shall hold all such assets for the exclusive benefit of Plan Participants and Beneficiaries. The Group Annuity Contract shall be treated as a trust for purposes of Code Sections 457(g) and 401(f), and no portion of the amount deposited in the Group Annuity Contract, or the earnings thereon, may be used for, or diverted to, any purpose other than for the exclusive benefit of Plan Participants and Beneficiaries prior to the satisfaction of all liabilities with respect to employees and their Beneficiaries.

6. The first sentence of Section 8.2 of the Group Annuity Contract is hereby deleted. In place thereof, the following sentence will be added:

Except as provided in Section 8.3, no distributions will be allowed prior to the Participant's Annuity Commencement Date, attainment of age 70 1/2, or separation from service, as determined by the Group Policyholder, unless, for years after December 31, 1996, the Plan provides for a cash out of a Participant Annuity Account which does not exceed \$3,500 and meets all of the other requirements of Code Section 457(e)(9)(A).

Signed for Great-West Life & Annuity Insurance Company on the Issue Date.

President and Chief Executive Officer

## AMENDMENT TO SECTION 457 PLANS

### ATTACHED TO AND FORMING PART OF THE GROUP ANNUITY CONTRACT

WHEREAS, the Group Contractholder/Group Policyholder has entered into a Group Annuity Contract (the "Contract") with Great-West Life & Annuity Insurance Company (the "Company"),

WHEREAS, the Contract and related riders, endorsements, amendments, and other related forms, if any, issued under the Contract require this Amendment pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"),

WHEREAS, the Contract, related riders, endorsements, amendments, and other related forms, if any, issued under the Contract require this Amendment pursuant to required minimum distribution regulations issued by the Federal Department of Treasury,

AND WHEREAS, the provisions of this amendment shall be effective January 1, 2002, unless otherwise indicated below, and shall supercede the provisions of the Contract and related riders, endorsements or amendments, if any to the extent those provisions are inconsistent with the provisions of this amendment.

NOW THEREFORE, the following Amendment is hereby made to the Contract and related riders, endorsements, amendments, or any related forms, if any, issued under the Contract.

#### 1. EGTRRA

##### a. Distributions

Notwithstanding any distribution provision to the contrary, distributions made under the Contract shall be made at the time and in the amount and manner allowed under the terms of the Plan and applicable Internal Revenue Code rules and regulations promulgated thereunder, as amended from time to time, and will be tax reported under the applicable rules in effect on the date of distribution.

##### b. Rollovers

In the event that a Plan has been amended to accept rollovers from other eligible retirement plans, such rollovers shall be treated as Deposits under the terms of the Contract. Amounts distributed may be rolled over to an IRA or any other eligible retirement plan that accepts such rollovers. Amounts directly rolled over will not be tax reported until distributed.

c. Qualified Domestic Relations Orders (QDROs)

In the event that a Section 457 Deferred Compensation Plan accepts QDROs, the Company shall process approved Requests to establish a separate account administered on behalf of the Alternate Payee named in such QDRO or make payment to the Alternate Payee in accordance with the provisions of the Plan. Distributions to an Alternate Payee shall be tax reported under the rules in effect on the date of the distribution. This provision shall replace any and all provisions related to Conforming Equitable Distribution Orders (CEDOs).

d. Deemed IRAs

In the event that a Plan has been amended to establish Deemed IRA(s), including traditional, Roth or both, as part of the Plan effective on or after January 1, 2003, all contributions and rollovers to the Deemed IRA(s) shall be treated as a Deposit under the terms of the Contract and will be administered pursuant to Internal Revenue Code Section 408(q), as amended from time to time, and any applicable rulings and regulations promulgated thereunder.

e. Unforeseeable Emergency Distributions

The terms and provisions of the Plan and the applicable provisions of the Internal Revenue Code and Treasury regulations promulgated thereunder, as amended from time to time shall govern all aspects of Unforeseeable Emergency Distributions.

2. Minimum Distribution Requirement Regulations

Required minimum distributions under the Contract shall only be made in a manner consistent with Internal Revenue Code Section 401(a)(9), as amended from time to time, and applicable Federal Treasury regulations promulgated thereunder in effect at the time of the distribution.

Signed for Great-West Life & Annuity Insurance Company on the Issue Date.

President and Chief Executive Officer

# Great-West Life & Annuity Insurance Company

## Application for Group Deferred Stable Asset Fund Annuity Contract

The Group Policyholder indicated below (hereinafter called the Applicant) hereby applies to Great-West Life & Annuity Insurance Company (hereinafter called the Company) for a Group Deferred Stable Asset fund Annuity Contract, form number STAC 1-95, (hereinafter called the Group Annuity Contract). The Group Annuity contract is not in force until this application is accepted by the Company at its Home Office in Greenwood Village, Colorado.

The effective date of the Group Annuity Contract is the Group Annuity Contract Date, which is: NOVEMBER 19, 2009.

**PLEASE NOTE, THE ANNUITY CONTRACT MAY PROVIDE FOR PAYMENTS OR VALUES WHICH ARE NOT GUARANTEED AS TO FIXED DOLLAR AMOUNT, BUT MAY INCREASE OR DECREASE ACCORDING TO THE INVESTMENT EXPERIENCE OF A VARIABLE ANNUITY ACCOUNT.**

### Basic Applicant Information

Full Legal Name of Applicant: County of Fresno

Full Legal Name of Plan: County of Fresno IRC 457 Deferred Compensation Plan

State of Situs: CA

Check one of the following:

☒ IRC 457 Plan, or

☐ IRC 401(a) or 401(k) Plan Federal Tax I.D. #: 94-6000512


**PLEASE NOTE, IRC sec. 401(a)/401(k) plans are subject to the provisions of ERISA. It is suggested that a Plan Document, and if applicable, an Application for Determination, be submitted to the Internal Revenue Service prior to enrollment. It is required that you provide Great-West Life & Annuity Insurance Company with a copy of the Plan document and Application for Determination submitted to the Internal Revenue Service when the Determination is received.**

Affiliated Corporations, Groups or Service Organizations:

ATTEST: \_\_\_\_\_

Applicant's Address: 2220 Tulare Street  
Fresno, CA 93721

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By   
Deputy



Signature of Applicant: Susan B. Anderson

10/6/09  
Dated

Print Name of Applicant

Title; Chairman, Board of Supervisors

  
Great-West Life & Annuity Representative Signature

Dated

Gregory E. Seiler  
Senior Vice President  
Government Markets

Great-West Life & Annuity Representative Name (Printed)

9.32.09.  
0A 99572  
License ID Number

**Important Note:** This Letter Agreement, and other contractual documents, must be duly executed by both parties prior to the effective date of the changes. Backdating contracts or funding agreements is in violation of our corporate governance and regulatory requirements. Changes cannot be implemented prior to the date all documents are fully executed, even if that requires the effective date to be postponed. There are no exceptions to the rule that the effective date must follow the date all documents are executed.

## Great-West Life & Annuity Insurance Company

### Letter Agreement

Notwithstanding the provisions of the Great-West Life & Annuity Insurance Company Group Deferred Stable Asset Fund Annuity Contract (hereinafter referred to as the "Contract"), group number 98957-01, Great-West Life & Annuity Insurance Company ("Company") and the County of Fresno ("Group Policyholder") agree to the following clarifications and modifications of said Contract issued by the Company.

1. Investment Management Fee –The Investment Management Fee (which includes both the Investment Management Fee and Administrative Fee) as described in Section 5 is declared according to the following schedule:

#### Investment Management Fee Schedule

<u>Total Plan Assets</u>	<u>Annualized Investment Management Fee</u>
\$0 to \$ 150 million	0.53% (.35% Investment Management Fee and .18% Administrative Fee)
Greater than \$150 million	0.50% (.35% Investment Manage Fee and .15% Administrative Fee)

The reduction in the fee shall begin the first calendar day of the quarter following the date the assets exceed \$150 million and shall continue thereafter.

2. Investment Guidelines –The Investment Guidelines agreed to by the parties are attached to this Letter Agreement as Attachment A as set forth in the definition of Stable Asset Fund in Section 1 of the Contract.
3. Amendment No. 1-96C – The reference to "\$3,500" in Section 6 shall be replaced in it entirety with "\$5,000 (or such other amount as provided from time to time by the Code)".

This Letter Agreement is in effect as long as the Great-West Life & Annuity Insurance Company is acting in its current capacities as the exclusive investment option and recordkeeping and communication provider for the Group Policyholder's Plan, and there are no substantial changes in the operation of the Group Policyholder's Plan, including but not limited to a change in approved investment product providers, marketers or required recordkeeping services. This Letter Agreement may be modified at any time upon mutual consent of both parties.

Effective Date: The later of November 19, 2009 or the date signed by both parties

**Great-West Life & Annuity Insurance Company**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Gregory E. Sellar  
Senior Vice President  
Government Markets

Date: \_\_\_\_\_

9.25.09.

**County of Fresno**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Susan B. Anderson

Susan B. Anderson

Chairman, Board of Supervisors

Date: \_\_\_\_\_

10/6/09

**ATTEST:**

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By \_\_\_\_\_

Deputy



**Important Note:** Annuity Contract, Service Agreement, Investment Guidelines, Pricing Change Agreements, and other contractual documents must be duly executed by both parties prior to the effective date of the changes. Backdating contracts or funding agreements is in violation of our corporate governance and regulatory requirements. Changes cannot be implemented prior to the date all documents are fully executed, even if that requires the effective date to be postponed. There are no exceptions to the rule that the effective date must follow the date all documents are execute

# **Investment Guidelines for the County of Fresno Deferred Compensation Plan Stable Asset Fund (Separate Account)**

## **Attachment A**

### **Investment Objectives**

Within the parameters as stated below, the objectives of the fund are to:

1. Earn a high level of return consistent with the other objectives of the fund
2. Provide sufficient liquidity to pay plan benefits
3. Provide stable and predictable returns.
4. Preservation of principal

### **Benchmark Index**

The returns after investment management fees will be compared to the returns of three-year treasury notes, on a constant maturity basis.

### **Types of Investments**

Subject to the Quality and Diversification Guidelines, Great-West may invest the assets of the Stable Asset Fund in any or all of the following:

- A. United States Treasury Securities including Treasury Bills, Notes, Bonds, and Strips
- B. United States Agency securities including FDIC guaranteed bank debt
- C. Mortgage-Backed securities issued by GNMA, FNMA, FHLMC, FHLB, VA Vendee, or other government agencies
- D. Collateralized Mortgage Obligations (CMO's) secured by GNMA, FNMA, FHLMC, FHLB, VA Vendee, or other government agencies
- E. Instruments of Commercial Banks domiciled in United States. All money deposited into these Banks must be 100% guaranteed by the FDIC
- F. Commercial Paper rated A, or P, as rated by S&P, Fitch, or Moody's
- G. Corporate Bonds rated "A-/A3" or better as rated by S&P, Fitch, or Moody's at time of purchase.
- H. Asset Backed Securities rated "A" or better as rated by S&P, Fitch or Moody's at time of purchase, including CMO's backed by non-agency collateral

### **Short-Term Investments**

All money received by Great-West for deposit to the Stable Asset Fund will be invested the same day it is received. Whenever possible these monies will be invested in the type of investments indicated above. However, if the monies are received at a time of the day which makes this impractical, then the monies will be invested in an interest bearing account at a commercial bank. The following business day the money will then be invested according to the above guidelines.

### **Quality & Diversification Guidelines**

- A. A minimum of 50% of the account assets are to be invested in U.S. Treasury debt, Agency Mortgage-Backed Securities or Collateralized Mortgage Obligations secured by GNMA, FNMA, FHLMC, securities
- B. A maximum of 50% of the account assets may be invested in Corporate Bonds or Asset Backed Securities and described in "H" of Type of Securities
- C. Weighted average quality of AA or better.
- D. No more than 10% of the account may be invested in "A" rated securities.
- E. No more than 5% of the portfolio may be invested in any one corporate issuer (including asset backed securities). For purposes of diversification, each Asset-Backed or non-agency mortgage backed trust will be treated as a separate issuer

### **Duration of Investments**

The portfolio's average duration will not exceed five years.

### **Reporting**

- A. On a quarterly basis, the manager will provide a statement to the Plan showing the market value of each security, the sector diversification within the portfolio, and the duration, quality and yield of the portfolio.
- B. On a quarterly basis, the manager will provide to the Plan a book value statement showing the book value of the total portfolio and describing the methodology and assumptions used to reset the crediting rate of the Stable Asset Fund.
- C. On an annual basis, a senior representative of Great-West will be made available to the Plan to present to the Plan a verbal and written review of the investment decisions, and the rationale associated with these decisions for the previous 12-month's activity.

