

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

C 75528
2013.1082

**AGREEMENT FOR THIRD-PARTY ADMINISTRATION SERVICES FOR
DEFERRED COMPENSATION PLAN**

I. PARTIES

A. Address

THIS AGREEMENT FOR THIRD-PARTY ADMINISTRATION SERVICES FOR DEFERRED COMPENSATION PLAN (the "Agreement") is made by and between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, and **GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY** ("Contractor"), a Colorado corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
Director of Finance or Designee City of Houston P.O. Box 5160 Houston, Texas 77251	Great-West Life & Annuity Insurance Company 8515 East Orchard Road, 10T2 Greenwood Village, CO 80111 Attention: Vice President Government Markets

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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- A. Scope of Services
- B. Equal Employment Opportunity
- C. Drug Policy Compliance Agreement
- D. Certification of No Safety Impact Positions
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- G. Plan**
- H. Investment Options**
- I. Performance Standards**
- J. Stable Asset Value Fund Documents**
- K. Reality Investing Advisory Services Agreement**

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections of the Agreement and any of the exhibits arises, the sections of the Agreement control over the Exhibits.

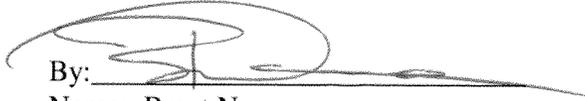
E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

WITNESS:

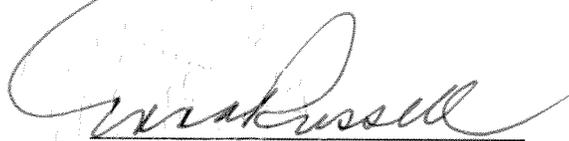
**GREAT-WEST LIFE & ANNUITY INSURANCE
COMPANY**

By: 
Name: Darryl Collier
Title: National Accounts Director

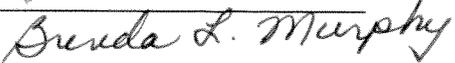
By: 
Name: Brent Neese
Title: Vice President, Government Markets
Federal Tax I.D. No. 84-0467907

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS


City Secretary

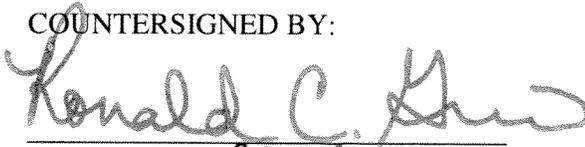
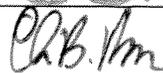
Signed by:

Mayor 

APPROVED:

COUNTERSIGNED BY:

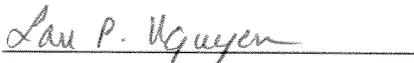

Director, Finance Department


City Controller 


City Purchasing Agent

APPROVED AS TO FORM:

DATE COUNTERSIGNED:


Sr. Assistant City Attorney
L.D. File No. 0341300138001

11-26-13

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

“Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

“Business Day” means any day that the New York Stock Exchange is open.

“Committee” means the City of Houston Deferred Compensation Advisory Committee.

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“City Attorney” means the City Attorney of the City’s Legal Department, or the person he or she designates.

“Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.

“Countersignature Date” means the date shown as the date countersigned on the signature page of this Agreement.

“Director” means the Director of the Department of Finance of the City of Houston, or the person he or she designates.

“Documents” mean notes, manuals, notebooks, plans, computations, databases, tabulations, software, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

“Investment Options” means those investment options set forth in Exhibit “H” attached to this Agreement and as may be amended from time to time by the Director.

“Parties” mean all the entities set out in the Preamble who are bound by this Agreement.

“Plan” means the City of Houston Deferred Compensation Plan set forth in Exhibit “G” to this Agreement and as may be amended from time to time.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit “A”.

B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that he or she may designate. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR’S FAILURE TO MAKE THESE PAYMENTS.

D. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, UNLESS THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY’S SOLE NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

E. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR ARISING FROM PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS

AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S NEGLIGENCE.

F. INDEMNIFICATION-PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) RESULTING FROM THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT PRIOR NOTICE TO THE CITY.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF A CLAIM OR MATTER FALLING WITHIN THIS SECTION III(F), CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS

REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE AMOUNTS THAT ARE REASONABLY ATTRIBUTABLE TO THE LOSS OF SUCH EQUIPMENT, SOFTWARE, OR DOCUMENTS.

G. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will

defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

H. Insurance

Contractor shall maintain in effect certain insurance coverage, which is described as follows:

(1) Risks and Limits of Liability. Contractor shall maintain the following coverages and limits of liability:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence and \$1,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Owned, Non-Owned, Hired Auto Coverage)	\$1,000,000 combined single limit per occurrence

Professional Liability

\$1,000,000 combined single limit
per occurrence

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

- (2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.
- (3) Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide, Property-Casualty United States.
- (4) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- (5) Deductibles. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED, MATERIALLY CHANGED OR NON-RENEWED.**

Contractor shall give written notice to the Director within five days of the date on which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.
- (9) Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Contractor shall require all subcontractors, including but not limited to its MWBE subcontractors engaged by Contractor to provide services specifically for this Agreement, to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Director.

(11) Proof of Insurance.

- (a) Prior to execution of this Agreement, Contractor shall furnish the Director with Certificates of Insurance, along with an Affidavit from Contractor confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Contractor shall furnish the City with certified copies of Contractor's actual insurance policies.
- (b) Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may
 - (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
 - (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(12) Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

I. Warranties

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

J. Use of Work Products

(1) The City may use all Documents that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to any of the Documents that are directly created by Contractor using solely its own materials.

(3) Contractor shall deliver the original Documents that Contractor directly prepares to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials necessary for their use.

(4) If there are any Documents that are necessary for the operation of the Plan or the transfer of the Plan to a successor, Contractor shall arrange for such documents to be used by the City or delivered to the City, even if they were not “directly prepared” by Contractor.

K. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

L. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

M. Compliance with Equal Opportunity Ordinance

Contractor shall comply with City’s Equal Employment Opportunity Ordinance as set out in Exhibit “B”.

N. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them.

O. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) if applicable (e.g. no safety impact positions), the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E." Contractor shall submit the Drug Policy Compliance Declaration with respect to safety impact personnel, if any, to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

P. Preservation of Information

- a. All information obtained by Contractor from the City, any Plan participant or beneficiary, or any Committee or City employee, whether the employee becomes a participant or not, shall be kept in absolute confidence and shall not be utilized by Contractor, its parent or any subcontractor, affiliate or any of their officers, directors, agents or employees in connection with any other matters of any other type or kind, nor shall such information be disclosed to any other person, firm, or corporation, unless the prior written consent of the Director has been obtained, or unless such disclosure is required by law.

- b. Contractor shall maintain for no less than three years all data and records generated by it in connection with the Plan's investments, accounting, and operations, in the manner described in Exhibit "A" of this Agreement. All records, documents, and electronic accounting records relative to the Plans shall at all times remain the property of the City, notwithstanding the fact that the records may have been stored by Contractor. The City shall, at all times, have access to those records during normal business hours and with reasonable advance notice. This subsection shall survive termination of this Agreement.

Q. Special Representations of Contractor

In addition to all other representations, covenants, and warranties contained in this Agreement, Contractor represents that:

Neither Contractor, any officer, stockholder, director, employee, nor subsidiary of Contractor nor any subcontractor of Contractor nor any subcontractor of Contractor associated with administration or investments of the Plan is subject to any present litigation or administrative proceeding of or before any court or administrative body that would have a materially adverse effect on participants in the Plan, Contractor or any subcontractor of Contractor. To the best knowledge of Contractor, no litigation or proceeding presently threatened against it or any of its property or the property of any subcontractor, except that litigation or those administrative proceedings which have been fully disclosed to the City. Contractor, its subcontractors, subsidiaries and affiliates, to the best of Contractor's knowledge, are presently in compliance with all existing laws and regulations applicable to it, a violation of which would or could materially adversely affect its operations or would or could materially affect its ability to fulfill its obligations and undertakings set forth in this Agreement.

Contractor presently has no interest and shall not acquire or sell any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services under this Agreement.

Contractor has the requisite knowledge, experience, licenses, permits and resources to fully and properly perform all of its duties and obligations and exercise all of its power as set forth herein and will assign highly qualified people to the City.

During the entire tenure of this Agreement, Contractor has an affirmative duty to immediately advise the Director in writing, if any of the representations contained in this Section are no longer correct.

R. Professional Conduct

Contractor shall assign only highly qualified employees and agents to the performance of its duties under this Agreement and act in good faith at all times in a professional manner. Contractor represents and warrants that it shall at all times use the care, skill, diligence, and prudence of a fiduciary (the "Standard of Care").

Contractor will cause Advised Assets Group, LLC ("AAG"), a registered investment adviser and an affiliate of Contractor, to provide information about the Plan's existing variable investment options (mutual or collective trust funds), and in the event that existing variable investment options fail AAG's analytic measurement process, then AAG will suggest replacement funds to the City. In so doing, any possible conflict of interest between Contractor and the City shall be fully disclosed to the Director in advance and the Director's permission sought before Contractor engages in any activity deemed to be a conflict of interest with the Plan. Unless the City instructs otherwise, Contractor represents that there is and will be no conflict of interest with respect to the investment options offered by Contractor to the Plan, both as to the Plan and the Participants, i.e., investment

options offered by Contractor shall be those that Contractor believes are in the best interest of the Plan and/or participant and (other than for Contractor's retention of disclosed fees to which it is entitled under Exhibit "F" of this Agreement and other than the retention of additional compensation for investment management services, and providing the participant book value accounting guarantee, for the Great-West Stable Asset Fund, as disclosed in the Group Annuity Contract and Letter Agreement for the Great-West Stable Asset Fund in Exhibit "J") the options offered shall have no relationship to the amount, if any, to the compensation Contractor, its agents, officers or employees may receive with respect to the offered options. Further, Contractor shall not withhold any relevant information of which it has knowledge about any of the investment options offered by the Plan.

