



CITY COUNCIL AGENDA REPORT

MEETING DATE: MAY 7, 2013

ITEM NUMBER:

CC-8

SUBJECT: ADOPT RESOLUTION AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE CITY OF COSTA MESA DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES - SECTION 457 GOVERNMENTAL PLAN AND TRUST TO ENSURE COMPLIANCE WITH APPLICABLE LEGISLATIVE AND REGULATORY REQUIREMENTS AND THE ESTABLISHMENT OF A TRUST TO HOLD ASSETS FOR THE EXCLUSIVE BENEFIT OF PLAN PARTICIPANTS AND BENEFICIARIES.

DATE: APRIL 12, 2013

FROM: FINANCE & I.T. DEPARTMENT

PRESENTATION BY: BOBBY YOUNG, FINANCE & I.T. DIRECTOR

FOR FURTHER INFORMATION CONTACT: BOBBY YOUNG, FINANCE & I.T. DIRECTOR (714) 754-5243

RECOMMENDATION

1. Staff recommends the City Council adopt a resolution amending and restating the City of Costa Mesa Deferred Compensation Plan for Public Employees Section 457 Governmental Plan and Trust in accordance with applicable legislative and regulatory requirements and establishing a trust to hold Plan Assets for the exclusive benefit of Plan participants and beneficiaries.
2. Staff recommends the City Council designate the Administrative Committee to serve as Trustee for the City's Deferred Compensation 457 Plan.

BACKGROUND

The City's Deferred Compensation Plan History:

The City has maintained a deferred compensation plan ("Plan") since 1972, when the Executive Plan was adopted. In 1983, a separate Plan was adopted for non-executive staff and in 1991, the two Plans were consolidated to streamline administrative activities and to obtain greater leverage when negotiating with vendors.

In 1998, the consolidated Plan was amended to comply with provisions of the Small Business Job Protection Act of 1996 and serves as the Current Plan (see Attachment 1). This amendment primarily set plan assets aside for the exclusive benefit of participants. Prior to this law change, assets in the plan were considered to be assets of the City and could be utilized to satisfy claims of creditors upon bankruptcy. Another part of the 1996 legislation required employers to set up a trust, custodial account, or annuity contract for plan assets. However, the Current Plan does not incorporate a trust document into the Plan, nor does it have a separate trust document adopted.

ANALYSIS

The City currently utilizes two Administrative Service Providers:

- Nationwide – an insurance company that also administers governmental deferred compensation plans
- California 457 Benefits – a wholly owned DBA of Walker Financial Advisors, Inc., an independent Registered Investment Adviser with the State of California

The City engaged a consultant, Christopher Rowey of Benefit Funding Services Group to draft a revised Plan and Trust agreement. Staff reviewed the draft and worked with the consultant to arrive at a proposed Plan and Trust document that addressed the trust issue and subsequent legislation as noted below. The Proposed Plan can be found in Attachment 2.

Legislation Subsequent to the Most Recent Amendment

Subsequent to the 1998 amendment, federal tax legislation has been enacted, including the Pension Protection Act of 2006 (“PPA”); the Heroes Earnings Assistance and Relief Tax Act of 2008 (“Heart Act”); and the Worker, Retiree and Employer Recovery Act of 2008 (“WRERA”). In accordance with this legislation, the City is required to make certain additional revisions to the Plan. A summary of changes required under these laws and Trust Provisions is as follows.

The PPA allows an eligible retired sworn public safety officer to annually have up to a \$3,000 distribution paid directly to the provider of an accident or health insurance plan or a qualified long-term care insurance contract with any such amounts excluded from the participant’s gross income. The Proposed Plan document Section 4.08 provides for this option.

The Heart Act provides that an individual who is performing qualified military services for a period of more than 30 days is “treated as” having severed employment (for purposes of the statutory provision that generally prohibits distributions from a Section 457(b) plan prior to severance from employment or attainment of age 70 1/2. In addition, a participant who elects to take a distribution solely on account of this provision cannot make pre-tax salary deferral to the plan for a six month period. The Proposed Plan document Article I, 1.26 - Section C(2) addresses this legislation.

The WRERA primarily made several technical corrections to the PPA, such as allowing non-spouse beneficiaries, all of which are incorporated in the Proposed Plan.

Trust Provisions in the Proposed Plan Amendment

Article IX of the Proposed Plan incorporates the establishment of a trust to hold plan assets for the exclusive benefit of participants and beneficiaries as contemplated in the Current Plan.

Trustee / Administrative Committee

Article I - Section 1.31 defines the "trustee" as the person or persons designated by the Employer to serve as trustee. It is recommended that the City Council appoint the Administrative Committee to serve as trustee.

Article VII of the proposed Plan details the roles and responsibilities of an Administrative Committee ("Committee") appointed to be responsible for the general operation of the Plan. Section 7.01 defines the Committee as a group of five members appointed by the City comprised of the Finance Director (Chairman), Assistant Finance Director (Vice Chairman), Human Resources Manager, and two full-time employees participating in the Plan who are appointed by the Chairman. The Committee in the current Plan contains nine members appointed by the City Manager for one-year terms with one of the members appointed as the Plan Administrator.

ALTERNATIVES CONSIDERED

Since this proposed Plan amendment is required to be in compliance with Federal laws, no alternatives were considered.

FISCAL REVIEW

There are no additional costs as a result of these changes.

LEGAL REVIEW

The proposed Plan has been reviewed and approved by both the City Attorney and outside legal counsel with Denver Compensation & Benefits LLC.

CONCLUSION

Staff believes that the proposed Plan is reasonable and in compliance with requirements in all applicable Federal laws.



BOBBY YOUNG
Finance & I.T. Director



TOM DUARTE
City Attorney

Attachments:

1. Current Plan
2. Proposed Plan
3. Resolution 13-____

DEFERRED COMPENSATION PROGRAM

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ARTICLE I DEFINITIONS

Whenever capitalized in the text, the following terms will have the meaning set forth below.

- 1.1 **Account** - "Account" means the account that is maintained for each Participant in the Plan, which holds his Deferrals and Rollover Contributions (if any), as well as the income earned on those amounts.
- 1.2 **Beneficiary** - "Beneficiary" means the person designated in Article III below to receive the benefit of a deceased Participant.
- 1.3 **City** - "City" means the City of Costa Mesa, located in the County of Orange, State of California.
- 1.4 **Code** - "Code" means the Internal Revenue Code of 1986.
- 1.5 **Administrative Committee** - "Administrative Committee" means the City of Costa Mesa Deferred Compensation Plan Administrative Committee, which is composed of nine (9) members who are to be appointed by the City Manager, with each member to serve a one (1) year term, and one member of which is appointed by the City Manager to serve as the Plan Administrator.
- 1.6 **Compensation** - A Participant's "Compensation" means the amount of his taxable income, as indicated on his Form W-2. A Participant's Compensation shall be determined without regard to any community property laws.
- 1.7 **Deferral Election** - "Deferral Election" shall mean the election by an Eligible Individual to make pre-tax contributions to the Plan.
- 1.8 **Deferrals** - "Deferrals" shall mean the pre-tax contributions made by Participants under the Plan.
- 1.9 **Effective Date** - The original "Effective Date" of the Plan was February 4, 1980. The Effective Date of the 1998 Restatement of the Plan is January 1, 1998.
- 1.10 **Eligible Individuals** - The only individuals who are eligible to participate in the Plan are:
 - A. Full-time benefited employees of the City; and
 - B. Members of the City Council
- 1.11 **Emergency Withdrawal Committee** - "Emergency Withdrawal Committee" means the City of Costa Mesa Emergency Withdrawal Committee, which is composed of three (3) City employees who are members of the Administrative Committee that are designated to serve on this committee.
- 1.12 **Employee** - "Employee" means each person who is a common law employee of the City.

- 1.13 **Investment Provider** - "Investment Provider" means a person or entity that makes available investments to Participants.
- 1.14 **Normal Retirement Age**
- A. "Normal Retirement Age" is:
- (i) Not later than age seventy and one-half (70 ½); and
 - (ii) Not earlier than the earliest age at which the participant has the right to retire without consent of the State and with entitlement to receive immediate, unreduced retirement benefits under the California Public Employees' Retirement System.
- B. If a Participant continues to work beyond the ages described in Paragraph (a) above, his Normal Retirement Age will be that designated by the Participant, but which may not be later than the date at which he incurs a Severance.
- 1.15 **Participant** - "Participant" means any Eligible Individual who has satisfied the eligibility requirements and has been enrolled in this Plan in accordance with the provisions of Article II below.
- 1.16 **Plan** - "Plan" means the City of Costa Mesa Deferred Compensation Plan. The Plan is intended to qualify under Code Section 457.
- 1.17 **Plan Administrator** - "Plan Administrator" shall mean the member of the Administrative Committee who is so designated by the City Manager to supervise the operations of the Plan.
- 1.18 **Section 457 Plan** - "Section 457 Plan" shall mean an eligible deferred compensation plan that satisfies the requirements of Code Section 457.
- 1.19 **Rollover Contribution** - "Rollover Contribution" means amounts that were transferred to the Plan from another Section 457 Plan on behalf of a Participant in the Plan.
- 1.20 **Severance**
- A. In the case of an Employee, "Severance" means the termination of his employment with the City, by reason of his retirement, death, resignation, dismissal, or otherwise.
 - B. The members of the City Council shall be deemed to have incurred a "Severance" when they cease to be a member of the City Council.
 - C. An unpaid leave of absence taken by an Employee that is approved by the City does not constitute a Severance.
 - D. The term "Severance" is intended to mean the same as "separation from service," as that term is used in Code Section 402(d)(4)(A)(iii).
- 1.21 **Spouse** - "Spouse" means the person to whom a Participant is married as of the relevant date, determined under applicable local law.