### **Trading Authority**

Within the Investment Guidelines as stated in this Exhibit, Great-West has the authority to buy and sell any securities in this separate account that it judges to be in the best long-term interest of the separate account and the participants that utilize the account.

### **Changes to Investment Guidelines**

The Plan may modify the guidelines (including duration) for investment of assets of the fund at any time providing that these modifications will not affect the funds ability to provide benefits a book value.

### **Amortization of Trading Gains/Losses**

The general policy of the fund will be a "buy and hold" strategy. However, to the extent that realized gains or losses occur, these gains/losses will be amortized over the expected average duration of the portfolio.


Effective Date: November 19, 2009

**Great-West Life & Annuity Insurance Company**

Signature:   
Name: \_\_\_\_\_  
Title: Gregory E. Selter  
Senior Vice President  
Government Markets

Date: 9.25.09.

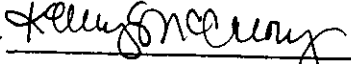
**County of Fresno**

Signature:   
Name: Susan B. Anderson  
Title: Chairman, Board of Supervisors

Date: 10/6/09


ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By   
Deputy

## CERTIFICATE OF DELIVERY OF DOCUMENT

I am employed by the County of Fresno as a Deputy Clerk of the Board of Supervisors. On October 6, 2009 I delivered a copy of Agreement No. 09-530 (Item No. 44) to the Chairman of the Fresno County Board of Supervisors.

  
Kelley McCreary  
Deputy Clerk

1                   **AMENDMENT I TO INVESTMENT GUIDELINES FOR THE COUNTY OF FRESNO**  
2                   **DEFERRED COMPENSATION PLAN STABLE ASSET FUND**

3           THIS AMENDMENT, hereinafter referred to as Amendment I, is made and entered into this  
4   16th day of May, 2016, by and between the County of Fresno 457(b) Deferred Compensation Plan for  
5   the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to  
6   as "COUNTY" or "PLAN", and Empower Retirement, hereinafter referred to as "CONTRACTOR"  
7   (collectively the "parties").

8           WHEREAS, the parties entered into that certain AGREEMENT, identified as COUNTY  
9   Agreement No. 09-530, effective November 19, 2009; and

10          WHEREAS, the Investment Guidelines For The County Of Fresno Deferred Compensation Plan  
11   Stable Asset Fund sets the investment parameters of the County Of Fresno Deferred Compensation  
12   Plan Stable Asset Fund; and

13          WHEREAS, the parties desire to amend the Investment Guidelines For The County Of Fresno  
14   Deferred Compensation Plan Stable Asset Fund regarding changes as stated below.

15          WHEREAS, the CONTRACTOR acknowledges and agrees that the desired amendment to the  
16   AGREEMENT as stated herein will not impair the CONTRACTOR's ability through the Stable Value  
17   Fund to continue to provide benefits at book value and CONTRACTOR acknowledges COUNTY's  
18   reliance upon said acknowledgement; and

19          NOW, THEREFORE, in consideration of their mutual promises, covenants and conditions,  
20   hereinafter set forth, the sufficiency of which is acknowledged, the parties agree as follows:

21          1.       That the following text in the original AGREEMENT, Page Two (2), under the heading  
22   "Quality & Diversification Guidelines" be deleted and the following inserted in its place:

23                "A.   A minimum of 50% of the account assets are to be invested in U.S. Treasury debt,  
24                   Agency Mortgage-Backed Securities or Collateralized Mortgage Obligations  
25                   secured by GNMA, FNMA, FHLMC, securities.

26                B.   A maximum of 50% of the account assets may be invested in Corporate Bonds or  
27                   Asset Backed Securities and described in "H" under heading Types of  
28                   Investments.

- C. Weighted average quality of AA or better.
- D. No more than 25% of the account may be invested in "A" rated securities.
- E. No more than 10% of the account may be invested in "BBB" rated securities.
- F. No more than 5% of the portfolio may be invested in any one corporate issuer (including asset backed securities). For purposes of diversification, each Asset-Backed or non-agency mortgage backed trust will be treated as a separate issuer.
- G. Corporate and Government Related Bonds rated "BBB-/Baa3" or better as rated by S&P, Moody's, Fitch or other nationally recognized rating agency at time of purchase. All securities must be U.S. dollar denominated. Government Related Bonds include:
  - a. Foreign Sovereigns,
  - b. Supranationals,
  - c. U.S. and Foreign Local Governments, and
  - d. Foreign Agencies."

2. COUNTY and CONTRACTOR agree that this Amendment I is sufficient to amend Agreement No. 09-530 and, that upon execution of this Amendment I, the AGREEMENT and Amendment I together shall be considered the AGREEMENT.

The AGREEMENT, as hereby amended, is ratified and continued. All provisions, terms, covenants, conditions and promises contained in the AGREEMENT and not amended herein shall remain in full force and effect. This Amendment I shall become effective on the date of June 16, 2016.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Amendment I.

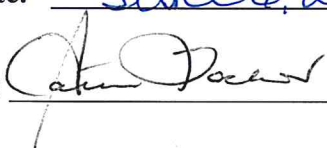
2  
3 ATTEST:

4 **CONTRACTOR:**  
5 **EMPOWER RETIREMENT**

**COUNTY**

6 **Date:** June 16, 2016

**Date:** 6/15/16

7 **By:** 

8 **By:**   
9 Jean Rousseau,  
Chair, Deferred Compensation Management  
Council

10 **Print Name:** Cathie Tocher

11 **Title:** SVP & CIO Segregated Funds



## **County of Fresno 457(b) Deferred Compensation Plan Investment Management and Custody Agreement**

AGREEMENT, dated October 6, 2009, by and between Barclays Global Investors, N.A. (the "Manager") and Susan B. Anderson (the "Trustee"), trustee of the County of Fresno 457(b) Deferred Compensation Plan (the "Plan").

WHEREAS, the Trustee has authority under the Plan to appoint investment managers to hold, invest and manage a portion of the Plan's assets.

NOW, THEREFORE, the Manager and the Trustee agree as follows:

1. Appointment of Manager. The Trustee appoints the Manager as investment manager to hold, invest and manage a portion of the Plan's assets, together with all income, proceeds and profits derived therefrom; provided however, that the authority of the Manager to act as Manager shall commence no earlier than the first business day after the Manager is notified in writing that additional assets have been added for the Manager to hold, invest and manage, in excess of those assets under the custody and control of the Manager (the "Account"). The Manager accepts appointment as investment manager and acknowledges that it is a fiduciary of the Plan with respect to the Account.
2. Investment Authority.
  - a. The Manager is granted full discretionary investment authority to invest the Account, subject to applicable fiduciary standards, in investments of any kind including one or more collective investment funds maintained by the Manager, subject to the written investment guidelines ("Guidelines") agreed to between the Trustee and the Manager from time to time (the agreement setting forth such Guidelines, the "Guideline and Fee Agreement"). To the extent that the Account is invested in collective investment funds maintained by the Manager, the Account shall be subject to all of the provisions of the instruments establishing such funds as they may be amended from time to time. Such instruments as they may be amended from time to time are hereby incorporated and made a part of this Agreement as if fully set forth herein and shall be adopted as part of the Plan to the extent required under Internal Revenue Service Rev. Rul. 81-100, as amended.

- b. Without limiting the generality of the foregoing, subject to the Guidelines, the Manager is authorized on behalf of the Plan to perform any act necessary or proper to enable the Manager to hold, invest and manage the Account including, but not limited to, the following:
    - 1. To purchase, sell, exchange, convert, hold or trade any security or other asset for the Account, and to instruct the trustee or custodian of any security or asset in the Account to deliver the security or other asset;
    - 2. To lend, including through a collective investment fund, any securities to brokers, dealers or other borrowers and to permit the loaned securities to be transferred into the name and custody of and be voted by the borrower or others, and to invest any collateral provided by any borrower in any security or other asset;
    - 3. To purchase, sell, execute, hold, grant, permit to expire, exercise and generally deal in any manner with contracts for the future delivery of financial instruments or other property and options of any kind;
    - 4. To execute and deliver any proxies or powers of attorney to such person or persons as the Manager may deem proper, granting to such persons such power and authority with relation to any property or securities at any time held in trust as it may deem proper;
    - 5. To vote, either in person or by general or limited proxy, or to refrain from voting, any security held in the Account; and
    - 6. To do all acts, whether or not expressly authorized, which the Manager may deem necessary or proper for the protection of the Account assets and generally to exercise any of the powers of an owner with respect to any property held by it.
  - c. In fulfilling these investment responsibilities, the Manager is authorized to bind and obligate the Plan for the carrying out of contracts, arrangements, or transactions entered into by the Manager on the Plan's behalf, and to employ or use broker-dealers, banks or other agents that it may select, including its affiliates, domestic or foreign. In the event that the Account, or any investment of the Account, exceeds or otherwise fails to comply with the Guidelines as a result of changes in market conditions, the Manager shall take such corrective action, in its sole discretion, as it deems advisable.
3. Non-Exclusivity of Services; Affiliates.

- a. The services of the Manager are not exclusive. The Manager and its affiliates will perform investment advisory and portfolio management services for various other clients. The Trustee understands and agrees that the Manager may give advice and take action with respect to such other funds and other clients or for its own account or for the account of any of its affiliates or for the accounts of any of their clients (collectively, "Other Accounts") which may differ from the advice or the timing or nature of action taken with respect to the Account, or effect transactions for Other Accounts at prices or rates that may be more or less favorable than for the Account. Furthermore, the Manager shall have no obligation to purchase or sell, or to recommend for purchase or sale for the Account any security or instrument which the Manager or an affiliate may purchase or sell for Other Accounts. The Manager may aggregate orders for the Account with orders for Other Accounts. To the extent permitted under applicable law, the Manager and its affiliates may obtain and keep any profits, commissions and fees accruing to them in connection with their activities as agent or principal in transactions for the Account and Other Accounts, and the Manager's fees as set forth in this Agreement shall not be abated thereby.
  - b. The Trustee acknowledges that the Manager does not warrant or guarantee any particular level of Account performance or that the Account will be profitable over time.
  - c. The Trustee understands and agrees that, from time to time, the Manager may make recommendations to purchase or sell securities, and may purchase or sell securities, in which an affiliate of the Manager deals and/or makes a market or an affiliate of the Manager may perform or seek to perform investment banking services for issuers of such securities. The Trustee also understands and agrees that any such purchases or sales may be made for the Account if viewed as advisable by the Manager in light of the Guidelines. The Manager may not engage in transactions hereunder except to the extent permitted by law.
  - d. The Trustee further understands and agrees that, from time to time, the Manager may trade with an affiliated broker-dealer to the extent permitted by law.
4. Consents. Without limiting the generality of Section (2) above, the Trustee acknowledges that it has received, through one or more separate writings from the Manager, including "Information About BGI: 16 Things You Should Know," certain disclosures whereby the Manager is making disclosure of material facts with respect to the following activities, and the Trustee hereby provides its

authorization for the Manager to engage in the those activities, including through any collective investment fund in which the Account participates:

- a. To trade through affiliated broker-dealers (for both effecting or executing a securities transaction or in agency cross trades).
  - b. To acquire securities issued during the existence of an underwriting or selling syndicate in which a U.S. affiliate of the Manager is a member of such underwriting or selling syndicate.
  - c. To lend securities (including but not limited to exchange-traded funds managed by an affiliate of the Manager, as acquired in accordance with applicable law) to one or more borrowers (each a "Borrower"), and to be compensated therefor; to lend securities through a common electronic platform in which the Manager has an equity interest; and to lend mortgage backed securities.
  - d. To lend securities to a Borrower that is an affiliate of the Manager.
  - e. To the extent provided for in the Guidelines, to purchase and sell shares of registered, open-end management investment companies, including exchange-traded funds and mutual funds, managed by an affiliate of the Manager.
  - f. To buy and sell securities in the Manager's cross-trading program, including as part of any transition services performed for the Plan.
  - g. To buy, hold and sell shares of common stock of an affiliate of the Manager.
5. Representations and Warranties by the Manager. The Manager represents and warrants that:
- a. It is a "bank" as defined in the Investment Advisers Act of 1940, as amended (the "Advisers Act").
  - b. This Agreement has been duly authorized, executed and delivered by the Manager and constitutes its legal, binding and valid obligation.
  - c. It has or will obtain all governmental authorizations, approvals, consents or filings required in connection with the execution, delivery or performance of this Agreement by the Manager.
6. Representations and Warranties by the Trustee. The Trustee represents and warrants the following:

