



Plan Name: City of Houston Deferred
Compensation Plan

Plan Number: 98989-01

Government Markets

Loan Policy Administration

Article I. Eligibility

Section 1.01 Employees who participate in a deferred compensation plan or defined contribution plan that permits loans may request a loan. New loans are available to plan participants who have terminated employment.

Article II. Minimum and maximum loan amounts

Section 2.01 The minimum loan amount that a participant may request is \$1,000.00 and the participant must have a minimum account balance of \$2,000.00.

Section 2.02 The maximum loan amount that a participant may request is \$50,000 or 50% of the vested account balance – which ever is less. The \$50,000 maximum loan amount is reduced by the highest loan balance during the past 12 months minus the loan balance on the date a new loan is made.

Section 2.03 If a participant has an outstanding loan through another qualified plan, 403(b) plan, or a 457 plan maintained by the same employer, the maximum loan amount available must be reduced by the highest outstanding loan balance during the past 12 months. The participant is responsible for ensuring that the aggregated loan amount on all plans sponsored by the same employer is the lesser of \$50,000 or 50% of the vested account balance.

Article III. Number of loans permitted

Section 3.01 The number of loans a participant may have outstanding at one time is limited to two (2).

Section 3.02 The plan does not allow for refinancing of existing loans.

Article IV. Fees

Section 4.01 A loan origination fee in the amount of \$50.00 shall be deducted from the loan amount.

Section 4.02 An administrative fee of \$25.00 per year/per loan, deducted quarterly at a rate of \$6.25, will be assessed to each participant account with an active loan.

Section 4.03 If a participant requests their loan check to be sent express delivery or via ACH deposit an additional charge will be deducted from the loan check amount.

Article V. Loan Terms

Section 5.01 General Purpose Loans have a term of twelve to sixty (12-60) months. No reason or documentation is required when a participant requests a General Purpose Loan. The interest rate for this type of loan is fixed for the life of the loan. The interest rate is 2% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.

Section 5.02 Principal Residence Loan has a term of seventy-two to one hundred eighty (72-180) months. This loan must be utilized for the purchase of a primary residence ONLY. The interest rate is 2% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated. The participant must provide additional documentation related to the purchase of the residence including the scheduled closing date.

Section 5.03 Interest paid on loans is not income tax deductible.

Article VI. Loan Initiation and Approval

Section 6.01 The participant will apply for a loan via the Participant Website, KeyTalk® phone system or with a Great-West client service representative.

Section 6.02 The Plan Sponsor will provide Great-West with the information necessary to process loan requests without signatures. This will include any indicative information necessary to ensure compliance with the provisions outlined in this document.

Section 6.03 Upon approval of the Plan Sponsor (if required) Great-West will process the distribution and issue a loan check to the participant. The Loan Check and Promissory Note are combined into one document – by endorsing the check, the participant agrees to the terms of the loan and acknowledges their repayment obligation.

Article VII. Distribution of loan amount and Plan Notification

Section 7.01 The distribution of loan assets will be processed upon market close on the business day following the receipt of all approvals. Loan distribution amounts will be prorated across all available money types as follows 1.non-fixed fund(s); 2.stable value fund.

Section 7.02 Once a new loan has been initiated, the payroll department will be sent a report or an electronic file to begin loan payments. Loan repayments must begin on time or the loan payments will be in arrears. If loan payments are not caught up in time, the loan may default. Loan default results in adverse tax consequences to the participant.

Article VIII. Loan Repayment Provisions

Section 8.01 Regularly scheduled payments will be made by payroll deduction. Loan repayments will be allocated to the participant's account according to current allocation percentages on ISIS.

Section 8.02 Amounts in excess of the regularly scheduled repayment will be applied to the next principal and interest assessment, not to exceed 180 days of prepayment.

Section 8.03 Partial lump sum loan repayments are permitted in order to catch up on a past-due amount or to reduce the principal amount of the loan. If a participant remits a partial payment, the loan payment amount will not change but the loan would be paid off earlier.

Section 8.04 A loan can be paid in full at any time. The participant may obtain a loan payoff quote via the Participant Website, KeyTalk® phone system or with a client service representative. The loan payoff quote is valid for 15 days from the date it is obtained.

Section 8.05 Loan repayments not made through payroll deduction can be submitted using ACH deductions, cashiers check, money order, or personal check. Repayments made using personal funds will restrict future distributions from the account for a period of 15 days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal.