S. Conflict of Interests of Contractor and City Employees

No officer, Council member or employee of the City shall have any financial interest, direct or indirect, in this Agreement or be financially interested, directly or indirectly, in the sale to the Plan of any materials, supplies or services, except on behalf of the Plan as an officer or employee. Any violation of this section shall constitute malfeasance in office of any officer, Council member or employee guilty thereof. Any violation of this section, with knowledge, express or implied, of the Contractor shall render the contract involved voidable by the Director.

T. Performance Standards

Contractor shall undertake to meet the service performance standards set forth in Exhibit "I" attached to this Agreement, subject to the guidelines for measuring Contractor's performance under the standards and the dollar amount at risk for each standard.

U. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all

purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

IV. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept fees at the prices provided in Exhibit "F" for all services provided by Contractor. The fees must only be paid from Allocated Funds, as provided below.

B. Expenses and Reimbursement

Reimbursable expenses include the following:

- (1) the ordinary and reasonable cost, including any sales tax Contractor is legally required to pay, for copying, printing, postage, running computer analyses, messages, delivery services, long distance telephone calls, and any additional expenses listed in Exhibit "F" Contractor incurs during its performance of Additional Services under this Agreement; and
- (2) the ordinary and reasonable costs of travel to points outside of Houston by Contractor's representatives, not to exceed the amount established under the City's then-current travel reimbursement policy for its employees, if the travel is reasonably necessary to accomplish a task and authorized by the Director.

C. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

D. Method of Payment

Payment to Contractor for services under this Agreement shall be made in accordance with Exhibit "F".

E. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$0.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. Access to Data

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

G. Confidentiality - Mutual Nondisclosure

1. In order for Contractor or City personnel to perform the obligations under this Agreement, it may become necessary for either party to receive or have access to specifications, designs, plans, drawings, software, data prototypes, or other technical or business information of the other party that either existed before performance of work or was subsequently developed independent of the parties performance of contract obligations ("Background Information"), which is considered proprietary or confidential by the other party. In addition, information developed in connection with the performance of this Agreement ("Delivered Information"), which is provided under this Agreement is proprietary and confidential. All Background Information and all Delivered Information are collectively referred to in this Section as "Information".

2. The party to whom Information is disclosed, shall:

- (a) hold the Information in confidence and protect it in accordance with the security regulations by which it protects its own proprietary or confidential information;
- (b) restrict disclosure of the Information solely to those employees, agents and representatives with a need to know; and
- (c) advise those employees, agents and representatives of their obligations with respect to the Information.

3. The party to whom Information is disclosed shall have no obligation to preserve the proprietary nature of any Information that:

- (a) was previously known to it free and clear of any obligation to keep it confidential;
- (b) except as otherwise provided under this Agreement, is disclosed to third parties by the disclosing party without restriction;
- (c) is or becomes publicly available by other than unauthorized disclosure;
- (d) is independently developed by it; or
- (e) is disclosed in response to requests made under the Texas Public Information Act or a court order, or is permitted under applicable state or federal law. However, the party ordered to disclose the Information shall (i) give the disclosing party of the Information or Software prompt written notice of all such requests, and (ii) cooperate with the disclosing party's efforts to obtain a protective order protecting the Information or Software from disclosure.

4. Neither party shall be liable for the inadvertent or accidental disclosure of Information, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the party normally takes to preserve its own proprietary information of a similar nature.

5. All Information owned by Contractor or its suppliers and furnished to the City under this Agreement is the property of Contractor or the supplier, and unless otherwise expressly provided in the applicable Order, the City, its agents and representatives shall:

- (a) use Information only to install, operate, or maintain the product(s) for which originally furnished or to perform an audit conducted by City employees or a third party to assess Contractor's performance under the Agreement and the effectiveness of systems, software, and equipment provided by Contractor;
- (b) use Information only for the City's internal business purposes;
- (c) not reproduce or copy Information except as authorized under this Agreement unless the parties otherwise agree in writing;
- (d) not use the Information to develop other software;
- (e) return or destroy the Information and any copies when no longer needed or permitted for use with the product for which initially furnished; and
- (f) not remove Information from the United States.

6. Upon request, the receiving party shall return to the furnishing party all Background Information received in tangible form that is not part of the Delivered Information.

H. Use of City's Office Space.

The City agrees to provide to Contractor the use of an office space located at 611 Walker, Houston, Texas, and Contractor agrees to pay to the City an amount of \$3,600 per year, payable semi-annually, for the utilization of such office space. Payment to the City for parking spaces to access City premises is not included in the above amount and shall be paid separately by Contractor at an amount mutually agreed upon between the parties.

V. TERM AND TERMINATION

A. Agreement Term

This Agreement is effective on January 1, 2014 and remains in effect for three (3) years unless sooner terminated under this Agreement (“Initial Term”).

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two (2) successive one-year terms each upon the same terms and conditions.

C. Termination for Convenience by City

The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City’s right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR’S ONLY REMEDIES FOR THE CITY’S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR

BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. However, if the Director desires to terminate this Agreement based upon Contractor's default, the Director must deliver a written notice to Contractor describing the default and the proposed termination date. The termination date must be at least 90 days after the date of written notice. The Director, at his or her sole option, may extend the proposed termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

E. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

B. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

C. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

D. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

E. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

F. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

G. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

H. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

I. Inspections and Audits

City representatives may have the right to perform, or have performed, (1) audits of Contractor's books and records relating to the services performed pursuant to this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement with reasonable prior notice and during Contractor's business hours. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's

compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

K. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

L. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

M. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

N. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

O. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

P. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause,

however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

Q. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

R. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR

DURING THE TERM OF THIS AGREEMENT.

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EXHIBIT A

SCOPE OF SERVICES

RECORDKEEPING RESPONSIBILITIES

A. PARTICIPANT ACCOUNT ESTABLISHMENT

Contractor will establish Participant and related data on its recordkeeping system that includes, but is not limited to, indicative data (name, address, birth date, etc.). Contractor will provide assistance to coordinate the establishment of Participant contribution processing to its recordkeeping system.

B. PLAN LEVEL RESPONSIBILITIES

Contractor shall have the following responsibilities with regard to the Plan.

1. Contractor shall keep account balances held with respect to the Plan as follows:
 - (a) amounts that are not guaranteed as to principal or interest shall be valued at their fair market value as of the close of each business day, and
 - (b) Plan assets that provide for a guaranteed interest rate and a guarantee of principal shall be valued at book value. Interest shall be accounted for on a daily effective method.
2. Contractor shall provide a reconciliation between Plan level assets held and Participant allocated account balances within 30 business days after the end of each calendar quarter.
3. **REPORTS:**
 - (a) **Plan Level Reports:** Contractor shall provide to the Director those written reports reasonably required by the Director to administer the Plan in formats reasonably requested from time to time by the Director. Such reports shall include, but are not limited to:
 - (1) Quarterly financial activity confirmation statement, showing deferrals, purchase adjustments, withdrawals by amount within each investment option, exchanges both in and out by dollar amount by investment option and a summary page. This report shall also contain, as appropriate, number of units

and unit value by investment option, as well as account balances for the previous and current periods.

- (2) Quarterly surrender audit reports, showing by Social Security Number, the total amount surrendered and the date of such surrenders. The type of withdrawal shall be indicated by a mutually accepted reason code to indicate such things as annuity payments, termination of employment, and financial hardships.
- (3) Quarterly Plan summary report summarizing Plan level assets and participant account balances no later than twenty (20) Business Days after each calendar quarter end. However, the first report may be delayed beyond this twenty day period while records are being set up. The following Plan information shall be outlined in the report:
 - (a) Account summary - a summarization of Plan transactions and assets.
 - (b) Summarization of contributions processed.
 - (c) Withdrawals.
 - (d) Annuities purchased.
 - (e) Periodic payments.
 - (f) Investment option grand totals--summarizing both dollars and units/shares and Plan activity.
 - (g) Investment option totals by money type--summarizing both dollars and units/shares and money type activity.
 - (h) Participant summary--report of account activity for each participant.
- (4) Within 90 days following the end of each calendar year, Contractor shall certify to the accuracy of and provide to the Director in a mutually satisfactory format an itemization of all direct and indirect compensation received or accrued by Contractor or any of its subsidiaries or affiliates that are in any way related to its association with the administration of the Plan for the investment of those assets.

- (5) Annual Plan review that shall include the following information:
 - (a) Review of enrollment efforts.
 - (b) Asset allocation information/contribution distributions (investment options and fixed/variable split).
 - (c) Review of current investment options and investment option performance on a quarterly basis. Contractor has contracted with Advised Assets Group, LLC ("AAG"), a registered investment advisor and a wholly owned subsidiary of the Contractor, to provide this service to Contractor.
 - (d) Voice response usage and enhancements.
 - (e) Benefit payments.
 - (f) Direct on-line system access - current services and available services.
 - (g) Legislative updates.
- (b) **On-line Access:** Contractor shall allow the Director direct on-line access to Contractor's system to allow the Director to access the following information or perform the following functions involved in administering the Plan:
 - (1) Directly process contributions to participant accounts either through on-line interaction or electronic transmission of files.
 - (2) Inquire about participant account information, account balances, allocations and transaction history.
 - (3) Inquire about the Plan's basic information, interest rates and unit values.
 - (4) Add a new participant account.
 - (5) Change participant information and investment allocations.

Contractor's representatives shall be available to assist and train the Director and other City employees as may be necessary in properly accessing and processing transactions on to Contractor's system. The City understands that Contractor's system may be unavailable periodically for maintenance, routine checks and backups. Contractor shall use its best efforts to notify the Director in advance of any such planned downtime.