- a. Investment of the Account as contemplated hereunder satisfies the funding policy and the diversification and liquidity requirements of the Plan, and the Trustee understands the risks involved in investing in the investments set forth in the Guidelines and other documentation governing the Account or any collective investment fund including "Information About BGI: 16 Things You Should Know" and acknowledges that all of the assets of the Account may be managed by a single manager, including the Manager.
- b. The Trustee has full power and authority under the provisions of the applicable instruments and law governing the Plan to execute, deliver and perform this Agreement on behalf of itself and the Plan (including providing representations and consents required under this Agreement) and to bind the Plan. This Agreement has been duly authorized, executed, and delivered by the Trustee on behalf of the Plan. The execution, delivery and performance of this Agreement by the Trustee, and the Trustee's instructions, directions, representations and consents pursuant to this Agreement, will constitute the valid and binding obligation of the Plan, and (i) will not violate any laws or regulations or any constituent document, policy, guideline, contract or other document applicable to the Trustee or the Plan and (ii) will not violate or result in any default under any material contract or other agreement to which the Trustee or the Plan is a party or by which it or the Plan's assets may be bound, or any applicable statute or any rule, regulation or order of any government agency or body. The Plan is not subject to the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations thereunder.
- c. Transactions contemplated by this Agreement to the extent permitted by the Guidelines, including but not limited to transactions in securities, futures, options, currency, forward contracts, repurchase agreements, deposits, swaps, other derivatives and any other instrument and obligation of any kind or within the Trustee's authority ("Transactions") (i) are duly authorized by the Trustee and the Plan's policies, board resolution(s), trust agreement(s) or any other enabling or governing law or instruments, (ii) are, in the Trustee's opinion, suitable investments for the Plan, and (iii) do not require any government notice or consent in connection with execution, delivery and performance of any such Transactions. Under the provisions of the applicable instruments and law governing the Plan, including Internal Revenue Service Rev. Rul. 81-100, as amended, the Plan's assets may be commingled for investment purposes with the assets of other eligible plans invested in and through a collective investment fund (or group trust), including the Manager's collective investment funds. The Plan has been amended to incorporate the instruments establishing the Manager's collective investment funds to the extent

of investment of the Account in such funds and to the extent there is any conflict between such instruments and the Plan or this Agreement, such instruments shall prevail.

- d. No restrictions exist on the transfer, sale or other disposition of any of the assets of the Account and no option, lien, charge, security or encumbrance exists or will, due to any act or omission of the Plan or the Trustee, exist over any of such assets.
- e. The Trustee has provided to the Manager all documentation, including, but not limited to, the plan and trust documents, enabling statutes that the Manager may reasonably request in connection with its obligations hereunder. In addition, the Trustee will furnish the Manager with copies of any amendments to or modifications of any such document, opinion or other instrument as shall be executed from time to time that materially affect the Trustee's or the Plan's authority or obligations hereunder.
- f. The Trustee has the sole authority and power to appoint and terminate investment managers for the Plan. The Trustee also has the authority to adopt collective investment funds under the Plan.
- g. The Plan owns and invests more than \$25 million in aggregate. The Plan and any related Plan trust are qualified under Section 457 (b) of the Internal Revenue Code (the "Code") and exempt from federal income taxation under Section \_\_\_\_ of the Code or is a governmental plan within the meaning of Section 818(a)(6) and exempt from federal income taxation under the Code. The Plan is not a "Keogh Plan" (H.R. 10 Plan) and does not cover any "self employed individuals" that are treated as employees under Section 401(c)(1) of the Code.

7. Notification.

- a. The Trustee shall notify the Manager in writing before or immediately upon the occurrence, or if it knows or has reason to know of the occurrence or likelihood of the occurrence, of any event which (i) would cause a change in the representations and warranties made under this Agreement, (ii) would jeopardize the tax qualification of the Plan or any related Plan trust, (iii) would operate to limit, suspend or terminate the authority of the Trustee or the Plan or affect the Trustee's or the Plan's obligations hereunder, or (iv) would effect any change in the Trustee or custodian. The Manager shall not be charged with knowledge of any of the foregoing until it receives written notice from the Trustee.

- b. The Trustee shall certify to the Manager the names of a person or persons who exercise control over the Plan, including those persons authorized to sign this Agreement and instructions on its behalf, and the current contact information for the foregoing person(s). Such certification may be in the form of a certificate of incumbency, certified board resolution, or other documentation acceptable to the Manager in its sole discretion. The Trustee shall provide a specimen signature form identifying those officers and employees of any Plan sponsor(s) or any third party authorized by the Trustee to place trade orders on behalf of the Plan. The Trustee shall immediately notify the Manager in writing of any change to such foregoing persons. The Manager shall not be charged with knowledge of any such change until it receives written notice from the Trustee.

8. Indemnification.

- a. The Manager shall not be liable to the Trustee, the Plan or any Plan trust for, and to the extent permitted by applicable law the Plan shall indemnify, defend and hold harmless the Manager and its officers, directors, affiliates and those employees supporting the Account from and against, any and all expenses, liabilities, damages, taxes, charges and claims of any kind or nature the Manager may incur (including reasonable attorney's fees and expenses) resulting from (a) any action taken or omitted by the Manager in good faith exercise of its powers under this Agreement, except as to matters regarding the Account in which the Manager has committed willful misconduct or negligence, has breached this Agreement or has violated applicable law, or (b) any act or omission of the Trustee, the Plan, or any Plan trust or any breach of this Agreement by the Trustee, the Plan, or any Plan trust or (c) any act or omission of the Plan's custodian, trustee or other investment manager.
- b. The Plan and the Trustee shall not be liable for, and the Manager shall indemnify, defend and hold harmless the Plan and the Trustee, from and against, any and all expenses, liabilities, damages, taxes, charges and claims of any kind or nature the Plan or the Trustee may incur (including reasonable attorney's fees and expenses) resulting from the Manager's willful misconduct or negligence, breach of this Agreement or applicable law with respect to the Account.

9. Force Majeure. Notwithstanding any other provision of this Agreement, neither the Manager nor its officers, directors, affiliates and employees shall be liable for any loss to the Trustee, the Plan or any Plan trust caused directly or indirectly by circumstances beyond the Manager's reasonable control,

including, but not limited to, government restrictions, exchange or market rulings, actions affecting securities or commodity exchanges including suspensions of trading or extensions of trading hours, acts of civil or military authority, national emergencies, labor difficulties, fires, earthquakes, floods or other catastrophes, acts of God, wars, acts of terrorism, riots or failures of communication or power supply.

10. Internal Controls and Procedures of the Plan. The Plan shall maintain, or shall cause to be maintained, written internal control procedures (the "Internal Control Procedures") reasonably designed to prevent or detect on a timely basis (i) orders being placed that are not orders for the Plan, (ii) orders being placed that are not orders for any Plan participants or do not accurately represent Plan participants' order instructions, (iii) orders being placed that are orders the Plan received after the Close of Trading (defined below), and (iv) orders being placed that are not in compliance with the terms and conditions of this Agreement. The Plan shall cause any third party authorized by the Plan to place contribution or withdrawal orders on behalf of the Plan to maintain Internal Control Procedures. The "Close of Trading" means, for each business day, the time as of which the unit value of collective investment funds maintained by the Manager is determined.
11. Manager Compensation. The Manager shall be entitled to reasonable compensation for its services hereunder in accordance with the fee schedule as agreed to between the Trustee and the Manager in the Guideline and Fee Agreement from time to time.
12. Reports. The Manager shall provide the Trustee a monthly statement for the Account reflecting all investments, receipts, and disbursements.
13. Limitations. The Manager's duties and responsibilities with respect to the Plan and the Account shall be limited to those specifically identified in this Agreement. The Manager shall have no duty or responsibility relating to the operation or administration of the Plan or any Plan trust. The Trustee represents and warrants that the Trustee has established the Plan's funding policy, investment (including diversification) policy and risk levels. The Trustee acknowledges that the Manager has not provided any assessment of appropriate risk levels or the Plan's funding policy or investment policy.
14. Confidentiality. This Agreement and all information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties (including, without limitation, to employees of either party or their respective affiliates) except to the extent that such persons utilize such information in the performance of their duties with respect to this Agreement or except as required by law or as agreed between the parties. Without limiting the foregoing, the



Trustee shall treat as confidential, to the extent provided to the Trustee by the Manager, the identity of securities holdings and other investments and positions therein and the issuers thereof contained in securities holdings reports for the Account provided by the Manager, certain portfolio information and trade data, historical trade data and historical portfolio positions, and any non-public financial and operating data and other proprietary and confidential business information relating to the Manager, the Account and any investment therein, and shall not use any such confidential information to inform any trading or investment decisions by the Trustee. Subject to any applicable law, notwithstanding anything contrary herein, the Manager may disclose client information to its employees, agents or affiliates pursuant to its internal record-keeping or data collection rules or policies as required to support the Account and any fund managed by the Manager in which the Account invests. The Manager is also hereby authorized (which may be withdrawn at any time upon written notice from the Trustee to the Manager) after the date of initial funding of the Account to publicly disclose that it has been awarded a mandate to provide investment management services to the Plan. The Manager may also release confidential information if directed to do so by the Trustee, if compelled to do so by law, or in connection with any government or self-regulatory organization request or investigation.

In the event that the Plan is required by law (any statute, governmental rule or regulation, or judicial or governmental order, judgment or decree) to disclose to the public ("Open Records Laws") any information regarding the investments, identity, performance, or value of any fund managed by Barclays Global Investors, N.A. ("BGI Fund"), or confidential or proprietary business information relating to the services or products of the Manager or any BGI Fund ("Confidential Information"), the Plan will give prior written notice of such requirement and prior written notice of any request for disclosure under such Open Records Laws to the Manager and any relevant BGI Fund, and shall permit the Manager and the BGI Fund a reasonable period of time to seek a protective order prohibiting or limiting such disclosure. Furthermore, the Manager and any relevant BGI Fund shall have the right not to disclose further to the Plan the types of Confidential Information that the Plan is required by law to disclose. To the extent that the Plan is permitted to recognize or treat any Confidential Information as trade secrets, sensitive commercial information or any similar information type which is beyond the reach of any Open Records Laws, the Plan shall recognize and treat the Confidential Information as such and shall not disclose the Confidential Information to the public.

The Trustee shall promptly notify the Manager in writing of any known unauthorized, negligent or inadvertent use or disclosure of any confidential information and cooperate with the Manager to

prevent disclosure of confidential information. The Trustee further acknowledges and understands that the use or disclosure of confidential information in any manner inconsistent with this paragraph may cause the Manager and/or BGI funds irreparable damage.

15. Anti Money Laundering Provisions. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each company that opens an account. In this regard, when the client seeks to open an account, the Manager will ask for a completed form W-9, which includes the name, address, Tax ID/Employer ID number of each Plan and/or client (or any other registration number issued in the jurisdiction of location or incorporation) and other information that will allow the Manager to identify the client. The Manager will also ask for legal documents that establish the identity of the client and may ask for information and documentation regarding source of funds to be invested. The Manager also reserves the right to ask for more information on the individuals who are beneficial owners of the client, exercise control over the Plan, or are signatories to this Agreement as well as for the Account being established with the Manager. At a minimum the Manager will ask for the names of these individuals but may also ask for address, date of birth, and other information that will allow the Manager to identify the signatories. The Manager may also request such other information as may be necessary to comply with applicable law. Furthermore, the Manager may verify any of the aforementioned information using third-party sources.

The Trustee represents, warrants and covenants that it has disclosed to the Manager if (a) the Plan is located in any of the Jurisdictions (as that term is defined below), (b) the Plan is owned or controlled by another entity located or incorporated in any of the Jurisdictions, (c) the Plan has a trading interest or significant business activity in any of the Jurisdictions or (d) the Plan's owners and/or controllers and those who are authorized to place trades on behalf of the Plan have any of the Jurisdictions as their country of nationality, residency or birth. The Trustee agrees to notify the Manager promptly if any of the above representations, warranties or covenants are no longer true or have changed.

Jurisdictions include any of the following countries: Iran, Iraq, Syria, Myanmar, North Korea, Liberia, Sudan, Belarus, Democratic Republic of Congo, Ivory Coast, Lebanon, Sierra Leone, Somalia, Uzbekistan, Cuba and Zimbabwe.

16. Notices. All notices, instructions and communications with respect to matters contemplated by this Agreement shall be in writing and shall be delivered by mail, facsimile, or electronic means (including web link), or any other mutually agreed telecommunication method.