Section 8.06 Loans are in arrears and delinquent when any payment is missed. A late loan payment notice will be issued after the end of the calendar quarter in which the payment is delinquent. If all missed payments are not made by the end of the calendar quarter after the calendar quarter in which a payment is first missed such that the loan is totally paid up to date, the loan will be in default. In that event, the entire outstanding loan balance, consisting of the missed payments, all accrued but unpaid interest and the remaining principal, will be reported to the IRS as taxable income on a Form 1099-R for the year in which the loan default occurs.

Section 8.07 Basic Rules Regarding Loans to Ensure They Do Not Default

- (a) Any amount paid out of a plan will be treated as a taxable distribution unless the plan loan rules under Code section 72(p) and the applicable Treasury regulations are followed.
- (b) Payments must be made in level amortized amounts and must be made at least quarterly.
- (c) Missed payments must be received prior to the end of the calendar quarter following the quarter in which the payment was missed.
- (d) If a participant fails to make a loan repayment on time, and the missed loan repayment(s) is/are not made by the end of the following calendar quarter (or within the plan's more restrictive cure period), the loan is in default and ceases to comply with section 72(p).
- (e) The entire outstanding loan balance plus accrued interest at the time of the default is taxable to the participant as a deemed distribution.
- (f) The plan loan rules under Code section 72(p) do not provide a mechanism to ignore missed payments or to reverse a loan that has already defaulted.

Section 8.08 In addition, if a loan has not been fully repaid by the end of its term, the outstanding balance will be taxable and will be reported to the IRS on Form 1099-R as taxable income. There is no opportunity to cure a late payment once the term has expired. The payroll department will be notified of the final loan payment amount prior to the final payment due date.

Section 8.09 If the participant has a loan that defaulted at any time in the past, their eligibility for a new loan is revoked.

Section 8.10 A participant who leaves service prior to the end of the loan term may continue to make payments on their loan using ACH deduction or coupon repayment.

Section 8.11 The participant's outstanding loan balance will be offset upon receiving any type of distribution after severance of employment. As required by federal tax regulations, a participant's defaulted loan will remain on the books until a qualifying event occurs, even though income has been reported to the IRS.

Article IX. Military Leave of Absence

Section 9.01 If the participant takes a military leave of absence, the interest rate on the loan will be reduced to 6%, during the period of military service provided the interest rate on the loan is greater than 6%. Loan payments must resume upon the participant's return from military leave. The term of the loan may be extended by the term of the military leave. The entire outstanding loan balance, including all accrued but unpaid interest, will be reamortized.

Article X. Outstanding Loan at Death

Section 11.01 All outstanding loan principal and accrued interest shall be treated as a distribution from the plan when Great- West Retirement Services is notified of a participant's death. A deceased participant's loan may not be transferred or assumed by the participant's beneficiary(ies). If a participant's loan has not been repaid as of the date of the participant's death, any distributions made from the deceased participant's plan account will be made net of any outstanding loan obligations. The amount of the outstanding loan as of the participant's date of death will be tax reported as a distribution to the participant or to the participant's estate as applicable.

Article XI. Future additions

Section 11.01 Future tax laws regarding plan loans will be incorporated into this loan policy and the Promissory Note.

Article XII. Enforcement

Section 12.01 Great-West Retirement Services is required to enforce these rules. The loan policy and loan administration procedures have been developed to comply with the requirements of Internal Revenue Code section 72(p) and the federal Treasury regulations thereunder, as amended from time to time.

The Plan Administrator/Employer hereby authorizes Service Provider to implement participant initiated loans based on the Loan Policy outlined above.



Authorized Plan Administrator/Employer Signature

9/29/2011

Date

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.

- (b) Rollovers to Plan. The Plan shall accept a rollover contribution on behalf of a Participant or Employee who may become a Participant. A rollover contribution for purposes of this subsection is an eligible rollover contribution (as defined in Code § 402(f)(2)) from any (i) plan qualified under Code §§ 401(a) or 403(a); (ii) tax-sheltered annuity or custodial account described in Code § 403(b); (iii) individual retirement account or annuity described in Code § 408; or (iv) eligible deferred compensation plan described in Code § 457(b) maintained by an eligible employer described in Code § 457(e)(1)(A). Prior to accepting any rollover contribution, the Administrator may require that the Participant or Employee establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of the Code. A Participant's rollover contribution shall be held in a separate rollover account or accounts, as the Administrator shall determine from time to time.
- (c) Other Transfers to the Plan. To the extent permitted by Code and/or Treasury Regulations or other similar guidance, accrued vacation and sick leave pay may be transferred in amounts as may be allowed by law or applicable regulation by a Participant to the Plan upon such Participant's Severance from Employment. Such amounts shall be held, accounted for, administered and treated as Compensation. If such transfers are allowed by the Code and/or Treasury Regulations, the Administrator may establish necessary rules and procedures consistent with applicable laws to govern these transfers.
- (d) Transfers from the Plan. To the extent permitted by Code and/or Treasury Regulations or other similar guidance, Participants may transfer funds from this Plan to other eligible Section 457 plans sponsored by this Employer. The Plan Administrator and the Deferred Compensation Advisory Committee shall establish written transfer guidelines for transfers from this Plan to other eligible Section 457 plans sponsored by this Employer (the "Transfer Guidelines"). The Transfer Guidelines shall be initially established and thereafter may be reviewed on an annual basis. The Transfer Guidelines shall take into account total Plan assets, number of Plan Participants, market conditions and any other factors that the Plan Administrator and the Deferred Compensation Advisory Committee deem relevant. Transfers may only occur in accordance with the Transfer Guidelines and at such times, in such aggregate and individual amounts, and in the manner allowed by the Employer or Plan Administrator.