- (c) **Participant Statements:** Contractor shall provide quarterly account reports to each participant that summarize all activity for the previous calendar quarter, that include, but are not limited to, the following:
- (1) Beginning and ending balances.
 - (2) All transactions processed during the quarter, including contributions.
 - (3) Interest or change in value.
 - (4) Fees/Charges (if applicable).
 - (5) Transfers and withdrawals for each of the investment options for the quarter.

Contractor must submit these reports to include the quarter next after the termination of this Agreement or any extension hereof. Contractor shall mail participant statements within fifteen (15) Business Days of the end of each calendar quarter. Contractor shall mail participant statements to each participant's last known home address as provided by the City and/or any prior recordkeeper. Additionally, Contractor shall mail to each participant a confirmation of every completed change. Participants shall also have access to their account activity via a voice response unit and the Internet. Should notification of any errors on a Participant's statement be received at the home office within ninety (90) days after the statement date, Contractor will retroactively correct the error(s). However, should errors not be identified within ninety (90) days of the statement date or if the errors have been made by the Participant, Contractual or other third party, the error(s) will be corrected, but not made effective retroactively.

- (d) **Miscellaneous Reporting:** Contractor's reporting responsibilities shall also include the following:
- (1) Reconcile deferral transmittal data with corresponding wire sent by City within two (2) business days. Deferral transmittal data to be furnished shall include a pay-ending

date, Social Security Number, participant name, amount deferred on behalf of participant and (where applicable) policy/amount name.

- (2) In the event the Participant Enrollment Form is incomplete, or it is not received by Contractor's Home Office in Greenwood Village, Colorado prior to the receipt of any deposits, Contractor will retain all monies received and allocate them to the default investment option selected by the Director.
 - (3) Once the participant's account has been established, it is the participant's responsibility to call Contractor's automated voice response system in order to transfer monies from the default investment option. Also, all contributions received after the participant's account is established will be applied to the investment option the participant has selected.
4. **Remittance of Funds:** Initially, for a period not to exceed 120 days, the City may remit payroll deposits to Contractor via ACH or wire transfer and data via magnetic tape. Thereafter, the City shall electronically remit on-line (directly to Contractor's system) records of payroll deposits and the accounting of deposits among Participants. Funds will be transmitted via ACH or wire transfer. City agrees that if it changes the reporting format for the reporting of contributions, Contractor will be given two weeks advance notice to test the new format before monies are remitted on the new file format.

C. INVESTMENT SERVICES

1. Contractor shall effect purchases and sales of securities at the direction of the Plan's participants will be effected through a broker/dealer affiliate of the Contractor. Contractor is thus authorized to receive, transmit and forward instructions for the purchase, sale, exchange or transfer of shares on behalf of the Plan to GWFS Equities, Inc. for processing, and to execute any necessary forms with mutual fund companies.
2. Contractor shall open an account with each investment provider for each investment option authorized by the Director. Contractor is making the following investment options available to the City for the Plan:
 - (a) Stable Asset Fund pursuant to the agreements attached to this Agreement as Exhibit "J".

- (b) Director may instruct Contractor to open as many as 26 mutual fund investment accounts, inclusive of a self-directed brokerage account. The initial mutual fund investment options are set forth in Exhibit "H" to this Agreement. If the Director requests that more than 26 mutual fund investment accounts be opened at any given time, then for each mutual fund investment option over 26 that is opened, there shall be an additional fee charged as stated in Exhibit " F" to this Agreement. Upon authorization from the Director, Contractor shall delete or add any investment option.
- 3. Stable Asset Fund deposits received from the City that are submitted by 3:00 p.m. Central Time with complete allocation instructions shall be effective the same Business Day. Contractor shall process deposits associated with all other investment options the same Business Day if complete allocation instructions are submitted no later than 1:00 a.m. Central Time AND the deposit is received no later than 3:00 p.m. Central Time. Otherwise, the deposits shall be effective the next Business Day. Interest is not credited to contributions being held overnight for investment.

Participant transfer requests among the investment options that are received by Contractor before 3:00 p.m. Central Time shall be initiated and effective the same Business Day if all of the investment option providers associated with the Plan meet Contractor's requirements for "late day" trading. "Late day" trading means that the investment option provider agrees to accept transactions at that Business Day's price that are initiated before 3:00 p.m. Central Time, but that are received by the investment provider after 3:00 p.m. Central Time.

As of January 1, 2014, Contractor represents and warrants that all investment options that are to be included in the Plan meet Contractor's late day trading requirements. Contractor shall advise the Director before any existing providers lose that status, and shall advise the Director of the status of any prospective providers.

- 4. Contractor shall administer the Stable Asset Fund as follows:
 - (a) Contractor shall establish in advance of each calendar quarter an interest rate to be credited to the Stable Asset Fund. This rate shall be based on the expected yield of the fund plus (or minus) any amortization of the difference of the book value of the assets of the fund and the aggregate account balances of the participants. Upon request, Contractor shall provide to the Director a written calculation of the blended rate of return upon each quarterly change in the blended rate of return.

The interest rate established for the Stable Asset Fund shall be the portfolio rate (i.e., one interest rate will apply to all participant money in the fund.)

- (b) Total Participant transfers from the Stable Asset Fund are permitted, in aggregate, in any one calendar year up to 100% of the assets in the Stable Asset Fund valued as of the last day of the immediately preceding calendar year. However, the Director reserves the right to establish an aggregate at any time and from time to time throughout the term of this Agreement upon providing written notice of same to Contractor. For purposes of this calculation, net inflows into the fund from participant contributions, interest earnings, and transfers in the same calendar year into the Stable Asset Fund shall be netted against total Participant transfers out of the Fund. Participant level transfers from the Stable Asset Fund are permitted at 100% up to the overall aggregate limit of 100% per calendar year.

The Director shall give Contractor reasonable notice before changing investment guidelines found as Attachment A to the Stable Asset Fund contract. If Contractor has informed the Director of the effects of proposed changes, it may modify the Participant transfer restrictions described in the preceding paragraph to the extent reasonably required to accommodate any changes which are made.

D. MISCELLANEOUS SERVICES

1. Contractor shall provide appropriate personnel, including outside legal counsel, if required by Contractor, in order to enable Contractor to assist the City in administering the Plan and in preparing and adopting any amendments to the Plan. Contractor's responsibilities include using its best efforts to secure timely approvals of any amendments to the Plan from all applicable state and federal governmental agencies to the extent that the Director feels it is appropriate for Contractor to be involved. Contractor shall assist the City in negotiating contracts for investment options that are mutually agreed upon by Contractor and the City.
2. Contractor shall assist the Director in the development and implementation of rules, regulations and procedures, as might be required by the City for the effective and efficient operation of the Plan.
3. Contractor shall perform the applicable federal and state tax reporting and withholding functions required on payments made under the Plan, including filing reports due in the year next after the termination of this Agreement or any extension hereof.

4. Contractor shall take such steps as are necessary to comply with all applicable state and federal laws and regulations affecting the operation of the 457 Plan and the offering of the 457 Plan to City employees, including, but not limited to, compliance with Section 457 of the Internal Revenue Code, compliance with the Securities Act of 1933, Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940.
5. Contractor shall meet with appropriate personnel of the City to advise and assist them in the development and maintenance of such computer software and other management systems as are necessary for establishing and reconciling payroll deductions under the Plan or as requested by the Director for the necessary or efficient operation of the Plan.
6. Contractor shall develop, in conjunction with the City, all necessary procedures for the withholding and reporting of applicable payroll deductions from participating employees.
7. At the request and subject to the approval of the Director, Contractor shall develop specifications and procedures for the solicitation of proposals from various investment providers to be selected by the Director, in such manner as deemed advisable by the Director. The types of proposals solicited shall be for the types of investments or insurance products permitted by statute, approved by the Director, and designated by the Director for the Plan.
8. Contractor shall review and discuss with the Director as to the selection of the best proposals. If requested, Contractor shall use its best efforts to provide information to the Director in the process. If requested by the Director, Contractor shall provide, at its sole expense, an independent actuarial opinion with any bid analysis involving an investment option that is from an investment provider that is a parent, subsidiary or affiliated entity of Contractor. Contractor shall at all times disclose all relationships between Contractor and all affected affiliates and the actuaries. The Director shall have the sole discretion and authority to make the final decision as to each investment provider and proposal selected.

Contractor shall either enter into contracts with an investment manager directly or, if necessary, prepare the proper documents for City approval and shall unless otherwise directed by the City, participate in the negotiation of the contracts with current and prospective investment managers.

9. Contractor shall take reasonable steps to ensure that the specifications for proposals and the contracts with the investment providers offered pursuant to the Plan require the investment providers to maintain proper aggregate

account records, as applicable, for all monies for the Plan and for the individual participant and to provide the records and reports, in a format acceptable to Contractor and the Director, within a reasonable time, in order for Contractor to fulfill its responsibilities pursuant to this Agreement. As soon as it becomes aware of the failure of any investment provider to comply with these requirements, Contractor shall notify the Director of the failure.

10. Contractor shall make every reasonable effort to ensure that the contracts with the investment providers offered pursuant to the Plan require the investment providers to credit the deferred amounts to the appropriate accounts as of the date of receipt of the amounts by the investment providers. As soon as it becomes aware of the failures of any investment provider to comply with these requirements, Contractor shall notify the Director of the failure and shall request instructions from the Director.

E. PARTICIPANT LEVEL RECORDKEEPING SERVICES

1. Contractor shall open an account for each participant who becomes a member of the Plan.
2. The participant account record maintained for each participant shall consist of the following information, at a minimum:
 - (a) Participant Name; mailing address; date of birth; gender; and telephone number
 - (b) Participant Social Security Number
 - (c) Participant department number
3. In addition to the participant information noted in 2 above, Contractor shall also maintain a record of the funds invested on behalf of the participant as follows:
 - (a) Current investment allocation for each investment account authorized by the employer.
 - (b) A history of investment allocations by the participant, and the time periods they were effective beginning October 1, 2000 and, to the extent furnished to Contractor by any prior recordkeeper, a history of prior investment allocations by the participant.
 - (c) Current account balances held on behalf of the participant in each sub-account authorized by the Board that is a result of prior deferrals.