ARTICLE II
ELIGIBILITY AND CONTRIBUTIONS

- 2.1 **Commencement of Participation** - Eligible individuals may commence participation as of the first day of the first payroll period beginning in the calendar month following the calendar month in which they first elect to participate in the Plan.
- 2.2 **Changes in Employment Status** - In the event an individual ceases to be an Eligible Individual, he shall no longer be permitted to make Deferrals.
- 2.3 **Initial Elections** - The Administrative Committee will prescribe such rules and procedures as it deems necessary or appropriate relating to Deferral Elections.
- A. An Eligible Individual must make his initial election to defer amounts before the first day of the calendar month to which the election applies.
- 2.4 **Special Rules**
- A. Participants may change or stop the amount of their Deferrals as of the first day of any payroll period.
- B. Deferrals will be collected by the City only through payroll deductions.
- C. The City will remit the Deferrals to the applicable Investment Provider as soon as administratively practicable.
- 2.5 **Amount Subject to a Deferral Election**
- A. Except as provided in Paragraph (b), the maximum amount that a Participant may defer under this Plan and all other Section 457 Plans of the City in a calendar year ("Plan Ceiling") is the lesser of:
- (i) Thirty-three and one-third percent (33 1/3 rd %) of the Participant's (net) compensation (which is operationally the same as 25% of gross compensation); or
 - (ii) Seven thousand, five hundred dollars (7,500). The amount described in this Subparagraph (ii) will be adjusted by the Internal Revenue Service for increases in the cost of living, in accordance with Code Section 457(e)(15).
- B. For one or more of the Participant's last three (3) calendar years ending before he attains Normal Retirement Age, the maximum amount he can contribute for a calendar year is the lesser of:
- (i) Fifteen thousand dollars (\$15,000); or
 - (ii) The sum of:
 - a. The amount of the Plan Ceiling; plus

- b. So much of the Plan Ceiling for prior calendar years that was not used under Paragraph (a) above or this Paragraph (b) for prior calendar years. Prior years will be taken into account if the Participant was eligible to participate in another Section 457 Plan or plans, if the other plan or plans are also located in California.
- c. The provisions of Paragraph (b) above shall only apply once to a Participant, even if the Participant retires and he is rehired by the City or by another entity sponsoring a Section 457 Plan.
- d. In the event that a Participant's Deferrals exceed the above limitations of this Section 2.5, the surplus funds shall be distributed to the Participant as a taxable refund of his Deferrals.

2.6 Coordination with Other Plans

- A. The maximum amount that can be deferred by an individual under Code Section 457 in a calendar year is determined by reference to the rules in Section 2.5 of this Plan, notwithstanding the fact that the individual participated in more than one Section 457 Plan sponsored by an unrelated entity.
- B. For purposes of Paragraph (a) above, contributions to the following types of plans shall be treated as if they were Deferrals under this Plan:
 - (i) Employer as well as pre-tax employee contributions to a tax-deferred annuity under Code Section 403(b); and
 - (ii) Pre-tax employee contributions to a cash or deferred arrangement under Code Section 401(k); and
 - (iii) Pre-tax employee contributions to a simplified employee pension under Code Section 408(k); and
 - (iv) Pre-tax employee contributions to a simple retirement account described in Code Section 408(p).

2.7 Rollover Contributions

- A. Pursuant to such rules and procedures as may be prescribed by the Administrative Committee, any Participant who is a current (i) Employee or (ii) member of the City Council may make a Rollover Contribution.
- B. The Administrative Committee may reject any Rollover Contribution that is not in the form of cash.
- C. Rollover Contributions are not subject to the above dollar or percentage of Compensation limitations of this Article II.

2.8 Vesting - Participants shall always have a fully vested (i.e. nonforfeitable) right to the amounts in their Accounts.

ARTICLE III
PAYMENT OF BENEFITS

- 3.1 Distributions of Deferrals** - Notwithstanding anything in this Plan to the contrary, the amount of a Participant's Deferrals and Rollover Contributions may not be distributed prior to the occurrence of the earliest of any of the events described below:
- A. The calendar year in which the Participant attains age seventy and one-half (70 ½);
 - B. The Participant incurs a Severance;
 - C. The Participant is entitled to receive a distribution because of an Unforeseeable Emergency pursuant to the rules of Section 3.2 below; or
 - D. The Participant is entitled to receive a Cashout Distribution pursuant to the rules of Section 3.3 below.
- 3.2 Unforeseeable Emergency** - The processing of Unforeseeable Emergency Withdrawals will be handled by the Emergency Withdrawal Committee.
- A. "Unforeseeable Emergency" is a severe financial hardship to the Participant resulting from:
 - (i) Sudden and unexpected illness or accident of the Participant or his dependent or dependents (as defined in Section 152(a) of the Code);
 - (ii) Loss of the Participant's property due to casualty; or
 - (iii) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.
 - B. "Unforeseeable Emergency" does not include the Participant's desire to send the Participant's child to college or to purchase a home.
 - C. The amount of an emergency withdrawal is limited to the amount reasonably needed to satisfy the emergency need, but reduced to the extent that such hardship is or may be relieved:
 - (i) Through reimbursement or compensation by insurance or otherwise;
 - (ii) By liquidation of the Participant's assets, to the extent such liquidation would not cause severe financial hardship; or
 - (iii) By cessation of the Participant's Deferrals under the Plan.
 - D. A participant who receives an emergency withdrawal will be precluded from making any more Deferrals for twelve (12) months.
- 3.3 Cashout Distribution** - A Participant may elect to receive a distribution pursuant to this Section 3.3 if the following conditions are satisfied:

- A. The Participant has not made any Deferrals during the two (2) year period ending on the date of the distribution;
- B. The balance in the Participant's Account does not exceed five thousand dollars (\$5,000); and
- C. The Participant has not received a prior distribution pursuant to this Section 3.3.

3.4 Form of Distributions

- A. Distributions under the Plan may be in any form permitted by the applicable Investment Provider that is consistent with Code Section 457. A Participant may receive his benefit payable in different forms from different Investment Providers.
- B. The Administrative Committee may prescribe rules and procedures whereby a Participant's benefit will be distributed in the form of a lump sum distribution absent an election by Participant as to the manner in which his benefit is to be paid.

3.5 Timing of Distributions

- A. Except to the extent that a Participant elects otherwise, payment of the benefits must commence not later than sixty (60) days after the close of the year in which the later of the following occurs:
 - (i) The participant attains Normal Retirement Age; or
 - (ii) The Participant incurs a Severance.
- B. A Participant is entitled to make one (1) election to defer the commencement of distribution(s) after the amounts may be available under the Plan. However, such election must be made before the actual commencement of the distribution(s).

3.6 Required Beginning Date

- A. The benefit of each Participant will be distributed in a lump sum distribution not later than his Required Beginning Date.
- B. "Required Beginning Date" means April 1 of the calendar year following the calendar year in which the later of the following occurs:
 - (i) The date on which the Participant attains age seventy and one-half (70 ½); or
 - (ii) The date on which the Participant incurs a Severance.

3.7 Distributions Beginning after Death - If a Participant dies before distribution of his benefit has begun, his entire benefit will be distributed within five (5) years of his death, unless all of the following conditions are satisfied:

- A. A Beneficiary has been designated to receive the Participant's benefit and the designation is effective at the Participant's death;
- B. The payments to the Beneficiary commence:

- (i) If the Beneficiary is the Spouse, before the time the Participant would have attained age seventy and one-half (70 ½); and
 - (iii) In all other cases, within one year of the Participant's death; and
- C. The Participant's benefit is paid to the Beneficiary over a period not to exceed the Beneficiary's life. Notwithstanding the preceding, the maximum payment period cannot exceed whichever of the following is applicable:
 - (i) Fifteen (15) years, if the Beneficiary is not the surviving Spouse of the Participant; or
 - (ii) The Beneficiary's life expectancy, if the Beneficiary is the surviving Spouse of the Participant.

3.8 Distributing Beginning before Death - If the distribution commences prior to the death of the Participant:

- A. The amount payable with respect to the Participant will be paid at times specified by the Internal Revenue Service that are not later than the time determined under Code Section 401(a)(9)(G) (relating to incidental death benefits); and
- B. The remaining portion of the Participant's benefit must be distributed at least as rapidly as under the method being used as of the date of his death.

3.9 Nonincreasing Benefits - Any distribution payable over a period of more than one (1) year may only be made in substantially nonincreasing amounts, paid not less frequently than annually.

3.10 Designation of Beneficiary

- A. Pursuant to such rules and procedures as may be adopted by the Administrative Committee, a Participant may designate his Beneficiary or Beneficiaries to receive the remaining portion of his benefits upon his death.
- B. Any distribution on behalf of a deceased Participant will be paid to his estate if:
 - (i) The deceased Participant failed to designate a Beneficiary; or
 - (ii) The Administrative Committee is unable to locate the designated Beneficiary.