.10 Multiple Plans. In the case of a Participant who participates in more than one deferred compensation plan governed by Code § 457, the limitations set forth in sections 4.02, 4.03 and 4.04 shall, to the extent required under the Code, apply to all such plans considered together. For purposes of sections 4.02, 4.03 and 4.04, Compensation deferred shall be taken into account at its value in the Plan Year in which deferred.

.11 Qualified Military Service. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with Code § 414(u).

V. CREATION OF TRUST AND TRUST FUND

.1 Custody of Plan Assets. All contributions under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held for the exclusive benefit of Participants and their Beneficiaries. On the Effective Date of this Plan, the trust requirement of Code 457(g) is satisfied as the Plan's assets are set aside in one or more annuity contracts and one or more custodial accounts. However, the trust requirement of Code § 457(g) may be satisfied if the Employer sets aside the Plan assets in one or more of the following ways:

- (a) Plan assets may be set aside in trust pursuant to a separate written trust agreement between the Employer and certain employees of (or holders of certain positions with) the Employer named as Trustee.
- (b) Plan assets may be set aside in trust pursuant to a separate written trust agreement entered into between the Employer and the bank or trust company named as Trustee.
- (c) Plan assets may be set aside in one or more annuity contracts described in Code § 401(f).
- (d) Plan assets may be set aside in one or more custodial accounts described in Code § 401(f).

.2 Exclusive Benefit Rules. No part of the Plan assets shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with a interest in the Plan, and the Beneficiary or Beneficiaries of a deceased Participant having an interest in the Trust assets at the death of the Participant.

VI. INVESTMENTS

.1 Investment Options. The Employer, acting by and through the Director, has the sole discretion to select one or more investment options from which Participants may invest their Account balances. All investment options offered under the Plan shall be appropriate and in compliance with any and all state and federal laws and regulations pertaining to such investments.

.2 Participant Investment Direction. If the Employer chooses to designate one or more investment options in which Participants may direct investment of their Account, Participants shall have the option to direct the investment of their Account from among the investment options designated by the Employer. A Participant's right to direct the investment of Account balances shall apply only to making selections among the options made available under the Plan and only to the extent specified by the Employer pursuant to uniform rules.

- (a) Each Participant shall designate on the form prescribed by the Administrator the one or more investment options in which he or she wishes to have his Account invested and may change such investment directions in accordance with and at the time or times specified under uniform rules established by the Administrator. The Participant's Account shall be debited or credited as appropriate to reflect all gains or losses on such investments.
- (b) Neither the Employer, the Administrator, the Trustee nor any other person shall be liable for any loss incurred by virtue of following the Participant's directions or by reason of any reasonable administrative delay in implementing such directions.
- (c) The Employer may from time to time change the investment options made available under the Plan. If the Employer eliminates an investment option, all Participants who had chosen that investment option shall select another option. If no new option is selected by the Participant, money remaining in the eliminated investment option shall be reinvested at the direction of the Employer. The Participants shall have no right to require the Employer to select or retain any investment option. Any change with respect to investment options made by the Employer or a Participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options.

.3 Participant Accounts. The Administrator shall maintain or cause to be maintained one or more individual accounts for each Participant. Such accounts shall include separate accounts, as necessary, for Code § 457 Deferred Compensation, Code § 457 rollovers, IRA rollovers, other qualified plans and Code § 403(b) plan rollovers, and such other accounts as may be appropriate from time-to-time for Plan administration. At regular intervals established by the Administrator, each Participant's account(s) shall be credited with the amount of any Deferred Compensation paid into the Trust; debited with any applicable administrative or investment expense, including, but not limited to, fees charged to Participants, allocated on a reasonable and consistent basis; credited or debited with investment gain or loss, as appropriate; and debited with the amount of any distribution. At least once a year each Participant shall be notified in writing of his Total Amount Deferred.