- (d) An accounting of each transaction made to each investment sub-account authorized by the Director.
4. Upon receipt of complete payment instructions, Contractor shall make benefit payments to participants and beneficiaries within two (2) Business Days. Contractor shall make benefit payments with respect to each participant account, withhold the appropriate tax and Contractor shall provide tax reporting for each participant account as follows:
- (a) Keep a record of any distribution from the Plan made with respect to the participant and the reason for the distribution.
 - (b) Perform appropriate federal and state income tax withholding and reporting for each benefit payment from the Plan with respect to the participant.
 - (c) At the time of the benefit payment, Contractor shall forward the income tax withholding to the Internal Revenue Service and other appropriate state of local entities.
 - (d) Provide information to the Internal Revenue Service annually showing an accounting of all participants who have received distributions during the previous calendar year.
5. Contractor shall provide ensure that participants have access to a twenty-four hour a day, toll free, automated voice response unit (VRU) that will provide the following information to the participant from a touch-tone telephone:

Obtain:

- (a) Current interest rates for fixed investment option, however constructed.
- (b) Current unit values or share prices and daily change in value for variable investment funds.
- (c) Current account balance, in total and by investment fund.
- (d) Current investment fund allocation percentages.

Change/Transfer:

- (a) Change investment fund allocation percentages.

- (b) Transfer among investment options.
- (c) Ability to change the Personal Identification Number (PIN).
- (d) Ability to access transaction history since inception date of contract.
- (e) Ability to activate rebalancer and dollar cost averaging options.

Participant allocation changes and transfers may be initiated by using the VRU.

Inquiry services available from VRU will utilize most currently available share prices, unit values and account balances as of the previous Business Day. Allocation changes shall be effective the date they are made.

- 6. In addition to access to account information through VRU outlined above, Contractor shall make available client service representatives to answer participant questions in English and Spanish between the hours of 8:00 a.m. Central Time and 7:00 p.m. Central Time. The VRU system is available 24 hours a day, except for routine maintenance of the system, which generally takes place between the hours of 1:00 a.m. and 1:00 p.m. Central Time each Sunday morning. However, the VRU system may be unavailable at other times if necessary for system maintenance. Contractor shall notify the Director in writing and in advance if the VRU system will be unavailable for greater than two hours during business hours on Business Days.

II. TECHNICAL SERVICES

Contractor shall provide the City with the following services:

- A. Quarterly written report to the Director and the City Attorney, or his or her designee, concerning federal legislative activity of which Contractor is aware that may affect the Plan and related funding contracts.
- B. Meet with the Director quarterly to review administrative and recordkeeping functions under the Plans.
- C. At the request of either the Director or the City Attorney, Contractor shall make available its legal counsel to respond to legal issues related to the City's Plan or this Agreement.

III. COMMUNICATION RESPONSIBILITIES

- A. Other than communications by the City, employee communication services shall be provided by Contractor.
- B. Contractor shall extend the opportunity for enrollment, including the opportunity to designate any and all of the available investment options, on an equal basis to all eligible employees of the City pursuant to such nondiscriminatory guidelines as may be established by the City or by state or federal legislation or regulation governing the administration of the Plan.
- C. Contractor shall process, or arrange to have processed, the enrollment of eligible employees who elect to participate in the Plan. The above noted forms and materials shall include, but not be limited to the following materials:
- (1) Enrollment and distribution forms.
 - (2) Asset allocation information.
 - (3) Quarterly newsletters.
 - (4) Summary of Product details.
 - (5) Enrollment Communications:
 - Develop custom look and feel for the Plan
 - Enrollment Guides with custom look and feel
 - Enrollment Meeting Posters with custom look and feel
 - Enrollment Presentation with custom look and feel
 - (6) Web Site:
 - Customized website: www.houstondcp.com
 - Web-based e-Learning presentations
 - Virtual Classroom learning modules
 - (7) Ongoing Participant Communications:
 - Custom look applied to Educational Fliers
 - Custom look applied to Educational Seminars
 - Custom quarterly participant newsletter
 - One statement stuffer per year in addition to the participant newsletter
 - Fund change communications
 - KeyTalk and Web quick reference card

- (8) Surveys:
 - One annual web survey
- (9) Targeted Marketing:
 - One targeted direct mailing per year

The City agrees to allow and facilitate the periodic distribution of such material to employees.

- D. Contractor shall provide three (3) full-time representatives, solely dedicated to the City's Plan, to provide communication and marketing services for the Plan, and one (1) part-time representative, in addition to one (1) Regional Director and one (1) Administrative Support Staff assigned to the Plan. The Director shall have final approval over the selection of all of the full-time and part time representatives. Contractor shall have such additional management, enrollment representatives, administrative support and related servicing personnel in sufficient numbers to fulfill its responsibilities under this Agreement and maintain adequate continuous service to the participating employees.

All representatives of Contractor engaged in soliciting or enrolling employees in the Plan and in providing continuous service with respect to the Plan shall possess all licenses and permits required by all local, state and federal governmental agencies including, without limitation, any licenses required to sell insurance, mutual funds, and related securities within the City. No representative of Contractor shall solicit any City employee for enrollment or enroll an employee in the Plan without all necessary and required licenses, including, but not limited to, State Department of Insurance Life, Health, Variable and Annuity licenses and Federal Series 6 and Series 63 licenses. Contractor shall likewise possess all necessary and required local, state and federal licenses, permits and franchises necessary to carry out its responsibilities under this Agreement in accordance with all state statutes.

The rate of compensation paid by Contractor to its agents and employees shall not favor one option over another. Contractor shall also furnish to the City copies of compensation schedules established for all of its agents and representatives associated with decisions made by the participants in the Plan.

- E. Contractor shall attend periodic deferred compensation Committee meetings as reasonably requested and shall be prepared to report on the current status of the Plan and its activities and the performance of each investment option.

F. **PRESENTATIONS**

Contractor shall provide the following presentations to City employees. No less often than once each year, Contractor shall present an educational plan to the Director for its review and approval.

- (1) **Group Presentations:** Contractor shall conduct group meetings periodically for education purposes. At the group meetings, some or all of the following shall be communicated, as may be required:
 - (a) Summary of the key provisions of the Plan.
 - (b) Summary of investment options.
 - (c) Discussion of services including automated voice response system inquiry, retirement planning, and investment seminars.
 - (d) Instructions on how to sign up for the Plan or request an individual counseling session.

As attendance warrants, some of these meetings shall be conducted in Spanish. The introduction meetings shall be open to all employees of the City.

- (2) **Seminars:** Contractor shall also offer specific "advanced" educational seminars covering topics such as asset allocation, understanding mutual funds, retirement planning and financial investing.
- (3) **Individual Counseling Sessions:** Contractor shall conduct prescheduled individual counseling sessions utilizing a participant paycheck analysis, an asset allocation model and retirement counseling services as approved by the Director.

- G. Contractor shall (1) take all changes, enrollments, and withdrawal requests from participants and beneficiaries, (2) advise participants and beneficiaries about allowable payment options, (3) calculate the proper payment amount, (4) determine the proper timing of payments, and (5) take necessary steps for payment to be made. Contractor represents that it has the knowledge and expertise necessary to handle this responsibility.

Contractor agrees to review Participant benefit request forms and help identify additional information where needed in order to submit such forms in good order to the Director for ratification in accordance with the Plan.

- H. **Hardship Withdrawals:** Contractor shall receive applications for withdrawal amounts, determine whether applications are appropriate for processing or

submission to the Board, and require each participant submitting an application for withdrawal to prove any and all appropriate documentation for such request. Contractor shall submit all hardship applications and appeals, along with its recommendation for action, to the Director or its designee for review and possible approval. Payment of any hardship withdrawal shall be in the manner specified by the Plan.

- I. Contractor or its agents shall not use information obtained under the Plan to directly solicit participants with respect to any product that is not part of the Plan.
- J. **Internet Site:** Contractor shall provide Plan participants an Internet site in which the following information is available:
 - 1. Current interest rates;
 - 2. Unit values and/or share prices;
 - 3. Daily changes in unit values and share prices;
 - 4. By individual participant account:
 - (a) balances in total and by fund;
 - (b) current deferral election (allocation of contributions);
 - (c) the ability to change allocation of future deferrals;
 - (d) the ability to transfer current balances between fund investment options;
 - (e) ability to access transaction history;
 - (f) ability to activate rebalancer and dollar cost averaging options.

K. City hereby instructs Contractor to complete an administrative review of all City approved QDROs submitted on or after the effective date of this Agreement to ensure that Contractor can determine the amount of the alternate payee's award, mailing address and social security number. Contractor will establish an alternate payee account or process a distribution pursuant to the terms of the QDRO, the Plan, and/or IRS Code requirements in effect on the date of the distribution, and a distribution request received in good order and in a manner satisfactory to Contractor. City instructs Contractor to determine the amount due to the alternate payee based solely on the Participant account records on Contractor's recordkeeping system.

IV. SELF-DIRECTED BROKERAGE

As part of Contractor's recordkeeping services, it shall offer a Self-Directed Brokerage Account investment option ("SDB"), as described in Exhibit 1 to this Exhibit "A", through an independent third party broker-dealer selected by the Director ("SDB Provider").

The Self-Directed Brokerage program shall be recordkept according to the terms of Exhibit 1 attached to this Exhibit "A".

Prior to Contractor providing recordkeeping and communication services in respect of the SDB, City agrees to execute the SDB Provider's Retirement Plan Services Agreement, the Securities Restriction Form and the Letter of Instruction Regarding Self-Directed Brokerage Account.