3.11 Payees under Legal Disability

- A. The Administrative Committee may have the payment, or any part of it, made to the person(s) or institution that it believes is caring for or supporting a payee if the Administrative Committee believes that any payee is a minor or is legally incapable of giving a valid receipt and discharge for any payment due him.
- B. Any such payment will be a payment for the account of the payee and will, to the extent thereof, be a complete discharge of any liability under the Plan to the payee.

3.12 Mailing of Payment

- A. All payments under the Plan will be delivered in person or mailed to the address of the Participant (or, in the case of the death of the Participant, to the last address of his Beneficiary).
- B. Each Participant will be responsible for furnishing the Administrative Committee with his current address and the name and current address of his Beneficiary.

3.13 Disputed Payments - If a dispute arises as to who is entitled to any benefit or payment, the Administrative Committee may withhold such payment until it determines as to who is properly entitled to the payment.

3.14 Withholding For Taxes - Any payments from the Plan may be subject to withholding for taxes as may be required by any applicable federal or state law.

3.15 No Loans Permitted - No loans from the Plan to any Participant, regardless of whether secured or unsecured, will be permitted.

3.16 Benefits Not Assignable - Benefits under the Plan may not be assigned or alienated.

ARTICLE IV
PLAN ADMINISTRATION

4.1 **Administrative Committee Powers** - The Administrative Committee shall operate the Plan. The Administrative Committee will have all powers necessary to administer the Plan, including the following powers:

- A. To allocate responsibilities among the members of the Administrative Committee and to designate one or more other persons to carry out responsibilities.
- B. To employ such legal, actuarial, medical, accounting, clerical, and other assistance as it may deem appropriate in carrying out the provisions of this Plan, including one or more persons to render advice with regard to any responsibility any Administrative Committee member may have under the Plan;
- C. To establish rules and procedures for the administration of this Plan;
- D. To administer this Plan and to answer all questions which may arise under this Plan. The decisions of the Administrative Committee, both as to factual matters and as to interpretations of the Plan provisions, will be binding upon all persons, to the maximum extent permitted by law; and
- E. To perform or cause to be performed such further acts as it may deem to be necessary or appropriate to administer the Plan.

4.2 **Administrative Committee Procedures**

- A. The Administrative Committee may conduct its meetings in person or by telephone.
- B. A majority of the members of the Administrative Committee will constitute a quorum, and any action will constitute the action of the Administrative Committee if it is authorized by a majority of the members;
 - (i) Present at any meeting; or
 - (ii) In writing without a meeting.
- C. The Administrative Committee may designate one or more of its members as authorized to execute any document or documents on behalf of the Administrative Committee. In that regard, all contracts involving the Plan shall be signed by the Plan Administrator, if so authorized by the City, after the document is reviewed and approved by the City Attorney.

4.3 **Indemnification**

- A. To the maximum extent permitted by law, the City will indemnify:
 - (i) Each member of the Administrative Committee and of the Emergency Withdrawal Committee; as well as

- (ii) Any other Employee with duties under the Plan;

Against liabilities and expenses (including any amount paid in settlement or by reason of a judgment) reasonably incurred by him in connection with any claims against him by reason of the performance of his duties under the Plan.

- B. This indemnity will not apply if the individual:
 - (i) Acted fraudulently or in bad faith in the performance of his duties relating to the Plan; or
 - (ii) Fails to assist the City in defending against the claim.
- C. The City will have the right to select counsel and to control the prosecution or defense of the suit.
- D. The City will not be required to indemnify a person for any amount incurred through any settlement unless the City consents in writing to the settlement.
- E. Payment of the indemnity will be made solely from the assets of the City, and will not be paid, directly or indirectly, from the assets of the Plan.
- F. The indemnification obligation of the City under this Section 4.3 will be reduced to the extent that payments are made for the benefit of the individual by reason of any insurance policy, fidelity bond, or other contractual agreement entered into by the City that does not allow recourse against the individual.
- G. The provisions of this Section 4.3 will survive the termination of the Plan, and will last at least as long as the applicable statute of limitations.

4.4 Plan Expenses

- A. The expenses incurred in the administration of the Plan, including but not limited to the expenses incurred by the members of the Administrative Committee I exercising their duties, will be borne by the Plan. However, the City may elect to subsequent reimbursement by the Plan.
- B. For purposes of Paragraph (a) above, "expenses" do not include the commission charges incident to the purchase and sale of investments, such as brokerage commissions.

4.5 Communications

- A. All communications from Participants to the Administrative Committee or the Emergency Withdrawal Committee (collectively referred to as the "Committee") will be:
 - (i) In writing;
 - (ii) Mailed or delivered to the office designated by the Committee;
 - (iii) On forms prescribed by the Committee; and
 - (iv) Deemed to have been given when received by that office.

B. Each communication from the Committee to a Participant will be:

- (i) In writing;
- (ii) Delivered in person or by mail; and
- (iii) Deemed to have been received by the Participant three (3) days after the date when it is deposited in the United States Mail with postage prepaid, addressed to the Participant at his last address of record with the Committee.

ARTICLE V
MISCELLANEOUS MATTERS

5.1 Custody of Plan Assets - The assets of the Plan will be held for the exclusive benefit of the Participants and their beneficiaries, in one (1) or more of the following investment vehicles. Deferrals must be transferred to the investment vehicle within a period that is not longer than is reasonable for the proper administration of the accounts of Participants, but in no event not later than fifteen (15) business days after the end of the month in which the Compensation would otherwise have been paid to the eligible individual.

A. A trust that is established pursuant to a written agreement that:

- (i) Constitutes a valid trust under state law; and
- (ii) States that it is impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the trust to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

Deferrals must be transferred to the trust within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.

B. A Custodial Account, if:

- (i) The Custodian is either:
 - a. A bank (as defined I Section 408(n) of the Code); or
 - b. A nonbank trustee that satisfies the conditions of Paragraphs (2)-(6) of Treasury Regulation Section 1.408.2(e).
- (ii) The account satisfies the conditions of Paragraph (a) above, other than the fact that it is not a trust.

C. An annuity contract defined in Code Section 401(g) that:

- (i) Has been issued by an insurance company qualified to do business in the state where the contract was issued; and
- (ii) Satisfies the conditions of Paragraph (a) above, other than the fact that it is not a trust.

An annuity contract does not include a life, health or accident, property, casualty, or liability insurance contract.

5.2 Investment Directions

A. Pursuant to such rules and procedures as may be prescribed by the Administrative Committee, Participants (and the Beneficiaries of deceased Participants) shall be responsible for directing the investment of the assets in their Accounts.

- B. Participants may have their Deferrals forwarded to only one Investment Provider at a time.
- C. The Administrative Committee shall determine which Investment Providers the Participants may utilize.

5.3 Plan Amendment or Termination

- A. Although it is intended that the Plan continue indefinitely, the Administrative Committee may amend the Plan at any time, and the City Council may terminate the Plan at any time.
- B. Upon termination of the Plan, all benefits will become immediately payable, except as otherwise provided by the Investment Providers.
- C. Plan amendments may be prospective or retroactive.
- D. Unless and to the extent expressly stated to the contrary in the terms of any amendment or required by law, no amendment will be construed to enlarge the rights of any Participant whose Severance occurred prior to the effective date of the amendment.

5.4 No Enlargement of Employee Rights

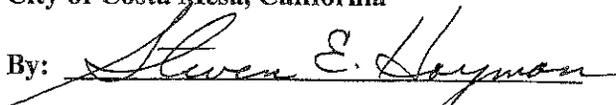
- A. Nothing contained in the Plan will be deemed to give any Employee the right to be retained in the employ of the City or to interfere with the right of the City to discharge any Employee at any time.
- B. No Employee will have any right to, or interest in, any asset of the Plan, other than as specifically provided in this Plan.

5.5 Interpretation

- A. Article and Section headings are for convenient reference only and will not be deemed to be part of the substance of the Plan, or in any way to enlarge or limit the contents of any Article or Section.
- B. Unless the context clearly indicates otherwise, the masculine gender will include the feminine, the singular will include the plural, and the plural will include the singular.
- C. The provisions of this Plan will be interpreted in a manner that is consistent with this Plan satisfying the applicable requirements of Code Section 457. As to all other matters, the Plan shall be governed by the laws of the State of California.

To signify its adoption of the Plan, the City has caused its execution.

City of Costa Mesa, California

By: 

Title: Personnel Services Director

Date: September 24, 1998

CITY OF COSTA MESA
DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
SECTION 457 GOVERNMENTAL PLAN AND TRUST

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SECTION 457 GOVERNMENTAL PLAN AND TRUST

The City of Costa Mesa (the "Employer") adopts this Section 457 Governmental Plan and Trust (the "Plan"). This Plan amends and restates the Plan adopted on September 24, 1998. The Plan is intended to be an "eligible deferred compensation plan" as defined in Code §457(b) of the Internal Revenue Code of 1986 ("Eligible 457 Plan"). The Plan consists of the provisions set forth in this plan document and is applicable to the Employer and each Employee who elects to participate in the Plan. The Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan. As such the provisions of this Plan, apply solely to an Employee on or after the execution of this Plan. The Plan is effective as to each Employee upon the date he/she becomes a Participant by entering into, and filing with the Employer or the Administrative Services Provider, a Participation Agreement.

ARTICLE I DEFINITIONS

1.01 **"Account"** means the separate Account(s) which the Administrative Services Provider or the Trustee maintains under the Plan for a Participant's Deferred Compensation. The Administrative Services Provider or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary's life expectancy.

1.02 **"Accounting Date"** means the last day of the Plan Year.

1.03 **"Administrative Committee"** means the City of Costa Mesa Deferred Compensation Plan Administrative Committee appointed by the City to serve as Trustee.

1.04 **"Administrative Services Provider"** means the third party Administrative Services Provider(s) appointed by the Employer to carry out the nondiscretionary administrative functions for the Plan.

1.05 **"Beneficiary"** means a person, who the Plan or a Participant designates and who is, or may become, entitled to a Participant's Account upon the Participant's death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Beneficiary has received full distribution of his/her Plan benefit. A Beneficiary's right to (and the Administrative Services Provider's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.06 **"Code"** means the Internal Revenue Code of 1986, as amended.

1.07 **"Compensation"** for purposes of allocating Deferral Contributions means the Employee's wages and salaries to the extent that the amounts are includible in gross income (or to the extent amount would have been received and includible in gross income but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b), including an election to defer Compensation under Article III. Compensation also includes any amount that the Internal Revenue Service in published guidance declares to constitute compensation for purposes of an Eligible 457 Plan.

(A) **Elective Contributions.** Compensation under Section 1.07 includes Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan, or a Code § 457 plan.

(B) **Differential Wage Payments.** Is any payment which is made by the Employer to an Employee with respect to any period during which the Employee is performing service in the uniformed services (as defined in USERRA) while on active duty for a period of more than 30 days, and represents all or a portion of the wages the Employee would have received from the Employer if the Employee were performing services for the Employer. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment as defined by Code § 3401(h)(2), shall be treated as an employee of the Employer making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the plan will not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

1.08 **"Deferral Contributions"** means Salary Reduction Contributions, the Employer or the Administrative Services Provider (if applicable) in applying the Code § 457(b) limit will take into account Deferral Contributions in the Taxable Year in which it was deferred. The Employer or Administrative Services Provider (if applicable) in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions.

1.09 **"Deferred Compensation"** means as to a Participant the amount of Deferral Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.10 **"Effective Date"** of this Plan is the date indicated on the execution line unless the Code, Treasury regulations, or other applicable guidance provides otherwise.

1.11 **"Eligible Employee"** means only full-time benefited Employees of the City and Members of the City Council.

1.12 **"Employee"** means an individual who provides services for the Employer, as a common law Employee of the Employer.

1.13 **"Employer"** means the City of Costa Mesa, California.

1.14 **"Excess Deferrals"** means Deferral Contributions to an Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the employee's gross income under Code §§401(k),403(b), 125 or 132(f) (4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.16 **“Leased Employee”** means an Employee within the meaning of Code § 414(n). A Leased Employee means any person who is not an employee of the recipient and who provides services to the recipient if--

(A) Such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the "leasing organization"),

(B) Such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) Such services are performed under primary direction or control by the recipient.

1.17 **“Normal Retirement Age”** means the age designated by the Participant unless the Employer designates in writing a Normal Retirement Age. The Normal Retirement Age designated by the Participant or Employer shall be no earlier than age 50 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the Employer (or a money purchase plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. The Normal Retirement Age also shall not exceed age 70½.

1.18 **“Participant”** is an Employee who elects to participate in the Plan in accordance with the provisions of Section 2.01 or an individual who has previously deferred Compensation under the Plan by a Participation Agreement and has not received a complete distribution of his/her Account .

1.19 **“Participation Agreement”** means the agreement to enroll and participate in the Plan that is completed by the Participant and provided to the Administrative Services Provider. The Participation Agreement is the agreement by which the Employer reduces the Participant’s Compensation for contribution to the Participant’s Account.

1.20 **“Plan”** means the 457 plan established or continued by the Employer in the form of this Plan and Trust Agreement. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.21 **“Plan Administrator”** means the Administrative Committee who supervises the operation of the plan pursuant to Article VII.

1.22 **“Plan Entry Date”** means the date on which an Employee completes and files a Participation Agreement with the Administrative Services Provider.

1.23 **“Plan Year”** means the calendar year.

1.24 **“Rollover Contribution”** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to an Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.25 **“Salary Reduction Contribution”** means a contribution the Employer makes to the Plan pursuant to a Participation Agreement.

1.26 **“Service”** means any period of time the Employee is employed by the Employer. An Employee terminates Service upon incurring a Severance from Employment.

(A) **Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant’s employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant 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). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

(B) **Continuous Service.** Service with the Employer during which the Employee does not incur a Severance from Employment.

(C) **Severance from Employment**

(1) **Employee.** An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer.

(2) **Uniformed Services.** For purposes of distributions to an individual in the uniformed services, such individual will be treated as incurring a Severance from Employment during any period the individual is performing service in the uniformed services described in Code § 3401(h)(2)(A). The “Uniformed Services” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency. However, the plan will not distribute the benefit to such an individual without that individual’s consent, so long as the individual is receiving differential wage payments.

If an individual elects to receive a distribution under this provision, the individual may not make an elective deferral or Employee contribution during the 6-month period beginning on the date of the distribution.

1.27 **“State”** means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.28 **“Taxable Year”** means the calendar year or other taxable year of a Participant.

1.29 **“Transfer”** means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.30 **“Trust”** means the Trust created under the adopting Employer’s Plan. The Trust created and established under the adopting Employer’s Plan is a separate Trust, independent of the trust of any other Employer adopting this Eligible 457 Plan and is subject to Article IX.

1.31 **“Trustee”** means the person or persons designated by the Employer to serve in the position of Trustee.

ARTICLE II PARTICIPATION IN PLAN

2.01 **ELIGIBILITY** - Each Eligible Employee becomes a Participant in the Plan as soon as he/she completes and files a Participation Agreement. If this Plan is a restated Plan, each Eligible Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan.

2.02 **PARTICIPATION UPON RE-EMPLOYMENT** - A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his/her re-employment.

ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

3.01 AMOUNT -

(A) **Contribution Formula.** For each Plan Year, the Employer will contribute to the Plan the amount of Deferral Contributions the Employee elects to defer under the Plan.

(B) **Return of Contributions.** The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer will return the Participant’s contribution, within one year after payment of the contribution. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

(C) **Time of Payment of Contribution.** An Employer will deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts. Neither the Administrative Services Provider nor the Trustee is responsible for the delay of deposits of Salary Reduction Contributions caused by the Employer.

3.02 **SALARY REDUCTION CONTRIBUTIONS** - The Plan does not apply any limitations on Salary Reduction Contributions other than the limitations applicable under the Code.

(A) **Deferral from Sick, Vacation and Back Pay.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

(B) **Application to Leave of Absence and Disability.** The Participation Agreement will continue to apply during the Participant's leave of absence or the Participant's disability (as the Employer shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

3.03 NORMAL LIMITATION - Except as provided in Section 3.04 and 3.05, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a taxable Year may not exceed the lesser of:

(A) The applicable dollar amount described in Code §457(e)(15) or such larger amount the Commissioner of the Internal Revenue Service may prescribe, or

(B) 100% of the Participant's Includable Compensation for the Taxable Year.

3.04 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION - For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(A) Twice the dollar amount under Section 3.03 normal limitation, or

(B) The underutilized limitation.

(1) **Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant, commencing after 1978, during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the normal limitation or any other Code § 457(b) limit, less the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

(2) **Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the coordination rule in effect under the now repealed Code §457(c)(2) applies. Additionally, the normal limitation for pre-2002 Taxable Years is applied in accordance with Code § 457(b)(2) as then in effect.

3.05 AGE 50 CATCH-UP CONTRIBUTION - All Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code § 414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the plan implementing the required limitations of Code § 457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.04, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.05. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.04 or Section 3.05 catch-up amount plus the Section 3.03 normal limitation.

3.06 CONTRIBUTION ALLOCATION - The Administrative Services Provider will allocate to each Participant's Account his/her Deferral Contributions.

3.07 ALLOCATION CONDITIONS - The Plan does not impose any allocation conditions.

3.08 ROLLOVER CONTRIBUTIONS - The Plan permits Rollover Contributions.

(A) **Operational Administration.** The Employer, operationally and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. If the Employer permits Rollover Contributions, any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Administrative Services Provider, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence that the proposed transfer is in fact a "Rollover Contribution" which the Code permits an Employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

(B) **Separate Accounting.** If an Employer permits Rollover Contributions, the Administrative Services Provider must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Eligible 457 plan); and (2) amounts rolled into this Plan from another Eligible 457 Plan. The Administrative Services Provider for purposes of ordering any subsequent distribution from this Plan may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

3.09 DISTRIBUTION OF EXCESS DEFERRALS - In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.09.

The Administrative Services Provider will distribute Excess Deferrals from an Eligible 457 Plan as soon as is reasonably practicable following the Administrative Services Provider's or Employer's determination of the amount of the Excess Deferral.

(A) **Plan Aggregation.** If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

(B) **Individual Limitation.** If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Administrative Services Provider may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

3.10 **DOLLAR LIMITS** - The table below shows the applicable dollar amounts described in paragraph 3.03(a) and limitations on age 50 catch-up contributions described in Section 3.05. These amounts are adjusted after 2006 for changes in the cost-of-living to the extent permitted in Code §415(d).

Year	Applicable Dollar Amount	Age 50+ Catch-Up Contribution Limitation
2009	\$16,500	\$5,000
2010	\$16,500	\$5,500
2011	\$16,500	\$5,500
2012	\$17,000	\$5,500
2013	\$17,500	\$5,500

**ARTICLE IV
TIME AND METHOD OF PAYMENT OF BENEFITS**

4.01 **DISTRIBUTION RESTRICTIONS** - Except as the Plan provides otherwise, the Administrative Services Provider or Trustee may not distribute to a Participant his/her Account prior to the Participant's Severance from Employment, the calendar year in which the Participant attains age 70½, or such other event for which federal legislation is enacted or regulatory relief granted permitting the Plan to make distributions to qualifying Participants.

(A) **Distribution of Rollover Contributions.** To the extent the Employer permits Rollover Contributions (but not Transfers) to this Plan, a Participant may receive a distribution of such Rollover Contributions without regard to the restrictions found in this Section 4.01.

4.02 **TIME AND METHOD OF PAYMENT OF ACCOUNT** - The Administrative Services Provider, or Trustee at the direction of the Administrative Services Provider, will distribute to a Participant who has incurred a Severance from Employment the Participant's Account under one or any combination of payment methods elected by the Participant. The Participant may elect one of the following methods of payment: (1) lump sum payment, (2) partial lump sum payment, (3) installment, or (4) an annuity. In no event will the Administrative Services Provider commence (or direct the Trustee to commence) distribution, nor will the Participant elect to have distribution commence, later than the Participant's required beginning date, or under a method that does not satisfy Section 4.03.

Subject to any restrictions imposed by the Participant's investment providers and the Administrative Services Provider, the Participant: (1) may elect to commence distribution no earlier than is administratively practical following Severance from Employment; (2) may elect to postpone distribution

of his/her Account to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (3) may elect the method of payment. A Participant may elect the timing and method of payment of his/her Account no later than eligible to commence payment of the Participant's Account. The Administrative Services Provider must furnish to the Participant a form for the Participant to elect the time and a method of payment.

4.03 REQUIRED MINIMUM DISTRIBUTIONS - The Administrative Services Provider may not distribute nor direct the Trustee to distribute the Participant's Account, nor may the Participant elect any distribution his/her Account, under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code §401(a)(9) or which is not consistent with applicable Treasury regulations.

(A) General Rules.

- (1) **Precedence.** The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.
- (2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 4.03 will be determined and made in accordance with the Treasury regulations under Code § 401(a)(9).

(B) Time and Manner of Distribution.

- (1) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (2) **Death of Participant Before Distribution Begins.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (a) Spouse Designated Beneficiary. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (b) Non-Spouse Designated Beneficiary. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (c) No Designated Beneficiary. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed to the Participant's estate pursuant to Section 6.02, by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Death of Spouse. If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.03(B) and Section 4.03(D), unless Section 4.03(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.03(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.03(C) and 4.03(D). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 4.01(a)(9) of the Code and the Treasury regulations.

(C) Required Minimum Distributions During Participant's Lifetime.

(1) **Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) Unified Life Table. The quotient obtained by dividing the Participant's account balance by the number in the Uniform Life Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

(b) Younger Spouse. If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distributions Continue through Year of Participant's Death.** Required minimum Distributions will be determined under this Section 4.03(C) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(D) Required Minimum Distributions after Participant's Death.

(1) Death On or After Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for the calendar year of the Participant's death is obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant. The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death. For each distribution calendar year after the year of the Participant's death, the minimum amount that will be distributed is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary.

(b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed to the Participant's estate pursuant to Section 6.02, for each distribution calendar year after the calendar year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(2) Death Before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.03(D)(1).

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution to the Participant's estate pursuant to Section 6.02 of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

(E) **Definitions.**

(1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.

(2) **Distribution Calendar Year.** A distribution calendar year means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which the distributions are required to begin under Section 4.03(B)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(4) **Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) **Required Beginning Date.** A Participant's required beginning date is April 1st of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant retires or such other date under Code § 401(a)(9) by which required minimum distributions must commence.

4.04 DEATH BENEFITS - Upon the death of the Participant, the Administrative Services Provider must pay or direct the Trustee to pay the Participant's Account in accordance with Section 4.03. Subject to Section 4.03, a Beneficiary may elect the timing and method of payment in the same manner as a Participant may elect under Section 4.02, if such elections apply.

In the case of a death occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the participant had resumed and then terminated employment on account of death.

4.05 DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT - Notwithstanding the Section 4.01 distribution restrictions, the Plan permits the following in-service distributions in accordance with this Section.

(A) **Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Administrative Services Provider may make a distribution to a Participant who has not incurred a Severance from Employment.

An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant's Beneficiary, or the Participant's spouse or dependent (as defined in Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code § 152(b)(1), (b)(2), and (d)(1)(B)); (2) loss of the Participant's or Beneficiary's property due to casualty; (3) the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code § 152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control. A distribution is deemed necessary to satisfy an immediate and heavy financial need of an employee caused by an Unforeseeable Emergency if: (1) the employee has obtained all other currently available distributions and loans under the plan and all other plans maintained by the employer; and (2) the employee is prohibited, under the terms of the plan or an otherwise legally enforceable agreement, from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 6 months after receipt of the hardship distribution. (Reg. §1.401(k)-1(d)(3)(iv)(E))

A hardship distribution may not exceed the amount of the employee's need. However, the amount required to satisfy the financial need may include amounts necessary to pay any taxes or penalties that may result from the distribution.

(Reg. §1.401(k)-1(d)(3)(iv)(A))

The Administrative Services Provider will not make payment to the extent the Participant or Beneficiary may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

The Participant's Beneficiary is a person who a Participant designates as a "primary beneficiary" and who is or may become entitled to a Participant's Plan account upon the Participant's death.

A Participant's unforeseeable emergency event includes a severe financial hardship of the participant's primary Beneficiary under the Plan, that would constitute an emergency event if it occurred with respect to the participant's spouse or dependent as defined under Code § 152.

(B) De minimis Distribution. A Participant may elect to receive a distribution of his/her Account where: (1) the Participant's Account (disregarding Rollover Contributions) does not exceed \$5,000 (or such other amount as does not exceed the Code §411(a)(11)(A) dollar amount); (2) the Participant has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (3) the Participant has not received a prior distribution under this Section 4.05(B).

(C) Distribution of Rollover Contributions. A Participant may request and receive distribution of his/her Account attributable to Rollover Contributions (but not to Transfers) before the Participant has a distributable event under Section 4.01.

4.06 DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs) - Notwithstanding any other provision of this Plan, the QDRO provisions will apply. The Administrative Services Provider (and any Trustee) must comply with the terms of a QDRO, as defined in Code § 414(p), which is issued with respect to the Plan.

(A) Time and Method of Payment. This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code § 414(p)) under the Plan. Nothing in this Section 4.06 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

(B) QDRO Procedures. Upon receiving a domestic relations order, the Administrative Services Provider promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Administrative Services Provider must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Administrative Services Provider's determination. The Administrative Services Provider must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

(C) Accounting. If any portion of the Participant's Account Balance is payable under the domestic relations order during the period the Administrative Services Provider is making its determination of the qualified status of the domestic relations order, the Administrative Services Provider may maintain a separate accounting of the amounts payable. If the Administrative Services Provider determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Administrative Services Provider does not make its determination of the qualified status of the order within the 18-month determination period, the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will

apply the order prospectively if the Administrative Services Provider later determines the order is a QDRO. To the extent it is not inconsistent with the provisions of the QDRO, the Administrative Services Provider may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Administrative Services Provider or Trustee will make any payments or distributions required under this Section 4.06 by separate benefit checks or other separate distribution to the alternate payee(s).

(D) **Permissible QDROs.** A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (“QDRO”) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the participant’s death.

4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN

(A) **Participant Election.** A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner the Administrative Services Provider prescribes, to have any portion of his/her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a “Participant” includes as to their respective interests, a Participant’s surviving spouse and the Participant’s spouse or former spouse who is an alternate payee under a QDRO.

(B) **Rollover and Withholding Notice.** At least 30 days and not more than 180 days prior to the Trustee’s distribution of an eligible rollover distribution, the Administrative Services Provider must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient’s right to roll over within 60 days after the date of receipt of the distribution (“rollover notice”).

(C) **Non-spouse Beneficiary Rollover Right.** A non-spouse Beneficiary who is a “designated beneficiary” under Code § 401(a)(9)(E) and the regulations thereunder by a direct trustee-to-trustee transfer (“direct rollover”), may roll over all or any portion of his/her distribution to an individual retirement account the Beneficiary establishes for purposes of receiving the distribution. In order to be able to rollover the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

(1) **Certain requirements not applicable.** Although a non-spouse Beneficiary may roll over directly a distribution, commencing with distributions after December 31, 2009, the distribution will be subject to the direct rollover requirements of Code § 401(a)(31) (including the automatic rollover provisions of Code §401(a)(31)(B)), the notice requirements of Code § 402(f) and the mandatory withholding requirements of Code § 3405(c). If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

(2) **Trust Beneficiary.** If the participant’s named Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code § 401(a)(9)(E).

(3) **Required minimum distributions not eligible for rollover.** A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the participant dies before his/her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution.

(D) **Definitions.** The following definitions apply to this Section:

(1) **Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more; (b) any Code § 401(a)(9) required minimum distribution; (c) any unforeseeable emergency distribution; and (d) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

(2) **Eligible retirement plan.** An eligible Retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified plan described in Code § 401(a), an annuity contract (or custodial agreement) described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) and maintained by an Employer described in Code § 457(e)(1)(A), which accepts the participant's, the Participant's spouse or alternate payee's eligible rollover distribution. For distributions made after December 31, 2007, a Participant or Beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code § 408A(b).

(3) **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(4) **Mandatory distribution.** The Administrative Services Provider is directed to make a mandatory distribution, which is an eligible rollover distribution, without the Participant's consent provided that the Participant's Account is less than \$1,000. A distribution to a Beneficiary is not a mandatory distribution.

(5) **401(a)(31)(B) Effective Date.** The §401(a)(31)(B) Effective Date is January 1, 2006.

4.08 ELECTION TO DEDUCT FROM DISTRIBUTION - For distributions in taxable years beginning after December 31, 2006, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The plan will pay such deducted amounts directly to the provider as described in Section 4.08(A).

(A) **Direct payment.** The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified healthcare premiums, and which otherwise complies with Code § 402(l).

(B) **Definitions.**

(1) **Eligible retired public safety officer.** An “Eligible Retired Public Safety Officer” is an individual who, by reason of disability or attainment Severance from Employment as a Public Safety Officer with the Employer.

(2) **Public safety officer.** A “Public Safety Officer” has the same meaning as in § 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796b(9)(A)).

(3) **Qualified health insurance premiums.** The term “qualified health insurance premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse, and dependents, by an accident or health plan or qualified long-term care insurance contract (as defined in Code § 7702B(b)).

ARTICLE V

ADMINISTRATIVE SERVICES PROVIDER - DUTIES

5.01 **TERM/VACANCY** - The Administrative Services Provider will serve until his/her successor is appointed. In case the Employer has not appointed a successor Administrative Services Provider, the Employer will exercise any and all duties of the Administrative Services Provider pending the filling of the vacancy.

5.02 **DUTIES** - The Administrative Services Provider will have the following duties:

(A) To create administrative forms necessary for the proper and efficient administration of the Plan provided the forms are not inconsistent with the terms of the Plan;

(B) To enforce the terms of the Plan and its procedures, including this document and such other documents related to the Plan’s operation;

(C) To make, at the direction of the Participant or Beneficiary or pursuant to Section 4.07(D)(4), distributions of an Account;

(D) To review in accordance with the Plan’s procedures respecting a claim for (or denial of a claim for) a benefit under the Plan;

(E) To furnish the Employer with information which the Employer may require for tax or other purposes;

(F) To make distributions on account of unforeseeable emergency in accordance with the Plan’s procedures;

- (G) To accept Deferral Contributions, Employer Contributions and Rollover Contributions;
- (H) To accept Transfers;
- (I) To accept Participant or, in the case of a deceased Participant, Beneficiary direction of investment;
- (J) To comply with any reporting and disclosure rules applicable to the Plan;
- (K) To make loans to Participants if elected by the Employer;
- (L) To appoint agents to act for and in performing its third party administrative services to the Plan; and
- (M) To undertake any other action the Administrative Services Provider deems reasonable or necessary to provide third party administrative services to the Plan.

5.03 LOANS TO PARTICIPANTS - The Employer permits the Administrative Services Provider to make Plan loans to Participants by executing a participant loan program document with the Administrative Services Provider. Any loan by the Plan to a Participant shall be made in compliance with Code § 72(p) and the following provisions:

(A) Employer has elected to make loans available to Participants and has delegated certain administrative duties to the Administrative Services Provider regarding loans from the Plan.

(B) Any loan by the Plan to a Participant under this Section shall be subject to the loan administrative procedures established by the Administrative Services Provider as well as the following requirements:

(1) **Loan Eligibility.** Any Participant may apply for a loan from the Plan. A Participant who has defaulted on a previous loan from the Plan shall not be eligible for another loan from the Plan until all defaulted loans are repaid in full, including accrued interest and fees.

(2) **Loan Application and Loan Agreement.** A Participant must complete and return to the Administrative Services Provider, a loan application. A non-refundable application fee established by the Administrative Services Provider will be deducted from the Participant's account(s) at the time of loan origination. Before a loan is issued, the Participant must enter into a legally enforceable loan agreement as provided for by the Administrative Services Provider.

(3) **Loan Repayment.** The Participant receiving a loan shall be required to furnish to the Administrative Services Provider any information and authorization necessary to effectuate repayment of the loan prior to the commencement of a loan. In the event that a payment cannot be processed because of lack of sufficient funds, the Administrative Services Provider shall assess an insufficient funds charge, which will be deducted from the Participant's account(s).

(4) Loan Term and Interest Rate. The maximum term over which a loan may be repaid is five (5) years, (fifteen (15) years if the Employer permits loans for the purchase of a Participant's principal residence). Each loan shall be amortized in substantially equal payments consisting of principal and interest during the term of the loan, except that the amount of the final payment may be higher or lower. The Administrative Services Provider shall establish the interest rate for any loan.

(5) Loan Frequency. Each Participant may have only one (1) Plan loan outstanding at any given time. A Plan loan which is in default, even if the defaulted loan was treated as a "deemed distribution" under federal regulations, shall be treated as an outstanding loan until such Participant's account balance is offset by the amount of principal and accrued interest under the loan. A Participant will be granted a loan no more frequently than two (2) times in any twelve (12) month period.

(6) Default. The Participant must pay the full amount of each loan payment (principal and interest) on the date that it is due. Failure to make such a payment by the due date, or within any cure period established by the Administrative Services Provider, shall cause the Participant to be in default for the entire amount of the loan, including any accrued interest. A loan will also be in default if the Participant either refuses to execute, revoke, or rescind any agreement necessary to comply with the provisions of this Section or the loan administrative procedures established by the Administrative Services Provider, commences or has commenced against Participant a bankruptcy case, or upon the death of the Participant.

(7) Loan Security. By accepting a loan, the Participant is giving a security interest in their vested Plan balance as of the loan process date, together with all additions thereof, to the Plan that shall at all times be equal to 100% of the unpaid principal balance of the loan together with accrued interest.

(8) Loan Amount. The maximum amount of any loan permitted under the Plan is the lesser of (i) 50% of the Participant's vested account balance less any outstanding loan balances under the Plan or (ii) \$50,000 less the highest outstanding loan balance during the preceding one-year period. The Administrative Services Provider shall establish the minimum loan amount. The Participant and not the Administrative Services Provider shall at all times remain responsible for ensuring that any loan received under the Plan is in accordance with these limits with regard to any other loans received by the Participant under any other plans of the Participant's employer.

(9) Loan Maintenance Fee. Until a loan is repaid in full, an annual loan maintenance fee established by the Administrative Services Provider will be deducted from the Participant's account(s).

(10) **Loan Default Fee.** At the time when a default occurs, a loan default fee established by the Administrative Services Provider will be deducted from the Participant's account(s).

The Administrative Services Provider shall fix such other terms and conditions necessary to the administrative maintenance of the provisions of this Section and as necessary to comply with the IRC and regulations there under.

5.04 INDIVIDUAL ACCOUNTS / RECORDS - The Administrative Services Provider will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan.

5.05 VALUE OF PARTICIPANT'S ACCOUNT - The value of each Participant's Account consists of his/her accumulated Deferred Compensation as of the most recent Accounting Date or any later date as the Administrative Services Provider may determine.

5.06 ALLOCATION OF NET INCOME, GAIN OR LOSS - As of each Accounting Date (and each other valuation date determined under Section 5.04), the Administrative Services Provider will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Administrative Services Provider will continue to allocate net income, gain and loss to a Participant's Account subject to an installment distribution, until the Account is fully distributed.

5.07 ACCOUNT CHARGED - The Administrative Services Provider will charge all distributions made to a Participant or to his/her Beneficiary, or transferred under Section 9.03 from his/her Account, against the Account of the Participant when made.

5.08 PARTICIPANT DIRECTION OF INVESTMENT - Subject to the terms and conditions required by the Administrative Services Provider and the Trustee, if any, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Administrative Services Provider will account separately for the Participant-directed Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility.

5.09 VESTING - Each Participant's Account will be immediately 100% vested.

5.10 PRESERVATION OF ELIGIBLE PLAN STATUS - The Employer may take any such necessary and appropriate action to preserve the status of the Plan as an Eligible 457 Plan.

5.11 LIMITED LIABILITY - The Employer will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Administrative Services Provider determines in accordance with the Plan terms. The Employer, the Administrative Services Provider, or the Trustee will not be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

5.12 LOST PARTICIPANTS - If the Administrative Services Provider is unable to locate any Participant or Beneficiary who's Account becomes distributable (a "lost Participant"), the Administrative Services Provider will apply the provisions of this Section 5.12.

(A) **Attempt to Locate.** The Administrative Services Provider will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) use the IRS letter forwarding program under Rev. Proc. 94-22; (3) use a commercial locator service, the internet or other general search method; (4) use the Social Security Administration or PBGC search program; or (5) use such other methods as the Administrative Services Provider believes prudent.

(B) **Failure to Locate.** If a lost Participant is not located after 6 months following the date the Administrative Services Provider first attempts to locate the lost Participant using one or more of the methods described in Section 5.12(A), the Administrative Services Provider may employ the unclaimed property processes of the state of the lost Participant's last known address. Neither the Administrative Services Provider nor the Trustee shall be responsible for restoring the Account (including potential gains) if a lost Participant whose Account was deposited with a state later makes a claim for his/her Account.

(C) **Nonexclusivity and Uniformity.** The provisions of this Section 5.12 are intended to provide permissible but not exclusive means for the Administrative Services Provider to administer the Accounts of lost Participants. The Administrative Services Provider may utilize any other reasonable methods to locate lost Participants and to administer the Accounts of lost Participants, including such methods as the Internal Revenue Service or other regulatory agency may in the future specify. The Administrative Services Provider will apply Section 5.12 in a reasonable manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Administrative Services Provider's ability to establish and the expense of establishing a rollover IRA, and other factors. The Administrative Services Provider may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.12 and which are associated with the lost Participant's Account.

5.13 PLAN CORRECTION - The Administrative Services Provider, as directed by the Employer, may undertake such correction of Plan errors as the Employer deems necessary, including but not limited to correction to maintain the Plan's status as an "eligible deferred compensation plan" under the Code.

ARTICLE VI PARTICIPANT ADMINISTRATIVE PROVISIONS

6.01 BENEFICIARY DESIGNATION - A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Administrative Services Provider or Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the method of payment of his/her Account. The Administrative Services Provider will prescribe the form for the Participant's written filing the form with the Administrative Services Provider, the form revokes all designations filed prior to that date by the same Participant. Provided the Administrative Services Provider has been provided reasonable notice thereof, a divorce decree, or a decree of legal separation,

revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless: (a) the decree or a QDRO provides otherwise; or (b) the Participant has re-designated his/her former spouse as Beneficiary following the date of the divorce decree, or other decree of legal separation. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Plan.

6.02 NO BENEFICIARY DESIGNATION - If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Administrative Services Provider will pay the Participant's remaining Account to the Participant's estate. If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a Beneficiary. A Beneficiary only may designate a Beneficiary for the Participant's Account Balance remaining at the Beneficiary's death and the Beneficiary's designation otherwise complies with the Plan terms. The Administrative Services Provider will direct a Trustee if applicable as to the method and to whom the Trustee will make payment under this Section 6.02.

6.03 PARTICIPATION AGREEMENT

(A) **General.** A Participant must elect to make Salary Reduction Contributions on a Participation Agreement form the Administrative Services Provider provides for this purpose. The Participation Agreement must be consistent with the procedures of the Administrative Services Provider. The Participation Agreement may impose such other terms and limitations as the Employer or Administrative Services Provider may determine.

(B) **Election Timing.** A Participation Agreement will take effect on the next subsequent pay period after the Participant executes the Participation Agreement. However, if the Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Participation Agreement on or before the date he/she becomes an Employee, effective for the first pay period in which he/she becomes an Employee.

(C) **Sick, Vacation and Back Pay.** The Employer permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay, or from back pay. A Participant who will incur a Severance from Employment may execute a Participation Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

(D) **Modification of Participation Agreement.** A Participation Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. A Participant may modify his/her Participation Agreement by executing a new Participation Agreement. Any modification will become effective on the next subsequent pay period after the date the Participant executes the new Participation Agreement. Filing a new Participation Agreement will revoke all Participation Agreements filed prior to that date. The Employer or Administrative Services Provider may restrict the Participant's right to modify his/her Participation Agreement in any Taxable Year.

6.04 PERSONAL DATA TO ADMINISTRATIVE SERVICES PROVIDER - Each Participant and each Beneficiary of a deceased Participant must furnish to the Administrative Services Provider such evidence, data or information as the Administrative Services Provider considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Administrative Services Provider, provided the Administrative Services Provider advises each Participant of the effect of his failure to comply with its request.

6.05 ADDRESS FOR NOTIFICATION - Each Participant and each Beneficiary of a deceased Participant must file with the Administrative Services Provider from time to time, in writing, his/her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his/her last address filed with the Administrative Services Provider, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

6.06 PARTICIPANT OR BENEFICIARY IN-CAPACITATED - If evidence is submitted to the Administrative Services Provider which supports an opinion that a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, the Administrative Services Provider or the Trustee may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Administrative Services Provider and to the Trustee. The Administrative Services Provider and the Trustee do not have any liability with respect to payments so made and neither the Administrative Services Provider nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

ARTICLE VII PLAN ADMINISTRATION

7.01 THE ADMINISTRATIVE COMMITTEE - The Administrative Committee, appointed by the City as Trustee, is comprised of the following members: Finance Director, who will serve as Chairman of the Administrative Committee, Assistant Finance Director, who will serve as Vice Chairman of the Administrative Committee, Human Resources Manager and two (2) Full-Time employees of the City who currently contribute to and maintain a balance in the Plan, to be appointed by the Chairman.

7.02 ADMINISTRATIVE COMMITTEE DUTIES AND RESPONSIBILITIES - The Administrative Committee will be responsible for the general operation of the Plan. The Administrative Committee will have all powers necessary to administer the Plan and will have the following Duties and Responsibilities:

(A) In its Fiduciary capacity:

- (1) To act as the named investment fiduciary for the Plan.

(2) To establish investment guidelines for the Plan consistent with the legal responsibilities under the California Constitution and as applicable, ERISA, including diversification of investments, compliance with the California Government Code and ERISA 404(c), and the investment options available to participants in the Plan.

(3) To monitor the performance of the Trust, investment managers and other investment fiduciaries of the Plan.

(4) To appoint individuals and/or subcommittees, which may or may not include Committee members, whether discretionary or otherwise, as the Committee shall determine, consistent with the terms of the Plan.

(5) To appoint one or more investment managers, as defined in the California Constitution, Government Code and Section 3(38) of ERISA, to manage all or a portion of the assets of the Plan in accordance with the terms of the Plan and investment policy developed by the Administrative Committee, Article XVI, Section 17 of the California Constitution, Section 402 of ERISA and all applicable State and Federal law.

(B) In its Non-Fiduciary Capacity:

(1) To perform all non-fiduciary functions on behalf of the City and the Plan. The Administrative Committee may not, however, perform any non-fiduciary act that increases the City's cost, unless the City has approved it beforehand.

(2) To report periodically to, and as requested by, the City Council with respect to significant developments concerning the Plan.

(C) Other Duties and Responsibilities:

(1) Delegate to the appropriate persons, committee, officer, manager or employee of the City such duties and responsibilities as it deems appropriate, including authority for all routine, normal and administrative actions for the Plan.

(2) Take all other action requested or directed by the City in the furtherance of the duties and responsibilities delegated hereunder, unless such actions are in conflict with any applicable laws.

7.03 LIMITATION ON LIABILITY - Except as provided in the Government Code Section 53213.5 and Part 4 of Title I of ERISA, no person shall be subject to any liability with respect to his duties under the Plan unless he/she acts fraudulently or in bad faith.

(A) No person shall be liable for any breach of fiduciary responsibility resulting from the act or omission of any other fiduciary or any person to whom fiduciary responsibilities have been allocated or delegated, except as provided in the Government Code Section 53213.5 and Part 4 of Title I of ERISA.

(B) No action or responsibility shall be deemed to be a fiduciary action or responsibility except to the extent required by the California Constitution, Government Code and ERISA.

7.04 INDEMNIFICATION

(A) To the extent permitted by law, the City shall indemnify the Chief Executive Officer and each member of the Committee, and any other Employees of the City with duties under the Plan, against expenses (including any amount paid in settlement) reasonably incurred by him/her in connection with any claims against him/her by reason of his conduct in the performance of his/her duties under the Plan, except in relation to matters as to which he/she acted fraudulently or in bad faith in the performance of such duties. The preceding right of indemnification shall pass to the estate of such a person.

(B) The preceding right of indemnification shall be in addition to any other right to which the Committee member or other person may be entitled as a matter of law or otherwise.

(C) The provisions of this Article VII will survive the termination of the Plan, and will last at least as long as the applicable statute of limitations.

ARTICLE VIII MISCELLANEOUS

8.01 NO ASSIGNMENT OR ALIENATION - A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Administrative Services Provider and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are non-assignable and nontransferable. Subject to Section 8.15, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

8.02 EFFECT ON OTHER PLANS - This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

8.03 WORD USAGE - Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

8.04 STATE LAW - The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Plan, except to the extent Federal law supersedes State law.

8.05 EMPLOYMENT NOT GUARANTEED - Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the Administrative Services Provider, the Trustee, any other Employee of the Employer, or any agents thereof except as expressly provided by the Plan.

8.06 NOTICE DESIGNATION, ELECTION, CONSENT AND WAIVER - All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form acceptable to the Administrative Services Provider. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code.

8.07 LIMITATIONS ON TRANSFERS AND EXCHANGES – The Employer and the Administrative Services Provider may adopt procedures to govern Participant elections and directions concerning a Participant’s, Beneficiary’s, or Alternate Payee’s investment specifications and may impose limitations on transfers and exchanges from one investment option with the Plan to another. These procedures shall be in addition to any established by investment providers to the Plan. The Employer and the Administrative Services Provider may decline to implement any investment instructions for a Participant, Beneficiary, or Alternate Payee where either deems appropriate.

8.08 EMPLOYER RESPONSIBILITY FOR DISTRIBUTION OF PLAN RELATED INFORMATION - The Employer will distribute all Plan related amendments, restated plan documents, and deferred compensation plan tax related documentation to the Administrative Services Providers when there are multiple Administrative Services Providers of the Plan.

8.09 USE OF PLAN ASSETS THAT ARE NOT ATTRIBUTABLE TO AN ACCOUNT - If the Plan receives money that is not attributable to an Account, then the Employer will direct the Administrative Services Provider as to the use of these amounts. Examples include, but are not limited to, money received by the Plan as part of a settlement, litigation award or fee reimbursement. The Employer may use these amounts to offset Plan expenses or may allocate these amounts to Participants or as it deems appropriate.

ARTICLE IX TRUST PROVISIONS

9.01 APPLICATION - The provisions of this Article IX apply only if the Employer has not elected to substitute another trust, custodial accounts or annuity contracts in lieu of the Trust established under this Article IX.

9.02 ACCEPTANCE HOLDING - The Trustee accepts the Trust created under the Plan and agrees to perform the duties and obligations imposed. The Trustee must hold in trust under this Article IX, all Deferred Compensation until paid in accordance with the Plan terms.

9.03 RECEIPT OF CONTRIBUTIONS - The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Administrative Services Provider, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

9.04 FULL INVESTMENT POWERS - The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following duties:

(A) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, insurance contracts of any type, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(B) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;

(C) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;

(D) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides;

(E) To credit and distribute the Trust as directed by the Administrative Services Provider of the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Administrative Services Provider for any payment or distribution made by it in good faith on the order or direction of the Administrative Services Provider;

(F) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(G) To compromise, contest, arbitrate or abandon claims and demands;

(H) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights;

(I) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;

(J) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(K) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;

(L) To file all tax returns required of the Trustee;

(M) To furnish to the Employer and the Administrative Services Provider an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Administrative Services Provider, except as to any act or transaction concerning which the Employer or the Administrative Services Provider files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(N) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so.

9.05 RECORDS AND STATEMENTS - The records of the Trustee pertaining to the Trust will be open to the inspection of the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer may specify in writing. The Trustee will furnish the Administrative Services Provider whatever information relating to the Trust the Administrative Services Provider considers necessary.

9.06 FEES AND EXPENSES FROM FUND - The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust, unless the Employer pays the fees and expenses.

9.07 PROFESSIONAL AGENTS - The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

9.08 DISTRIBUTION OF CASH OR PROPERTY - The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

9.09 RESIGNATION AND REMOVAL - The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Administrative Services Provider. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice. The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

9.10 SUCCESSOR TRUSTEE

(A) **Appointment.** In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

(B) **Automatic Successor.** Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

9.11 VALUATION OF TRUST - The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Administrative Services Provider may direct.

9.12 PARTICIPANT DIRECTION OF INVESTMENT - Consistent with the Administrative Services Provider's policy adopted under Section 5.02(i), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Administrative Services Provider will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Administrative Services Provider's policy. The Trustee will report to the Administrative Services Provider the net income, gain or losses incurred by each Participant directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

9.13 THIRD PARTY RELIANCE - No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

9.14 INVALIDITY OF ANY TRUST PROVISION - If any clause or provision of this Article IX proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article IX and the balance of the Trust provisions will remain operative.

9.15 EXCLUSIVE BENEFIT - The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the Employer nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The Employer will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the Employer's creditors or, except as provided in Section 4.06, of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his/her Account or any interest in his/her Deferred Compensation. Notwithstanding the foregoing, the Administrative Services Provider may pay from a Participant's or Beneficiary's Account the amount the Administrative Services Provider finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

9.16 SUBSTITUTION OF CUSTODIAL ACCOUNT OR ANNUITY CONTRACT - The Employer may elect to use one or more custodial accounts or annuity contracts in lieu of, or in addition to, the Trust established in this Article IX. Any such custodial account or annuity contract must satisfy the requirements of Code §457(g)(3) and applicable Treasury regulations.

9.17 GROUP TRUST AUTHORITY - Notwithstanding any contrary provision in this Plan, the Trustee may, unless restricted in writing by the Administrative Services Provider, transfer assets of the plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meets the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

ARTICLE X
AMENDMENT, TERMINATION, TRANSFERS

10.01 AMENDMENT BY EMPLOYER/SPONSOR - The Employer has the right at any time and from time to time:

(A) To amend this Plan and Trust Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as an Eligible 457 Plan; and

(B) To amend this Plan and Trust Agreement in any other manner, including deletion, substitution or modification of any Plan or Trust. The Employer must make all amendments in writing. The Employer may amend the Plan by addenda, by separate amendment, or by restatement of the Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustee or the Administrative Services Provider without the written consent of the affected Trustee or the Administrative Services Provider. The Employer will accept amendments from the Administrative Services Provider (including adoption of a substitute Plan and Trust) without being required to re-execute the Plan, provided that the amendments are necessary to continue the Plan as an Eligible 457 Plan.

10.02 TERMINATION / FREEZING OF PLAN - The Employer has the right, at any time, to terminate this Plan or to cease (freeze) further Deferral Contributions to the Plan. Upon termination or freezing of the Plan, the provisions of the Plan (other than provisions permitting continued Deferral Contributions) remain operative until distribution of all Accounts. Upon Plan termination, the Administrative Services Provider or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

10.03 TRANSFERS - The Plan: (a) may accept a Transfer of a Participant's Account in another employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the another employer's Eligible 457 Plan. The other plan involved in the Transfer must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his/her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Eligible 457 Plans; and 1.457-10(b)(4) as to transfers between Eligible 457 Plans of the same Employer. The Administrative Services Provider will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except such Transfer will not be treated as a Deferral Contribution subject to the limitations of Article III. The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Administrative Services Provider, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

10.04 **PURCHASE OF PERMISSIVE SERVICE CREDIT** - A Participant, prior to otherwise incurring a distributable event under Article IV, may direct the Trustee to transfer (as of January 1, 2002, or later) all or a portion of his/her Account to a governmental defined benefit plan (under Code§414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant for: (a) the purchase of permissive service credit (under Code §415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code §415 does not apply by reason of Code§415(k)(3).

IN WITNESS WHEREOF, the undersigned has executed this Plan and Trust to become effective the _____ day of _____, 20__ for the:

457 Plan and Trust

(Plan Name)

By:

(Signature)

Brenda Green

(Printed Name)

City Clerk

(Title/role)

RESOLUTION NO. 13-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ADOPTING THE AMENDED AND RESTATED CITY OF COSTA MESA DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES SECTION 457 GOVERNMENTAL PLAN AND TRUST TO COMPLY WITH FINAL INTERNAL REVENUE SERVICES (IRS) REGULATIONS, INCORPORATING APPLICABLE PROVISIONS OF THE PENSION PROTECTION ACT OF 2006 (PPA), THE HEROES EARNINGS ASSISTANCE ACT OF 2008 (HEART), THE WORKER, RETIREE AND THE EMPLOYER RECOVERY ACT OF 2008 (WRERA), AND OTHER PERTINENT IRS RULING AND RELATED LEGISLATION, AND A RESOLUTION TO ESTABLISH A TRUST, WITH THE ADMINISTRATIVE COMMITTEE SERVING AS TRUSTEE, FOR THE PURPOSES OF HOLDING PLAN ASSETS FOR THE EXCLUSIVE BENEFITS OF PLAN PARTICIPANTS AND BENEFICIARIES.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, the City maintains a deferred compensation plan available to City employees which qualify under Section 457 of the Internal Revenue Code; and

WHEREAS, the IRS has issued amendments to its regulations incorporating the requirements and provisions of PPA, HEART, and WRERA, and other pertinent IRS rulings and related legislation; and

WHEREAS, City staff, with consultation with outside consultants, has prepared an amended and restated Plan Document consistent with final 457(b) regulations, subsequent IRS guidance, proposed regulations, and other pertinent legislations including the establishment of a Trust, attached hereto as Attachment 1.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Costa Mesa has adopted and approved the amended and restated City of Costa Mesa Deferred Compensation Plan for Public Employees Section 457 Governmental Plan and Trust, attached hereto as Attachment 1. The City Clerk shall certify to the passage and adoption of this resolution, and it shall be thereupon be in full force and effect.

BE IT FURTHER RESOLVED that the amended and restated City of Costa Mesa Deferred Compensation Plan for Public Employees Section 457 Governmental Plan and Trust (Attachment 1) is effective retroactively to January 1, 2011.

BE IT FURTHER RESOLVED that the assets of the Plan shall be held in trust, with the City of Costa Mesa, as employer, appointing the Administrative Committee to serve as trustee ("Trustee"), for the exclusive benefit of Plan participants and their beneficiaries, and assets shall not be diverted to any other purpose.

BE IT FURTHER RESOLVED that the City of Costa Mesa, as employer, hereby appoints the Administrative Committee as Trustee under the Plan.

James M. Righeimer, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Thomas P. Duarte, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 13-____ and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 7th of May, 2013, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 8th day of May, 2013.

BRENDA GREEN, CITY CLERK

(SEAL)