

# MEMORANDUM

June 28, 2022

TO: Mayor John P. Kahl and Members of City Council

FROM: City Attorney Scott A. Brunton

SUBJECT: Ordinance Updating the City's Employee Deferred Compensation (Section 457) Plan

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## DISCUSSION:

The City last updated the City's employee Deferred Compensation (Section 457) Plan (the "Deferred Compensation Plan") in December 2010 with an effective date of January 1, 2011. At this time, at the request of City employees participating in the Deferred Compensation Plan, City Officials are recommending that two revisions and updates be made to the Deferred Compensation Plan: (1) add a Roth contribution option, and (2) add John Hancock Life Insurance Company as an approved vendor for the Deferred Compensation Plan.

With regard to the Roth contribution option, this option became available to 457 deferred compensation plans in 2011 under IRS rules and regulations. The Roth contribution option allows an employee to make contributions of salary or wage deferrals on a taxable basis, such that the employee is taxed at the time that the salary or wage deferral is earned, and the contribution is made into the employee's deferred compensation plan account. Thereafter, future earnings on the contribution amount and related withdrawals are not taxed when withdrawn by the employee provided that the employee follows the IRS requirements for withdrawals that generally require funds to be withdrawn only after the employee meets the IRS-required retirement age. Regular 457 deferred compensation plan contributions (non-Roth contributions) are made by the employee on a pre-tax basis, but then any earnings and contributions are taxed when later withdrawn by the employee after the IRS-required retirement age.

The John Hancock Life Insurance Company will replace a current vendor that is not be utilized by City employees. This Ordinance makes these two revisions and updates to the City's Deferred Compensation Plan, while also restating and reissuing the Deferred Compensation Plan effective August 1, 2022.

## RECOMMENDATION:

Approval of this Ordinance.

**ORDINANCE NO. 4660**

**AN ORDINANCE UPDATING AND REVISING  
THE CITY'S EMPLOYEE DEFERRED COMPENSATION PLAN  
(SECTION 457 PLAN)**

**WHEREAS**, the City of East Peoria, Illinois ("City"), the employer, established a deferred compensation plan under §457 of the Internal Revenue Code (the "City Deferred Compensation Plan") for its employees by ordinance on May 5, 1981, and then restated and reissued by ordinance on December 21, 2010, with the restated and reissued plan document being issued effective January 1, 2011; and

**WHEREAS**, in 2011, the "Roth" contribution option became available under the Internal Revenue Code for §457 deferred compensation plans offered by state and local governments for their employees; and

**WHEREAS**, a "Roth" contribution is an employee salary or wage deferral made on a taxable basis, such that the employee is taxed at the time the salary or wage deferral is earned and the contribution is made, and then future earnings on the contribution amount are not taxed when withdrawn by the employee provided that the employee follows the IRS requirements for withdrawals, which generally require that the employee not withdraw the funds before the employee meets the IRS-required retirement age and that the funds remain in the employee's deferred compensation plan account for the required length of time; and

**WHEREAS**, at the request of City employees participating in the City Deferred Compensation Plan, the City now seeks to add the "Roth" contribution option to the City Deferred Compensation Plan; and

**WHEREAS**, at this time, City Officials also seek to update the approved vendor listing in the City Deferred Compensation Plan, while also adding the John Hancock Life Insurance Company as an approved vendor under the City Deferred Compensation Plan; and

**WHEREAS**, the City finds that it is in the best interests of its employees to offer the "Roth" contribution option, add the John Hancock Life Insurance Company as an approved vendor, and accordingly update, restate, and reissue the City Deferred Compensation Plan document;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The recitals set forth above are found to be true and correct and are hereby incorporated herein.

**Section 2.** The revised, updated, and restated City Deferred Compensation Plan, as set forth in “Exhibit A” attached hereto, is hereby approved and adopted, superseding and replacing any prior plan documents for the City Deferred Compensation Plan.

**Section 3.** The changes made by this Ordinance to the City Deferred Compensation Plan (Exhibit A) as provided by this Ordinance shall be effective as of August 1, 2022.

**Section 4.** The City’s Human Resources Director is directed to furnish or otherwise make available a copy of the revised, updated, and restated City Deferred Compensation Plan document, as provided in Exhibit A, to all City employees, independently contracted persons, and elected officials currently participating in the City Deferred Compensation Plan and any retirees receiving benefits under the City’s Plan.

**Section 5.** This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

**PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**EXAMINED AND APPROVED:**

\_\_\_\_\_  
Corporation Counsel

**EXHIBIT A**

**City of East Peoria  
Deferred Compensation (Section 457) Plan**

# CITY OF EAST PEORIA

## DEFERRED COMPENSATION PLAN FOR CITY EMPLOYEES

The purpose of this City of East Peoria Deferred Compensation Plan (the “Plan”) is to provide eligible City employees and elected City officials with the opportunity to supplement their retirement savings on a tax-deferred basis. The Plan is intended to be an “eligible deferred compensation plan” as defined in §457(b) of the Internal Revenue Code of 1986 (“Eligible 457 Plan”). This Plan consists of the provisions set forth in this document and is applicable to each City Employee who elects to participate in this Plan. This plan document for the Plan only applies to Employee participation contracts entered into by City Employees as specifically provided by this Plan. This Plan document shall not apply to an Employee participation contract under the City’s Nationwide Plan (established by Ordinance No. 3951 and as amended from time to time thereafter), except as the Nationwide Plan is explicitly addressed in this Plan document.