Contractor is not responsible for the negligent or fraudulent acts or omissions of SDB Provider, its affiliates and their officers, directors, employees or authorized representatives. Contractor is not responsible for the content of the SDB Provider Web site and does not represent or warrant that information provided on the SDB Provider Web site is accurate or properly included.

All parties agree that Contractor is required to effect purchases and sales of securities at the direction of Plan participants through Contractor's family of companies' broker/dealer. GWFS Equities, Inc., will be the broker/dealer for all investment options other than the SDB option ("Core Investments"). Contractor is thereby authorized to receive, transmit and forward instructions for the purchase, sale, exchange or transfer of shares on behalf of the Plan, and to execute any necessary forms with mutual fund companies.

V. FINANCIAL ADVICE

If requested by the Director, Contractor shall provide financial advice services to the participants for the fees as described in Exhibit "F" to the Agreement. The Director is hereby authorized to enter into any agreement(s) necessary to effectuate the financial advice services.

VI. REALITY INVESTING ADVISORY SERVICES

Contractor has contracted with Advised Assets Group, LLC ("AAG"), a registered investment advisor and a wholly owned subsidiary of the Contractor, to provide Reality Investing Advisory Services to the City. These services are described in the agreement titled "Reality Investing Advisory Services Agreement" similar in form and content to the attached Exhibit "K" to this Agreement, to be signed between AAG and the City at the time of execution of this Agreement.

EXHIBIT 1 TO EXHIBIT A
SELF-DIRECTED BROKERAGE ACCOUNT OPTION

A. GENERAL DESCRIPTION

The Self-Directed Brokerage Account (“SDB”) option with SDB Provider is described as follows:

1. Account Establishment and Funding

SDB Provider has agreed to offer a SDB option to the employees of the Director. The SDB will be treated as a separate investment option under the Plan.

Participants must apply to SDB Provider to establish an account with SDB Provider and must affirmatively accept an indemnity/release statement via either Contractor’s web site or automated voice response system prior to participating in the SDB arrangement. Participants utilizing the SDB prior to the electronic indemnity/release statement being available will be required to accept an indemnity/release statement prior to making additional transfers to the SDB via web or voice response system.

Under the SDB option, the Participant chooses from eligible investments, including, mutual funds, stocks and bonds allowed by the Plan, as specified in the SDB Provider Restriction Form completed by the Plan and submitted to SDB Provider, subject to certain trading restrictions.

2. Core Investment Minimums

All investment options other than the SDB option shall be defined as “Core Investments”. The amount that must be left in the Core Investments, as established by Contractor, will be \$2,500. Contractor may change the aforementioned minimum with thirty (30) days advance written notice.

If the participant has not met the required Core Investments minimum, transfers will be restricted from the Core Investments to SDB Provider. In the event a Participant’s total balance in the Core Investments falls to twenty (20) percent below the stated Core Investments minimum, the Participant will be mailed a letter each month for up to three consecutive months requesting that the Participant transfer from the SDB to Core Investments the amount required to meet the Core Investments minimum. If after the third letter the participant’s total balance in the Core Investments is insufficient to recover fees owed under the terms of this Agreement, Director agrees to provide instruction to transfer the amount necessary from funds available in the participant’s Designated Money Market Fund at SDB Provider. If it is necessary to liquidate securities in the participant’s SDB account, Director will provide specific written instructions on the specific securities to be liquidated and the number of shares to be liquidated.

3. Transfers and Contributions to SDB Provider

Participants may transfer assets to SDB Provider only from the Core Investments, subject to any transfer restrictions or other rules associated with a particular investment option. Contributions from salary reduction must first be deposited into one or more of the Core Investments before the assets may be transferred may also be allocated to SDB Provider to the extent the Core Investments minimum has been met.

Participants must initiate transfers to SDB Provider via Contractor's web-site, the toll-free automated voice response system (currently called KeyTalk[®]) or the client service representative at the home office in Greenwood Village, Colorado. Transfers may be made only in U.S. dollars and only into the Designated SDB Money Market Fund at SDB Provider, or other comparable fund as designated by SDB Provider. Any cash balances within a Participant's SDB shall be automatically invested in the Designated SDB Money Market Fund.

When a Participant provides direction to transfer assets or to contribute directly to SDB Provider, the transfer of the assets from the Core Investments or to contribute directly to SDB and receipt of those assets by SDB Provider will not be simultaneous.

A Participant's initial transfer to SDB Provider must be at least \$1,000.00 and each subsequent transfers must be at least \$1,000.00. Either SDB Provider or Contractor may change any of the aforementioned minimums with thirty (30) days advance written notice.

All transfers between SDB Provider and the Core Investments will be prorated against all money sources within a Participant's account unless the participant directs a customer service representative at the home office in Greenwood Village, Colorado to transfer only one money source.

Transfers to SDB Provider will not be permitted if a Participant's total balance in the Core Investments falls below the Core Investments minimum.

4. Brokerage Activity

After funds are transferred or contributed to a Participant's SDB, the Participant must contact SDB Provider to buy or sell mutual funds or securities. Participants may provide investment instructions to SDB Provider by calling a SDB Provider Investor Service Representative, via the SDB Provider Voice Response System or via the Internet by accessing SDB Provider's web-site.

Securities eligible for trading in a SDB include only investment companies registered under the Investment Company Act of 1940; securities traded on a national securities exchange or over-the-counter and taxable debt instruments or obligations. SDB Provider will not accept orders for any transactions involving certain securities if so instructed by the Director pursuant to SDB Provider's Restriction Form executed by the Director and Trustee, if applicable.

Director acknowledges that SDB Provider will provide each Participant with any annual reports, proxy, tender offer, prospectus, or any other information it receives in connection with securities held in the Participant's SDB (collectively referred to as "Shareholder Communications"),

including information regarding voting, tendering or any other shareholder actions. SDB Provider will cause its Clearing Agent to exercise the default option under the reorganization terms on voluntary actions if the Participant provides no instruction. In no case will either SDB Provider or Contractor and/or its affiliates be under any duty to determine how, or if, proxies are voted or acted upon or to take any action in connection with any Shareholder Communication.

5. Transfers from SDB Provider

Participants must transfer assets from their SDB via Contractor's web-site, the toll-free automated voice response system (currently called KeyTalk[®]) or the client service representative at the home office in Greenwood Village, Colorado to the Core Investments to the extent that funds are required for a scheduled or requested loan, distribution, periodic payment or rollovers or distributions pursuant to a Qualified Domestic Relations Order (QDRO). Periodic payments scheduled for the ninety (90) day period following a distribution request and scheduled irrevocable payments are not available for other distributions. The minimum required balance for the Core Investments will not be available for any distributions if the Participant has a balance in the SDB. Transfers may be made only in U.S. dollars and only from the Designated SDB Money Market Fund. Participants must contact SDB Provider and liquidate mutual funds, stocks, and/or bonds prior to transferring from SDB Provider to the Core Investments. Before initiating a transfer, Participants must cancel any open "buy" orders for securities to the extent the open "buy" orders exceed the remaining balance available in the SDB option. Participants must then contact Contractor to initiate transfers from the SDB Money Market Designated Fund to the Core Investments. Transfers initiated by the participant from the SDB Money Market Designated Fund at SDB Provider to the Core Investments will be allocated among the Core Investments according to the Participant's instructions, or to the plan default in the absence of instructions from the Participant from time to time.

Assistance will be afforded the Participant in maintaining the minimum required in the Core Investments via a periodic letter notifying them of an insufficient amount of money in the Core Investments. If the Participant fails to comply with the notice to maintain the minimum required in the Core Investments, the Participant's account will be restricted so no additional money can be transferred into the SDB account.

6. Non-Required Future Payments

Any Participant who has established a SDB account and has set up future payments (including periodic payments) will be responsible for transferring the amount of money sufficient to maintain their future payments to the Core Investments.

If a future payment fails because there is not enough money in the Core Investments, the following will occur:

- a. The Participant will receive a letter each month for three (3) consecutive months notifying them that they have not met the required Core Investments minimum for future payments (the stated \$2,500 Core Investment minimum plus 150% of the next three (3) months of

- scheduled future payments) and request that the Participant transfer from the SDB to Core Investments the amount required to meet the Core Investments minimum.
- b. If the amount in the Core Investments is not sufficient to make a payment, the future payments will be terminated on the recordkeeping system. Notification will be sent to the Director, who may request that the all securities held at SDB Provider will be liquidated;
 - c. Transfers of money from SDB Provider to the Core Investments to satisfy future payments can only be made by the Participant;
 - d. Future payments will not be backdated to the original effective date.

To restart future payments, the Participant must transfer money to the Core Investments and resubmit any forms necessary to set up future payments.

7. Required Payments under the Plan, the Code or the Payment Option Selected

Any Participant who has established a SDB account and has required payments will be responsible for transferring the amount of money sufficient to maintain their periodic payments to the Core Investments.

If required payments fail because there is not enough money in the Core Investments, the following will occur:

- a. The Participant will be mailed a letter each month for three (3) consecutive months notifying them that they have not met the required Core Investments minimum for required payments (the stated \$2,500 Core Investment minimum plus 150% of the next three (3) months of required payments).
 - b. If the amount in the Core Investments is not sufficient to make a payment, the Director will be notified that all securities held at SDB Provider will be liquidated according to the Letter of Instruction from the Director and the total balance will be transferred back to the Core Investments and allocated to the Plan default option, in the absence of instructions from the Participant;
 - c. A restriction will be placed on the account, preventing the Participant from moving money to the SDB;
 - d. Required payments will be made as of the current date; and
 - e. The required payment schedule will be restarted for future required payments.
- #### 8. Death Benefit Payments

A beneficiary cannot access the SDB. Upon receipt of a death benefit claim form in good order at the home office in Greenwood Village, Colorado, SDB Provider will be directed to freeze SDB activity and cancel any open orders. Securities Unless an in-king rollover to eligible retirement plan is selected, securities held in the SDB Provider account will be liquidated according to the Letter of Instruction from the Director and the proceeds will be transferred to the plan default in the Core Investments for distribution. Trailing dividends will be transferred to the Core Investments for distribution.