.4 Distributions from the Trust. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any custodian or other person so authorized by the Employer to make such distribution. Neither the Employer, the Administrator, the Trustee nor any other person shall be liable with respect to any distribution from the Trust

made at the direction of the Employer or a person authorized by the Employer to give disbursement direction.

VII. DISTRIBUTIONS

.1 Conditions for Distributions.

- (a) § 457 Deferred Compensation. Payments from a Participant's § 457 Deferred Compensation account to the Participant or Beneficiary shall not be made earlier than:
- (1) the Participant's Severance from Employment or death;
 - (2) the Participant's account meets all of the requirements for an in-service *de minimis* distribution pursuant to section 7.03;
 - (3) the Participant incurs an approved Unforeseeable Emergency pursuant to section 7.04;
 - (4) the Participant transfers an amount to a defined benefit governmental plan pursuant to section 7.03(c); or
 - (5) The calendar year in which the Participant attains age 70 1/2.
- (b) Rollovers. Payments from a Participant's rollover account(s) may be made at any time. To the extent permitted by Treasury Regulations or other similar guidance, upon a Participant's Severance from Employment, the Participant may roll over all or any part of the Participant's account to a defined benefit plan. Such rollover shall be subject to such rules and procedures that may be established by the Administrator.

.2 Severance from Employment.

- (a) Subject to section 7.02(b), distributions to a Participant shall commence following his or her Severance from Employment, on the regular distribution commencement date (as the Administrator may establish from time-to-time) elected by the Participant, in a form and manner determined pursuant to sections 7.06, 7.07 and 7.08.
- (b) Upon notice to Participants, and subject to sections 7.08(b), 7.10 and 7.11, the Administrator may establish procedures under which a Participant whose total § 457 Deferred Compensation account balance is less than an amount specified by the Administrator (not in excess of \$1,000 or other applicable limit under the

Code) will receive a lump sum distribution on the first regular distribution commencement date (as the Administrator may establish from time-to-time) following the Participant's Severance from Employment, notwithstanding any election made by the Participant pursuant to section 7.02(a).

.3 In-Service Distributions and Transfers.

(a) Voluntary In-Service Distribution of *De Minimis* Accounts. A Participant who is an active Employee shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:

- (1) the portion of the total amount payable to the Participant under the Plan does not exceed an amount specified from time to time by the Administrator (not in excess of \$5,000 or other applicable limit under the Code);
- (2) the Participant has not previously received an in-service distribution (including any distributions made pursuant to section 7.04) under the Plan;
- (3) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
- (4) the Participant elects to receive the distribution.

(b) Involuntary In-Service Distribution of *De Minimis* Accounts.

Upon notice to Participants, and subject to section 7.11, the Administrator may establish procedures under which the Plan shall distribute the total amount payable under the Plan to a Participant who is an active Employee if the following requirements are met:

- (1) the portion of the total amount payable to the Participant under the Plan does not exceed an amount specified from time to time by the Administrator (not in excess of \$5,000 or other applicable limit under the Code);
- (2) the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan; and
- (3) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

(c) Transfer for Purchase of Defined Benefit Plan Service Credit.

If a Participant is also a Participant in a defined benefit governmental plan (as defined in Code § 414(d)), such Participant may request the Administrator to transfer amounts from his or her account for (i) the purchase of permissive service credit (as defined in Code § 415(n)(3)(A)) under such plan, or (ii) a repayment to which Code § 415 does not apply by reason of Code § 415(k)(3). Such transfer requests shall, if granted, be made directly to the defined benefit governmental plan. The Administrator may establish such procedures that are deemed in the Administrator's sole discretion necessary to effectuate the transfer.

.4 Unforeseeable Emergencies. If the Administrator has determined that a Participant has incurred a genuine Unforeseeable Emergency and that no other resources of financial relief are available, the Administrator may grant, in its sole discretion, a Participant's request for a payment from the Participant's § 457 Deferred Compensation account. Any payment made under this provision shall be in a lump sum.