### Section 1. Definitions

**Administrator:** The City of East Peoria or the entity or person designated by the City of East Peoria as the Administrator of the Plan.

**Account Balance:** The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Deferral Contributions, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for an alternate payee (as defined in Section 414(p)(8) of the Code).

**Agreement:** A Deferred Compensation Plan Participation Agreement established under this Plan.

**Beneficiary:** The designated person (or, if none, the Participant’s estate) who is entitled to receive benefits under the Plan after the death of a Participant.

**Code:** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

**Compensation:** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Section 3).

**Deferral Contributions:** The Participant's Salary Reduction Contributions and Designated Roth Contributions, which are contributions the Employer makes to the Plan on behalf of a Participant who entered into an Agreement pursuant to which such Participant has elected to participate in the Plan. The Employer in applying the Code §457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred. The Employer in determining the amount of a Participant's Deferral Contributions will disregard the Employee's net income, gain, and loss attributable to Deferral Contributions.

**Designated Roth Contributions:** A Participant's Deferral Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Designated Roth Contributions by the Participant in the Participant's deferral election. A Participant's Designated Roth Contributions will be separately accounted for, as will gains and losses attributable to those Designated Roth Contributions. The Plan shall maintain a record of the year in which the Participant first made a Designated Roth Contribution.

**Employee:** Each natural person, whether appointed or elected, who is employed by the City as a common law employee, excluding any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

**Employer:** The City of East Peoria.

**Includible Compensation:** An Employee's actual wages in box 1 of Form W-2 for a year of services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Section 3).

**Nationwide Plan:** The Nationwide Plan established by the City in Ordinance No. 3951 for participation of City Employees in the Nationwide Retirement Solutions, Inc. Deferred Compensation Plan under a separate plan document for the Nationwide Retirement Solutions, Inc. Deferred Compensation Plan. The Nationwide Plan does not include the City's Plan established by this Plan document, except as the Nationwide Plan is explicitly addressed in this Plan document.

**Normal Retirement Age:** The age specified in writing by the Participant within a range of ages ending no later than 70½ and beginning no earlier than the earliest age at which the Participant has the right to retire consistent with the date when the Participant can receive unreduced retirement benefits under the Participant's IRS qualified retirement plan. Otherwise, the Normal Retirement Age shall be no earlier than age 65 years.

However, a Participant who is a qualified police officer or firefighter as defined under Code §415(b)(2)(H)(ii)(I) may designate a Normal Retirement Age between age 50 years and age 70½ years.

**Participant:** An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan in compliance with eligibility provisions of this Plan.

**Plan:** The City's Deferred Compensation Plan for Employees as set forth in this plan document (established May 5, 1981, and restated on June 4, 2002 and again restated in this plan document by Ordinance No. 3951) and as it may be amended from time to time. The Plan does not include the Nationwide Plan, except as the Nationwide Plan is explicitly addressed in this Plan document.

**Salary Reduction Contributions:** A Participant's Deferral Contributions that are elective deferrals which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Salary Reduction Contributions by the Participant in the Participant's deferral election. A Participant's Salary Reduction Contributions will be separately accounted for, as will net income, gain or loss, attributable to those Salary Reduction Contributions. All Deferral Contributions by a Participant prior to the effective date as to when a Participant first makes Designated Roth Contributions are Salary Reduction Contributions.

**Severance from Employment:** The term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code).

**Taxable Year:** The calendar year or other designated taxable year for a Participant.

**Valuation Date:** Each business day.

## **Section 2. Plan Participation**

A. **Eligibility:** Any City Employee, or independently contracted person employed by the City whom the City designates as eligible to participate, or person elected to City office.

B. **Enrollment in the Plan:** Any eligible person may execute an Agreement for Deferral Contributions in a form as designated by the Administrator, specifying the amount of Compensation not yet earned which the Participant and the City mutually agree shall be deferred in accordance with the provisions of this Plan. Such election (or modified election) to defer Compensation under this Plan shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee (or other person eligible under this Plan) may defer Compensation payable in the calendar month during which the Participant first becomes a City employee (or otherwise eligible) if an Agreement is entered into on or before the Employee's first day of employment.

C. **Modifying an Existing Agreement:** A Participant may modify the amount of Deferral Contributions or the list of beneficiaries by the execution of an Agreement at any subsequent time, with the Agreement becoming effective as to the Participant's whole Compensation period (semi-monthly, monthly, or otherwise) next following the execution of the new Agreement.

D. **Revocation of Agreement:** A Participant may revoke an Agreement by completing and signing the "Revocation" section of the Agreement. In this event, the Participant will not be entitled to any benefits until Severance from Employment with the City except as allowed under Section 6, Section 7, or Section 8 of this Plan and such benefits will be computed as if Severance with the City occurred on the date of revocation.