9. Closing SDBs

Participants must call SDB Provider to close their account. Once the account is closed, the

Participant cannot initiate any further transfers to the SDB account. If a dividend is paid into the account after the Participant has transferred all money to the Core Investments, the Participant must call SDB Provider to liquidate securities and wait for the transaction to settle in the SDB Money Market Fund. Once the securities have settled in the SDB Money MarketFund, the Participant must call Contractor to initiate the transfer from the SDB Provider SDB Money Market Fund to the Core Investments. If a Participant closes their SDB account, they will have to open a new account with a new account number. Participants must call SDB Provider to close their account. Once the account is closed, the Participant cannot initiate any further transfers to the SDB account. However, the SDB account will remain in pending closure status for 45 days to receive trailing dividends. If a dividend is paid into the account after the Participant has transferred all money to the Core Investments, the Participant (or beneficiary) must call SDB Provider to liquidate securities and wait for the transaction to settle in the Designated Fund. Once the securities have settled in the Designated Fund, the Participant must call Contractor to initiate the transfer from the SDB Provider Designated Fund to the Core Investments. If a Participant closes their SDB account, they will have to open a new account with a new account number.

10. Name and Address Changes

Name and Address changes must be submitted to the home office in Greenwood Village, Colorado. Participants must also notify the SDB Provider of any address changes.

11. Special Recordkeeping Associated with the Self-Directed Brokerage Option

The parties hereto agree and acknowledge that the recordkeeping in respect of the SDB program will differ from the recordkeeping services described elsewhere in this Agreement.

- a. Rebalancer and dollar cost averaging are not available for any SDB;
- b. Participant statements issued according to this Agreement will show one balance for the SDB account. The rate of return will be included on the statement for the SDB balances. No transactions within the SDB will be shown on this statement.
- c. The following information will not be shown on the quarterly Plan Summary Report for SDBs:
 - i. Realized and unrealized gains and losses;
 - ii. Cost basis; and
 - iii. Reportable transactions.
- d. No in-kind distributions rollovers are allowed from the SDB account, if provided for in the plan document.
- e. Transaction timing information is described in Schedule A attached.

B. GENERAL INFORMATION

1. The parties hereto agree and acknowledge that SDB Provider is an independent, unaffiliated third party to Contractor and its affiliates and that SDB Provider may review and amend the fees charged at any time without notice.

2. The availability of a mutual fund, stock, or bond under the SDB program does not constitute a determination by Contractor, its affiliates or their employees, officers, directors, agents or affiliates (collectively Contractor) of the merits, prudence, or advisability of the SDB program, nor does Contractor or its affiliates provide investment advice or recommend or evaluate the merits or suitability of any investment available through the SDB program. Neither Contractor nor its affiliates act as a fiduciary with respect to the selection and retention of the SDB program or any Participant SDBs held thereunder.
3. Director understands that neither Contractor nor its affiliates have any discretionary authority and cannot exercise discretionary control on behalf of the Plan or SDB Provider and are not an agent of SDB Provider. However, except those duties expressly performed by Director or SDB Provider pursuant to this Recordkeeping and Administrative Responsibilities Agreement, all ministerial administrative functions related to the SDB arrangement are to be performed by Contractor according to this Agreement. Director agrees that SDB Provider may act pursuant to instructions provided according to the terms of this Agreement and pursuant to Participant directions.
4. Director hereby authorizes that the services in this Agreement to be performed in the following limited and nondiscretionary capacity: to forward cash to SDB Provider on behalf of the Plan and Plan Participants; to direct SDB Provider to liquidate any SDB assets and transfer such assets to the recordkeeping system at the home office in Greenwood Village, Colorado in order to pay fees, expenses and benefits in respect to payment options required under the Plan and close Participant SDB accounts according to Letter of Instruction Regarding Self Directed Brokerage Account and/or Participant instructions. The limited authority granted above includes the authority to transmit instructions to SDB Provider to transfer assets from SDBs to another Plan investment provider; to transfer assets to or from a SDB in accordance with this Agreement; and to take any other ministerial actions incidental to the administration of the foregoing.
5. In addition to the recordkeeping and communication fee described in the Agreement, an annualized fee of \$50.00 per year per Plan shall be collected from the account of each Participant utilizing the SDB, deducted from each participant's Core Investments account balance on a pro rata basis in an amount of \$12.50 per quarter (as defined below) per Plan. A quarter shall be defined as the period from the 21st day of the third month of the preceding calendar quarter to the 20th day of the third month of the current calendar quarter. This fee will not be assessed in respect of any quarter that the Participant maintains a zero (\$0) balance in the SDB for the entire quarter. Participants electing to invest in the SDB will also be assessed separately by SDB Provider its fees, the management and other fees specific to each investment option selected. The commissions and/or fees charged by SDB Provider are set forth on SDB Provider's Web site and will be charged to the Participant's SDB as they apply to the SDB arrangement. These commissions and/or fees are subject to change at any time without notice. Contractor and/or one or more of its affiliates may receive revenues from SDB Provider which reimburses for administrative and systems interface.

C. LIABILITY

Director acknowledges that neither SDB Provider nor Contractor and its affiliates act as a fiduciary with respect to the Participant's selection or retention of SDB assets or investments. Neither SDB Provider nor Contractor and its affiliates has any duty to monitor purchases, sales, or exchanges of securities in the Participant SDBs and other transactions in the SDB, or to determine whether the amount contributed or transferred to SDB Provider from the recordkeeping system for any Participant Account is proper or correct.

D. TERMINATION

The SDB arrangement may be terminated by Director or Contractor at any time upon written notice to the other parties. Such termination will be effective sixty (60) days after the date of mailing such notice. Upon termination, the Director agrees to provide direction with respect to the disbursement of any monies or securities invested in the SDB arrangement.

Schedule A
Transaction Timing

A. Transfers to SDB Provider:

Participant initiated transfer and contribution requests from the Core Investments to the SDB account that are received at the home office on a Business Day before 2:00 p.m. Mountain Time will be processed and sent to SDB Provider the second Business Day, if all of the Core Investment option providers associated with the transfer and contribution request meet the "late day" trading requirements. "Late day" trading means that the investment option provider agrees to accept transactions at that Business Day's price that are initiated prior to 2:00 p.m. Mountain Time but are received by the investment option provider after 2:00 p.m. Mountain Time. If received at the home office on a Business Day after 2:00 p.m. Mountain Time, transfers and contributions will be processed and sent to SDB Provider the third Business Day.

B. Transfers from SDB Provider:

Participant initiated transfer requests from the Money Fund at SDB Provider to the Core Investments that are received by SDB Provider on a Business Day before 2:00 p.m. Mountain Time will be received at the home office approximately three (3) Business Days after requested from SDB accounts. Once received at the home office, the amount transferred will be deposited to the applicable investment options according to the transfer timing schedule described in this Agreement.

C. Loans, Lump-Sum Withdrawals, Non-Required Periodic Payments, and Required Payments under the Plan, the Code or the Payment Option Selected:

The Participant must sell sufficient securities to raise the required amount of cash in the Designated SDB Money Market Fund and then transfer the cash from the SDB Money Market Designated Fund to the Core Investments. Once the transfer is received in the Core Investments, the loan or first payment will be available the later of five (5) Business Days after the Business Day the SDB monies (and complete and accurate information necessary to process the request) or the date of the scheduled payment.

D. Death Benefit Payments:

1. SDB Investment in Mutual Funds and Bonds:

Once complete and accurate information necessary to process the death benefit request is received at the home office, SDB Provider will be notified to liquidate all securities in the SDB and transfer them to the Core Investments on the recordkeeping system at the home office. The death benefit request will be processed no later than the

eleventh Business Day and the check will be processed and mailed no later than the twelfth Business Day.

2. SDB Investment in Stock With or Without Mutual Funds and/or Bonds:

Death benefit requests that include stock investments in the SDB will be completed no later than two (2) Business Days after the schedule described above in subparagraph 1 given that stock investments require two (2) additional Business Days to settle.

E. Closing the SDB:

In event the SDB account is closed, the Participant's SDB account will remain in pending closure status for forty-five (45) days to receive trailing dividends. If and if a dividend is paid into the SDB account after all of the SDB money has been transferred, the Participant (or beneficiary) must follow the procedures described in Section A. 9. Once the dividend has been paid into the Core Investments on the recordkeeping system at the home office, the check will be available according to the schedule described in paragraph C. above.

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, as amended and superseded, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246, as amended and superseded, and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor's Contract Administrator(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, as amended and superseded, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, as amended and superseded, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended and superseded, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "D"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

FEES

1. Recordkeeping and Communication Services

The explicit fee for Recordkeeping and Communication services under this Agreement shall be deducted on a quarterly basis from the Participants' accounts. This explicit fee is \$0.00 per participant per year and is guaranteed for the entire term of this Agreement. However, in the event of changes to total fees anticipated to be collected by Contractor, the Director and Contractor shall agree to modify this explicit fee and amend this Exhibit F to reflect a mutually agreeable amount for the Recordkeeping and Communication Fee, without the requirement of City Council approval.

2. Revenue Sharing on a Full Disclosure Basis

With the exception of the fees Great-West, and/or one or more of its affiliates receive for providing the Great-West Stable Value Fund, Great-West will remit to the Plan all fees that Great-West and/or one or more of its affiliates may receive from mutual fund families and other Core (i.e. non-self-directed brokerage option) investment providers for providing certain administrative or other services. These assets shall be placed into an unallocated trust assets account ("Plan Account") to be used for plan purposes as set forth in the plan document and will be invested in a single investment option as specified by Plan Sponsor.

3. Stable Value Fund Annualized Investment Management Fee

The City of Houston Stable Value Fund annualized Investment Management Fee is set forth in the Letter Agreement attached as Exhibit J to the Agreement.