- (a) The Plan Administrator shall have the right to request and review all pertinent information necessary to assure that hardship withdrawal requests are consistent with the provisions of Code § 457.
- (b) In no event, however, shall an Unforeseeable Emergency distribution be made if such hardship may be relieved:
 - (1) through reimbursement or compensation by insurance or otherwise;
 - (2) by liquidation of the Participant's assets, to the extent the liquidation of the Participant's assets would not itself cause a severe financial hardship; or
 - (3) by cessation of deferrals under this Plan; or
 - (4) if allowed, by taking out a loan under this Plan, provided that the repayment of such loan does not itself cause financial hardship
- (c) The amount of any financial hardship benefit shall not exceed the lesser of:
 - (1) the amount reasonably necessary, as determined by the Administrator, to satisfy the hardship; or
 - (2) the amount of the Participant's account.
- (d) The Administrator may suspend the Participant's salary deferral election during the pendency of the Participant's request for a financial hardship distribution.

Payment of a financial hardship distribution shall result in mandatory suspension of deferrals for a minimum of six (6) months from the date of payment (or such other period as mandated in Treasury Regulations).

.5 Death Benefits.

- (a) Upon the Participant's death, the Participant's remaining account balance(s) will be distributed to the Beneficiary commencing after the Administrator receives satisfactory proof of the Participant's death (or on the first regular distribution commencement date thereafter as the Administrator may establish from time-to-time), unless prior to such date the Beneficiary elects a deferred commencement date, in a form and manner determined pursuant to sections 7.06, 7.07 and 7.08.
- (b) If there are two or more Beneficiaries, the provisions of this section and section 7.08 shall be applied to each Beneficiary separately with respect to each Beneficiary's share in the Participant's account.
- (c) If the Beneficiary dies after beginning to receive benefits but before the entire account balance has been distributed, the remaining account balance shall be paid to the estate of the Beneficiary in a lump sum or to any designated beneficiary of Beneficiary.
- (d) Under no circumstances shall the Employer or the Plan be liable to the Beneficiary for the amount of any payment made in the name of the Participant before the Administrator receives satisfactory proof of the Participant's death.

.6 Payment Options. A payee's election of a payment option must be made at least thirty (30) days prior to the date that the payment of benefits is to commence or such advance notice that the Administrator may allow. A payee may stop any prior payment option (subject to the requirements of the current payout option) or select a new payment option at any time by providing the required election of payment notice for the above. If a timely election of a payment option is not made, benefits shall be paid in accordance with section 7.07. For Participants having made an irrevocable payment election before April 1, 2002, such Participants (except those Participants having purchased annuities before April 1, 2002 and so long as Participants are meeting the required minimum withdrawals) are now entitled to revoke their prior election and elect a new payment option(s) (with the same frequency as any other Participant) from those options listed below. Certain options may be subject to an administrative fee(s). Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options:

- (a) A single lump-sum payment;

- (b) Installment payments for a period of years (payable on a monthly, quarterly, semi-annual, or annual basis) which extends no longer than the life expectancy of the Participant or Beneficiary as permitted under Code § 401(a)(9);
- (c) Partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in subsection (b);
- (d) Annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the Participant or for the lifetimes of the Participant and Beneficiary in compliance with Code § 401(a)(9); or
- (e) Such other forms of payments as may be approved by the Employer consistent with the requirements of Code § 401(a)(9); or
- (f) Partial Payment(s).
- (g) A Participant who is an eligible retired public safety officer, as defined under Code §402(1)(4)(B), may elect to have distributions made directly to an insurer to pay qualified health insurance premiums for coverage for the eligible retired public safety officer, his/her spouse and dependents, by an accident of health insurance plan or qualified long-term care insurance contract as defined in Code §7703B(b). Any elections and distributions under this Section .6(g) shall be made in a manner consistent with the requirements and limits contained in Code §402(1) and any applicable guidance issued thereunder.

.7 Default Distribution Option. In the absence of an effective election by the Participant, Beneficiary or other payee, as applicable, as to the commencement and/or form of benefits, distributions shall be made in accordance with the applicable requirements of Code §§ 401(a)(9) and 457(d), and proposed or final Treasury Regulations thereunder.

.8 Limitations on Distribution Options. Notwithstanding any other provision of this Article VII, Plan distributions shall satisfy the requirements of this section 7.08.

- (a) No distribution option may be selected by a payee under this Article VII unless it satisfies the applicable requirements of Code §§ 401(a)(9) and 457(d), and proposed or final Treasury Regulations thereunder.
- (b) For mandatory distributions, if any, made on or after the effective date of and subject to final Treasury Regulations under Code § 401(a)(31), payment of an account balance that is less than 1,000 and for which the Participant has not made an election to receive in cash or to rollover to a qualified retirement plan shall, to the extent required by and in accordance with such regulations, be paid to the Participant in cash.

- (c) The terms of this Article shall be construed in accordance with all applicable Code sections.

.9 Transfers from the Plan.

- (a) If a Participant separates from service prior to his or her required beginning date, and becomes a Participant in an eligible deferred compensation plan of another governmental employer, and provided that payments under this Plan have not begun, such Participant may request a transfer of his or her account to the eligible deferred compensation plan of the other governmental employer.

Requests for transfers must be made to the Administrator and shall be granted in the sole discretion of the Administrator. If an amount is to be transferred pursuant to this provision, the Administrator shall transfer such amount directly to the eligible deferred compensation plan of the other employer. Amounts transferred to another eligible deferred compensation plan shall be treated as distributed from this Plan and this Plan shall have no further responsibility to the Participant or any Beneficiary with respect to the amount transferred.

.10 Taxation of Distributions. To the extent required by law, income and other taxes shall be withheld from each benefit payment and payments shall be reported to the appropriate governmental agency or agencies.

.11 Eligible Rollover Distributions.

- (a) General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Employer, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions. For purposes of this section, the following definitions shall apply.
- (1) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee or the non-spousal Beneficiary, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code § 401(a)(9); any distribution that is a deemed distribution under the provisions of Code § 72(p); the portion of any distribution that is not includable in gross income; and any hardship distribution or distribution on account of Unforeseeable Emergency.

- (2) Eligible Retirement Plan. An eligible retirement plan is any plan described in Code §402(c)(8). An eligible retirement plan is described as an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), a Roth IRA* described in Code §408A, an annuity plan described in Code §403(a), a qualified trust described in Code §401(a) (including §401(k)), a tax-sheltered annuity described in Code §403(b) or another eligible deferred compensation plan described in Code §457(b) that accepts the distributee's eligible rollover distribution.

*Effective for distributions made on/after January 1, 2008, an eligible retirement plan includes a Roth. IRA described in Code §408A.

- (3) Distributee. A distributee includes an Employee or former Employee, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (4) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

.12 Elections. Elections under this Article shall be made in such form and manner as the Plan Administrator may specify from time to time.

.13 Practices and Procedures. The Employer may adopt practices and procedures applicable to existing and new distribution elections.

.14 Taxation of Distributions. To the extent required by law, income and other taxes shall be withheld from each benefit payment and payments shall be reported to the appropriate governmental agency or agencies.

.15 Required Minimum Distribution Waiver of 2009. Notwithstanding any other provisions of Article VII. of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. If the Participant or Beneficiary has not elected to receive a 2009 RMD or Extended 2009 RMD then the Participant or Beneficiary will not receive a 2009 or Extended 2009 RMD unless the Participant elects to receive the distribution(s), notwithstanding section .11 herein.

VIII. LEAVE OF ABSENCE

.1 Paid Leave of Absence. If a Participant is on an approved leave of absence from the Employer with Compensation, or on approved leave of absence without Compensation that does not constitute a Severance from Employment, which under the Employer's current practices is generally a leave of absence without Compensation for a period of one year or less, said Participant's participation in the Plan may continue.

.2 Unpaid Leave of Absence. If a Participant is on an approved leave of absence without Compensation and such leave of absence continues to such an extent that it becomes a Severance from Employment, said Participant shall have separated from service with the Employer for purposes of this Plan. Upon termination of leave without pay and return to active status, the Participant may enter into a new Participation Agreement to be effective when permitted by section 4.01.

IX. PARTICIPANT LOANS

.1 Authorization of Loans. The Administrator may direct the Trustee to make loans to all active Employees, to Employees who have separated from service and to Beneficiaries on or after the effective date of Treasury Regulations or other guidance under Code § 457 and to the extent allowable under and in accordance with Code § 457. Such loans shall be made on the application of the Participant in a form approved by the Administrator and on such terms and conditions as are set forth in this Article, provided, however, that the Administrator may adopt regulations, rules or procedures specifying different loan terms and conditions if necessary or desirable to comply with or conform to such Treasury Regulations or other guidance and other applicable law.

.2 Maximum Loan Amount. In no event shall any loan made to a Participant be in an amount which shall cause the outstanding aggregate balance of all loans made to such Participant under this Plan and any other deferred compensation plan(s) offered by the Employer exceed the lesser of:

(a) \$50,000, reduced by the excess (if any) of: (i) the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which the loan is made; over (ii) the outstanding balance of loans from the Plan to the Participant or the Beneficiary on the date on which the loan is made; or

(b) One-half of the Participant's Total Amount Deferred.

.3 Repayment of Loan. Each loan shall mature and be payable, in full and with interest, within five (5) years from the date such loan is made, unless

- (a) The loan is used to acquire any dwelling unit that within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant; or
- (b) Loan repayments are, at the Employer's election, suspended as permitted by Code § 414(u)(4) (with respect to qualified military service).

4 Loan Terms and Conditions. In addition to such rules and regulations as the Administrator may adopt, which rules are hereby incorporated into this Plan by reference, all loans to Participants shall comply with the following terms and conditions:

- (a) Loans shall be available to all Participants on a reasonably equivalent basis.
- (b) Loans shall bear interest at a reasonable rate to be fixed by the Administrator based on interest rates currently being charged by commercial lenders for similar loans. The Administrator shall not discriminate among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates based on prevailing rates at the time.
- (c) Omitted.
- (d) Loan repayments must be made by payroll deduction for all active Employees and ACH debit or other repayment method approved by the Third Party Administrator and the Plan Administrator for all Employees who have separated from service and for all Beneficiaries. In all events, payments of principal and interest must be made at least quarterly and such payments shall be sufficient to amortize the principal and interest payable pursuant to the loan on a substantially level basis.
- (e) A loan to a Participant shall be considered a directed investment option for such Participant's account balance.
- (f) No distribution shall be made to any Participant, or to a Beneficiary of any such Participant, unless and until all unpaid loans, including accrued interest thereon, have been satisfied. If a Participant terminates employment with the Employer for any reason, the outstanding balance of all loans made to him shall become fully payable and, if not paid within thirty days, any unpaid balance shall be deducted from any benefit payable to the Participant or his Beneficiary. In the event of default in repayment of a loan or the bankruptcy of a Participant who has received a loan, the note will become immediately due and payable, foreclosure on the note and attachment of security will occur, the amount of the outstanding balance of the loan will be treated as a distribution to the Participant, and the defaulting Participant's Accumulated Deferrals shall be reduced by the amount of the outstanding balance of the loan (or so much thereof as may be treated as a distribution without violating Code requirements).

- (g) The loan program under the Plan shall be administered by the Administrator in a uniform and nondiscriminatory manner. The Administrator shall establish procedures for loans, including, but not limited to, procedures for applying for loans, guidelines governing the basis on which loans shall be approved, procedures for determining the appropriate interest rate, the types of collateral which shall be accepted as security, any limitations on the types and amount of loans offered, loan fees and the events which shall constitute default and actions to be taken to collect loans in default.
- (h) This Plan shall accept a transfer from another governmental Code Section 457 plan in accordance with that plan, the Code and regulations thereunder or rollover as part of an Eligible Rollover Distribution of a promissory note.

X. AMENDMENT OR TERMINATION OF PLAN

.1 Termination. The Employer may at any time terminate this Plan; provided, however, that no termination shall affect the amount of benefits, which at the time of such termination shall have accrued for Participants or Beneficiaries. Such accrued benefit shall include any Compensation deferred before the time of the termination and income thereon accrued to the date of the termination. Such amount shall be calculated in accordance with section 6.03 and the terms and conditions of the affected investment option. Upon such termination, each Participant in the Plan shall be deemed to have revoked his agreement to defer future Compensation as provided in section 4.06 as of the date of such termination and section 4.01(b) shall no longer be in effect. Each Participant's full Compensation on a nondeferred basis shall be restored.

.2 Amendment. The Employer may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for Participants or Beneficiaries, to the extent of and Compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment, calculated in accordance with section 6.03 and the terms and conditions of the investment options hereunder; and provided further, that no amendment shall affect the duties and responsibilities of the Trustee unless executed by the Trustee.

To the extent permitted by applicable law, the Administrator, acting by and through the Director and with the concurrence of the City Attorney, may adopt rules, regulations or procedures from time to time as may be necessary or desirable to conform Plan amendments, provisions to or to elaborate Plan provisions in light of amendments to the Code, Treasury regulations or other guidance issued under the Code, and such rules, regulations or procedures are hereby ratified by the Employer as having the force and effect of Plan amendments.

.3 Copies of Amendments. The Administrator shall provide a copy of any Plan amendment to any Trustee or custodian and to the issuers of any investment options selected pursuant to section 6.01.

XI. TAX TREATMENT OF AMOUNTS CONTRIBUTED

It is intended that pursuant to Code § 457, the amount of Deferred Compensation shall not be considered current compensation for purposes of federal income taxation. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this Plan shall supplement retirement and death benefits payable under the Employer's group insurance and retirement plans, if any.

XII. NON-ASSIGNABILITY

.1 Non-Assignability. It is agreed that neither the Participant, nor any Beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable; and in the event of attempt to assign or transfer, the Employer shall have no further liability hereunder, nor shall any unpaid amounts be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, except to the extent otherwise required by law.

.2 Qualified Domestic Relations Orders. Domestic relations orders approved by the Administrator shall be administered as follows.

- (a) To the extent required under a final judgment, decree, or order meeting the requirements of Code § 414(p), herein referred to as a Qualified Domestic Relations Order ("QDRO"), which is duly filed upon the Employer and to the extent the relevant account information is available, any portion of a Participant's account may be paid or set aside for payment to a spouse, former spouse, or a child of the Participant. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the spouse, former spouse, or child, and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the spouse, former spouse, or child making the investment selection. Upon establishment of the Alternate Payee Account, the Awardee will have 90 business days to provide the Plan Sponsor with his or her distribution election. After 90 days, the Plan will distribute the full account balance as soon as administratively possible.

Any amounts so set aside for a spouse, former spouse or a child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the QDRO directs a different form of payment or different payment date. Withholding and income tax reporting shall be done with respect to the Alternate Payee under the terms of the Code as amended from time to time.

- (b) The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse or child pursuant to this section. No amount shall be paid or set aside unless the Employer, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the Employer from any claim with respect to such amounts in any case in which the Employer has been notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant's account for a spouse, former spouse or child, and the Participant fails to obtain an order of the court in the proceeding relieving the Employer from the obligation to comply with the QDRO.
- (c) The Employer shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate any Plan provision or any provision of Code § 457. Neither the Employer nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a Participant's benefits under the Plan unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer, its agents or assigns to incur such expense, the amount of the expense may be charged against the Participant's account and thereby reduce Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer, its agents and assigns shall be authorized to disclose information relating to Participant's individual account to the Participant's spouse, former spouse or child (including the legal representatives of the spouse, former spouse or child), or to a court.

XIII. DISCLAIMER

The Employer makes no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary, or any other person with respect to (a) the financial soundness, investment performance, fitness, or suitability (for meeting a Participant's objectives, future obligations under the Plan, or any other purpose) of any investment option offered pursuant to section 6.01 or any investment vehicle in which amounts deferred under the Plan are actually invested, or (b) the tax consequences of the Plan to any Participant, Beneficiary or any other person.

XIV. EMPLOYER PARTICIPATION

Notwithstanding any other provisions of this Plan, the Employer may add to the amounts payable to any Participant under the Plan additional Deferred Compensation for services to be rendered by the Participant to the Employer during a payroll period, provided such additional

Compensation deferred, when added to all other Compensation deferred under the Plan, does not exceed the maximum deferral permitted by Article IV.

XV. ADVISORY COMMITTEE

.1 Deferred Compensation Advisory Committee. The Mayor of the City shall appoint and the City Council shall confirm the members of a Deferred Compensation Advisory Committee.

(a) Duties. The duties of the Committee are as follows:

- (1) to review and determine unforeseen emergency appeals filed by Participants;
- (2) to recommend investment options offered to Participants to be finally approved by the Director;
- (3) to meet with the Administrator to review the status of this Plan; and
- (4) to perform other duties assigned to it by the Director. With the consent of the Director, the Committee may expend funds to fulfill its duties.

(b) Members. The Committee is composed of a member of the City Council; the Director; the director of the Human Resources Department or his or her designee; the Mayor or his or her designee; and three Employee Participants (one or more of whom may be retired) in the Plan. The members of the Committee remain members so long as they occupy their official positions with the City or until removed by the Mayor. The City Attorney or his or her designee shall serve as counsel to the Committee.

(c) Officers. The Committee must elect annually a chairperson and a vice-chairperson from among its members. In addition, the Committee has the authority to appoint a secretary (who need not be a member of the Committee) and to establish administrative procedures necessary to carry out the Committee's duties set forth above.

.2 Expenses. The cost of the services described above may be paid out of administrative fees charged to Participants.

XVI. INTERPRETATION

.1 Governing Law. This Plan shall be construed under the laws of the State of Texas.

.2 §457. This Plan is intended to be an eligible deferred compensation plan within the meaning of Code §457, and shall be interpreted so as to be consistent with such section and all regulations promulgated thereunder.

.3 Word Usage. Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

.4 Headings. The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

.5 Entire Agreement. This Plan and any properly adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant. This Plan and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, Trustees, successors, and assigns and on all designated Beneficiaries of the Participant.

.6 Savings Clause. If any provision of this Plan, or the application of such provision, should be rendered or declared invalid by any court action, or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Plan shall remain in full force and effect.

Approved:

CITY OF HOUSTON



Director or Designee
Finance Department
Date: 1/5/11