E. **Limitation on Number of Agreements:** A Participant may not have more than two active Agreements at any given time. This limitation on the number of active Agreements includes any Agreements under the Nationwide Plan.

F. **Termination of an Agreement:** The City may terminate at any time any Agreement or contract, or refuse to enter into an Agreement or contract, which is not in compliance with this Plan or the Nationwide Plan.

G. **Deferral Payments:** Deferral Contributions made by a Participant under this Plan shall be transferred to the appropriate financial institution or company within a period of time that is not longer than is reasonable for the proper administration of the employee payroll and Plan deferrals of Compensation, which shall typically be within fifteen (15) business days following the end of the month in which the amount would otherwise have been made paid to the Participant barring unusual circumstances.



### **Section 3. Amount of Deferrals**

A. **Minimum Amount of Compensation Deferred:** The minimum amount of compensation which a Participant may defer shall be Fifty Dollars (\$50) per month, appropriately coordinated with a Participant's compensation schedule (semi-monthly or otherwise).

B. **Maximum Amount of Compensation Deferred:** Under §457 of the Code, the maximum amount of compensation which a Participant may defer in a calendar year under any Agreement or combination of Agreements shall be the lesser of the following:

1. 100% of the Participant's includible compensation (which does not include the amount of compensation deferred under this Plan) for the Taxable Year, which will ordinarily be equivalent to 50% of the Participant's compensation from the City if no Agreement is in effect to defer compensation under this Plan; or

2. The applicable "Maximum Dollar Amount" as set forth below:

<u>Calendar Year</u>	<u>Maximum Dollar Amount</u>
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 and thereafter	\$15,000

For calendar year 2007 and thereafter, the Maximum Dollar Amount may be adjusted to reflect increases in cost-of-living in accordance with §§457(e)(15) and 415(d) of the Code. Further, the Maximum Dollar Amount set forth in this section of the Plan shall be immediately adjusted to reflect the maximum limitations provided under §457 of the Code as revised from time to time.

C. **Catch-Up Contributions for Participants Age 50 and Over:** In addition to compensation deferred pursuant to the limitations set forth in Paragraph B of Section 2 of this Plan, a Participant may defer an additional amount of compensation under any Agreement as an "Additional Catch-Up Amount", which maximum amount shall be the lesser of the following:

<u>Calendar Year</u>	<u>Additional Catch-Up Amount</u>
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 and thereafter	\$5,000

For calendar year 2007 and thereafter, the Additional Catch-Up Dollar Amount may be adjusted to reflect increases in cost-of-living in accordance with §457(v)(2) of the Code. Further, the Additional Catch-Up Amount set forth in this section of the Plan shall be immediately adjusted to reflect the maximum limitations provided under §457 of the Code as revised from time to time. A Participant may not make a Catch-Up deferral pursuant to this paragraph in any calendar when the Participant makes a Catch-Up deferral under Paragraph D of Section 2 below.

**D. Catch-Up Contributions for Three Years Prior to Retirement:** Without regard to any other limitation set forth in this Plan, a Participant may defer under any Agreement the maximum amount of compensation as a “Pre-Retirement Catch-Up Amount” for each of the last three Taxable Years ending before the Participant’s attainment of Normal Retirement Age. The maximum amount of the Pre-Retirement Catch-Up Amount shall be the lesser of the following:

1. Twice the Maximum Dollar Amount set forth in Paragraph B of Section 2 of this Plan; or
2. The sum of the Maximum Dollar Amount plus that portion of the maximum dollar amount not used in each of the prior Taxable Years for the Participant commencing after 1978 in which (a) the Participant was eligible to participate in this Plan or similar plan of another employer under §457 of the Code, and (b) compensation deferred under this Plan or similar plan of another employer under §457 of the Code subject to the deferral limitations set forth in this Section.

Normal Retirement Age shall be considered 65 unless the Participant has elected an alternative retirement age that must be consistent with the date when the Participant can receive unreduced retirement benefits under the Participant’s IRS qualified retirement plan, by written instrument, which may not be revised at a later date, delivered to the City prior to termination of employment with the City. A Participant may only defer Compensation as a Pre-Retirement Catch-Up Amount under this Section if the Participant has not previously deferred Compensation with respect to a different Normal Retirement Age under this Plan, the Nationwide Plan, or other similar plan of another employer under §457 of the Code.

**E. Correction of Excess or Mistaken Deferral Amount:** If the annual amount of Deferral Contributions made pursuant to this Plan on behalf of a Participant for any calendar year exceed the limitations described above or otherwise exceed the amount of permissible deferrals for the Participant, then the excess amount of the Participant’s Deferral Contributions under this Plan shall be distributed to the Participant (as adjusted for any income or loss in value, if any, applicable to this excess amount) in accordance with IRS regulations. Further, if any deferral is made under this Plan by a good faith mistake (by the City or by the Participant), then within one year after the payment of such deferral and upon proper request made and approved by the City’s Human Resources Coordinator, the amount of the mistaken deferral (as adjusted for any

income or loss in value, if any, applicable to this mistaken amount) shall be returned directly to the Participant or, to the extent required or permitted by the Human Resources Coordinator, to the City.