4. Self-Directed Brokerage Option Fees

In addition to the recordkeeping and communication fee, GWL&A shall collect from each participant utilizing the Self-Directed Brokerage Option (SDB) an annualized fee of \$50.00 per year, deducted from each participant's Core Investments (all investment options except SDB) account balance in an amount of \$12.50 per quarter. Participants electing to invest in the SDB will also be assessed separately by the SDB Provider its fees, the management and other fees specific to each investment option selected. The commissions and/or fees charged by SDB Provider are set forth on SDB Provider web site and will be charged to the Participant's SDB as they apply to the SDB arrangement. These commissions and/or fees are subject to change at any time without notice. Great-West and/or one or more of its affiliates will retain revenues, if any, which become payable by SDB Provider to compensate Great-West for the establishment and on-going recordkeeping services for the self-directed brokerage option.

5. Loan Fees

A \$50 loan origination fee will be deducted from the amount of each loan processed. In addition, a \$25.00 annual maintenance fee per loan will be deducted from the Participant's account in an amount of \$6.25 per quarter.

6. Bank Credit Disclosure

Great-West may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned are aggregated with credits and/or interest earned by Great-West affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Great-West and its affiliates will not retain credits and/or interest earned in excess of such maintenance expenses.

Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where Plan distribution checks have not been presented for payment by Plan Participants. Credits and/or interest (i) begin to accrue on contributions, on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Plan participant instructions and (ii) begin to accrue on distributions, on the date the check is written or on the wire date, as applicable and end on the date the check is presented for payment or when the wire clears against the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

7. Miscellaneous Fee Provisions

If the City selects a custodian or trustee that requires the procedures or services in this Agreement to change, Great-West reserves the right to adjust fees in this Section.

Should a Participant request an overnight delivery, Great-West will assess the Participant its current overnight delivery fee.

Should a Participant request a payment via Automated Clearing House (ACH) for partial and full withdrawals, Great-West will assess the Participant its current ACH fee.

Should a Participant request a payment via wire for partial and full withdrawals, Great-West will assess the Participant its current wire fee.

City may direct Great-West in writing to assess a mutually agreeable per Participant fee, asset fee, or combination fee to Participants account balances. Such fee(s) may be deposited into an unallocated trust assets account ("Plan Account") to be used for plan purposes as set forth in the plan document and as directed in writing by the City. These assets may be invested in a single investment option and such fees may be adjusted annually as specified by the City, if applicable.

The parties agree that any services which Great-West is requested to perform beyond the scope of the services described in this Agreement shall be provided at a mutually agreed upon price negotiated prior to the performance of such services.

EXHIBIT "G"

PLAN

(See attached)

CITY OF HOUSTON
SECOND AMENDED AND RESTATED
SECTION 457 ELIGIBLE DEFERRED COMPENSATION PLAN
EFFECTIVE: JANUARY 1, 2011

SECOND AMENDED AND RESTATED
SECTION 457 ELIGIBLE DEFERRED COMPENSATION PLAN

EFFECTIVE JANUARY 1, 2011
("Restated 457 Plan")

I. INTRODUCTION

In accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended, the City of Houston ("the City" or "Employer") has established a Section 457 Eligible Deferred Compensation Plan, hereinafter referred to as the "Plan." Pursuant to Ordinance No. 2005-1113, the City adopted the First Amended Section 457 Eligible Deferred Compensation Plan, effective June 1, 2005 (hereinafter referred to as "First Amended 457 Plan") as the Plan.

This SECOND AMENDED AND RESTATED SECTION 457 ELIGIBLE DEFERRED COMPENSATION PLAN hereby supersedes and replaces the First Amended 457 Plan in its entirety, effective January 1, 2011.

Pursuant to Section .2 Amendment of Article X. herein, the Administrator, acting by and through the Director, may adopt rules, regulations or procedures from time to time as may be necessary to conform Plan amendments to Treasury regulations or other guidance issued under the Code.

Nothing contained in the Plan shall be deemed to constitute an employment agreement between any Participant and Employer and nothing contained herein shall be deemed to give a Participant any right to be retained in the employ of Employer.

II. DEFINITIONS

.1 "Administrator" or "Plan Administrator" means either the Employer or its duly authorized designee who shall exercise the functions assigned to it by the Employer under the terms of the Plan.

.2 "Age 50 or Older Catch-up" means the deferred amount described in section 4.04.

.3 "Alternate Payee" means the spouse, former spouse, child or other dependent of a Participant who has acquired an interest in the Participant's account pursuant to a Qualified Domestic Relations Order (QDRO) pursuant to Section 12.02. Alternate Payees shall be treated as Beneficiaries for all purposes under the Plan except that Alternate Payees shall be allowed to request a distribution of all or a portion of their account balance at any time, subject to the terms of the QDRO.

- .4 "Beneficiary" means the persons or entities designated by a Participant pursuant to section 4.01(c).
- .5 "City Attorney" means the City Attorney of the City or his or her designee.
- .6 "Code" means the Internal Revenue Code of 1986, as amended, or any future United States internal revenue law. References herein to specific section numbers of the Code shall be deemed to include Treasury regulations and Internal Revenue Service guidance thereunder and to corresponding provisions of any future United States internal revenue law.
- .7 "Committee" means the Deferred Compensation Advisory Committee established under Article XV.
- .8 "Compensation" means all payments made to an Employee by the Employer as remuneration for services rendered, including salaries, and, to the extent permitted by the Code and/or Treasury Regulations or other similar guidance, accrued vacation and sick leave benefits for which an Employee is eligible to receive monetary compensation upon termination.
- .9 "Custodial Account" means the account established with a Custodian meeting the provisions of Code § 401(f), if the Employer has elected to satisfy the trust requirement of Code § 457(g) by setting aside Plan assets in a custodial account.
- .10 "Custodian" means the bank, trust company or other person authorized to hold the assets of such a custodial account in accordance with regulations issued by the Secretary of the Treasury pursuant to Code § 401(f) that is selected by the Employer to hold Plan assets if the Employer has elected to use a custodial account pursuant to Code § 457(g) and § 401(f).
- .11 "Deferred Compensation" means the amount of Compensation that the Participant defers in accordance with the Plan, which includes pre-tax deferral, ROTH contributions or both, subject to any deferral limitations that may apply.
- .12 "Director" means the Director of the City of Houston Finance Department or his or her designee.
- .13 "Effective Date" means January 1, 2011.
- .14 "Employee" means any officer or full-time or part-time employee whose name appears on the periodic payroll roster of the Employer and any elected official of the Employer but excludes independent contractors of the Employer.
- .15 "Employer" means the City of Houston, Texas.
- .16 "Includible Compensation" means, for purposes of the limitation set forth in section 4.02, Compensation for services performed for the Employer as defined in Code § 457(e)(5).
- .17 "Limited Catch-up" means the deferred amount described in section 4.03.
- .18 "Normal Retirement Age" means age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to

Severance From Employment. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the Limited Catch-up of section 4.03 of the Plan. Once a Participant has to any extent utilized the Limited Catch-up of section 4.03 of the Plan, his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date the Participant will become eligible to retire under the Employer's basic retirement plan that is applicable to such Participant without the Employer's consent and to receive immediate retirement benefits without actuarial or similar reduction because of early retirement, and may not be later than age 70½. If the Participant will not become eligible to receive benefits under a retirement plan maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than age 50 and may not be later than age 70½. If a Participant continues to be employed by Employer after attaining age 70½, not having previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually severs employment with the Employer if the Employer has no mandatory retirement age.

.19 "Participant" means any Employee who becomes a Participant pursuant to section 4.01. Except for purposes of Articles IV, VIII, and IX, "Participant" shall include former Participants.

.20 "Participation Agreement" means the agreement entered into and filed by an Employee with the Employer pursuant to section 4.01, in which the Employee elects to become a Plan Participant.

.21 "Plan Year" means the calendar year.

.22 "Qualified Domestic Relations Order" or "QDRO" shall have the meaning specified in section 12.02.

.23 "Qualified Military Service," or "QMS" means any service in the uniformed service (as defined in Chapter 43 of Title 38 of the United States Code as in effect as of December 12, 1994) by any individual if such individual is entitled to reemployment rights under such Chapter with respect to such service.

.24 "Severance from Employment" means severance of the Participant's employment with the Employer. A Participant shall be deemed to have severed his employment with the Employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the Participant by the Employer.

.25 "Third Party Administrator" means that person or entity engaged by the Employer to perform some or all of the Administrator's duties under the Plan.

.26 "Total Amount Deferred" means, with respect to each Participant, the sum of all Compensation deferred under the Plan, plus income and minus loss thereon (including amounts

determined with reference to life insurance policies) and less the amount of any expenses or distributions authorized by this Plan.

.27 "Trust" means the trust created under Article V of the Plan. "Trust" may also mean a trust created by a separate written agreement between the Employer and the Trustee if a bank or trust company is named as Trustee. The Trust shall consist of all Plan assets held by the Trustee.

.28 "Trustee" means the Employer or such other person, persons or entity selected by the Employer who agrees to act as Trustee hereunder. This term (except as used in Article V) also refers to the person holding the assets of any custodial account or holding any annuity contract described in section 5.01.

.29 "Unforeseeable Emergency" is defined pursuant to Treasury Regulation §1 457-6(c)(2). An Unforeseeable Emergency shall be defined in the Plan as a severe financial hardship to the Participant or beneficiary resulting from an illness or accident of the Participant or beneficiary, the Participant's or beneficiary's spouse, or the Participant's or beneficiary's dependent (as defined in the Code Section 152, and for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)); loss of the Participant's or beneficiary'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); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or beneficiary's primary residence may constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in the Code section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)) of a Participant or beneficiary may also constitute an Unforeseeable Emergency. Except as otherwise specifically provided in this paragraph (c)(2)(i) of Treasury Regulation § 1.457-6, the purchase of a home and the payment of college tuition are not Unforeseeable Emergencies under paragraph (c)(2)(i) of Treasury Regulation § 1.457-6. Whether a hardship constitutes an Unforeseeable Emergency under section VII.4 shall be determined in the sole discretion of the Administrator."