17. Termination. This Agreement shall continue until terminated. It may be terminated by the Manager or the Trustee upon thirty days written notice to the other. The Agreement may be amended at any time by mutual written agreement of the Manager and the Trustee.
18. No Waiver. No waiver of any provision of this Agreement shall be effective unless the same shall be in writing by the party so waiving, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given. No failure to exercise and no delay in exercising, on the part of the Manager, the Plan, or the Trustee, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof.
19. Custody. With respect to assets of the Account, the Manager shall be depository and custodian of such assets, and the Trustee and the Manager shall be bound by the terms and conditions of the Custody Arrangement attached hereto as Appendix A and as may be revised from time to time.
20. Separability. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and the Agreement shall be construed and enforced as if such provision had not been included.
21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Governing Law. This Agreement shall be administered and construed according to the internal laws of the State of California notwithstanding conflict of laws provisions thereof, except as preempted by Federal law.
23. Entire Understanding. This Agreement (including any schedules and Appendices attached herein) and the Guideline and Fee Agreement represent the entire understanding of the parties hereto and supersede all prior written or oral agreements with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written. ATTEST:

TRUSTEE

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By Susan B. Anderson 10/6/09

By Kelly McCleary  
Deputy

Name Susan B. Anderson

Title Chairman, Fresno County Board of Supervisors

The undersigned, Barclays Global Investors, N.A., hereby accepts the foregoing appointment as investment manager and acknowledges it is a fiduciary with respect to the Plan insofar as the assets subject to its management are concerned.

**BARCLAYS GLOBAL INVESTORS, N.A.**

By

Name

Title

By

Name

Title

## **Appendix A**

### **Custody Arrangement**

The Trustee is the trustee of the Plan trust that provides a source of payments of benefits under the Plan. The Manager requires custody of Account assets in order to effect investment pursuant to the Agreement. The Trustee desires to retain and employ the Manager to act, and the Manager is willing to act, as depository and custodian of Account assets. Therefore, this Appendix B and the Agreement will govern custodian services performed by the Manager.

1. The Trustee hereby retains and employs the Manager as depository and custodian for the purposes of maintaining the Account and holding therein such assets as shall be received from the Trustee, all investments made by the Manager therewith or with the proceeds thereof in its capacity as investment manager of the Account pursuant to the Agreement, and all earnings and profits thereon.
2. The Manager in its capacity as custodian is authorized as follows:
  - a. to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and all other instruments that may be necessary or appropriate to register the securities in the Account or to complete any sales or deliveries of them;
  - b. to employ suitable agents or custodians, and to employ counsel who may but need not be counsel for the Trustee, and to rely upon the advice of such counsel;
  - c. to register any and all property held under this arrangement in its own name as agent, in the name of its nominee, or in bearer form, and combine certificates representing such investments with certificates of the same issue held by the Manager in other fiduciary capacities, or deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or an agency or instrumentality thereof, with a federal reserve bank, but the books and records of the Manager shall at all times show that all such investments are a part of the Account; and

- d. to do all acts, whether or not expressly authorized which it may deem necessary or proper for the protection of the property held hereunder.
- 3. The Manager shall receive for the Account any money or property, including dividends and interest, due and payable from or on account of the securities and other property in the Account. The Manager shall not, however, be required to enforce such collections by legal means or otherwise but shall receive the proceeds of such collections as may be effected by the Manager or its agents in the ordinary course of business.
- 4. The Manager shall add or withdraw assets from the Account on the written instructions of the Trustee and/or any third party as previously designated by the Trustee.
- 5. The Manager in its discretion may vote any stocks, bonds or other securities in the Account, and may give general or special proxies with or without power of substitution with respect thereto.
- 6. The Manager shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions in the Account, and all accounts, books and records relating thereto shall be open, upon advance written notice of at least ten (10) days, to inspection and audit at all reasonable times by any person designated by the Trustee. Within ninety (90) days following the close of fiscal year of the Plan, and within ninety (90) days after the termination of this arrangement, the Manager shall file with the Trustee a written account setting forth all investments, receipts, disbursements and other transactions effected by it during such fiscal year or during the period from the close of the last fiscal year to the date of such termination.
- 7. In the event of termination of the Agreement, the assets then held by the Manager shall be disposed of as the Trustee may direct in writing, and the Manager shall have no further responsibility for the Account.

## **County of Fresno 457(b) Deferred Compensation Plan Guideline and Fee Agreement**

Reference is made to the Investment Management Agreement (the "Agreement") dated October 6, 2009 by and among the Susan B. Anderson (the "Trustee"), and Barclays Global Investors, N.A. (the "Manager"). Capitalized terms used herein and not defined shall be given their meanings as so defined in the Agreement.

To expand on Paragraph Two of the Agreement, the Trustee has determined that, pursuant to the Plan's investment policies and objectives, the Plan's investment needs can best be met by investing a portion of its assets in the following collective investment fund(s):

### **Equity Index Fund F**

The Equity Index Fund F shall be valued on a daily basis and invested and reinvested in a portfolio of equity securities with the objective of approximating as closely as practicable the capitalization weighted total rate of return of that segment of the United States market for publicly traded equity securities represented by the larger capitalized companies. The criterion for selection of investments shall be the S&P 500 Index. When deemed appropriate by the Manager, the Manager may invest a portion of the Equity Index Fund F in S&P 500 Index futures contracts for the purpose of acting as a temporary substitute for investment in equity securities. The Equity Index Fund F will not engage in speculative futures transactions.

The above referenced collective investment funds may invest through one or more short term investment funds used for a cash "sweep" vehicle to manage uninvested cash or reinvestment and management of cash collateral associated with securities loans (each, a "STIF Fund").

STIF Funds used for a cash "sweep" vehicle are invested primarily in short term debt securities, such as variable amount notes, commercial paper, U.S. government securities, repurchase agreements, certificates of deposit of banks and savings institutions, and other short term obligations.

STIF Funds used to manage cash collateral associated with securities loans ("Cash Equivalent Funds") invest such cash collateral in short term debt instruments. These instruments include, but are not limited

to, the following: obligations issued by the United States government, its agencies and instrumentalities; corporate debt obligations; asset-backed securities (including mortgage-backed securities); instruments issued by banks, including time deposits, certificates of deposit and bankers acceptances; supranational and sovereign debt obligations; repurchase agreements; master notes; promissory notes; loan participations; shares in institutional money market funds; and insurance company funding agreements. Cash Equivalent Funds may also use strategies that seek a return that is higher than the current money market rates of return by engaging in "synthetic cash" transactions which have characteristics similar to money market instruments. These transactions may involve the following: financial futures, forwards or options transactions, equity securities, swap transactions and/or other derivative transactions that have the potential for enhancing the return of the Cash Equivalent Fund. In addition, certain Cash Equivalent Funds may invest in other Cash Equivalent Funds.

In the event of Plan (non-participant) directed activity into or out of the Fund, the Trustee will provide the Manager with 30 days advance notification in order to allow for coordination of order placement, trading and specification of settlement date.

The Trustee will notify the Manager if it is determined for any reason that there is a change in the Plan's investment needs affecting the stated objectives.

To expand on Paragraph Eleven of the Agreement, the fees to be applied to the Trustee's investment in the above collective investment fund(s) are as follows:

**Equity Index Fund F**

First	\$3 billion	.02 of 1%
Balance		.01 of 1%

Fees are calculated and billed monthly in arrears using the month end market value. When assets are held for a partial quarter(s) as a result of an initial contribution to or a final withdrawal from a collective investment fund, the quarter-end market value will be calculated using a time-weighted method. The quarter-end market value shall be: (1) decreased on a pro rata basis by any contribution to the account made during the calendar quarter and, (2) increased on a pro rata basis by any withdrawal made from the account during the calendar quarter. Pro-rata quarterly fee calculations will not apply in the event of a final withdrawal of assets from a collective investment fund held for less than 12 consecutive months, and are subject to the full quarterly minimum fee.



Payment is due to the Manager within thirty (30) days after receipt of invoice unless other arrangements are made. If payment of fees is not received within one-hundred and eighty (180) days of quarter-end, fees will automatically be redeemed from the Account.

This Guideline and Fee Agreement shall also serve as standing authorization for the Manager to accept investment direction from the Trustee's account representatives at Great-West Life & Annuity Insurance Company ("Representatives"). Such directions as the Manager may receive from the Representatives shall be subject to the Trust's overall investment strategy and may include purchase and sale directives, wire instructions, and such other instructions as may be necessary or appropriate to manage the account. This authorization shall continue until revoked in writing by the Trustee or the Manager.

**BARCLAYS GLOBAL INVESTORS, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

AGREED AND ACCEPTED:

TRUSTEE

By: Susan B. Anderson

Date: 10/6/09

Name: Susan B. Anderson

Title: Chairman, Fresno County Board of Supervisors

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By Kelly M. Chang  
Deputy

PLACE ON LETTERHEAD

Certificate of Incumbency

The UNDERSIGNED, being a duly appointed and acting Clerk to the Board of Supervisors of the County of Fresno (the "County"), DOES HEREBY CERTIFY that the following individuals have been designated as "beneficial owners" and/or "controllers"<sup>1</sup> of the County of Fresno Deferred Compensation Plan (the "Plan") and are duly elected or appointed to, and presently hold, the offices set forth below, and that they are duly authorized to act on behalf the Plan.

NAME AND TITLE (add /delete as appropriate)

Name: Susan B. Anderson  
Title: Chairman of the Board of Supervisors

Name: John Navarrette  
Title: County Administrative Officer

Name: Vicki Crow  
Title: Auditor-Controller / Treasurer-Tax Collector

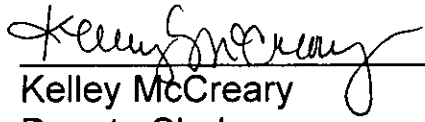
IN WITNESS WHEREOF, the undersigned has subscribed this certificate dated this 6<sup>th</sup> day of October, 2009.

Kellie McCray, Deputy  
Clerk to the Board of Supervisors  
County of Fresno

<sup>1</sup> Barclays Global Investors (BGI) Anti-Money Laundering policy requires clients investing with BGI to provide a certification of those officers of the client who are deemed "beneficial owners" or "controllers" of the entity investing with BGI. With respect to **US corporate pension and retirement plans**, this means those employees of the client who exercise control over the management of the plan, which includes, to the extent applicable, members of the investment committee or other similar group designated as a "Named Fiduciary" under ERISA. With respect to **US government or other public pension and retirement plans, funds, or systems**, this means those employees and/or trustees of the client who exercise control over the management of the plan, fund, or system. With respect to all other entities, this means (1) for a **corporate entity**, any individual who ultimately owns or controls, directly or indirectly more than 25% of the shares or voting rights or who exercises control over the management of the body; (2) for a **partnership**, any individual who is ultimately entitled to or controls, directly or indirectly, more than 25% of the capital, profits, or voting rights or who exercises control over the management of the partnership; and (3) for a **trust**, any individual or entity that is a beneficiary of the trust, any individual who is entitled to a specified interest in at least 25% of the capital of the trust property, or the class of persons in whose main interest the trust is set up or operates, or any individuals who maintain control over the trust.

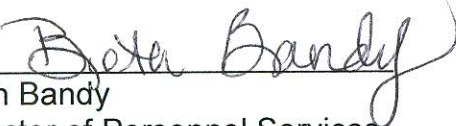
## CERTIFICATE OF DELIVERY OF DOCUMENT

I am employed by the County of Fresno as a Deputy Clerk of the Board of Supervisors. On October 6, 2009 I delivered a copy of Agreement No. 09-531 (Item No. 44) to the Chairman of the Fresno County Board of Supervisors.


  
Kelley McCreary  
Deputy Clerk

**Amendment to Agreement No. 09-531 with BlackRock Institutional Trust Company, N.A. to update the names of the parties to the Agreement and expand the lineup of investment options provided by BlackRock Institutional Trust Company, N.A. to County of Fresno 457(b) Deferred Compensation Plan participants.**


REVIEWED & RECOMMENDED FOR APPROVAL

  
Beth Bandy  
Director of Personnel Services

APPROVED AS TO LEGAL FORM

  
Kevin Briggs  
County Counsel

APPROVED AS TO ACCOUNTING FORM

  
Vicki Crow  
Auditor-Controller/Treasurer-Tax Collector

## **County of Fresno 457(b) Deferred Compensation Plan**

### **First Amendment to Investment Management and Custody Agreement**

This First Amendment to Investment Management and Custody Agreement (the "Amendment") is made as of July 9, 2013 by and between BlackRock Institutional Trust Company, N.A. ("Manager") and the Chair of the County of Fresno Board of Supervisors ("Trustee), trustee of the County of Fresno 457(b) Deferred Compensation Plan ("Plan"). Capitalized terms used herein and not defined shall be given their meanings as so defined in the Agreement (as defined below).

WHEREAS, Susan B. Anderson (as former trustee of the Plan) and the Manager are party to an Investment Management Agreement dated as of October 6, 2009 (the "Agreement");

WHEREAS, Barclays Global Investors, N.A. has changed its name to BlackRock Institutional Trust Company, N.A. effective December 1, 2009 on account of the change in ownership of the entity;

WHEREAS, Susan B. Anderson retired and is succeeded as trustee of the Plan by the Trustee, effective January 7, 2013;

WHEREAS, the Trustee and the Manager wish to supersede and replace any other Guideline and Fee Agreements with respect to the Plan's assets managed pursuant to the Agreement with those set forth in this Amendment; and

WHEREAS, the Trustee and the Manager wish to amend certain terms and conditions of the Agreement.

NOW, THEREFORE, the Trustee and the Manager agree as follows:

1. Amendments to the Agreement.

- (a) The term "Manager" is hereby defined as BlackRock Institutional Trust Company, N.A.
- (b) Susan B. Anderson retired and is succeeded as trustee of the Plan by the Trustee, effective January 7, 2013. The term "Trustee" is hereby defined as the then-current Chair of the County of Fresno Board of Supervisors.

- (c) References to Guideline and Fee Agreement in the Agreement shall refer to the attached Appendix B – Guidelines and Appendix C – Fees, as applicable, which shall supersede and replace any other Guideline and Fee Agreements related to the Agreement.
2. Full Force and Effect. Except as expressly set forth above, all other terms and provisions of the Agreement shall remain in full force and effect.
  3. Representations and Warranties. The Trustee represents and warrants that the representations and warranties contained in Section 6, 13 and 15 of the Agreement are still true and correct in all material aspects.
  4. Severability. If any provision of this Amendment is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Amendment shall be construed and enforced as if such provision had not been included.
  5. Governing Law. The validity of this Amendment and the construction of its terms shall be administered and construed according to the laws of the State of California, except as preempted by ERISA or other laws of the United States.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereto duly authorized as of the day and year first above written.

**Chair of the County of Fresno Board of Supervisors**

By:

Name: Henry Perea *7/9/13* Title: Chair, Board of Supervisors

**BlackRock Institutional Trust Company, N.A.**

By:

Name: *[Signature]* Title: **Robert C. Gain**  
Managing Director

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By: *[Signature]*  
Deputy



## **Appendix B**

### **Guidelines**

To expand on Section Two of the Agreement, the Trustee has determined that, pursuant to the Plan's investment policies and objectives, the Plan's investment needs can best be met by investing a portion of its assets in the following collective investment funds:

**Equity Index Fund F**

**Mid Capitalization Equity Index Fund F**

**Russell 2000® Index Fund F**

**U.S. Debt Index Fund F**

**EAFE Equity Index Fund F**

The investment guidelines for the above referenced collective investment funds can be found in the Plan of BlackRock Institutional Trust Company, N.A. Investment Funds for Employee Benefit Trusts and the Schedule A thereto (collectively the "Plan Document"), a current copy of which may be accessed via the following website link: [www.blackrockdocuments.com](http://www.blackrockdocuments.com).

The Manager shall notify the Trustee of material changes to the investment guidelines of the above-listed collective investment funds in which the Account is invested.

In the event of Plan (non-participant) directed activity into or out of the collective investment funds, the Trustee will provide the Manager with thirty (30) days advance notification in order to allow for coordination of order placement, trading and specification of settlement date.

The Account or the above referenced collective investment funds may invest through one or more short term investment funds used for a cash "sweep" vehicle to manage uninvested cash or reinvestment and management of cash collateral associated with securities loans, including but not limited to Money Market Fund (each, a "STIF Fund").

STIF Funds used for a cash "sweep" vehicle are invested primarily in short term debt securities, such as variable amount notes, commercial paper, U.S. government securities, repurchase



agreements, certificates of deposit of banks and savings institutions, and other short term obligations.

STIF Funds used to manage cash collateral associated with securities loans ("Cash Equivalent Funds") invest such cash collateral in short term debt instruments. Additional information relating to the investment philosophy, risk management and guidelines criteria for the STIF Funds, as well as specific guidelines for each STIF Fund can be found in "Short-Term Investment Funds Overview and Guidelines", a current copy of which may be accessed via [www.blackrockdocuments.com](http://www.blackrockdocuments.com).

## Appendix C

### Fees

This Appendix C will also serve as the fee schedule referred to in Section Eleven of the Agreement. The investment management fees to be applied to the investment by the Account in the collective investment funds as directed by the Trustee are as follows:

#### **Equity Index Fund F**

Annual investment management fee rate:

First	\$3 billion	0.02 of 1%
Balance		0.01 of 1%

#### **Mid Capitalization Equity Index Fund F**

Annual investment management fee rate:

First	\$2 billion	0.03 of 1%
Next	\$1 billion	0.02 of 1%
Balance		0.01 of 1%

#### **Russell 2000® Index Fund F**

Annual investment management fee rate:

First	\$2 billion	0.03 of 1%
Next	\$1 billion	0.02 of 1%
Balance		0.01 of 1%

#### **U.S. Debt Index Fund F**

Annual investment management fee rate: 0.04 of 1%

#### **EAFE Equity Index Fund F**

Annual investment management fee rate: 0.10 of 1%

For the purpose of calculation of the investment management fees for each of the above collective investment funds with tiered fee structures, assets invested in each such collective investment fund

will be aggregated with certain of the assets managed by the Manager for which the Financial Administrative Services Corporation, an affiliate of the Representatives (as defined below), provides recordkeeping and administrative services.

Investment management fees are calculated quarterly in arrears by averaging an Account's three month-end market values and applying 25% of the annual fee schedule. When assets are held for a partial quarter as a result of an initial contribution to or a final withdrawal from a collective investment fund, the quarter-end market value will be calculated using a time-weighted method. The quarter-end market value shall be: (1) decreased on a pro rata basis by any contribution to the Account made during the calendar quarter and, (2) increased on a pro rata basis by any withdrawal made from the Account during the calendar quarter.

With respect to the Plan's investment in above referenced funds, payment is due to the Manager by wire transfer within thirty (30) days after receipt of invoice by Trustee or its designated third party administrator. If payment of fees is not received within one-hundred and eighty (180) days of quarter-end, fees will automatically be redeemed from the Account.

This Appendix C shall also serve as standing authorization for the Manager to accept investment direction from the Trustee's account representatives at Great-West Life & Annuity Insurance Company ("Representatives"). Such directions as the Manager may receive from the Representatives shall be subject to the Plan's overall investment strategy and may include purchase and sale directives, wire instructions, and such other instructions as may be necessary or appropriate to manage the account. This authorization shall continue until revoked in writing by the Trustee or the Manager.

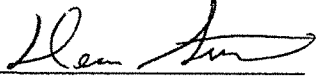
**Second Amendment to Agreement No. 09-531 with BlackRock Institutional Trust Company, N.A. to change the share classes of collective investment funds provided by BlackRock Institutional Trust Company, N.A. to County of Fresno 457(b) Deferred Compensation Plan participants.**

REVIEWED & RECOMMENDED FOR APPROVAL



Beth Bandy  
Director of Personnel Services

APPROVED AS TO LEGAL FORM



for: Daniel Cederborg  
County Counsel

## **County of Fresno 457(b) Deferred Compensation Plan**

### **Second Amendment to Investment Management and Custody Agreement**

This Second Amendment to Investment Management and Custody Agreement (the "Second Amendment") is made as of January 13, 2015 by and between BlackRock Institutional Trust Company, N.A. (the "Manager") and the Chair of the County of Fresno Board of Supervisors (the "Trustee"), trustee of the County of Fresno 457(b) Deferred Compensation Plan (the "Plan"). Capitalized terms used herein and not defined shall be given their meanings as so defined in the Agreement (as defined below).

WHEREAS, the Trustee and the Manager are party to an Investment Management Agreement, AGT # 09-531, dated October 6, 2009 (the "Agreement");

WHEREAS, the Trustee and the Manager entered into a First Amendment of the Agreement on July 9, 2013;

WHEREAS, the Trustee and the Manager wish to supersede and replace any other Guideline and Fee Agreements with respect to the Plan's assets managed pursuant to the Agreement with those set forth in this Second Amendment; and

WHEREAS, the Trustee and the Manager wish to amend certain terms and conditions of the Agreement.

NOW, THEREFORE, the Trustee and the Manager agree as follows:

1. Amendments to the Agreement.

- (a) Appendix B to the Agreement is hereby deleted in its entirety and replaced with the Appendix B attached hereto.
- (b) Appendix C to the Agreement is hereby deleted in its entirety and replaced with the Appendix C attached hereto.

2. Full Force and Effect. Except as expressly set forth above, all other terms and provisions of the Agreement shall remain in full force and effect.

3. Representations and Warranties. The Trustee represents and warrants that the representations and warranties contained in Section 6, 13 and 15 of the Agreement are still true and correct in all material aspects.
4. Severability. If any provision of this Second Amendment is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Second Amendment shall be construed and enforced as if such provision had not been included.
5. Governing Law. The validity of this Second Amendment and the construction of its terms shall be administered and construed according to the laws of the State of California, except as preempted by ERISA or other laws of the United States.

(The rest of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their respective officers thereto duly authorized as of the day and year first above written.

**Chair of the County of Fresno Board of Supervisors**

By Deborah A. Prochigian Chairman  
Name Title

**ATTEST:**

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By Susan Bishop  
Deputy

**BlackRock Institutional Trust Company, N.A.**

By \_\_\_\_\_  
Name Title

## **Appendix B**

### **Guidelines**

To expand on Section Two of the Agreement, the Trustee has determined that, pursuant to the Plan's investment policies and objectives, the Plan's investment needs can best be met by investing a portion of its assets in the following collective investment funds (the "Available Collective Funds"):

#### **Equity Index Fund M**

#### **Mid Capitalization Equity Index Fund M**

#### **Russell 2000® Index Fund M**

#### **U.S. Debt Index Fund W**

#### **EAFE Equity Index Fund T**

Each Available Collective Fund engages in securities lending and will pay to the Manager a separate securities lending fee as described in Appendix C.

The investment guidelines for Available Collective Funds can be found in the Plan of BlackRock Institutional Trust Company, N.A. Investment Funds for Employee Benefit Trusts and the Schedule A thereto (collectively the "Plan Document"). The Manager shall notify the Trustee of material changes to the investment guidelines of the Available Collective Funds. A copy of the CTF Plan Document, which may be updated from time to time, may be accessed via the following website link: [www.blackrockdocuments.com](http://www.blackrockdocuments.com). The Trustee has received an email containing a login ID and password to access the above website.

In the event of Plan (non-participant) directed activity into or out of the Available Collective Funds, the Trustee will provide the Manager with thirty (30) days advance notification in order to allow for coordination of order placement, trading and specification of settlement date.

The Available Collective Funds may invest through one or more short term investment funds, including but not limited to the Short-Term Investment Fund, a short term investment fund established under the CTF Plan Document (each, a "**STIF Fund**"), used for a cash "sweep" vehicle to manage uninvested cash or, if an Available Collective Fund engages in securities lending, to reinvest and manage cash collateral associated with securities loans. Additional information relating to the investment objectives, guidelines and risk management for the STIF Funds can be found in



"Short-Term Investment Funds Overview and Guidelines" (the "**STIF Guidelines**"). A copy of the STIF Guidelines, which may be updated from time to time, may be accessed via [www.blackrockdocuments.com](http://www.blackrockdocuments.com).

(The rest of this page is intentionally left blank.)

## Appendix C

### Fees

This Appendix C will also serve as the fee schedule referred to in Section Eleven of the Agreement. The investment management fees to be applied to the investment by the Account in the collective investment funds ("Available Collective Funds") as directed by the Trustee are as follows:

#### Investment management fees.

*Net of fee Available Collective Funds:*

##### **Equity Index Fund M**

Annual investment management fee rate: 1.5 basis points

##### **Mid Capitalization Equity Index Fund M**

Annual investment management fee rate: 2.5 basis points

##### **Russell 2000® Index Fund M**

Annual investment management fee rate: 4.5 basis points

##### **U.S. Debt Index Fund W**

Annual investment management fee rate: 4.0 basis points

##### **EAFE Equity Index Fund T**

Annual investment management fee rate: 10.0 basis points

With respect to the net of fee Available Collective Funds listed above, investment management fees are accrued daily as a percentage of the net assets of a net of fee Available Collective Fund and are reflected in such Available Collective Fund's unit value.

Securities lending fees. The lending Available Collective Fund and the Manager will each receive 50% of the net income earned from securities lending transactions. If a loan is collateralized with cash, net income is determined by calculating the return received by a lending Available Collective Fund's investment of cash collateral posted for securities loans in the applicable STIF Fund used to manage cash collateral, net of borrower rebate fees. If a loan is collateralized with assets other than

cash, net income equals the loan fee negotiated with the borrower. The net income from securities lending divided between the lending Available Collective Fund and the Manager is also net of cash collateral management fees paid to the Manager as described below and the other expenses of the STIF Funds used to manage cash collateral. The Manager bears all operational costs directly related to securities lending transactions from its share of net income. The Plan's portion of lending revenue is retained by the lending Available Collective Fund and invested in accordance with the relevant Available Collective Fund guidelines.

STIF Funds used to manage cash collateral associated with securities loans are subject to a management fee, payable to the Manager, accrued daily on the net assets of such fund at either (a) an annual rate of 0.050%, or (b) an annual rate of 0.056%, if such fund may engage in "synthetic" transactions. "Synthetic" transactions are further described in the STIF Guidelines.

Administrative expenses. Each of the Available Collective Funds is subject to administrative expenses, including, but not limited to accounting, custody and audit fees. The administrative expenses are accrued daily against the Available Collective Fund, which results in an adjustment in the Available Collective Fund's unit value to reflect such expenses accrued. The administrative expenses for each Available Collective Fund are capped at 2 basis points (0.02%) per year.

This Appendix C shall also serve as standing authorization for the Manager to accept investment direction from the Trustee's account representatives at Nationwide Financial Services, Inc. (the "Representatives"). Such directions as the Manager may receive from the Representatives shall be subject to the Plan's overall investment strategy and may include purchase and sale directives, wire instructions, and such other instructions as may be necessary or appropriate to manage the account. This authorization shall continue until revoked in writing by the Trustee or the Manager.

The Trustee acknowledges that it has received and reviewed the description of the Manager's cross trading program in *Managing ERISA Assets*. The Trustee hereby authorizes participation in the Manager's cross-trading program in accordance with PTE 2002-12 and the performance by the Manager of any act necessary or proper to enable it to purchase or sell securities to another account or fund managed by the Manager or its affiliates at prevailing market levels in accordance with applicable law, including PTE 2002-12, and the Manager's cross-trading policies and procedures.

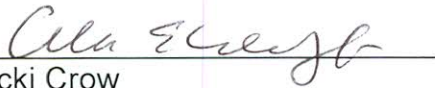
**Agreement with Great-West Trust Company, LLC to provide Great-West Lifetime Trusts as an investment option to County of Fresno 457(b) Deferred Compensation Plan participants.**

REVIEWED & RECOMMENDED FOR APPROVAL

A handwritten signature in cursive script, appearing to read "Beth Bandy", written over a horizontal line.

Beth Bandy  
Director of Personnel Services

APPROVED AS TO ACCOUNTING FORM

A handwritten signature in cursive script, appearing to read "Vicki Crow", written over a horizontal line.

Vicki Crow  
Auditor-Controller/Treasurer-Tax Collector

Lee A. Trucker  
R. Bradford Huss  
Charles A. Storke  
Benjamin F. Spater  
Deborah Judith Wiener  
Julie Burbank  
Ronald J. Triche  
Mary E. Powell  
Robert F. Schwartz  
Tiffany N. Santos  
Kevin E. Nolt  
Clarissa A. Kang  
Charles M. Dyke


Of Counsel  
Barbara B. Creed

TRUCKER ♦ HUSS  
A PROFESSIONAL CORPORATION  
ERISA AND EMPLOYEE BENEFITS ATTORNEYS

Elizabeth L. Loh  
Matthew L. Gouaux  
Michelle Schuller Lewis  
Virginia H. Perkins  
Jennifer Dack Brooks  
J. Marc Fosse  
Brian C. Gilmore  
Robert R. Gower  
Mikaela C. Habib  
T. Katuri Kaye  
Albert K. Su  
Jahiz Noel Agard  
Angel L. Garrett  
Blake E. Williams

Special Counsel  
Barbara P. Pletcher  
Richard A. Gilbert

MEMORANDUM

**TO:** Kevin B. Briggs, Fresno County Counsel  
**FROM:** Kevin Nolt; Robert Gower   
**DATE:** March 15, 2013  
**RE:** Great-West Trust Company Collective Investment Trust for Employee Benefit Plans

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This memorandum addresses our review of the Great-West Trust Company Collective Investment Trust for Employee Benefit Plans Participation Agreement (the "Participation Agreement"), the related September 24, 2012 Disclosure Memorandum and series of five supplemental declarations, for potential legal issues involving a proposal for participation by the County of Fresno 457(b) Deferred Compensation Plan (the "Plan"). In conducting our review, we relied on the April 17, 2012 restatement of the Plan as the sole document governing the terms of the Plan.

As a deferred compensation plan maintained under section 457(b) of the Internal Revenue Code, the Plan, its management, and operations are subject to both the Internal Revenue Code and fiduciary duties under the California Constitution. We believe, based on the information provided, the arrangement proposed under the Agreement is legal under such governing instruments, and would be valid and binding on the parties if entered into.

We note that the fee amounts are included in the schedules attached to the Participation Agreement. The reasonableness of these fee amounts and recipients of the fees are a fiduciary decision that the Council must address, and upon which we are unable to give an opinion.

Please contact us if you have any questions.

RRG:rrg

**GREAT-WEST TRUST COMPANY  
COLLECTIVE INVESTMENT TRUST FOR EMPLOYEE BENEFIT PLANS**

**PARTICIPATION AGREEMENT**

This Participation Agreement (“**Agreement**”) is made as of 7/9/13 by and between Great-West Trust Company, LLC (“**Great-West**”) as trustee (in such capacity, “**Trustee**”) of the Great-West Trust Company Collective Investment Trust for Employee Benefit Plans (the “**Collective Trust**”), and the plan sponsor or other authorized fiduciary executing this Agreement (“**Fiduciary**”) on behalf of the employee benefit plan or trust identified below (“**Eligible Trust**”).

Capitalized terms used but not defined in this Agreement are defined as indicated in the Declaration of Trust of the Great-West Trust Company Collective Investment Trust for Employee Benefit Plans dated as of April 8, 2011, as amended from time to time (the “**Declaration of Trust**”).

<b>RECITALS</b>
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A. Great-West maintains the Collective Trust under the Declaration of Trust as a medium for the collective investment of tax-qualified retirement trusts, certain governmental employee plans, and certain other eligible participants identified in the Declaration of Trust.

B. Fiduciary has authority to direct investments or select or designate investment options for the Eligible Trust, and desires that each of the Trusts identified on Schedule A to this Agreement (as amended from time to time by agreement of Fiduciary and Great-West) and maintained under the Declaration of Trust (referred to for convenience as the “**Trusts**”) be an investment of the Eligible Trust or available as an investment option for Eligible Trust participants in accordance with this Agreement.

C. Great-West desires to accept the Eligible Trust as a Participating Trust of the Trusts, subject to the terms and conditions of this Agreement.



## I. ELIGIBLE TRUST-RELATED INFORMATION

*Please complete all information below, as applicable.*

- A. Eligible Trust Name:  
County of Fresno 457(b) Deferred Compensation Plan
- B. Eligible Trust Tax ID Number (EIN plus 3-Digit Plan number): 946000512001
- C. Plan Type (please check appropriate box):
- ☐ Tax-qualified corporate-employee benefit plan (see Part IV.A. below)
  - ☐ Puerto Rican plan described in ERISA Section 1022(i) (see Part IV.B.)
  - ☒ Governmental plan or unit (see Part IV.C.)
  - ☐ Church plan (see Part IV.D.)
  - ☐ Group trust (see Part IV.E.)
  - ☐ Insurance company separate account (see Part IV.F.)
- D. Plan Sponsor Name:<sup>\*</sup>  
County of Fresno
- Street address: 2220 Tulare Street, 14th Floor
- City, State, Zip: Fresno, CA 93721
- Phone number: (559) 600-1810
- E-mail address: djoseph@co.fresno.ca.us
- EIN number: 946000512
- Ticker (if Plan Sponsor is publicly traded company): n/a

<sup>\*</sup> "Plan Sponsor" is corporate, governmental, or church employer (in the case of a Qualified Plan, Governmental Plan, or Church Plan, respectively); bank or trust company (Commingled Trust); trustee or other authorized investment manager (Other Group Trust); insurance company (in case of Insurance Company Separate Account)

E. Authorized Fiduciary Contact

Name: Personnel Services Manager - Employee Benefits  
Street address: 2220 Tulare Street, 14th Floor  
City, State, Zip: Fresno, CA 93721  
Phone number: (559) 600-1810  
E-mail address: pnerland@co.fresno.ca.us

F. [RESERVED] Wire Instructions for Redemptions:

Bank Name: \_\_\_\_\_

ABA #: \_\_\_\_\_

Bank Address: \_\_\_\_\_

Beneficiary Account Name: \_\_\_\_\_

Beneficiary Account Number: \_\_\_\_\_

For Further Credit Account Name: \_\_\_\_\_

For Further Credit Account Number: \_\_\_\_\_



## II. AUTHORIZATION AND ACCEPTANCE OF PARTICIPATING TRUST

A. Appointment of Great-West. Fiduciary hereby appoints Great-West as investment manager of the Eligible Trust with respect to Eligible Trust assets that are transferred to it by or on behalf of the Eligible Trust for investment in the Trusts (the “**Account**”). Fiduciary authorizes Great-West to perform any and all acts with respect to the Account that Trustee is authorized, required, or permitted to perform under the Declaration of Trust. Great-West will apply Eligible Trust assets received by it to the acquisition of Units in such Trust or Trusts as shall be identified in instructions provided to Great-West by Fiduciary or its designee from time to time. Great-West hereby accepts its appointment and, if the Eligible Trust is subject to ERISA, acknowledges that it is a fiduciary, as such term is defined for purposes of Part 4 of Subtitle B of Title I of ERISA, with respect to the Account; provided that Fiduciary solely shall be responsible for the fiduciary determination that the Trusts in which the Eligible Trust invests from time to time are prudent and appropriate investments or investment options for the Eligible Trust and its participants. Fiduciary hereby agrees that the responsibilities and duties of Great-West are limited to the Account, and, if the Account only constitutes a portion of the assets of the Eligible Trust, Great-West has no responsibilities or duties with respect to any other assets of the Eligible Trust.

B. Great-West Acknowledgements. Great-West acknowledges that it is a “bank” as such term is defined in the Investment Advisers Act of 1940, as amended. Great-West shall discharge its duties with respect to the Account with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

C. Acceptance of Eligible Trust as Participating Trust. Trustee hereby accepts the Eligible Trust as a Participating Trust of the Trust(s) as of the date specified on the signature page hereto, which is a Valuation Date of the Trusts. Fiduciary or its designee will provide notices to Trustee as necessary to arrange for additional purchases of Units and redemptions of Units, all in accordance with the procedures specified in the Declaration of Trust, the applicable Supplemental Declarations, and this Agreement.

D. Declaration of Trust Controls. Fiduciary acknowledges and understands that the Eligible Trust’s participation in the Trusts is at all times subject to the Declaration of Trust (including the Supplemental Declaration of each Trust in which Eligible Trust assets are invested), as amended from time to time, which is hereby adopted as a part of this Agreement. Fiduciary agrees that if there is any inconsistency between this Agreement and the Declaration of Trust, the Declaration of Trust shall control. Fiduciary acknowledges having received copies of the Declaration of Trust and the Supplemental Declaration of each Trust and having had adequate time to review their terms with its legal counsel and discuss the same with Trustee. Fiduciary further acknowledges that, with respect to the assets of the Eligible Trust invested in the

Collective Trust (i) the investment objectives and policies of each Trust supersede any internal or other investment guidelines adopted by or applicable to the Eligible Trust, including those set forth in any investment policy statement of the Eligible Trust (“**Plan Guidelines**”), (ii) each Trust shall be managed by Great-West without regard to any Plan Guidelines, which shall not apply to any Trust, (iii) the Fiduciary, and not Great-West, is responsible for ensuring that the Eligible Trust’s participation in the Collective Trust complies with any Plan Guidelines, and (iv) compliance by Great-West with the investment objectives and policies of each Trust will not violate the Plan Guidelines.



### III. GENERAL WARRANTIES, REPRESENTATIONS, AND AGREEMENTS OF FIDUCIARY

Fiduciary warrants and represents to, and agrees with, Trustee as follows:

A. Authority of Fiduciary. If the Eligible Trust is subject to ERISA, Fiduciary is a named fiduciary, as that term is defined in ERISA, of the Eligible Trust. If the Eligible Trust is not subject to ERISA, Fiduciary has authority to manage or control the assets of the Eligible Trust. In either case, Fiduciary is authorized to enter into this Agreement on the Eligible Trust's behalf and to appoint Great-West as investment manager of the Eligible Trust. Any person signing this Agreement on Fiduciary's behalf is authorized to do so, and this Agreement is binding on Fiduciary, the Eligible Trust, and the Eligible Trust's participants and beneficiaries.

B. Investment is Authorized. Fiduciary has carefully considered the advisability of an investment of Eligible Trust assets in the Trusts, taking into account the fact that the value of the Trust assets may be affected positively or negatively by a variety of risks and factors, and has determined that such investment by the Eligible Trust is consistent in all respects with ERISA or other applicable law (specifically including state law if the Eligible Trust is not subject to ERISA or Code Section 4975, such as a Governmental Plan or church plan), that the investment of Eligible Trust assets in the Trusts is consistent with Fiduciary's duties to diversify Eligible Trust assets, and that all actions required to authorize the Eligible Trust to make such investment have been duly taken. Fiduciary agrees and acknowledges that Trustee, in discharging its responsibilities under the Declaration of Trust and this Agreement, has no responsibility to advise or monitor Fiduciary or any Eligible Trust participant or beneficiary with respect to asset allocation and other determinations underlying its, his, or her decision, as the case may be, to establish the Trusts as eligible investments under the Eligible Trust and/or to invest (and continue to invest) in the Trusts.

C. Agreement to Update and Furnish Information. Each purchase of Units of any Trust by the Eligible Trust shall constitute a reaffirmation by Fiduciary that Fiduciary's representations and warranties contained in this Agreement are true and correct on and as of the date each such purchase is made. Trustee and any investment adviser retained by Trustee are entitled to rely on Fiduciary's representations and warranties in this Agreement and any additional information provided by Fiduciary to Trustee pursuant to this Agreement unless and until superseded by Fiduciary in writing.

#### IV. PLAN-SPECIFIC WARRANTIES AND REPRESENTATIONS OF FIDUCIARY

The following representations of Fiduciary apply to the Eligible Trust or the Plan of the Eligible Trust is a part, as the case may be. Fiduciary warrants and represents to, and agrees with, Trustee as indicated under the applicable box checked below:

☐ A. Qualified Plan Subject to ERISA (Declaration of Trust Section 1.22).

- (1) The Plan is qualified under Code Section 401(a) and satisfies, among other applicable requirements, Treasury Regulation § 1.401(a)-2, as amended (exclusive benefit requirement).
- (2) The Plan is subject to the fiduciary responsibility standards of Part 4 of Subtitle B of Title I of ERISA.
- (3) The Plan is Trused by a trust which is exempt from United States federal income taxation under Code Section 501(a).
- (4) The Plan does not cover any self-employed individuals within the meaning of Code Section 401(c)(1).
- (5) The Plan is maintained pursuant to a plan or trust instrument which authorizes it to participate in a common, collective, or commingled trust Trust, including the Collective Trust.
- (6) The Declaration of Trust is hereby incorporated by reference in, and adopted as a part of, the Plan.

[RESERVED] B. Puerto Rican Plan.

- (1) The Plan is described in and satisfies applicable requirements of ERISA Section 1022(i)(1), and the Plan's accompanying trust either (i) was a Participating Trust in the Collective Trust in the Trusts identified on Schedule A on January 10, 2011, or (ii) holds assets that had been held by a Qualified Plan described in Section A of this Part IV immediately prior to the transfer of those assets to such trust pursuant to Revenue Ruling 2008-40, as modified by Revenue Ruling 2011-1.
- (2) The Plan is subject to the fiduciary responsibility standards of Part 4 of Subtitle B of Title I of ERISA.
- (3) The Plan does not cover any self-employed individuals within the meaning of Code Section 401(c)(1).



- (4) The Plan is maintained pursuant to a plan or trust instrument which authorizes it to participate in a common, collective, or commingled trust Trust, including the Collective Trust.
- (5) The Declaration of Trust is hereby incorporated by reference in, and adopted as a part of, the Plan.

☒ C. Governmental Plan (Declaration of Trust Section 1.14).

- (1) The Plan is established and maintained for its employees by the U.S. Government, by the government of a State or political subdivision thereof, or by an agency or instrumentality of the foregoing, within the meaning of Code Section 414(d).
- (2) The Plan is *(please check applicable box)*:
  - ☐ qualified under Code Section 401(a) and satisfies, among other applicable requirements, Treasury Regulation § 1.401(a)-2, as amended (exclusive benefit requirement); or
  - ☒ an eligible deferred compensation plan within the meaning of Code Section 457(b) that is established and maintained by an eligible governmental employer described in Code Section 457(e)(1)(A) and satisfies, among other applicable requirements, Treasury Regulation § 1.457-8(a)(2)(i), as amended (exclusive benefit requirement); or
  - ☐ a Governmental Plan other than a Plan described in the preceding boxes, but described in Code Section 401(a)(24).
- (3) The Plan is not subject to Federal income taxation.
- (4) The Plan has been established by a governmental employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income, if any, of the Trusts accumulated under the Plan.
- (5) The governing instrument or legislation providing for the establishment of the Plan expressly provides that it is impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than the exclusive benefit of employees or their beneficiaries, prior to the satisfaction of all liabilities of the Plan with respect to such employees or their beneficiaries.
- (6) The Plan is not funded by an annuity contract described in Code Section 403(b).

- (7) To the extent required by applicable law, the Declaration of Trust is hereby incorporated by reference in, and adopted as a part of, the Plan.

☐D. Church Plan.

- (1) The Plan is established and maintained by a church, a convention or association of churches, or by an organization, the principle purpose or function of which is the administration or Trusting of a plan or program for the provision of retirement benefits for the employees of a church or a convention or association of churches, and which is controlled by or associated with a church or a convention or association of churches, all within the meaning of Code Section 414(e).
- (2) The Plan is not established and maintained primarily for the benefit of employees (or their beneficiaries) who are employed in connection with one or more unrelated trades or businesses within the meaning of Code Section 513.
- (3) Substantially all of the individuals included in the Plan are employees of a church or a convention or association of churches or their beneficiaries;
- (4) The governing instrument of the Plan expressly provides that it is impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than the exclusive benefit of employees or their beneficiaries, prior to the satisfaction of all liabilities of the Plan with respect to such employees or their beneficiaries.
- (5) The Plan is exempt from Federal income taxation under Code Section 501 by reason of being qualified under Code Section 401(a) and satisfying, among other applicable requirements, Treasury Regulation § 1.401(a)-2, as amended (exclusive benefit requirement).
- (6) The Plan is not Trusted by an annuity contract described in Code Section 403(b).
- (7) The Declaration of Trust is hereby incorporated by reference in, and adopted as a part of, the Plan.

E. Commingled Trust (Declaration of Trust Section 1.6).

- (1) The Eligible Trust is a tax-exempt group trust that meets the requirements of the Group Trust Rules. Fiduciary has received or has requested a favorable determination letter from the Internal



Revenue Service confirming the Eligible Trust's status as a tax-exempt "group trust."

- (2) The Eligible Trust consists solely of assets of (i) Plans described in Part IV.A., C., and D. above that have provided representations and warranties to Fiduciary comparable to those set forth in Part IV.A., C., and D., respectively, (ii) other tax-exempt group trusts that meet the requirements of this Part IV.E., and (iii) Insurance Company Separate Accounts described in Part IV.F. below.
- (3) The governing instrument of the Eligible Trust authorizes it to participate in a common, collective, or commingled trust Trust, including the Collective Trust.
- (4) The Declaration of Trust is hereby incorporated by reference in, and adopted as a part of, the Eligible Trust and its constituent plans.

[RESERVED] F. Insurance Company Separate Account (Declaration of Trust Section 1.15).

- (1) The Eligible Trust is a separate account, as defined in Investment Company Act Section 2(a)(37), established and maintained by an insurance company, as defined in Investment Company Act Section 2(a)(17).
- (2) The Eligible Trust Trusts a contract offered to and held solely by plans described in Part IV.A., C., and D. above that have provided representations and warranties to Fiduciary comparable to those set forth in Part IV.A., C., and D., respectively.

Fiduciary acknowledges that, in order to invest and participate in the Trusts, the Eligible Trust must satisfy applicable requirements of the Group Trust Rules, the Securities Act, the Investment Company Act, and any applicable rules of the U.S. Internal Revenue Service or the U.S. Securities and Exchange Commission, as amended from time to time, regarding participation in a collective trust Trust maintained by a bank or trust company in the form of a "group trust." Consequently, Fiduciary agrees to notify Trustee promptly in the event the Eligible Trust no longer meets the conditions for eligibility specified in this Part IV or is for any other reason disqualified from continuing to participate in the Trusts.

Fiduciary also agrees to furnish such other information or assurances as Trustee may request in order to determine or confirm the Eligible Trust's continued eligibility to participate in the Trusts. Such information or assurances may include written representations regarding the Eligible Trust's tax status and other information (including, for example, an opinion of counsel or a copy of an Internal Revenue Service determination letter), and such other assurances as the Trustee may deem necessary or advisable.

## V. EMPLOYER SECURITIES AND PROHIBITED TRANSACTIONS

### ONLY PLANS SUBJECT TO ERISA MUST COMPLETE SECTION V

A. Employer Securities. Fiduciary acknowledges and agrees that Fiduciary is responsible for monitoring or ensuring compliance by the Eligible Trust (including each constituent Plan of an Eligible Trust that is itself an investment Trust) with applicable requirements of Section 407 of ERISA (dealing with investments in “employer securities”), and that Trustee shall have no such responsibility in its management of the Trusts, except as indicated in specific written instructions from Fiduciary provided below, which must be acceptable to the Trustee (please attach additional sheets if necessary):

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☐ None (please check if applicable).

B. Prohibited Transaction Exemptions. Fiduciary acknowledges and agrees that, to the extent applicable, Trustee and any investment adviser or investment manager retained by Trustee may rely on exemptions provided under ERISA, including, without limitation, ERISA Section 408(b)(17), and exemptions promulgated by the U.S. Department of Labor, including, without limitation, Prohibited Transaction Exemption (“PTE”) 91-38 (applicable to transactions of a common or collective trust fund maintained by a bank or trust company) and PTE 84-14 (applicable to transactions by a “Qualified Professional Asset Manager”) in connection with transactions undertaken by or on behalf of the Trusts. Accordingly, except as Fiduciary has notified Trustee below, Fiduciary and each other person, if any, that has or has exercised any discretionary authority, control, responsibility, or influence with respect to the investment of the Eligible Trust’s assets in, or held by, the Trusts or renders investment advice (within the meaning of Section 3(21)(A)(ii) of ERISA) with respect to such assets: (i) is not a bank, broker-dealer, insurance company, trust company, or similar financial institution (collectively, an “**issuer/institution**”); (ii) is not a director or employee of an issuer/institution; and (iii) does not have an affiliate (within the meaning of Section V(c) of PTE 84-14 or Section IV(a) of PTE 91-38 (each as amended from time to time ) that is an issuer/institution (please attach additional sheets if necessary).

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☐ None (please check if applicable).

C. Related Plan Investments. All plans (other than the Plan) established or maintained by (i) the same employer (or affiliate thereof within the meaning of PTE 84-14 Section VI(c)(1)) or (ii) the same employee organization, the assets of which are directly or indirectly invested in a Trust in which the Eligible Trust will invest, are identified below (please attach additional sheets if necessary):

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☐ None (please check if applicable).

D. Multiple Employer Plans. If the Eligible Trust holds the assets of a multiple employer plan, please list the name of each employer that is a “substantial employer” with respect to the Eligible Trust within the meaning of ERISA Section 4001(a)(2), if 5% were substituted for 10% in that definition (please attach additional sheets if necessary):

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☐ None (please check if applicable).

E. Reliance. Fiduciary agrees that Trustee and any investment adviser or investment manager retained by Trustee shall be entitled to rely on the information set forth in this Part V unless and until superseded in writing by Fiduciary. Each purchase of Units of any Trust by the Eligible Trust shall constitute a reaffirmation by Fiduciary that Fiduciary’s representations and warranties contained in this Section V are true and correct on and as of the date each such purchase is made.

## VI. TRUSTEE'S RETENTION OF INVESTMENT ADVISERS

A. Retention of Advisers. Fiduciary understands that Trustee is authorized under the Declaration of Trust to retain investment advisers, which may be affiliated or unaffiliated with Great-West, to assist Trustee with respect to the investment of the assets of any Trust. Fiduciary acknowledges and agrees that Trustee has retained Great-West Capital Management LLC, an affiliate of Trustee ("**Adviser**"), as investment adviser with respect to the Trusts. Trustee will pay from its own resources (including any compensation payable to Trustee from the Trusts) any fees or compensation due to Adviser for its services with respect to the Trusts.

B. Appointment of Investment Managers. If the Eligible Trust is subject to ERISA, Fiduciary hereby confers on Trustee such authority as is necessary to enable Trustee, if Trustee in its discretion deems it necessary or advisable to do so, to appoint any of the following as an investment manager (as such term is defined by ERISA Section 3(38)) with respect to the Eligible Trust, with responsibilities as such limited to, assets of the Eligible Trust that are held in the Trusts: (i) Adviser; (ii) such other investment adviser Trustee may retain to assist Trustee with respect to the investments of the Trusts; and (iii) the trustee or investment manager of any pooled investment Trust in which a Trust may invest.

**VII. OMNIBUS ACCOUNTS**  
**RESERVED –DO NOT COMPLETE**

Please check applicable box:

- ☐ Eligible Trust purchases and redemptions of Units pursuant to this Agreement will be made through an omnibus account established with each Trust (“**Omnibus Account**”) by the Eligible Trust service provider identified below (“**Service Provider**”) pursuant to an agreement between Service Provider and Trustee. If this box is checked, Fiduciary agrees that the following representations, warranties, and agreements of this Part VII apply to the participation of the Participating Trust in the Trusts.

\_\_\_\_\_  
[Name of Service Provider]

- ☐ Eligible Trust purchases and redemptions pursuant to this Agreement will not be made through an omnibus account. If this box is checked, the following provisions of this Part VII are inapplicable.

A. Purchases and Redemptions. Notwithstanding any other provision of this Agreement, the Eligible Trust’s participation in each Trust shall be effected through the Omnibus Account pursuant to Fiduciary’s instructions to Service Provider and Service Provider’s instructions to Trustee, and Trustee shall hold such assets of the Eligible Trust as shall be delivered to it by Service Provider from time to time as part of the Omnibus Account. The Eligible Trust shall continue to purchase or redeem Units through the Omnibus Account until the Omnibus Account is terminated or another relationship acceptable to Trustee is established between Trustee and the Eligible Trust.

B. Limited Agent for Orders. Fiduciary acknowledges that (i) Trustee has authorized Service Provider, as limited agent of Trustee, to receive and accept orders for Eligible Trust purchases and redemptions of Units (“**Orders**”) on Trustee’s behalf, (ii) Trustee will be deemed to have received an Order when Service Provider (or its authorized designee) receives the Order, (iii) Orders accepted by Service Provider before the Close of Trading on a Valuation Date shall be treated as having been received by Service Provider on such Valuation Date and Orders accepted by the Service Provider at or after the Close of Trading on a Valuation Date shall be treated as having been received by the Service Provider on the next Valuation Date, and (iv) the value of Units purchased or redeemed will be the value determined for the Valuation Date on which they are received pursuant to the foregoing procedures.

C. Service Provider Compensation. To the extent Service Provider receives as compensation for its services in connection with each Omnibus Account all or any part of the Administrative Service Expense described in Section VIII.B hereof, Fiduciary has determined, taking into account the totality of the services provided by Service Provider to the Eligible Trust, including services provided with respect to the Omnibus Account and otherwise, that Service Provider's compensation is, and shall continue to be, in the aggregate, reasonable in relation to such services.



## VIII. GENERAL PROVISIONS

A. Trustee Compensation. Fiduciary specifically agrees to the Trustee compensation arrangements described in Schedule B to this Agreement and has concluded that such compensation does not exceed reasonable compensation to Trustee for its services.

B. Administrative Service Expense. Fiduciary agrees to the third party administrative service expense arrangements described in Schedule C to this Agreement.

C. Directions from Fiduciary; Indemnification. Fiduciary has designated the individual(s) identified in Schedule D to this Agreement (as amended by Fiduciary from time to time) to communicate directions, instructions, or other notices required or permitted under this Agreement or the Declaration of Trust to Trustee on Fiduciary's behalf. Trustee shall be protected fully in relying on and proceeding in accordance with any such direction or notice. Fiduciary and the Plan Sponsor, by joining herein, hereby agree to indemnify Trustee, its affiliates, and their respective directors, officers, and employees (each, an "indemnified party"), and hold them harmless from all liabilities, losses, claims, demands, damages, costs, and expenses, including reasonable attorneys' fees, arising from (i) any act taken or omitted by an indemnified party in good faith in accordance with directions of any person authorized to give a direction with respect to the matter, or (ii) the failure of the representations and warranties given hereunder by Fiduciary on its own behalf or on behalf of the Eligible Trust to be true, complete, and accurate in all material respects. This indemnity will survive the termination of this Agreement.

D. Amendment. This Agreement may be amended at any time by the parties in writing; provided, however, that Trustee reserves the right to augment or amend this Agreement in such manner as Trustee, in its discretion, may deem necessary or advisable to comply with Trustee's legal obligations. Fiduciary will receive a copy of any such amendment at its address indicated on the signature page to this Agreement, or such other address as Fiduciary may indicate by written notice to Trustee.

E. Termination. This Agreement (i) will terminate upon the complete withdrawal or redemption of the Eligible Trust from the Trusts, (ii) will be binding upon the successors and assigns of the parties hereto; provided that the Eligible Trust may not assign its interest in the Trusts without Trustee's express permission, and (iii) together with the Declaration of Trust, as amended, is the entire agreement between the parties regarding the subject matter of this Agreement.

F. Governing Law, Interpretation. The interpretation of this Agreement and the rights of the parties hereunder shall be governed by ERISA and other applicable federal law and, to the extent not preempted by the foregoing, the laws of the State of Colorado, without giving effect to principles of conflict of law. Section headings and

captions used in this Agreement are for convenience and reference only and shall not be deemed to limit or affect the terms or provisions herein.


[SIGNATURES APPEAR ON NEXT PAGE]

*Please execute both the Authorized Fiduciary and Plan Sponsor signature blocks. If the Plan Sponsor and Authorized Fiduciary are the same person/entity, the same person/entity should execute both signature blocks.*

Dated: July 9, 2013

County of Fresno 457(b) Deferred Compensation Plan  
[Name of Eligible Trust]

By Henry Perea - Chair, Board of Supervisors  
[Printed Name of Authorized Fiduciary]

  
[Signature of Authorized Fiduciary] 7/9/13

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By   
Deputy

For purposes of Part VIII.C. only:

County of Fresno  
[Name of Plan Sponsor]

By   
[Signature of Plan Sponsor Representative]

Printed Name: Beth Bandy

Title: Director of Personnel Services

ACCEPTANCE:

Great-West Trust Company, LLC, as trustee of the Collective Trust, hereby accepts the Eligible Trust identified above as a "Participating Trust" of the Trusts as of \_\_\_\_\_, subject to the terms and conditions of this Agreement.

Dated: \_\_\_\_\_

Great-West Trust Company, LLC, as Trustee

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



**GREAT-WEST TRUST COMPANY  
COLLECTIVE INVESTMENT TRUST FOR EMPLOYEE BENEFIT PLANS**

**PARTICIPATION AGREEMENT**

**SCHEDULE A: TRUSTS AND EXPENSES**

Fiduciary hereby designates the following Trusts as investments or investment options for the Eligible Trust *[please check applicable box(es): if selecting Great-West Lifetime Trusts, only one (1) glide path may be selected, Great-West Lifetime Trusts and Great-West SecureFoundation Lifetime Trusts, including the Great-West SecureFoundation Lifetime Balanced Trust may be selected together].*

TRUST NAME
<input type="checkbox"/> <b>Great-West Lifetime Trust I - Conservative</b>
Great-West Lifetime 2015 Trust I
Great-West Lifetime 2025 Trust I
Great-West Lifetime 2035 Trust I
Great-West Lifetime 2045 Trust I
Great-West Lifetime 2055 Trust I
<input checked="" type="checkbox"/> <b>Great-West Lifetime Trusts II- Moderate</b>
Great-West Lifetime 2015 Trust II
Great-West Lifetime 2025 Trust II
Great-West Lifetime 2035 Trust II
Great-West Lifetime 2045 Trust II
Great-West Lifetime 2055 Trust II
<input type="checkbox"/> <b>Great-West Lifetime Trusts III - Aggressive</b>
Great-West Lifetime 2015 Trust III
Great-West Lifetime 2025 Trust III



TRUST NAME
Great-West Lifetime 2035 Trust III
Great-West Lifetime 2045 Trust III
Great-West Lifetime 2055 Trust III
<input type="checkbox"/> <b>Great-West SecureFoundation Lifetime Trusts</b>
Great-West SecureFoundation Lifetime 2015 Trust
Great-West SecureFoundation Lifetime 2020 Trust
Great-West SecureFoundation Lifetime 2025 Trust
Great-West SecureFoundation Lifetime 2030 Trust
Great-West SecureFoundation Lifetime 2035 Trust
Great-West SecureFoundation Lifetime 2040 Trust
Great-West SecureFoundation Lifetime 2045 Trust
Great-West SecureFoundation Lifetime 2050 Trust
Great-West SecureFoundation Lifetime 2055 Trust
<input type="checkbox"/> <b>Great-West SecureFoundation Lifetime Balanced Trust</b>

Each Trust will incur certain expenses, including but not limited to custody, audit and transactions costs, in connection with its operations that will be charged to each Trust as described in the Declaration of Trust and such Trust's Supplemental Declaration. Trustee, in its discretion, may elect to pay certain expenses of a Trust from its own resources and may discontinue or modify any such reimbursement at any time without notice to Fiduciary. Neither a modification nor a discontinuance of any such expense reimbursement will be deemed to be a revision of this Agreement.

**GREAT-WEST TRUST COMPANY  
COLLECTIVE INVESTMENT TRUST FOR EMPLOYEE BENEFIT PLANS**

**PARTICIPATION AGREEMENT**

**SCHEDULE B: TRUSTEE COMPENSATION**

The Trustee shall receive a fee from the Participating Trust for the Trustee's management and administration of the Trusts (the "Trustee Fee"). The Trustee Fee shall be computed at the annual rate of 0.12% (12 basis points), based on the on the aggregate net asset value of the Trust Units held by the Participating Trust at the end of each day. The Trustee Fee is payable by the Participating Trust monthly in arrears.

Fiduciary hereby gives standing instructions to the Trustee to redeem Units from the Participating Trust's account in the Trust to the extent sufficient to pay the Trustee Fee. The fee for any period that is less than a full month shall be prorated on a daily basis.

**GREAT-WEST TRUST COMPANY  
COLLECTIVE INVESTMENT TRUST FOR EMPLOYEE BENEFIT PLANS**

**PARTICIPATION AGREEMENT**

**SCHEDULE C: ADMINISTRATIVE SERVICE EXPENSE**

Fiduciary directs Trustee to calculate and pay to the trustee of the Eligible Trust an amount representing Fiduciary's approximation of certain third party administrative service expenses accrued by the Eligible Trust (the "Administrative Service Expense"). Fiduciary hereby designates the following amount as the Administrative Service Expense [*please check applicable box*]:

Administrative Service Expense
<input checked="checked" type="checkbox"/> None
<input type="checkbox"/> 0.05%
<input type="checkbox"/> 0.10%
<input type="checkbox"/> 0.15%
<input type="checkbox"/> 0.20%
<input type="checkbox"/> 0.25%

Trustee shall calculate the Administrative Service Expense daily at the annual percentage selected above of the daily aggregate net asset value of the Trust Units held by the Eligible Trust.

Fiduciary hereby gives standing instructions to Trustee to redeem Units from the Eligible Trust's account in the Trust having an aggregate value equal to the amount of the Administrative Service Expense calculated for that month and to pay the redemption proceeds to the trustee of the Eligible Trust, which in turn will pay the third-party service provider(s) directly.


Fiduciary has determined, taking into account the nature of the services provided by such third-party service provider to the Eligible Trust that the service provider's compensation is, and shall continue to be, in the aggregate, reasonable in relation to such services.

**GREAT-WEST TRUST COMPANY  
COLLECTIVE INVESTMENT TRUST FOR EMPLOYEE BENEFIT PLANS**

**PARTICIPATION AGREEMENT**

**SCHEDULE D: AUTHORIZED SIGNATURES**

The following individuals, whose signatures appear below, are authorized to give directions on behalf of Fiduciary to Trustee with respect to the matters addressed in this Participation Agreement:

  
[Signature]

Name: Beth Bandy

Title: Director of Personnel Services

  
[Signature]

Name: Paul Nerland

Title: Personnel Services Manager

\_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_