**F. Participants in Uniformed Service:** A Participant whose employment with the City is interrupted by qualified military service under §414(u) of the Code or who is on a leave of absence for qualified military service under §414(u) of the Code may elect to make additional deferrals upon resumption of employment equal to the maximum amount of Deferral Contributions that the Participant could have elected during that period of military service or leave of absence for military service if the Participant's employment had continued (at the same level of compensation). The Participant can make these additional deferrals under this provision of the Plan for up to five (5) years following resumption of employment with the City.

**G. Participant Covered by More Than One Eligible Plan:** For purposes of this Section 3, the following rule shall apply. If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

#### **Section 4. Participant Agreements and Accounts**

**A. Permitted Financial Vendors:** Pursuant to an executed Agreement, the Plan shall establish (1) an annuity contract on the life of a Participant from an insurance company licensed to do business in the State of Illinois and as directed by the Participant, or (2) one or more custodial accounts as directed by the Participant, or (3) a trust pursuant to a written agreement that constitutes a valid trust under the law of the State of Illinois, as such shall become necessary for the direction of the Participant's deferred Compensation under this Plan. Any such arrangement made pursuant to an executed Agreement shall hereafter be referred to as an "Account". The aggregate payments toward such Account shall be equal to the aggregate Compensation deferred by the Participant under the Agreement. A copy of any Account consisting of an annuity contract or custodial account entered into on behalf of a Participant must be provided to the Employer. An Account may only be established with one of the following listed companies (as long as such company remains a valid company licensed to do business in Illinois):

The Equitable Life Assurance Society of the U.S.  
The Hartford  
John Hancock Life Insurance Company  
Nationwide Retirement Solutions, Inc. (under the Nationwide Plan)

Neither the Participant nor the City shall establish an Account or other deferred arrangement which has not been expressly authorized under this Section of the Plan. Any Account or other deferred arrangement which is made by an employee, independently contracted person, or person elected to office with a company not listed in this Section shall not be authorized, and the City shall not defer any compensation for payment to the Account or other deferred arrangement, and the corresponding Agreement shall be immediately terminated, unless expressly provided otherwise elsewhere in this Plan. Only Accounts as set forth above may be established under this Plan; no life insurance contracts, other investment instruments, or other deferred arrangements shall be accepted under this Plan.

However, any annuity contract or life insurance contract purchased by the City on behalf of a Participant pursuant to a participation agreement prior to the effective date of Ordinance No. 3368, which was purchased after the City established its deferred compensation plan by ordinance on May 5, 1981, and was a qualified contract under §457 of the Code, shall remain in full force and effect under this Plan until (i) all benefits have been paid under that contract, (ii) the Participant has terminated employment or affiliation with the City, or (iii) the Participant revokes the participation Agreement. Excluding the limitations set forth in the first two paragraphs of this Section, this Plan shall hereafter govern all terms and conditions of any participation agreement and annuity contract or life insurance contract made prior to the effective date of Ordinance No. 3368 which was entered into after the City established its deferred compensation plan.

**B. Salary Reduction Contributions:**

1. Designation of Deferrals. For each Taxable Year, the Employer will contribute to the Plan on behalf of each Participant the amount of Deferral Contributions the Participant has elected to make under the Plan for such Taxable Year. All such Deferral Contributions shall be considered Salary Reduction Contributions under the Plan and shall be placed in and maintained in a designated Salary Reduction Contributions account except as otherwise expressly permitted by this Plan. After the date as of which Participants may make Designated Roth Contributions to the Plan, all Deferral Contributions made under this Plan shall be designated as Salary Reduction Contributions unless expressly designated as Designated Roth Contributions under the provisions of this Plan.

2. Partial Elections. After the date as of which Participants may make Designated Roth Contributions to the Plan, a Participant may elect to place a portion of the Participant's Deferral Contributions for a Taxable Year in separate Salary Reduction Contributions and Designated Roth Contributions accounts.

3. In-Plan Transfer to Designated Roth Contributions Account. If the Participant has elected to contribute a portion of the Participant's Deferral Contributions to a Designated Roth Contributions account, the Participant may elect to make a direct in-Plan rollover of funds held in a Salary Reduction

Contributions account into the Participant's separate Designated Roth Contributions account (an "In-Plan Roth Rollover"). In-Plan Roth Rollovers can only be made once in a Taxable Year. Once an In-Plan Roth Rollover has been completed, the transfer cannot later be reversed or recharacterized. An In-Plan Roth Rollover will likely result in taxable income to the Participant for the Taxable Year in which the In-Plan Roth Rollover is made. Before making an In-Plan Roth Rollover, the Participant should consult with the Participant's financial advisor or income tax advisor regarding potential income tax consequences from such In-Plan Roth Rollover.

**C. Designated Roth Contributions:**

1. Designated Roth Contributions Permitted. Subject to the conditions and limitations of this Plan, a Participant may elect, in lieu of all or a portion of the Salary Reduction Contributions the Participant is eligible to make to the Plan for an applicable period, to make Designated Roth Contributions. Designated Roth Contributions shall be treated in the same manner as Deferral Contributions for all Plan purposes except as provided otherwise in this Plan. The Employer may, in operation, implement administrative rules, including deferral election procedures, with respect to Designated Roth Contributions, provided such rules and procedures are communicated to Participants, and permit Participants to modify their elections at least once each Taxable Year.

2. Separate Account; No Recharacterization. All such Deferral Contributions designated as Designated Roth Contributions shall be placed and maintained in a separately designated Designated Roth Contributions account. Once a Participant contributes any Deferral Contributions to a Designated Roth Contributions account, such contributions held in the Designated Roth Contributions account cannot later be changed to pre-tax deferrals in a Salary Reduction Contributions account or any other pre-tax deferral account. Further, any funds held in a Designated Roth Contributions account cannot later be changed or recharacterized to pre-tax deferrals in a Salary Reduction Contributions account or any other pre-tax deferral account. Also, a Designated Roth Contributions account cannot be set up solely to accept an In-Plan Roth Rollover from the Participant's Salary Reduction Contributions account.

3. Distribution Rule. Withdrawals (including withdrawals for an Unforeseeable Emergency in accordance with Section 6 of this Plan) from a Participant's Accounts may be directed by the Participant from either Salary Reduction Contributions, Designated Roth Contributions or pro rata from Salary Reduction Contributions and Designated Roth Contributions.

4. Corrective Distribution Rule. For any Taxable Year in which a Participant may make both Designated Roth Contributions and Salary Reduction Contributions and for which a corrective distribution is made to the Participant, the

corrective distribution from the Participant's Accounts will be taken pro rata from a Participant's Salary Reduction Contributions and Designated Roth Contributions made during such Taxable Year, or the Participant may elect which type of Deferral Contributions shall be distributed first.

5. Loans. For any loans made after the date as of which Participants may make Designated Roth Contributions to the Plan, the loan policy or program shall permit Participants to use as security a Participant's Designated Roth Contribution Account; provided, however, that loans may not be funded from the Participant's Designated Roth Contribution account.

6. Rollovers of Roth Contributions.

(a) A direct rollover of a distribution from a Participant's Designated Roth Contributions account shall only be made to an Eligible 457 Plan which includes Designated Roth Contributions as described in Code Section 402A(e)(1) or to a Roth IRA as described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(b) The Plan may accept a rollover contribution of Designated Roth Contributions from another Eligible 457 Plan only if it is a direct rollover from another Eligible 457 Plan which permits Designated Roth Contributions as described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).

D. No provision of the Plan referring to Compensation or Deferral Contributions is intended to modify, or shall be construed as modifying, any compensation policy, arrangement, or practice of the Employer.

**Section 5. Benefits under the Plan**

A. **Benefit Distributions at Retirement or Other Severance from Employment.** Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account Balance under any form of distribution permitted under Section 5.C commencing at the date elected under Section 5.B. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made as provided in paragraph 2 of Section 5.C.

B. **Election of Benefit Commencement Date.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed at least 30 days before the date on which benefits are to

commence. However, in no event may distribution of benefits commence later than the date described in Section 5.F.

C. **Forms of Distribution.** In an election to commence benefits under Section 5.B, a Participant entitled to a distribution of benefits under this Section 5 may elect to receive payment in any of the following forms of distribution:

1. A lump sum payment of the total Account Balance; or

2. Annual installment payments through the year of the Participant's death, the amount payable each year equal to a fraction of the Account Balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the Participant's age on the Participant's birthday for that year. If the Participant's age is less than age 70, the distribution period is 27.4 plus the number of years that the Participant's age is less than age 70. At the Participant's election, this annual payment can be made in monthly or quarterly installments. The Account Balance for this calculation (other than the final installment payment) is the Account Balance as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under Section 5.2. For any year, the Participant can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

D. **Death Benefit Distributions.** Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account Balance shall be paid to the Beneficiary in a lump sum.

Alternatively, if the Beneficiary with respect to the Participant's Account Balance is a natural person, at the Beneficiary's election, distribution can be made in annual installments (calculated in a manner that is similar to installments under Section 5.C) with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

E. **Account Balances of \$5,000 or Less.** Notwithstanding Sections 5.B, 5.C and 5.D, if the amount of a Participant's Account Balance is not in excess of \$5,000 (or the dollar amount under section 411(a)(11) of the Code, if greater) on the date that

payments commence under Section 5.C or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

**F. Latest Distribution Date.** In no event shall any distribution under this Section 5 begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70 1/2 or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Section 5.C and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph 9b) of Section 5.C must also be paid before the end of the calendar year of commencement.

**G. Mandatory Distributions for Certain Account Balances of \$5,000 or Less.** At the direction of the Administrator, a Participant's total Account Balance shall be paid in a lump sum as soon as practical following the direction if (a) the total Account Balance does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater), (b) the Participant has not previously received a distribution of the total amount payable to the Participant under this Section 5.G and (c) no Deferral Contributions have been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

## **Section 6. Early Withdrawals: Unforeseeable Emergency**

Upon the occurrence of an unforeseeable emergency, a Participant may apply in writing to the Administrator for withdrawal from the Plan prior to retirement or other termination of the Participant's service with the City. The Participant's written request under this provision of the Plan shall be submitted to the City's Human Resources Coordinator. The Administrator shall evaluate a request for an early withdrawal due to an unforeseen emergency to determine whether the request conforms to the requirements of this Plan and applicable IRS regulations. The Administrator's determination of whether an unforeseen emergency exists and regarding the permitted amount to be distributed under this provision of the Plan shall be final.

An unforeseeable emergency shall include a severe financial hardship caused by (1) a sudden and unexpected illness or accident of the Participant, the Participant's spouse, or dependent of the Participant, (2) a casualty loss of the Participant's property, (3) the need to pay for funeral expenses of a Participant's spouse or dependent (as



defined in Section 152(a) of the Code), or (4) other similar extraordinary and unforeseeable circumstance caused by events beyond the Participant's (or beneficiary's) control. Examples of unforeseeable emergencies include (i) imminent foreclosure of or eviction from Participant's primary residence, (ii) the need to pay for medical expenses and prescription drug medications not otherwise covered by insurance, and (iii) the need to pay for funeral expenses for a spouse or dependent. Withdrawals for foreseeable expenditures normally budgeted such as down payments on a home, purchase of an auto, or college tuition and expenses will not be permitted. However, expenditures to rebuild a home following damage to a home as a result of a natural disaster, which is not otherwise covered by homeowner's or other insurance, will be permitted.

The Participant must set forth in writing the severe financial reason(s) and provide supporting documentation for the withdrawal request. If such application for withdrawal is approved by the Administrator, the withdrawal will be effective at the later of the date specified in the Participant's application or the date of approval by the Administrator. The Administrator may elect to honor a request from the Participant to pay the amount of money determined as if the Participant had terminated service with the City. If the withdrawal request is honored by the City, the Plan shall make payment to the Participant in a lump sum.

The withdrawal may only be in an amount which covers the severe financial hardship as shown by the supporting documentation and shall not cover an amount which can or will be covered by insurance or otherwise, cessation of deferrals under the Plan, or liquidation of Participant's assets to a level which does not itself cause a severe financial hardship. Following the withdrawal, the Participant's compensation will be restored to its prior level.

### **Section 7. In-Service Distribution from Rollover Accounts**

If a Participant has a separate account attributable to rollover contributions to the Plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account, subject to any requirements or penalties provided in the Code or IRS regulations.

### **Section 8. Transfers and Rollovers**

A. **Rollovers from Other Qualified Plans.** A Participant may rollover into the Plan an amount deferred under another Eligible 457 Plan, or an eligible rollover distribution from another employer's eligible retirement plan or from a Rollover IRA, and provided that the rollover distribution is otherwise qualified under the Code. In order to do so, the Participant must initiate the rollover process by providing appropriate documentation to the Administrator and the approved annuity contract provider as necessary to effectuate the rollover within the provisions of the Code and to confirm that

the rollover distribution is from an eligible deferred compensation plan, eligible retirement plan from another employer, or an eligible Rollover IRA. Any such rollover distribution to the Plan shall be subject to the same restrictions on distributions applicable to other amounts held under the Plan.

**B. Acceptance of Transfer of Annuity Contract from Other Plans.** A Participant may transfer into the Plan an annuity contract and its funds from a previous employer's Eligible 457 Plan, including §457(g) of the Code, and is otherwise qualified under the Code. In order to do so, the Participant must first initiate the transfer process by providing appropriate documentation to the Administrator to allow the City to become the contract owner and beneficiary of the annuity contract and must execute an Agreement. Only annuity contracts may be transferred into the Plan; no life insurance contracts or other investment instruments may be transferred into the Plan, regardless of whether the life insurance contract or other investment instrument is permitted under §457 of the Code. An annuity contract, which has not been issued by an insurance company set forth in Section 4, may be accepted under this transfer provision of the Plan.

**C. Rollovers to Other Qualified Plans.** Upon retirement from or termination of employment with the City, or upon any other allowable distribution under the Plan, a Participant, or the Participant's Beneficiary upon the death of the Participant, may elect to have any portion of funds being held under this Plan rolled over into another eligible retirement plan or other qualified plan, including a Rollover IRA, provided that the rollover distribution is otherwise allowed under the Code. The Participant must initiate the rollover process by providing appropriate documentation to the Administrator and the other eligible retirement plan as necessary to effectuate the rollover within the provisions of the Code. A distribution made pursuant to this provision of the Plan that is an eligible rollover distribution and that is paid in a form other than a rollover will be subject to mandatory withholding of 20%, or such other mandatory withholding rate as may be imposed under the Code.

**D. Transfer to Other Plans.** Upon retirement from or termination of employment with the City, or upon any other allowable distribution under the Plan, a Participant, or the Participant's Beneficiary upon the death of the Participant, may elect to have any portion of funds being held under this Plan transferred to another eligible deferred compensation plan or to the trustee of a defined governmental plan for the purchase of permissive service credit, provided that the rollover distribution is otherwise allowed under the Code. The Participant must initiate the transfer process by providing appropriate documentation to the City and the other eligible deferred compensation plan or to the trustee of a defined governmental plan as necessary to effectuate the rollover within the provisions of the Code.

**E. Permissive Service Credit Transfers.** If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account

Balance transferred to the defined benefit governmental plan. A transfer under this Section may be made before the Participant has had a Severance from Employment. A transfer may be made under this Section only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

### **Section 9. Leave of Absence**

A. If a Participant is on an approved leave of absence from the City with compensation, or on an approved leave of absence without compensation for a period of not more than six months, the Participant's participation in this Plan will continue.

B. If a Participant is on an approved leave of absence without compensation and such leave of absence continues for more than six months, said Participant will be deemed to have withdrawn from the Plan as of the end of such six-month period. The City may elect to pay such withdrawn Participant the amount of money determined as if the Participant had terminated service, said payment to be made in five substantially equal annual installments, to commence on the effective date of such withdrawal, or in the sole discretion of the City in a lump sum.

### **Section 10. Additional Deferral Election for Distributions**

If a Participant has elected, in accordance with the Plan, to defer the commencement of distributions beyond the first permissible payout date, then the Participant may make an additional election to further defer the commencement of distributions, provided that the election is filed before distributions actually begin and the later commencement date meets the required distribution commencement date provisions of sections 401(a)(9) and 457(d)(2) of the Code (see Section 3.B). A Participant may not make more than one such additional deferral election after the first permissible payout date.

For purposes of the preceding paragraph, the "first permissible payout date" is the earliest date on which the Plan permits payments to begin after separation from service, disregarding payments to a Participant who has an unforeseeable emergency (see Section 6), attains age 70½, or has received payments under the in-service distribution provisions of this Plan (see Section 5).

### **Section 11. Plan Succession**

The Plan set forth by Ordinance No. 3951 amends the deferred compensation plan which was initially established by the City by ordinance on May 5, 1981, and any other

subsequent enabling ordinances or resolutions, and hereby replaces and supersedes, in their entirety, these prior ordinances and resolutions. The City of East Peoria Deferred Compensation Plan is therefore governed solely by this Plan document and amendments made to the Plan after passage of Ordinance No. 3951. This Plan hereby adopts, in its entirety, Resolution No. 9899-101 passed on October 20, 1998, by the City as a provision of this Plan. However, Resolution No. 9899-101 only applies to annuity contracts with ICMA Retirement Corporation which have been made on behalf of a Participant pursuant to an Agreement, and any conflict or inconsistency between this Plan and Resolution No. 9899-101 will be resolved in favor of this Plan.

## **Section 12. Amendment or Termination of Plan**

A. The City may at any time terminate this Plan. Upon such termination, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination, the Participant's Compensation will be thereupon restored, and the City agrees to pay such Participants the amount of money determined as if the Participant had terminated employment, said payment to be made in five substantially equal annual installments, or in the sole discretion of the City, in a lump sum, commencing on the effective date of such termination.

B. The City may also amend the provisions of this Plan at any time. The City shall give notice of any amendment to each Participant then in the Plan, and such Participants may elect to withdraw from the Plan within sixty days after such notice, and prior to the effective date of the amendment. Upon such withdrawal, the Participant's compensation will be restored to its prior level and the City agrees to pay such Participant the amount of money as if the Participant had terminated service, said payment to be made in five substantially equal annual installments, or in sole discretion of the City, in a lump sum, commencing on the effective date of such withdrawal.

## **Section 13. Exclusive Benefit Provision**

Notwithstanding any contrary provision of this Plan, including any annuity contract issued under the Plan, in accordance with §457(g) of the Code, all amounts of Compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such account, property, or rights shall be held for the exclusive benefit of Participants and Beneficiaries under the Plan and shall be held in an annuity contract (as defined in Code Section 401(f)), in one or more custodial accounts, or in trust as provided in Section 4 of this Plan. For purposes of this Section:

A. An annuity contract shall be issued by an insurance company qualified to do business in the state where the contract was issued and may not include any life, health or accident, property casualty or liability insurance contract (the term "annuity

contract” shall not include a life, health or accident, property, casualty, or liability insurance contract);

B. The custodian of any custodial account created pursuant to this Plan must be a bank, as described in Code Section 408(n), or a person who meets the non-bank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees; and

C. A trust must be established under the Plan pursuant to a written agreement that constitutes a valid trust under the law of the state in which the Plan Sponsor is located.

#### **Section 14. Non-Assignability Clause**

A. **In General:** Neither the Participant, the beneficiary of the Participant, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be non-assignable and non-transferrable; and, in the event of any attempted assignment or transfer, the City shall have no further liability hereunder, nor shall any payments be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise provided by law, notwithstanding the above clause.

#### **B. Domestic Relations Orders:**

1. **Allowance of Transfers:** To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. Where necessary to carry out the terms of such an order, the annuity contract provider may establish a separate account with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the order directs a different form of payment or an earlier time, to the extent allowed under the Code. Where the final judgment, decree, or order does not define a form or time of payment that is available under this Plan, the City shall have the right to interpret the final judgment, decree, or order in a manner that is consistent with the terms of this Plan. Any payment made to a person other than the Participant pursuant to this section shall be reduced by required income tax withholding.

2. **Release from Liability to Participant:** The City’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been

paid or set aside for payment to a spouse, former spouse, or child pursuant to paragraph 1 of this section. No such transfer shall be effectuated unless the City or the annuity contract provider has been provided with satisfactory evidence that the City or the annuity contract provider are released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the City or the annuity contract provider from any claim with respect to such amounts, in any case in which (a) the City or the annuity contract provider has been served with legal process or otherwise joined in a proceeding relating to such transfer; (b) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending by service of process in such action or by mail from the City or the annuity contract provider to the Participant's last known mailing address, and (c) the Participant fails to obtain an order of the court in the proceeding relieving the City or the annuity contract provider from the obligation to comply with the judgment, decree, or order. The Participant shall also be deemed to have released the City or the annuity contract provider if the Participant has consented to the transfer pursuant to the terms of a property settlement agreement and/or a final judgment, decree, or order as described in paragraph 1 of this section.

**3. Participation in Legal Proceedings:** The City or the annuity contract provider shall not be obligated to defend against or seek to have set aside any judgment, decree, or order described in paragraph 1 in this section or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the City or the annuity contract provider to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the City's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the City or the annuity contract provider shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

### **Section 15. Prohibition Against Funding**

The annuity contracts purchased by the City shall not be funded by the City; rather, the Participant's yet to be earned Compensation must be pledged to fund the Account. If the City shall establish an Account or any other asset in connection with the liabilities assumed by the City hereunder, it is expressly understood and agreed that neither the Participant nor any Beneficiary of the Participant shall have any right with respect to, or claim against, such Account or other asset until paid or made available to the Participant or the Participant's Beneficiary. Such Account or other asset shall not be held in any way as collateral security for the fulfilling of the obligations of the City under this Agreement.

## **Section 16. Loans**

If the Participant's annuity contract specifically permits loans from the funds being held under the annuity contract and if the loan program meets the requirements of §72(p) of the Code, loans to a Participant are permissible under this Plan.

A. The Administrator, in the Administrator's discretion, may permit loans to Participants and Beneficiaries under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to "highly compensated employees" in an amount greater than the amount made available to other Participants and Beneficiaries; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) repayment of the loan shall be made over a reasonable period of time.

B. Loans made pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) shall be limited to the lesser of:

1. \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or

2. The greater of (a) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Participant under the Plan, or (b) \$10,000.

C. Loans shall have level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years.

D. Any loan made pursuant to this Section where the vested interest of the Participant is used to secure such loan shall require the written consent of the Participant's spouse. Such written consent must be provided within the 90-day period prior to the date the loan is made. However, no spousal consent shall be required under this paragraph if the total accrued benefit subject to the security is not in excess of \$3,500.

## **Section 17. Administration of the Plan**

The City's Human Resources Coordinator shall be the coordinator and Administrator of the Plan. In this capacity, the Human Resources Coordinator shall receive necessary reports, notices, and other documentation from the insurance companies holding contracts under this Plan. The Human Resources Coordinator is

authorized to sign an Agreement on behalf of the City, which is in compliance with this Plan, and may assign any administrative duties needed to carry out this Plan, including the filing and retention of any original Agreements executed pursuant to this Plan. The Human Resources Coordinator is further authorized to establish Participant Accounts that comply with this Plan on behalf of the City pursuant to a properly executed Agreement. However, the signature of the Human Resources Coordinator on behalf of the City on an Agreement or annuity contract does not validate an Agreement or annuity contract which is otherwise not in compliance with the Plan.

The Human Resources Coordinator shall use a checklist in suitable form designated by the City to ensure compliance with the Plan when establishing a new annuity contract and Agreement, modifying an existing Agreement, revoking an existing Agreement, accepting a transfer annuity contract, accepting a rollover distribution, or providing an early withdrawal. The checklist shall act as a means to check and monitor compliance with the Plan.

### **Section 18. Severability**

If any provision of this Plan or Ordinance No. 3951, or the application thereof, is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or applications of this Plan or Ordinance No. 3951 which can be given effect without the invalid or unenforceable provision or application. In order to effectuate the purpose of this Section, the provisions of this Plan and Ordinance No. 3951 are severable.

### **Section 19. Effective Date**

This Plan, established under Section 457 of the Code, was adopted by the City of East Peoria and became effective on May 1, 1981. Effective August 1, 2022, the City of East Peoria adopted this Plan document, which superseded and replaced any prior Plan documents. Accordingly, this Plan document is effective August 1, 2022, subject to future amendments as made by City ordinance after the effective date of Ordinance No. 4660.