III. ADMINISTRATION

.1 Administrator. The Employer shall be the Administrator unless the Employer has delegated certain of its duties to a Third Party Administrator.

.2 Appointment and Termination of Third Party Administrator. A Third Party Administrator may be engaged by the Employer to perform certain duties and obligations in reference to the Plan.

.3 Duties of Administrator. Subject to any applicable laws, the Administrator shall have full power and authority to adopt rules, regulations and procedures for the administration of the Plan, and to interpret, alter, amend, or revoke any rules, regulations or procedures so adopted. The Administrator's duties shall include, but not be limited to:

- a) appointing the Plan's accountant, actuary, custodian or any other party needed to administer the Plan or the Plan assets;
- b) directing the Trustee with respect to payments from the Plan assets held in Trust;
- c) communicating with Employees regarding their participation and benefits under the Plan, including the administration of all claims procedures;
- d) filing any returns and reports with the Internal Revenue Service or any other governmental agency;
- e) reviewing and approving any financial reports, investment reviews, or other reports prepared by any party appointed under paragraph (a);
- f) establishing a funding policy and investment objectives consistent with the purposes of the Plan; and
- g) construing and resolving any question of Plan interpretation. The Administrator's interpretation of Plan provisions including eligibility and benefits under the Plan is final.

.4 Administrative Fees and Expenses. All reasonable costs, charges and expenses incurred by the Administrator in connection with the administration of the Plan may be paid by the Employer, but if not paid by the Employer when due, shall be paid from Plan assets. Notwithstanding the foregoing, no compensation other than reimbursement for expenses shall be paid to an Administrator who is the Employer or a full-time Employee of the Employer. In the event any part of the assets in the Plan become subject to tax, all taxes incurred shall be paid from the Plan assets unless the Administrator advises the Trustee not to pay such tax.

.5 Actions of Administrator. Every action taken by the Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him, her, or it. The Administrator shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Administrator shall not be liable for amounts of Compensation deferred by Participants or for other amounts payable under the Plan.

.6 Delegation. Subject to any applicable laws and any approvals required by the Employer, the Administrator may delegate any or all of his, her or its powers and duties hereunder to another person, persons, or entity, and may pay reasonable compensation for such

services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

IV. PARTICIPATION IN THE PLAN

.1 Enrollment in the Plan.

(a) An Employee may become a Participant by entering into a Participation Agreement. Compensation will be deferred for any payroll period if a Participation Agreement providing for such deferral is entered into by the Participant and approved by the Administrator before the beginning of such payroll period. With respect to a new Employee, Compensation shall be deferred for the payroll period during which a Participant first becomes an Employee if a Participation Agreement providing for such deferral is entered into by the Participant and approved by the Administrator before the first day on which the Participant becomes an Employee. Any prior employee who was a Participant in the Plan and is rehired by Employer may resume participation in the Plan by entering into a Participation Agreement. Unless distributions from the Plan have begun due to that prior Severance from Employment, however, any deferred commencement date elected by such employee with respect to those prior Plan assets shall be null and void.

In entering into the Participation Agreement, the Participant elects to participate in this Plan and consents to the deferral by the Employer of the amount specified in the Participation Agreement from the Participant's gross compensation for each payroll period. Such deferral shall continue in effect until modified, disallowed or revoked in accordance with the terms of this Plan, or until the Participant ceases employment with the Employer. The Employer retains the right to establish minimum deferral amounts per payroll period and to limit the number and/or timing of enrollments into the Plan in the Participation Agreement.

(b) Notwithstanding section 4.01(a), to the extent permitted by applicable law, the Administrator may establish procedures whereby each Employee becomes a Participant in the Plan and, as a term or condition of employment, elects to participate in the Plan and consents to the deferral by the Employer of a specified amount for any payroll period for which a Participation Agreement is not in effect. In the event such procedures are in place, a Participant may elect to defer a different amount of compensation per payroll period, including zero, by entering into a Participation Agreement.

(c) Beneficiary. Each Participant may designate in the Participation Agreement or in any other manner authorized by the Administrator a Beneficiary or Beneficiaries to receive any amounts which may be distributed in the event of

the death of the Participant prior to the complete distribution of benefits. A Participant may change the designation of Beneficiaries at any time by filing with the Administrator a written notice on a form approved by the Administrator. If no such designation is in effect on the Participant's death, payment will be made to the properly appointed executor of the Participant's estate. If an executor has not been appointed and qualified with 90 days after the death of the Participant, the payment may be made first to a surviving spouse, second to a surviving child or children and third, to a surviving parent or parents.

.2 Deferral Limitations.

(a) Except as provided in sections 4.03 and 4.04, the maximum that may be deferred under all of the Employer's eligible 457 deferred compensation plans for any taxable year of a Participant shall not exceed the lesser of (1) the applicable dollar amount in effect for the year, as adjusted for the calendar year in accordance with Code § 457(e)(15), or (2) 100% of the Participant's Includible Compensation, each reduced by any amount specified in section 4.02(b) for that taxable year.

(b) The deferral limitation shall be reduced by any amount excludable from the Participant's gross income attributable to elective deferrals to another eligible deferred compensation plan described in Code § 457(b).

.3 Limited Catch-up.

For one or more of the Participant's last three taxable years ending before the taxable year in which Normal Retirement Age under the Plan is attained, the maximum deferral shall be the lesser of:

(a) twice the applicable dollar limit in effect under Code § 457(e)(15), reduced by any applicable amount specified in section 4.02(b) for that taxable year; or

(b) the sum of:

(1) the limitations established for purposes of section 4.02 of the Plan, for such taxable year (determined without regard to this section 4.03), plus

(2) so much of the limitation established under section 4.02 of the Plan or established in accordance with Code § 457(b)(2) and the regulations thereunder under an eligible deferred compensation plan sponsored by an entity other than the Employer and located in the same state for prior taxable years (beginning after December 31, 1978 and during all or any portion of which the Participant was eligible to participate in this Plan) as has not theretofore been used under sections 4.02 or 4.03 hereof or under such other plan (taking into account the limitations under and participation

in other eligible deferred compensation plans in accordance with the Code); provided, however, that this section 4.03 shall not apply with respect to any Participant who has previously utilized in whole or in part the limited catch-up under this Plan or under any other eligible deferred compensation plan (within the meaning of Code § 457).

.4 Age 50 or Older Catch-up. A Participant who attains age 50 or older by the end of a Plan Year and who does not utilize the Limited Catch-up for such Plan Year may make a deferral in excess of the limitation specified in section 4.02, up to the amount specified in and subject to any other requirements under Code § 414(v).

.5 Employer Modification of Deferral. The Employer 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 sections 4.02, 4.03 and 4.04;
- (b) in excess of the Participant's net Compensation for any payroll period;
- (c) upon any change in the length of payroll period utilized by Employer. 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;
- (e) to reduce the future deferrals in the event that the amount actually deferred for any payroll 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. No adjustment in future deferrals shall be made if a periodic deferral is missed or is less than the amount elected, for any reason whatsoever; or
- (f) if the deferral elected for any payroll period is less than the minimum amount specified in section 4.01(a);

And to the extent permitted by and in accordance with the Code, the Employer may distribute the amount of a Participant's deferral in excess of the distribution limitations stated in sections 4.02, 4.03 and 4.04 notwithstanding the limitations of Article VII; provided, however, that the Employer shall have no liability to any Participant or Beneficiary with respect to the exercise of, or the failure to exercise, the authority provided in this section 4.05.

.6 Participant Modification of Deferral. A Participant may modify the Participation Agreement at the times and in the manner authorized by the Administrator with respect to Compensation payable no earlier than the payroll period after such modification is entered into by the Participant and accepted by the Administrator. Notwithstanding the above, if a negative

election procedure has been implemented pursuant to section 4.01(b), a Participant may enter into or modify a Participation Agreement at any time to provide for no deferral.

Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by Qualified Military Service under Code §414(u) may elect to make, upon resumption of employment with the Employer, additional annual deferrals equal to the maximum annual deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave.)

.7 Revocation. A Participant may at any time revoke the agreement to defer Compensation by filing a request for revocation to the Administrator in a manner approved by the Administrator. Such revocation will be effective for the payroll period following the Administrator's receipt of the revocation or as soon as administratively feasible thereafter. However, the Total Amount Deferred shall be distributed only as provided in Articles VI and VII and shall be subject to the terms and provisions of the affected investment option. A Participant's request for a distribution in the event of an Unforeseeable Emergency shall in addition be treated as a request for revocation of deferrals as of a date determined by the Administrator for the period of time determined under section 7.04.

.8 Re-Enrollment. A Participant who revokes the Participation Agreement as set forth in section 4.07 above may again become a Participant at the times and in the manner authorized by the Administrator, by entering into a new Participation Agreement to defer Compensation payable no earlier than the payroll period after such new Participation Agreement is entered into by the Participant and accepted by the Administrator.

.9 Transfers and Rollovers Into and out of the Plan.

- (a) Transfers to the Plan. If the Participant was formerly a Participant in an eligible deferred compensation plan maintained by another employer, and if such plan permits the direct transfer of the Participant's interest therein to the Plan, then the Plan shall accept assets representing the value of such interest; provided, however, that the Participant has separated from service with that prior employer and become an Employee of Employer. Such amounts shall be held, accounted for, administered and otherwise treated in the same manner as Compensation deferred by the Participant under this Plan except that such amounts shall not be considered Compensation deferred under the Plan in the taxable year of such transfer in determining the maximum deferral under section 4.02. The Employer may require such documentation from the predecessor plan as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of Code § 457, and to assure that transfers are provided under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash.