

**THE CITY OF SEATTLE VOLUNTARY
DEFERRED COMPENSATION PLAN AND TRUST**

AMENDED AND RESTATED

EFFECTIVE AS SET FORTH IN ARTICLE 10

(Updated February 11, 2009)

**THE CITY OF SEATTLE VOLUNTARY
DEFERRED COMPENSATION PLAN AND TRUST**

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**THE CITY OF SEATTLE VOLUNTARY
DEFERRED COMPENSATION PLAN AND TRUST**

ARTICLE 1

1. INTRODUCTION

1. 1. Adoption of Deferred Compensation Plan and Trust.

The City of Seattle hereby establishes the following restated deferred compensation plan and trust for City officers and employees (called the "Plan").

1. 2. Plan Overview

When the Participant enrolls in this Plan, The City of Seattle (called the "City") will defer paying a part of the Participant's salary or wages. The deferred amounts will be deposited in trust for the exclusive benefit of the Employee and the Employee's Beneficiaries and invested in accordance with the provisions of this Plan. After the Participant leaves the service of the City, retires or dies, the Plan will pay the Participant, or the Participant's beneficiaries, benefits based on the invested value of the deferred amount (the Participant's "Account Value"). If the Participant becomes employed by another employer with an eligible plan, the City may transfer the Participant's Account Value to the Participant's new employer's Plan. The Account Value will be based on the amount deferred, less administrative fees and expenses, plus gain or minus losses from market fluctuations, and, when applicable, deductions for withdrawal ("surrender") fees. An earlier withdrawal may only occur if the Participant suffers an unforeseeable financial emergency or if the Participant is eligible for an in-service cash out as provided by this Plan. The Participant's right to commence payment of benefits and the manner and timing of benefit payments will be governed by the

provisions of this Plan, the Internal Revenue Code, its applicable regulations, and the administrative rules adopted by the Plan Committee which may be changed from time to time.

1. 3. Compliance with Internal Revenue Code.

The Plan and Trust is intended to be an eligible deferred compensation plan under Section 457 of the Internal Revenue Code of 1986, as amended, (the "Code") and a trust exempt from tax under Code Sections 457(g) and 501(a). It is subject to all eligibility standards established by the Code for eligible deferred compensation plans (called "Code Requirements"). Code Requirements take precedence over any conflicting provision in this Plan Document or any ordinance implementing the Plan, and all provisions of this Plan shall be interpreted and applied in a manner to conform with Code requirements.

1. 4. Plan Document.

This Plan Document may be supplemented by administrative rules and agreements adopted or entered into by the Plan and/or Trust Committee from time to time. These rules and agreements provide for the Plan's administration, reports and fees, and terms and conditions useful in carrying out the Plan. This Plan Document may be amended from time to time in accordance with Articles 3 and 7.

1. 5. Definitions and citations.

Article 9 defines words and terms used in this Plan. Brackets in the text contain citations to the Code or to the Code's implementing regulations [Regs. § 1.457] in order to assist in understanding and applying the section.

1. 6. Name of Plan.

The name of the Plan shall be The City of Seattle Voluntary Deferred Compensation Plan and Trust.

1. 7. Exclusive benefit.

This Plan shall at all times be operated for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the City or be used for or diverted to purposes other than the exclusive benefit of Participants and their beneficiaries.

ARTICLE 2

2. ENROLLMENT AND DEFERRAL

2. 1. Participation

Only City officers and Employees may enroll in the Plan.

2. 2. Enrollment.

By enrolling the Participant accepts the terms and conditions of this Plan, authorizes the City to defer paying a part of the Participant's salary or wages for each pay period, and consents to applying the deferred amount in accordance with this Plan.

2. 3. Deferrals.

When enrolling, the Participant sets an amount to be deferred from the Participant's salary or wage for each pay period. The Participant may later increase or decrease the amount, or stop and resume further deferrals, each as authorized by this Plan. A deferral and an authorization to increase, decrease or stop the Participant's deferral takes effect in the month following the Participant's request. [Code § 457(b)(4)]. The Participant's authorization to begin a deferral, to increase or decrease the amount, or to stop or resume deferrals applies to salary or wages the Participant earns afterward. A change or stoppage of the Participant's authorized deferral will not cause any refund or return of any

amount already deferred. A Participant's authorized deferral will remain in effect until the Participant revokes or alters the terms of the authorization.

A Participant may elect to defer all or a portion of an amount received following Severance from Employment but only if the amount is Post-Severance Compensation as defined below. [Regs. § 1.457-4(d)].

Post-Severance Compensation. Post-Severance Compensation includes payments made by the later of: (i) 2-1/2 months after severance from employment, or (ii) the last day of the calendar year in which the severance from employment occurs. Post-Severance Compensation payments may be deferred if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and would have been regular compensation for service during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, or payment for unused accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered Post-Severance Compensation if paid after severance from employment, even if they are paid within the timeframe above following severance from employment.

2. 4. Limits on annual deferrals.

(a) The Participant may defer as much under the Plan in any year as Code § 457 allows for an eligible deferred compensation plan. Unless the "catch-up" provision of Code § 457 applies, the most the Participant may now defer of the Participant's compensation for any taxable year beginning on or after January 1, 2002 is the lesser of the applicable dollar amount within the meaning

of Code Section 457(b)(2)(A), as adjusted for the cost-of-living in accordance with Code Section 457(e)(15), (\$12,000 for 2003; \$13,000 for 2004; \$14,000 for 2005; \$15,000 for 2006 and thereafter. After 2006, the \$15,000 amount is adjusted for cost of living increases in \$500 increments.), or one hundred percent (100%) of the Participant's Includable Compensation (see Plan § 9.8). This amount is called the Plan Ceiling (See Plan § 9.15).

(b) Last Three Years Catch-up. Under the Last Three Years Catch-up provision, for one or more of the Participant's last three (3) taxable years ending before the year in which the Participant reaches Normal Retirement Age, the Participant may defer the lesser of twice the applicable limit set forth in Section 457(e)(15), or the amount of the Plan Ceiling for the current year plus so much of the Plan Ceiling for earlier taxable years as the Participant was eligible to use but failed to use. Any deferral the Participant made during the year under another eligible deferred compensation plan established under Code § 457 will be counted in applying these limits. The Participant may use the Last Three Years Catch-up provision only once and may not use it while using the Age 50 Catch-up provisions; the Participant cannot invoke the higher limits a second time by resetting his or her retirement age or returning to City service after the Participant retires [Regs. § 1.457-4(c)(3)].

(c) Age 50 Catch-up. Under the Age 50 Catch-up provision, a Participant who has attained age 50 before the close of the Plan Year may contribute an additional amount not to exceed the catch-up limit under Code § 414(v)(2) for the taxable year. The maximum amount of the Age 50 Catch-up contributions for taxable year under Code § 414(v) is \$2,000 for 2003, \$3,000 for 2004, \$4,000 for 2005 and \$5,000 for 2006 and thereafter. After 2006, the \$5,000 amount is adjusted for cost-of-living increases in \$500 increments. The Age 50 Catch-up is not available during the three years the Participant is taking

advantage of the Last Three Years Catch-up provided in 2.4(b). [Regs. § 1.457-4(c)(2).]

(d) Notwithstanding any provision of the Plan to the contrary, the amounts excludible from the Participant's gross income under this Plan or any other eligible deferred compensation plan under Code § 457(b) shall not exceed the limits set forth in Code §§ 457(b) and 414(v). In the event the Plan Committee determines the Participant's elective deferrals to the Plan for a calendar year would exceed the Code § 457(b) limits, the City will not make any additional elective deferrals with respect to that Participant for the remainder of that calendar year, paying in cash to the Participant any amounts which would result in the Participant's deferrals for the calendar year exceeding the 457(b) limitation. If the Plan Committee determines a Participant's elective deferrals already contributed to the Plan for a calendar year exceed the limitations, the Plan Committee will distribute the amount in excess of the 457(b) limitation (the "excess deferral") as adjusted for allocable income, as soon as administratively practicable after the Plan Committee determines the amount is an excess deferral in accordance with the Code and Regulations. For purposes of making a distribution of excess deferrals, allocable income means net income or net loss allocable to the excess deferrals for the calendar year in which the Employee made the excess deferral, determined in a manner which is uniform, nondiscriminatory and reasonably reflective of the manner used by the Plan to allocate income to Participant's accounts. [Regs. § 1.457-4(e).] The City and the Committee will not have any liability to any Participant or Beneficiary with respect to the exercise of, or failure to exercise, the authority of the Section 2.4.

Prior to January 1, 2003, for purposes of determining the maximum limitations on deferrals under this Section, the following amounts reduced the Plan Ceiling and the Last Three Years Catch-up limitation (but not below zero)

for a taxable year: (1) elective deferrals or employer contributions made on behalf of a Participant to a Code §403(b) plan (Code §403(b)(1) annuity contract or Code §403(b)(7) custodial account) for the taxable year; (2) elective deferrals under a Code §401(k) arrangement; (3) elective deferrals under a Simplified Employee Pension; (4) SIMPLE IRA contributions under Code §408(p); and (5) deductible contributions under a Code §501(c)(18) plan.

(e) Normal Retirement Age for the purpose of determining the Last Three Years Catch-up period, means a retirement age selected by the Participant from the range of ages ending not later than when the Participant reaches seventy and one-half (70 1/2) and not sooner than the time when the Participant has the right to retire without the City's consent, and to immediately receive unreduced retirement benefits under the City Employees' Retirement System, or the Law Enforcement Officers' and Fire Fighters' Retirement System, whichever may be applicable to the Participant, without actuarial or similar reduction because of retirement before a later age or number of years of service; or, if none apply, the time the Participant would have been eligible for unreduced retirement benefits had the Participant joined the City Employees' Retirement System upon first becoming eligible. [Code §§ 457 (d)(1)(B) and 401 (a)(9)(c); Regs. § 1.457-4(c)(3)(v)(A)].

2. 5. Investment selections.

When enrolling, the Participant needs to make an investment selection or selections from among the investment alternatives chosen by the Trustee for this Plan. It is the Participant's responsibility throughout the Participant's participation in this Plan to direct the investment of the Participant's deferred amounts to the Plan's investment options. The Participant may change the Participant's investment selection from time to time. The Participant's

investment directions must be given according to the procedure or form required by the Plan Committee and may be subject to reasonable restrictions imposed by the Plan Committee as to the frequency with which an individual Participant and the Participants collectively may give investment directions. The City, the Trustee, the Plan Committee, its custodian, Plan Administrator, or any person deemed to be a fiduciary of the Plan shall have no liability of any kind for any damage, loss, or claim which may arise from the participant or the beneficiary's investment direction or the failure of the participant or the beneficiary to exercise investment direction.

2. 6. Investment transfers.

The Participant may transfer amounts already deferred from one investment option to another in accordance with this Plan and rules adopted by the Plan Committee and Trustees. A transfer will be based on the current value of the previous investment selection, including any gains or less any losses that had already been credited or debited to the Participant's account and may involve a fee or charge.

2. 7. Forms and methods.

The Plan Committee will provide for the manner in which enrollment, deferral changes, and investment selections are to be conducted and implemented. The Participant's authorization and the Participant's investment selection continue in effect for future pay periods so long as the Participant is employed until the Participant directs otherwise in the manner established by the Plan Committee.

2. 8. Investment options and transfers between options.

The Plan's investment options shall include investment alternatives chosen by the Trustee pursuant to the Plan's investment policy, and may include

such investment options such as securities, mutual funds, money market accounts, and annuities. From time to time the Trustee may change, add to or remove investment options from the Plan, and the Trustee may employ professional investment advisors for the purpose of reviewing the investment options offered through this Plan. If an investment option is removed from the Plan, the Participant's deferred amounts shall be transferred to alternative investment options according to administrative procedures adopted for their transfer unless the Participant directs otherwise in the manner established by the Trustee. Losses may be incurred as a result of a transfer from one investment option to another due to market fluctuations, among other reasons. A participant, or after a participant's death, a beneficiary, may transfer funds between the investment options offered by the Plan. Transfers must be made in accordance with administrative rules, or as required by the Plan Committee and/or Trustee, and subject to the terms and conditions for crediting account values in any contract with outside service providers to the Plan. The Plan Committee and/or Trustee may require that transfers be authorized in writing in advance.

2. 9. Employer Contributions.

The City will contribute such amounts as it has agreed to contribute from time to time on behalf of police officers and fire fighters. Any such contribution is subject to the Plan Ceiling.

2. 10. Uniformed Services Employment and Re-Employment Rights Act of 1994.

This Plan shall also include any Service that the Plan must credit in order to satisfy the crediting of Military Service requirements of the Uniformed Services Employment and Re-Employment Rights Act of 1994 ("USERRA") in accordance

with the provisions of Code § 414(u). In applying these provisions, the Employer shall allow a re-employed individual whose absence is due to uniformed service to contribute make-up contributions during the period which begins on the date of re-employment and has the same length as the lesser of (a) the period of the individual's absence due to uniformed service multiplied by three, or (b) five years. The City is required to make any City contributions at the same rate that would have been made had the employee continued in service during the period of uniformed service. Any additional elective deferrals, Employer contributions, and other Employee contributions will be treated as make-up contributions for purposes of the USERRA provisions exempting such contributions from the maximum deductible contribution limits otherwise applicable to a Code § 457 Plan arrangement. All such make-up contributions shall be made without regard to any actual or constructive earnings that would otherwise be credited to such account with respect to contributions, and shall be administered, for this purpose, in accordance with the USERRA provisions in Code § 414(u) and the reporting requirements in IRS Announcement 98-45, as may be amended from time to time. The provisions of this paragraph are effective as of December 12, 1994, the effective date of the benefits-related provisions of USERRA.

ARTICLE 3

3. ADMINISTRATION, ACCOUNTS AND REPORTS

3.1. Plan Committee.

The Plan will be administered by a Plan Committee consisting of seven (7) members. The Plan Committee may formally designate one or more subcommittees of up to four (4) Committee members each to act on behalf of the Plan Committee on specified matters and such subcommittee shall have the

same powers to act as the Plan Committee in such instances. References to Plan Committee include any such designated subcommittee.

The members of the Plan Committee shall be: (1) the Director of the Personnel Department or the functional successor; (2) the Director of the Department of Executive Administration, or the functional successor; (3) the Investment Director of the Department of Executive Administration, or the functional successor; (4) the Executive Director of the Retirement System, or the functional successor; (5) two union representatives selected by the Coalition of City Unions; and (6) a member-at-large selected by the four Plan Committee members that are City employees.

The members selected by the Coalition of City Unions shall serve for a term of three (3) years. Any such union member may be re-selected for additional three (3) year terms. Any selected union member need not be a Participant. The member selected by the City Plan Committee members shall serve for a term of three (3) years. Any such member selected by the City Plan Committee may be re-selected for additional three (3) year terms.

Any member of the Committee may resign by notice in writing filed with the Trustee and the Committee. Any vacancy thus created shall be promptly filled by the City or the Coalition of City Unions, as appropriate. Any person appointed to fill the vacancy of a selected member shall serve only until the end of the original term. The City shall appoint a replacement if a vacancy occurs in a City position. Any vacancies unfilled for ninety (90) days shall be filled by a majority vote of the remaining members of the Committee. If a vacancy occurs in the position occupied by a Coalition of City Unions member, the City shall give notice to the Coalition to appoint a new trustee. If no new member is appointed by the Coalition within the 90-day period for filling a vacancy, the Committee may select a represented employee to fill the vacancy.

3. 2. Officers and duties.

The Plan Committee shall choose from among its members a Chairperson and a Secretary. The Secretary shall keep minutes of the Committee's proceedings and all dates, records and documents pertaining to the Committee's supervision of the Plan. The Committee may adopt rules for the conduct of its meetings. The Committee may employ, and suitably compensate, such attorneys, actuaries, accountants, consultants, advisory, clerical or other employees as it may deem necessary for the performance of its duties.

3. 3. Decision-making procedure.

All actions of the Committee or a designated subcommittee shall be determined by vote of a majority of its members who may act with or without a meeting. Either the Chairperson or the Secretary may execute any certificate or other written direction on behalf of the Committee or a designated subcommittee. A member of the Committee shall not vote on any question relating exclusively to the individual member or his or her Immediate Family; in the determination of any such question, the decision of a majority of the remaining members of the Committee shall govern. The members of the Committee shall serve without bond and without compensation for their services as such.

3. 4. Limits of liability.

No member of the Committee shall be liable for any act or omission of any other member of the Committee nor for any act or omission on his or her own part, except his or her own willful misconduct. The City shall indemnify and hold harmless, and defend each member of the Committee from any and all liabilities arising out of his or her membership on the Committee, except liabilities arising out of his or her own willful misconduct. The Committee shall make available to Participants and Beneficiaries, for examination during reasonable business

hours, such records as pertain to the person wishing to examine the same. The indemnification provisions of this Section apply to the Trustees if such Trustees are also employees of the City, provided that a Trustee who is a union representative and not a City employee shall be indemnified under this provision. This provision shall not apply to an outside service provider who is compensated. The Committee shall notify the City as soon as possible of any such claims which it may seek indemnification and defense under this provision, and consult with the City Attorney on choice of defense counsel. The City may elect to conduct the defense of the Committee through outside counsel.

3. 5. Powers of Plan Committee.

The Committee and any formally designated subcommittee shall administer and enforce the Plan in accordance with its terms and shall have all the powers convenient or necessary to accomplish that purpose including, but not limited to, the following powers:

- a) To determine all questions relating to the rights or of the eligibility of employees to become Participants and the value of a Participant's account;
- b) To certify to the Trustee the fact of retirement, death, termination of employment or of participation of any Participant;
- c) To interpret, construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- d) To adopt rules of procedure and regulations necessary for the administration of the Plan provided the rules are not inconsistent with the terms of this Plan;

- e) To adopt amendments to the Plan on behalf of the City (without the approval of any other body); provided, such power of adoption is limited to amendments which the Plan Committee determines: (1) will facilitate the administration of the Plan; (2) are in the best interest of the Participants and their Beneficiaries; or (3) are necessary to maintain the Plan and/or the Trust in tax-qualified status under the Internal Revenue Code Section 457, 501(a) as amended, and any other relevant Internal Revenue Code section, or to conform to any other law; and (4) which do not increase the City's contributions under this Plan.
- f) To direct the Trustee with respect to the crediting and distribution of the Trust;
- g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan and to establish a claims procedure for Participants and their beneficiaries if necessary.
- h) To establish a policy in making distributions for unforeseeable emergencies;
- i) To furnish the City with information which the City may require for tax or other purposes;
- j) To comply with the reporting and disclosure rules, if any, applicable to the Plan.
- k) To establish, in its sole discretion, a nondiscriminatory policy which the Trustee must observe in making loans, if any, to Participants. If the Plan Committee adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer

the Participant loan program; (2) a procedure for applying for the loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve plan assets in the event of default. This Section 3.5(k) specifically incorporates a written loan policy as part of the City's Plan.

- l) To review, approve or decline to approve any Qualified Domestic Relations Order ("QDRO") presented to the Plan for approval and to act upon such recommendations as the Plan Committee may adopt with respect to any QDRO.

All decisions of the Plan Committee in matters properly coming before it according to the terms of this Plan, and all actions taken by the Plan Committee in the proper exercise of its administrative powers, duties and responsibilities, will be final and binding upon all Employees, Participants and their Beneficiaries and upon any person having or claiming any rights or interest in this Plan unless it can be shown that the decision, action, interpretation or determination was arbitrary and capricious. The City and the Plan Committee will make and receive any reports and information, and retain any records necessary or appropriate to the administration of this Plan or to the performance of duties hereunder, or satisfying any requirements imposed by law. In the performance of its duties, the Plan Committee will be entitled to rely on information furnished by an employee, Participant or Beneficiary or by the City or Trustee.

3. 6. Transmittal of information.

To enable the Committee to perform its functions, the City shall supply full and timely information concerning the compensation of Participants, their retirement, death, termination of employment or of participation, and such other pertinent facts as the Committee may require. The Committee shall advise the Trustee of such facts as may be pertinent to the Trustee's administration of the Trust.

3. 7. Expenses of administration.

The costs of carrying out the Plan will be borne by those participating through reasonable fees agreed to by the Plan Committee for administrative, record-keeping, investment and other services performed and for appropriate expenses incurred. The Participants' deferred amounts will be subject to fees charged by the City, its custodian, its independent trustee, if any, or the Plan recordkeeper for the administrative costs and expenses of the Plan. The administrative fees charged to the Participants may include the costs and expenses of services rendered by a third party administrator, custodian, recordkeeper, or services rendered by a professional investment advisor, accountant, or legal counsel. A fee may take the form of an assessment calculated as a percentage of the current value of the Participant's account, a deduction measured by a payment or transaction, and/or a fixed charge for a service, among other reasonable methods. The Plan Committee may direct the Trustee to allocate fees and expenses for administration incurred pursuant to Section 5.6 as a charge against all Participant accounts on a pro rata basis.

3. 8. Accounts.

An account will be kept for everyone who participates in the Plan. Like all others, the Participant's account will be credited with a sum equal to the amounts

deferred from the Participant's salary or wages; it will be adjusted to reflect the current market performance of the Participant's investment selection(s); and the Participant's account will be reduced by fees charged to the Participant's account as authorized by Section 3.7, emergency withdrawals under Section 4.6, or in-service cash out taken under Section 4.9. The adjustment will reflect interest, dividends, and other distributions received; gains or losses from market fluctuations; investment losses; and/or any default by an investment underwriter, each if and when occurring, and, if applicable, a withdrawal ("surrender") fee. The current value of the Participant's account will determine the amount of benefits paid under Article IV.

3. 9. Deposit of deferrals into Trust and time lag.

Transfers to the Trust will be made within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.

3. 10. Account report.

The Participant will be given a written report of the current value of the Participant's account at least annually. Unless the Participant makes written exception to the information supplied within sixty (60) days of its receipt, the Participant's statement will establish the current value of the Participant's account as of the account date.

3. 11. Annual Plan report.

An annual report on the operation and condition of the Plan (including a schedule of receipts and disbursements during the preceding year) will be filed with the City Clerk as a public record.

3. 12. Access to Plan records.

Upon reasonable notice the Participant may inspect records maintained for the Plan generally by the City or a Plan administrator and the Participant's account during normal business hours.

ARTICLE 4

4. BENEFITS

4. 1. Timing for distribution of benefits.

(a) **Earliest availability of benefits.** Except for unforeseeable emergency withdrawals, in-service distributions and distributions under qualified domestic relations orders allowed under Sections 4.6, 4.9, 4.10 and 4.14, the payment of the Participant's benefits under this Plan shall not begin prior to the Participant's permanent separation from City. [Code § 457(d)(1)(A); Regs. §1.457-6(a)]. The Participant's permanent separation from City service is the earliest of the following events: the Participant's resignation, retirement, the severance of the Participant's employment with the City, or the Participant's death.

(b) **Distribution commencement date.** Unless the Participant (or the Participant's beneficiary) elects to begin distribution or transfers his or her account to another eligible plan, the distribution commencement date will be deferred until a later date, but no later than the date allowed under Section 4.1(c).

(c) **Last date to commence distribution of benefits ("Required Beginning Date").** The Participant's distribution commencement date shall not be later than the last date for beginning distribution under this Plan, which shall be April 1st of the calendar year following the calendar year in which the Participant reaches age 70 1/2, and, if the Participant continues his or

her service with the City beyond age 70 1/2, the Participant's distribution commencement date shall be no later than April 1st of the calendar year following the calendar year in which the Participant leaves City service. [Code §§ 457(d)(2) and 401(a)(9)(C).]

4. 2. Election to begin distribution commencement date.

The Plan allows the Participant to elect the Participant's distribution commencement date provided it is not later than the date in 4.1(c).The Participant may change his or her elected distribution commencement date any number of times.

4. 3. Election of benefit distribution method.

(a) Election of method of distribution. The Participant's benefits may be paid in a lump sum or in periodic payments or such other method allowed by administrative rule, the Code, and its implementing regulations. The Participant must elect the method of distribution of benefits in accordance with rules and methods adopted by the Plan Committee. The Participant may revoke his or her election of a method of distribution after payments commence, and may increase or decrease his or her payments after the Participant's payments commence. If the Participant's beneficiary elects a method of distribution, the period of time and the manner in which the benefits are distributed is governed by administrative rule.

(b) Minimum distribution requirements. If the Participant's benefits are distributed in periodic payments under this Plan, the amount and timing of such payments shall be governed by Section 4.11, administrative rule and the minimum distribution requirements of the Internal Revenue Code and its applicable regulations. [Code § 457(d)(2) and 401(a)(9).] The Participant's

benefit payments must commence no later than the last date for beginning distribution under Section 4.1.

4. 4. Designating a beneficiary.

The Participant has the right and duty to designate a beneficiary to receive benefits under this Plan if the Participant dies. Any Participant may from time to time designate, in writing, any person or persons, contingently or successively, to whom the Trustee will pay his or her benefits (including any life insurance proceeds payable to the Participant's account) in the event of his or her death. The Plan Committee will prescribe the form for the written designation of beneficiary and, upon the Participant's filing the form with the Plan Committee, the form effectively revokes all designations filed prior to that date by the same Participant. The Beneficiary designation of a married Participant or Participant with a state registered domestic partner ("SRDP") is not valid (whether married or registered at the time of the designation or later) unless the Participant's spouse or state registered domestic partner consents to the Beneficiary designation. The spousal or SRDP consent requirement in this paragraph does not apply if the Participant's spouse or SRDP is the Participant's sole primary Beneficiary. A married or SRDP Participant's Beneficiary Designation is not valid unless the Participant's spouse or SRDP has consented in writing, the spouse's or SRDP's consent acknowledges the effect of the designation, and a Notary Public notarizes or the Plan Administrator (or his or her representative) witnesses and acknowledges the spouse's or SRDP's consent. The validity of a beneficiary designation is determined at the date of death. A designation may be valid when executed (e.g., no current spouse or SRDP) but becomes invalid due to subsequent events (e.g., a marriage or registration of a SRDP).

The Plan Committee will accept as valid a consent which does not satisfy the spousal or SRDP consent requirements if the Plan Committee establishes that the Participant does not have a spouse or SRDP, if the Plan Committee is not able to locate Participant's spouse or SRDP, if the Participant is legally separated or has been abandoned (within the meaning of state law) and the Participant has a court order to that effect, or if other circumstances exist under which the Secretary of the Treasury would excuse the consent requirements under applicable Tax Code rules. If the Participant's spouse or SRDP is legally incompetent to give consent, the spouse's or SRDP's legal guardian (even if the guardian is the Participant) may give consent.

If the Participant fails to name a Beneficiary in accordance with the above procedures, or if the Beneficiary named by Participant predeceases him or her, then the Trustee will pay the Participant's benefit in the following order of priority:

- (a) The Participant's surviving spouse or SRDP;
- (b) The Participant's surviving children, including adopted children, in equal shares;
- (c) The Participant's surviving parents, in equal shares;
- (d) The Participant's surviving brothers and sisters, in equal shares; or
- (e) The Participant's estate.

Automatic Revocation of Spousal or SRDP Designation. A divorce decree, a decree of legal separation or dissolution, invalidation or termination of a state registered domestic partnership, revokes a Participant's designation, if any, of his or her spouse, former spouse or state registered domestic partner as his or her Beneficiary under the Plan unless the decree, order or a QDRO provides otherwise.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the Participant's entire benefit, the Trustee will pay the remaining benefit to the Beneficiary's estate unless the Participant's Beneficiary designation provides otherwise, or the Beneficiary has properly designated a beneficiary. A Beneficiary may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death only if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Committee will direct the Trustee as to the method and to whom the Trustee will make payment under this Section 4.4.

Simultaneous Death of Participant and Beneficiary. If a Participant and his or her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Plan Committee will presume conclusively that the Beneficiary predeceased the Participant.

Incapacitated Participant or Beneficiary. If, in the opinion of the Plan Committee or the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age, at the direction of the Plan Committee, the Trustee may make the distribution to the Participant's or Beneficiary's court-appointed guardian, or court-appointed conservator, his or her attorney-in-fact or to another person authorized under State law to receive the benefit upon furnishing evidence of such status satisfactory to the Plan Committee and to the Trustee. The Plan Committee and the Trustee do not have any liability with respect to payments so made and neither the Plan Committee nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan. Notwithstanding the above, where a trust is

named as a Designated Beneficiary, the Plan Committee and Trustee may distribute Plan benefits in accordance with the Participant's or Beneficiary's Beneficiary designation form although a trust beneficiary may be incapacitated.

The rules set forth in this Section 4.4 are for the administrative convenience of the Plan and are not required by law. These rules do not affect rights that a Participant may have under federal or state law such as community property laws. However, the Plan will follow these rules to determine how it will pay out benefits in the event of no beneficiary designation or in determining whether a designation is a valid or invalid designation.

4. 5. Payments to Beneficiaries.

If the Participant dies before drawing benefits or before all benefits are paid, benefits shall be paid to the Participant's Beneficiary in the manner provided by Section 4.4, 4.11 and administrative rule. Payments must be sufficiently rapid to satisfy the requirements of Code § 457(d)(2) and Code § 401(a)(9).

4. 6. Unforeseeable emergency.

Upon application, the Plan Committee may permit a payment to the Participant in an amount reasonably needed to meet an "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship of the Participant resulting from: (1) an illness or accident of the Participant, the Participant's Beneficiary, or the Participant's or Beneficiary's spouse, or dependent (as defined in Code Section 152 without regard to Section 152(b)(1), (b)(2) and (d)(1)(B)); (2) loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); (3) the need to pay for the funeral expenses of the Participant's or Beneficiary's spouse or dependent (as defined in Code ' 152, without regard to

Code ' 152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's or Beneficiary's control. The Participant's Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant's Plan account upon the Participant's death. No payment can be made to the extent that the Participant's hardship may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the Participant's assets to the extent the liquidation would not itself cause severe financial hardship; or suspending the Participant's deferrals. The payment may not exceed the lesser of the current value of the Participant's account (see Section 3.2) or the amount required to satisfy the Participant's emergency need [Regs. §1.457-6(c)]. The Participant's account will be reduced by an amount equal to any payment made; and any balance remaining in the Participant's account after the payment will be paid as benefits in accordance with Section 4.1. This is one of three ways in which payment of deferred amounts may be authorized by the City prior to the Participant's permanent separation from active City service. The Participant may also receive an "in-service cash out election" payment if the conditions of Section 4.9 are satisfied. In addition, an alternate payee may receive a distribution while the Participant is still employed if the conditions of Section 4.10 are satisfied.

4. 7. [Reserved]

4. 8. [Reserved]

4. 9. In Service cash-out election before separation.

The Participant may elect to receive a lump sum "in-service cash out" payment prior to the Participant's permanent separation from City service if the Participant meets certain Code requirements which include the following: no

deferrals have been made to the Participant's account for the previous twenty-four (24) month period, the Participant's account balance (not attributable to rollover contributions) is less than the maximum amount allowed by Section 457 of the Code, and the Participant has not previously received an in-service cash out distribution under this Plan. Payment will be made after the City receives and approves the Participant's written request for payment. Only one in-service cash-out election will be made available to the Participant during the Participant's membership in this Plan. [Code §457(e)(9)(A).]

4. 10. Distributions under domestic relations orders.

Nothing contained in this Plan prevents the Trustee, in accordance with the direction of the Plan Committee, from complying with the provisions of a Qualified Domestic Relations Order meeting the requirements of Code Section 414(p)(11). This section specifically permits an alternate payee the right to receive an immediate distribution. It does not permit the alternate payee to receive a form of payment not otherwise permitted under the Plan.

The Plan Committee may establish reasonable procedures to certify the domestic relations order is qualified. Upon receiving a domestic relations order, the Plan Committee 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 certifying the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Committee must notify the Participant and each alternate payee, in writing, of its determination. The Plan Committee will provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

After the Plan Committee certifies the domestic relations order is qualified, the Plan Committee must make a separate accounting of the amounts payable

under the qualified domestic relations order until the amounts are eligible for distribution. The Trustee will make any payments or distributions required under this section by separate benefit checks or other separate distribution to the alternate payee(s). [Code § 414(p)(11); Reg. § 1.457-10(c)]

4. 11. Minimum Distribution Requirements.

(A) General Rules.

(1) Effective Date. The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) Coordination with Minimum Distribution Requirements Previously in Effect. [Reserved.]

(3) Precedence. The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(4) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.

(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 Distributions Begin. 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) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as provided in Section F,

below, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.

(b) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, except as provided in Section F, below, 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) 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 by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) 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 4.11(B)(2) other than Section 4.11(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.11(B)(2) and Section 4.11(D), unless Section 4.11(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.11(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.11(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 4.11(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 (C) and (D) of this Section 4.11. 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 401(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) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(b) 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 Section 1.401(a)(9)-9 of the Treasury regulations, 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 (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 Date 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 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 longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(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 year after the year of the Participant's death, 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 Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before Date Distributions Begin.**

(a) **Participant Survived by Designated Beneficiary.** Except as provided in the Plan, 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 (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 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 (B)(2)(a), this Section (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 Section 4.4 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(2) Distribution calendar year. 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 distributions are required to begin under Section (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 Section 1.401(a)(9)-9 of the Treasury regulations.

(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 amounts rolled over or transferred 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. The date specified in Section 4.1 of the Plan.

(F) Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.

Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections (B)(2) and (D)(2) of Section 4.11 of the Plan applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 4.11(B)(2) or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with Sections (B)(2) and (D)(2) of Section 4.11 of the Plan.

4. 12. Direct Rollovers of Plan Distributions.

(a) Direct Rollovers. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Section 408(d)(3)(C) of the Code). The Plan Committee may develop procedures as it deems necessary or desirable to comply with the requirements applicable to direct transfers, including any exceptions to the requirements and subsequent changes made by law or Treasury Regulations.

(b) Definitions.

(1) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or Life Expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under Code § 401(a)(9) and 457(d)(2); (c) the portion of any distribution that is made as a result of unforeseeable emergency of the employee; (d) any distribution that is not includable in gross income (determined without regard to

the exclusion of net unrealized appreciation with respect to employer securities); and (e) 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.

For purposes of the direct rollover provisions of the plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(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) or 403(b), a qualified trust described in Code § 401(a), or an eligible plan described in Code § 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan for this plan that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code § 414(p).

(3) Distributee. A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse

and the Employee's or former Employee's spouse, former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse, former spouse.

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

4. 13. In-Service Transfers for Purchase of Defined Benefit Plan Service Credits.

A Participant may elect in writing, on a form prescribed and supplied by the Plan Committee, to withdraw all or a portion of the Participant's Account for the purpose of (a) purchasing permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving governmental defined benefit retirement plan; or (b) repaying a prior cash-out distribution to which Code Section 415 does not apply by reason of Code Section 415(k)(3). Any such withdrawal will be transferred directly to the Trustee of the Defined Benefit Governmental Plan.

4. 14. Rollover.

Any Participant, with the Plan Committee's consent and after filing any form(s) prescribed by the Plan Committee, may contribute cash or other property to the Trust if the contribution is a "Rollover Contribution" which the Code permits an Employee to transfer either directly or indirectly from one qualified plan to another qualified plan within the meaning of Code § 402(c)(8)(C).

(a) Policy Regarding Rollover Acceptance. Before accepting a Rollover Contribution, the Plan Committee may require an Employee to furnish satisfactory evidence that the proposed transfer is in fact a "Rollover Contribution" which the Code permits an Employee to make to a qualified plan.

The Committee in its sole discretion may decline to accept a Rollover Contribution of property which could: (i) generate unrelated business taxable income; (ii) create difficulty or undue expense in storage, safekeeping or valuation; (iii) create other administrative problems for the Plan or Trust.

The Plan Committee, operationally and on a uniform and nondiscriminatory basis, may limit the source of Rollover Contributions that may be accepted by this Plan. The Plan Committee may adopt, amend or terminate any procedures and rules as it deems necessary or desirable to comply with the requirements and guide its decisions regarding Rollover Contributions it will accept.

The Trustee will invest the Rollover Contribution as part of and in the same manner as the rest of the Trust Fund. As of the Accounting Date (or other valuation date) for each Plan Year, the Plan Committee will allocate and credit the net income (or net loss) from an Employee's Rollover Contributions Account and the increase or decrease in the fair market value of the assets of the Rollover Contributions Account in the same manner as all other Participant Accounts. The Plan shall separately account for eligible rollover distributions from any eligible retirement plan. It may further elect to separately account for eligible rollover distributions that are not from an eligible deferred compensation plan described in Code Section 457(b) maintained by an eligible governmental employer described in Code Section 457(e)(1)(A). Except as set forth by the Commissioner of the Internal Revenue Service in Revenue Rulings, Notices and other guidance, the limitations on distribution set forth in Section 4.1 apply to any amounts held in a separate account for eligible rollover distributions. In accordance with Rev. Rul. 2004-12 the Committee will allow the Participant to

request a distribution of the Participant's rollover accounts at any time. The Plan Committee may establish non-discriminatory rules governing such withdrawals and other administrative details.

The Plan Committee shall develop such procedures, and may require such information from an Employee desiring to make such a transfer, as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of this paragraph. Upon approval by the Trustee, the amount transferred shall be deposited in the Trust Fund. Such amount shall be one hundred percent (100%) vested in the Employee and shall share proportionally in the profits and income and in the losses and expenses of the Trust Fund. Upon termination of employment or retirement, the rollover amount, increased and/or decreased as herein above provided, shall be distributed in accordance with Article 4.

4. 15. Participant Loans.

(a) General. The Plan Committee may make loans on a nondiscriminatory basis to a Participant in accordance with the loan policy established by the Plan Committee, provided: (1) the loan policy satisfies the requirements of Section 3.5(k); (2) loans are available to all Participants on a reasonably equivalent basis and are not available in a greater amount for highly compensated employees than for other Employees; (3) any loan is adequately secured and bears a reasonable rate of interest; (4) the loan provides for repayment within a specified time; (5) the default provisions of the note prohibit offset of the Participant's Account prior to the time the Trustee otherwise would distribute the Participant's Account; and (6) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's Account.

(b) Default on a Loan. If a Participant defaults on a loan made pursuant to a loan policy adopted by the Plan Committee pursuant to Section 3.5(k), the outstanding balance of the loan should be treated as a deemed distribution. In such event, an actual distribution of a Plan loan offset amount will not occur until a distributable event occurs in the Plan. At that time, the Plan Committee will reduce the Participant's Account by the lesser of the amount in default (plus accrued interest, if any) or the Plan's security interest in that Account.

4. 16. Health and Long-Term Care Insurance Distributions.

(a) **Election to deduct from distribution.** 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 4.16(b), to pay qualified health insurance premiums.

(b) **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 health insurance premiums, and which otherwise complies with Code § 402(l).

(c) **Definitions.**

(1) **Eligible retired public safety officer.** An "Eligible Retired Public Safety Officer" is an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer.

(2) Public safety officer. A “Public Safety Officer” has the same meaning as in Section 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 insurance plan or qualified long-term care insurance contract (as defined in Code § 7702B(b)).

ARTICLE 5

5. CUSTODIAN/TRUSTEE, POWERS AND DUTIES

5.1. Acceptance and Trust Committee.

The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee agrees to hold the Trust Fund in trust for the exclusive benefit of the Participants and their Beneficiaries in accordance with the provisions of this Plan and Trust.

The Trustee shall be the Plan Committee unless it appoints an ancillary Trustee under Section 5.18. There shall be no need to distinguish between the Plan Committee and Trustee functions. Where signature of the Trustee is required, the Plan Committee member(s) shall sign as Plan Committee member - - Trustee. Where there are references in this Article to communication or direction between the Trustee and the Plan Committee, it shall be deemed to apply to an outside or ancillary Trustee, if appointed. Members of the Plan Committee do not have to show communication or direction between themselves as Plan Committee and as Trustees.

5. 2. Investment Advisory Committee.

In accordance with RCW 35.39.080, there is also established an Investment Advisory Committee which is also the Plan Committee.

5. 3. Receipt of contributions.

The Trustee is accountable to the City for the funds contributed to it by the City, but does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obliged to collect any contributions from the City, nor is The Trustee obliged to see that funds deposited with it are deposited according to the provisions of the Plan.

5. 4. Investment powers.

(a) Trustee powers. The Trustee has full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment manager or with respect to a Plan asset properly subject to City, Participant or Plan Committee direction of investment. The Trustee must coordinate its investment policy with Plan financial needs as communicated to it by the Plan Committee. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- (1) To invest any part or all of the Trust Fund 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, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate, as a prudent person would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith is proper but must be of a kind constituting a diversification considered by law suitable for trust investments.

- (2) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.
- (3) 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 of 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 govern the investment of such assets and which the Plan 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 the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.

- (4) 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.
- (5) To credit and distribute the Trust as directed by the Plan Committee. The Trustee is not 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 is accountable only to the Plan Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Committee.
- (6) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge; to make loans on a nondiscriminatory basis to a Participant in accordance with the loan policy established by the Plan Committee, provided any loan is adequately secured, bears a reasonable rate of interest, provides for repayments within a specified time, prohibits offset of the Participant's Account for loan default prior to the time the Trustee otherwise would distribute the Participant's Account, and otherwise conforms

to the Participant loan exemption provided by Code § 457 and regulations thereunder.

- (7) To compromise, contest, arbitrate or abandon claims and demands, in its discretion.
- (8) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights.
- (9) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.
- (10) 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.
- (11) 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.
- (12) 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 final adjudication is made by a court of competent jurisdiction.
- (13) To file all tax returns required of the Trustee.

- (14) To furnish to the City and the Plan Committee an annual statement of account showing the condition of the Trust Fund 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 are conclusive on all persons, including the City and the Plan Committee, except as to any act or transaction concerning which the City or the Plan Committee files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object.
- (15) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee is not obliged or required to do so unless indemnified to its satisfaction.

(b) Participant Loans. This Section 5.4(b) specifically authorizes the Trustee to make loans on a nondiscriminatory basis to a Participant or to a Beneficiary in accordance with the loan policy established by the Plan Committee, provided: (1) the loan policy satisfies the requirements of Section 3.5(k); (2) loans are available to all Participants and Beneficiaries on a reasonably equivalent basis and are not available in a greater amount for highly compensated employees than for other Employees; (3) any loan is adequately secured and bears a reasonable rate of interest; (4) the loan by its terms provides for repayment within a specified time; and principal and interest be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used

to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant; (5) the default provisions of the note prohibit offset of the Participant's Benefit prior to the time the Trustee otherwise would distribute the Participant's Benefit; and (6) the amount of the loan when added to all other loans outstanding from the Plan (including loans from any other plan maintained by the Employer) does not exceed (at the time the Plan extends the loan) the lesser of (a) \$50,000 reduced by the excess if any of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) one-half the present outstanding balance of loans from the Plan on the date the loan is made.

5. 5. Records and statements.

The records of the Trustee pertaining to the Plan must be open to the inspection of the Plan Committee and the City at all reasonable times and may be audited from time to time by any person or persons as the City or Plan Committee may specify in writing. The Trustee must furnish the Plan Committee with whatever information relating to the Trust Fund the Plan Committee considers necessary.

5. 6. Fees and expenses from Fund.

The Trustee will receive reasonable annual compensation as may be agreed upon from time to time between the City and the Trustee. No person who is receiving full pay from the City may receive compensation for services as Trustee. The Trustee will pay from the Trust Fund all fees and expenses reasonably incurred by it in its administration of the Plan unless the City pays such fees and expenses. Any fee or expense paid, directly or indirectly, by the

City is not an employer contribution to the Plan, provided the fee or expense relates to the ordinary and necessary administration of the Fund.

5. 7. Parties to litigation.

Except as otherwise provided by applicable law, no Participant or Beneficiary is a necessary party or is required to receive notice of process in any court proceeding involving the Plan, the Trust Fund or any fiduciary of the Plan. Any final judgment entered in any proceeding will be conclusive upon the City, the Plan Committee, the Trustee, Custodian, Participants and Beneficiaries.

5. 8. Professional agents.

The Trustee may employ and pay from the Trust Fund 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 Plan, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

5. 9. 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.

5. 10. Distribution directions.

If no one claims a payment or distribution made from the Trust, the Trustee must promptly notify the Plan Committee and then dispose of the payment in accordance with the subsequent direction of the Plan Committee.

5. 11. Notice to third parties dealing with multiple trustees.

No person dealing with the Trustee is obligated 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 Plan. 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 is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan will be conclusive in favor of any person relying on the certificate. If more than two persons act as Trustee, a decision of the majority of such persons controls (with or without a meeting) with respect to any decision regarding the administration or investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustee. However, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.

5. 12. Resignation.

See Article 3 or Section 5.18 if for resignation or removal of ancillary Trustee.

5. 13. Removal.

See Article 3 or Section 5.18 for resignation or removal of ancillary Trustee.

5. 14. Interim duties and successor Trustee.

Each successor Trustee succeeds to the title to the Trust vested in his or her predecessor by accepting in writing his or her appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of

record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under this Plan upon his or her predecessor. A successor Trustee shall not be personally liable for any act or failure to act of any predecessor Trustee, except as required under federal law. With the approval of the City and the Plan Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

5. 15. Valuation of Trust.

The Trustee will value the Trust Fund as of each Valuation Date to determine the fair market value of each Participant's Account in the Trust. The Trustee will also value the Trust Fund on such other valuation dates as directed by the Plan Committee.

5. 16. Limitation on liability - if investment manager, ancillary trustee or independent fiduciary appointed.

The Trustee is not liable for the acts or omissions of any investment manager the Plan Committee or Trustee may appoint, nor is the Trustee under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed investment manager. The Plan Committee, the Trustee and any properly appointed investment manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the Trust Fund under the control of the investment manager.

The limitation on liability described in this Section 5.16 also applies to the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 5.18 of the Plan. However, if the Trust Committee,

pursuant to the delegation described in Section 5.18 of the Plan, appoints an ancillary trustee, the Trust Committee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with applicable law. The City, the Trust Committee and an ancillary trustee may execute a letter agreement as a part of this Plan and Trust delineating any indemnification agreement between or among the parties.

5. 17. Investment in group trust fund.

The Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the City maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly the value of each Participant's Account under the Plan(s) in which he or she is a Participant.

5. 18. Appointment of ancillary trustee or independent fiduciary.

The Trust Committee, in writing, may appoint any person in any State to act as ancillary trustee with respect to all or a designated portion of the Trust Fund. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status. The ancillary trustee has the rights, powers, duties and discretion as the Trust Committee may delegate, subject to any limitations or directions specified in the instrument evidencing appointment of the ancillary trustee and to the terms of the Plan or applicable law. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 5.4 of the Plan including the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment

fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a State and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Trust Committee also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 5.17 of the Plan.

The ancillary trustee may resign its position at any time by providing at least 30 days' advance written notice to the Trust Committee, unless the Trust Committee waives this notice requirement. The Trust Committee, in writing, may remove an ancillary trustee at any time. In the event of resignation or removal, the Trust Committee may appoint another ancillary trustee, return the assets to the control and management of the Trustee or receive such assets in the capacity of ancillary trustee. The Trust Committee may delegate its responsibilities under this Section 5.18 to a Trustee under the Plan.

5. 19. Standard of care.

The Trustee, each investment manager, ancillary trustee or independent fiduciary and the Plan Committee shall discharge their respective investment duties as provided herein with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims and by diversifying the investments held hereunder consistent with investment policies, objectives and guidelines so as to minimize

the risk of large losses, unless under the Plan or circumstances it would be clearly not prudent to do so.

5. 20. Limits of liability.

No member of the Trust Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his or her own part, except his or her own willful misconduct. The City shall indemnify, hold harmless and defend each current or former member of the Committee from any and all liabilities arising out of his or her membership on the Committee, except liabilities arising out of his or her own willful misconduct, provided that a Trustee who is a union representative who is not a City employee shall be indemnified under this provision. This provision shall not apply to an outside service provider who is compensated. The Trust Committee, and any current or former member, shall notify the City as soon as possible of any such claims which it may seek indemnification and defense under this provision, and consult with the City Attorney on choice of defense counsel. The City may elect to conduct the defense of the Committee through outside counsel.

ARTICLE 6

6. MISCELLANEOUS

6. 1. No assignment or alienation.

Except as provided in Section 4.10 and 4.15, neither a Participant nor the Participant's beneficiary, or any of the Participant's creditors or their creditors (if any), shall have any claim or 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 Trustee will not recognize any such anticipation, assignment or

alienation. The payments and rights under this Plan are expressly declared to be nonassignable and nontransferable by operation of law. Further, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution, or other legal or equitable process.

Except as provided in Article V, the City shall have no beneficial interest in any assets of the Trust established therein, and no part of any asset in the Trust shall ever revert to or be paid to the City, either directly or indirectly; nor shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be, at any time, used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. The Trust Fund shall constitute a spendthrift trust under applicable state and federal law.

6. 2. Transfers between eligible plans.

This Plan will accept plan-to-plan transfers of deferred compensation accounts for employees who enter City service from another employer with an eligible governmental plan established under Code § 457. Conversely, if the Participant leaves City service to take a position with another employer with an eligible governmental plan, upon the notice to the City as provided in this section, the City will directly transfer the Participant's account to the Participant's new employer for deposit in its plan as long as the receiving plan accepts such transfers [Regs. § 1.457-10(b)]. If the Participant wishes to effect a plan to plan transfer, the Participant must give notice to the City in writing and identify the eligible employer with whom the Participant has accepted employment. Such transfer may be by distribution and a direct rollover so long as any distribution is made payable only to the recipient plan.

6.3. Priority.

This is a group plan. The concerns of the City and the need to accommodate all Participants as a whole comes first in Plan administration, adopting rules, setting fees and charges, and in making decisions that could affect many even though a practice, rule, charge or decision in a particular situation may seem unjust or arbitrary or cause hardship.

6.4. Number.

The singular of a noun or verb covers the plural, and the plural number applies to the singular, too.

6.5. Captions.

Captions are for convenient reference only and do not limit or comment upon the text of a section or article.

6.6. Successors.

This Plan shall be binding on the parties, all beneficiaries, and anyone claiming through any of them.

6.7. Entire agreement.

The Plan and Trust Document, as supplemented by implementing ordinances, written rules and procedures enacted from time to time, constitutes the entire agreement between the Participant and the City. The Participant may not rely upon any oral statements.

ARTICLE 7

7. AMENDMENT AND TERMINATION

7.1. Amendment/termination.

The City or the Plan Committee on behalf of the City may at any time amend, modify, or terminate the Plan with or without the Participant's consent (or of any beneficiary) or of all Participants. The City reserves the power to participate in the State of Washington Deferred Compensation Plan; the Library Board reserves the same authority as to Library personnel, and the authority to establish its own Plan.

7.2. Notice.

Amendments to the Plan will be enacted in the manner contemplated by the City Charter for City ordinances or, if proposed by the Plan Committee, in accordance with Plan Section 3.5(e). Wherever practical 30 days advance notice of proposed amendments to the Plan Document shall be provided, a public hearing will be held at which Participants may be heard, and a copy of the proposed amendment will be supplied to Participants. An adopted copy shall be filed with the City Clerk.

7.3. Limitation on amendments.

No amendment will deprive the Participant of any benefits to which the Participant is entitled under the Plan with respect to deferred amounts credited to the Participant's account before the effective date of the amendment. However, the City may at any time amend the Plan, in the event such amendment is necessary to qualify the Plan for tax exemption notwithstanding that such amendment may have the effect of depriving a Participant or Beneficiary of a right or benefit which has accrued.

7. 4. Result of termination.

If the Plan is terminated or further deferrals stopped for all Participants, the City will provide for retaining amounts already deferred and the making of payment in accordance with Article IV. If the City elects to participate in the State of Washington deferred compensation plan, the City may transfer all deferred amounts to the State as long as Participants receive credit with the state plan for their accounts balances with the City; the Library Board reserves the same authority as to Library personnel.

ARTICLE 8

8. DISCLAIMERS AND LIMITATIONS

8. 1. Employment unaffected.

Enrolling in the Plan will not give the Participant any right to continue the Participant's service with the City nor restrict in any way the City's rights to terminate the Participant's service. Deductions for Social Security purposes (Federal Insurance Contributions Act), the City Employees' Retirement System, workers' compensation and other state or City benefits, shall be based upon the salary or wages the Participant receives as if no deferrals are made.

8. 2. Disclaimer as to tax impact.

The City makes no representation of any kind as to the benefits of the Plan or the tax consequences that may occur to the Participant. The Participant should consult the Participant's own counsel on these matters.

8. 3. Assumption of risks.

The Participant accepts and assumes all risks that adhere in the Plan and its administration. The City, the Plan Committee and/or the Trust Committee will

not be liable for any loss due to market fluctuations, failure of investments, default by an investment underwriter or annuity carrier, or errors or misappropriation by any plan administrator. Any plan administrator, insurance company, investment underwriter, or financial institution will be an independent contractor responsible for its own actions.

ARTICLE 9

9. DEFINITIONS

9. 1. Account Value.

A Participant's Account Value will be an amount, in trust, which will represent the current value of all contributions made by the Employer and all the amounts deferred, less administrative fees and expenses, plus gains or minus losses from market fluctuations, and, if applicable, deductions for withdrawal (surrender) fees.

9. 2. Age 50 Catch-up.

See Section 2.4(c).

9. 3. City.

City means The City of Seattle.

9. 4. Code.

Code means the Internal Revenue Code of 1986 as now existing or later amended or replaced. References to specific sections or regulations include Amendments to those sections.

9. 5. Code requirements.

Code requirements means the eligibility standards established by the United States Internal Revenue Code for eligible deferred compensation plans, as now

existing or amended or replaced. See Code § 457 for Code requirements in effect upon adoption of this Plan.

9. 6. Deferred amount.

Deferred amount means the part of the Participant's wage or salary which the City and the Participant mutually agree shall be deferred pursuant to this Plan and Trust.

9. 7. Employee.

Employee means any person who is employed by the City and identified as an employee in the City's Municipal Code. An Employee does not include any person identified by the City as an independent contractor or temporary agency employee even if that person is later reclassified as an employee by the City, any governmental agency or court.

9. 8. Immediate Family

Immediate Family has the meaning set forth in SMC 4.16.030 as now or hereafter amended.

9. 9. Includable compensation.

Includable compensation means the Participant's compensation from the City reported to the Internal Revenue Service for federal income tax purposes. Such term does not include payments made on the Participant's behalf for retirement system purposes under Ordinance 111992 and Code § 414(h), and other non-taxable income. Such term does include elective contributions made by the City on the Employee's behalf. Elective contributions are amounts excludible from the Employee's gross income under Code §§ 125, 132(f)(4), 402(e)(3), 402(h), 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, Code § 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan, or a Code § 457 plan. Amounts under § 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under § 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan. It is determined without taking into account Washington's community property laws [Code § 457(e)(5); § 415(c)(3); Regs. § 1.457-2(g)].

9. 10. Investment Advisory Committee.

Investment Advisory Committee means the group of individuals appointed as the Trust Committee pursuant to Section 5.1.

9. 11. Investment underwriter.

Investment underwriter means a financial institution; a mutual fund, a securities manager, trust, or dealer; or any other organization, except the City, itself, which invests and manages deferred amounts.

9. 12. Normal retirement age.

Normal retirement age. See Section 2.4(e).

9. 13. Last Three Years Catch-up.

See Section 2.4(b).

9. 14. Participant.

Participant means each and everyone who enrolls in the Plan and for whom an account is maintained.

9. 15. Pay period.

Pay period means the regular calendar interval of City employment by which the Participant's salary or wages are paid.

9. 16. Plan Ceiling.

Plan Ceiling is the lesser of the applicable dollar amount within the meaning of Code § 457(b)(2)(A), as adjusted for the cost-of-living in accordance with Code § 457(e)(15), (\$12,000 for 2003; \$13,000 for 2004; \$14,000 for 2005; \$15,000 for 2006 and thereafter) or one hundred percent (100%) of the Participant's "Includible Compensation." See Section 2.4.

9. 17. Plan Committee.

Plan Committee means the group of individuals appointed as such pursuant to Section 3.1 and shall be the Trustee pursuant to Section 5.1.

9. 18. Plan.

Plan means this City of Seattle Voluntary Deferred Compensation Plan and Trust Agreement as it now exists or hereafter may be amended.

9. 19. Plan Year.

Plan Year means the 12-month period ending on December 31.

9. 20. Regs.

Regs. is an abbreviation for the Regulations implementing the Internal Revenue Code, Title 26, Code of Federal Regulations.

9. 21. Required Beginning Date.

See Section 4.1(c).

9. 22. Trust.

Trust means the separate Trust created under this Plan.

9. 23. Trustee.

Trustee means the Trust Committee appointed as such pursuant to Section 5.1.

9. 24. Unforeseeable emergency.

Unforeseeable emergency means the circumstances defined in Section 4.6 when payment may be made to Participants who remain in City service.

9. 25. Valuation Date.

Valuation Date means the last day of each Plan Year and such other date or dates as may be designated by the Plan Committee.

9. 26. The Participant.

The Participant means each and everyone who enrolls and participates in the Plan.

ARTICLE 10

10. EFFECTIVE DATE

Unless otherwise stated herein, the provisions of this Amended Agreement are effective as of February 12, 2009.

ARTICLE 11

11. TRUSTEES

NOW THEREFORE, the Trustees accept the Trust created under the Plan and agree to perform the obligations imposed, and in recognition of the premises recited above, the Plan Committee Members - Trustees have signed below.

PLAN COMMITTEE MEMBERS - TRUSTEES:

Director of Personnel Department

Director of Department of Executive Administration

Investment Director of Department of Executive Administration

Executive Director of Retirement System

Member at Large

Union Representative

Union Representative

RULES IMPLEMENTING THE CITY'S DEFERRED COMPENSATION PLAN

These Rules implement the City's Deferred Compensation Plan. In case of conflict, the Plan and amendments to the Plan Document control.

These rules are in effect unless amended, revoked, or superseded. The rules in Part G interpret and apply particular language in 26 USC §457 and provide guidance to the Plan Administrator and City officials. If and to the extent that an authoritative opinion of a court or of the Internal Revenue Service rules directly on the issue, the Plan Administrator or a City official may follow that decision rather than the guidance of the rules in Part G.

"You" means the participant in the City's Deferred Compensation Plan.

A. Enrollment

Rule A-1. Enrollment Services. Enrollment services are provided in a manner specified by the Plan Administrator. The Plan Administrator can be contacted for detailed information.

Rule A-2. Time to Reconsider. A copy of the Plan Document is available on the City's Inweb at http://inweb/personnel/benefits/pubs/dc_plan_doc.pdf or can be obtained in hard copy from the Benefits Unit. After enrolling, you may withdraw from the Plan before any payroll deduction is taken without any penalty. Participation in the Plan is entirely voluntary.

Rule A-3. Changes in Amount Deferred. You may change the amount of your deferral or stop your deferral at any time. However, the City Finance Director may decline to accept "year-end" increases in deferrals, which are

presented in November and to occur only in December. (Section 2.03 of the Plan Document explains when a change takes effect.)

Rule A-4. Method of Making Transfers in Investment Selections.

You, or if you die, your beneficiary, may transfer funds between the Plan's investment options by speaking with a Plan Administrator representative in a recorded conversation or via the Plan Administrator's automated voice response system subject to written confirmation by the Plan Administrator in the manner that securities transactions are conducted under the rules of the New York Stock Exchange or of the National Association of Securities Dealers and subject to the terms and conditions for crediting participant account values in the City's contract with the Plan Administrator. For cause the Plan Administrator may require that transfer between securities investments be authorized in writing in advance.

Transfers to or from the investment selection of the Seattle Metropolitan Credit Union of Seattle may require a written authorization.

B. Deferrals

Rule B-1. "Includable Compensation." To calculate your "includable compensation" for determining how much of your compensation that you can defer, the City will use wage and salary reporting forms it supplies to the United States Internal Revenue Service. Certain payments, which are not reported as income to you for federal income tax purposes, are excluded, e.g., retirement contributions and workers' compensation payments.

Your salary wage will first be considered “includable compensation” when it has been reported to the United States. In cases of doubt, the City Personnel Department Director’s determination is final.

Rule B-2. Exclusions from “Includable Compensation.” Your “includable compensation” excludes amounts paid to you under the Internal Revenue Code Section 105(d) (relating to wage continuation plans) and/or Section 911 (relating to citizens or residents of the United States living abroad).

Rule B-3. Schedule Deferrals. Unless you are using the “catch-up” provision,” your total annual deferral must be not more than the lesser of the applicable dollar amount within the meaning of Code Section 457(b)(2)(A), as adjusted for the cost-of-living in accordance with Code Section 457(e)(15), (\$12,000 for 2003; \$13,000 for 2004; \$14,000 for 2005; \$15,000 for 2006 and thereafter. After 2006, the \$15,000 amount is adjusted for cost of living increases in \$500 increments.), or one hundred percent (100%) of the Participant’s Includable Compensation earned from the City during the calendar year at the time your deferral is made.

Rule B-4. Ranking of Payroll Deductions. Mandatory payroll deductions take precedence over deferrals: federal income tax withholdings; social security, workers’ compensation, and unemployment taxes; retirement system contributions; and when applicable, union dues and garnishments. The following payroll deductions are presumed to be senior unless your payroll officer indicates otherwise: contributions to charities, payment for U.S. Savings Bond programs, and payments to the Seattle Metropolitan Credit Union. If your pay is

not sufficient to cover all such deductions, the deficiency will be taken from your deferral.

Rule B-5. Compensatory Offsets. If the City has deducted more or less from your pay than it should have done due to an error or a late charge, the City may, in its discretion, make a corresponding offset on your next succeeding payroll rather than revise and correct the affected payroll warrant.

C. Designation of Beneficiaries

Rule C-1. Making a Designation. You are responsible for designating one or more beneficiaries to receive benefits under the Plan in the event of your death called the “primary beneficiary” and for naming a beneficiary or two or more beneficiaries to receive benefits under the Plan if your primary beneficiary should die before you or within ten days of your death. The latter are called “contingent beneficiaries.” You should make your designations by completing a form supplied by the Plan Administrator and filing it with the Plan Administrator. You should make sure that the addresses of your beneficiary(ies) are current and inform the Plan Administrator of any changes of address in writing.

Rule C-2. Designation by People Who Are Married or Who Have a State Registered Domestic Partner (“SRDP”). If you are married or have a SRDP, your spouse or SRDP must give his or her written consent for you to designate anyone other than your spouse or SRDP as your primary beneficiary(ies). You may change a designation of your spouse or SRDP as your beneficiary only with his or her written consent. The beneficiary designation of a married participant or a participant with a SRDP is not valid (whether you are

married or registered at the time of the designation or later) unless your spouse or SRDP consents to the beneficiary designation. Even if your current beneficiary is a trust or estate of which your spouse or SRDP is a beneficiary, spousal or SRDP consent is necessary. Without such waiver and consent, the death benefit cannot be paid until the Plan has consulted with counsel.

Rule C-3. Naming Two or More Beneficiaries. If you name two or more primary beneficiaries, each survivor will share in the benefits equally unless you indicate otherwise. If you name two or more contingent beneficiaries, any benefits paid to the contingent beneficiaries will be apportioned equally between them unless you indicate otherwise

Rule C-4. Change in Beneficiaries. You may change a primary or contingent beneficiary at any time.

D. Account Statements

Rule D-1. Account Statements. You should examine your quarterly account statements promptly. You must bring any errors or omissions to the attention of the Plan Administrator, or if your account is maintained with another investment selection, to the financial institution or investment manager responsible for that selection. Your inquiry or complaint must be made within sixty (60) days. If the problem is not resolved to your satisfaction, you should then promptly notify the City Personnel Department Director in writing.

E. Payment of Benefits

Rule E-1. Proof May Be Needed. In order to receive benefits under the Plan, you or your beneficiary may need to present proof of age, identity, marriage, or death. The amount of proof for uniformed personnel will be measured by the evidence required by the Washington Law Enforcement Officers' and Fire Fighters' Retirement Systems, and for other City personnel by the City Employees' Retirement System.

Rule E-2. Survivorship. To make sure that your beneficiary(ies) survives you for ten or more days, the City will delay making payment to a beneficiary until at least sixty-one (61) days after your death.

Rule E-3. Payment to a Trust. Your designation of a trust as your beneficiary authorizes payment to the trustee as full satisfaction of the City's obligation; the City will not be responsible for making inquiry about the trust or for the trustee's performance. If you fail to make a designation of beneficiary or none of your beneficiaries survive you, the City will pay the benefits according to the order set out in Plan Section 4.4.

Rule E-4. Doubt About Payment. If the City has any doubt as to whom to make payment, the City may in its discretion pay the benefits into the registry of the court for judicial determination.

Rule E-5. Distribution to participants after separation from service. After separation from service, your accumulated deferrals (your "benefits") shall be paid to you in one or more installments as selected by you pursuant to Rules E-8 and E-9. The value of your benefits will be based on their current market value

at the time of the transfer less any administrative fees or expenses due to the Plan.

Rule E-6. Distribution in the event of death of participant. Should you die at any time, whether before or after separation from service, your benefits shall be paid to your beneficiary or beneficiaries designated by you pursuant to Rules C-1 through C-4. Your benefits shall be paid out as provided in Rules E-5 through E-9. If no beneficiary is designated as provided in the Plan, or if the designated beneficiary does not survive you by a period of ten days, then a lump sum shall be paid in accordance with Plan Section 4.11 to your estate

Rule E-7. Distribution in event of death of beneficiary. In the event a beneficiary survives you by ten days and becomes entitled to receive benefits, benefits shall become payable to the beneficiary's estate pursuant to Plan Section 4.11 on the second month following the beneficiary's death, unless benefits are being paid in the form of an annuity, in which case the disposition of the remaining amount shall be determined by the annuity contract.

Rule E-8. Elections regarding distribution. You (or if you die, each of your beneficiary(ies) other than an organization or an estate) shall elect the date when you wish payout to begin (your “distribution commencement date”) and the payout period (your “method of distribution ”) in the following manner.

(A) Election regarding time of payment (“distribution commencement date”). You may elect to begin your distribution after your separation from City service (or if your beneficiary makes the election, after your

death). Unless you elect to begin distribution or you transfer your account to another eligible plan, the Plan treats your distribution as deferred until a later date. Any election to roll over your account from the Seattle City Employees' Retirement System to the 457 Plan must be made prior to terminating employment with the City.

(B) Election regarding method of payment (“method of distribution”). You (or your beneficiary) upon making an election regarding the distribution commencement date, may also elect the period over which payments will be made (“the method of distribution”). The method of distribution election may be made at any time you or your beneficiary elect to begin distributions. Once having made this election of method, you (or your beneficiary, other than an organization or estate) may change the method of distribution prior to or even after payments begin, including the ability to revoke his or her election of a method of distribution, increasing or decreasing his or her payments after payments begin so long as elections comply with minimum distribution rules in Plan Section 4.11. Your beneficiary may also make this election after your death where you were already receiving payments, but, as provided in Rule E-9 (C), your beneficiary must receive distribution at least as rapidly as it was being distributed to you. Your beneficiary must make an election of distribution method after your death, and if no election is made the Plan may begin distribution as provided in subsection (D) of this section. Provided, if you were receiving payout in the form of an annuity contract, then the successor's right shall be limited by the terms of that contract.

(C) How elections are made. You or your beneficiary will make elections allowed under this section in the manner designated by the Plan Administrator.

(D) Consequences in absence of a timely election regarding time of payment. Regardless of an election to defer distribution, payments must begin not later than April 1st of the calendar year following the calendar year in which the Participant reaches age 70 ½ (if the Participant is no longer employed). If the Participant's benefits are distributed in periodic payments, the amount and timing of such payments must meet the minimum payout requirements of Section 457 (d)(2) of the Internal Revenue Code and its applicable regulations known as the minimum distribution rules.

If verification of your mailing address cannot be obtained by the week prior to the date of distribution, the distribution will be delayed until the next payment cycle following the date such information becomes available.

(E) Effects of certain employment changes. Transfers of your accounts from the City's deferred compensation plan to another eligible retirement plan or individual retirement arrangement ("IRA") will be made by the City, provided the receiving plan will accept the transfer, the distribution is an eligible rollover distribution and you provide the name of the eligible retirement plan or IRA or other information to enable the City to arrange a transfer or direct rollover. The Internal Revenue Code now allows transfers or rollovers of your 457 plan assets to most other types of IRS qualified retirement plans or IRAs but does not require such plans to accept rollovers or transfers.

(F) Consequences in absence of an election regarding method of payment. In the absence of an election regarding the period of time over which payment will be made, payment will be deferred unless required under the minimum distribution rules described in subsection (D) of this rule.

(G) Payment to an organization or estate. Any amount payable to an organization or estate shall be paid in a lump sum as prescribed in Plan Section 4.11.

Rule E-9 Distribution of deferrals (benefits). All payments are subject to the limitations in Plan Section 4.11. You must either receive a lump sum payment or periodic payments. Once payments to you begin, you may accelerate or defer payments, or increase or reduce the payments under the schedule provided such actions continue to comply with minimum distribution requirements.

F. Ancillary Provisions

Rule F-1. Powers of Attorney. If you want to give another person a power of attorney or appointment to change your beneficiaries, your investment selections, or your selection for phased payment of benefits, you must expressly authorize your agent to make those decisions for you. A general power of attorney in broad language will not be accepted as authorizing such a delegation of your decision-making on these subjects unless it is very clearly stated.

Rule F-2. Domestic Relations Orders.

A. Segregation of Assets for Alternate Payees. The Plan will establish a sub-account for the former spouse of a participant (hereafter “an alternate

payee” account) upon the Plan Administrator’s receipt and acceptance of a qualified domestic relations order providing for the division of the participant’s benefits under the Plan. The Plan specifically permits a court order to permit an immediate payout of the amount awarded the alternate payee. An order must not require the Plan Administrator to act in violation of the Plan, its implementing rules, Section 457 of the Internal Revenue Code or its regulations. The following rules state the requirements for acceptance and administration of the alternate payee’s sub-account.

B. Acceptance of a Domestic Relations Order. No action to segregate or otherwise recognize the claim of a participant’s former spouse will be taken unless the Plan Administrator is served with a certified copy of a court order providing for all of the following without reference to any separate document unless the separate document is attached:

1. The court order must state that it is entered pursuant to state domestic relations law and that the order relates to the provision of child support, alimony, or distribution of marital property rights to a former spouse.
2. The court order must refer unambiguously to the City’s Deferred Compensation Plan.
3. The court order must clearly specify the name and mailing address of the participant, and the name and mailing address of the alternate payee. The alternate payee must provide date of birth and taxpayer

identification number to establish an account and receive a distribution.

4. The court order must specify the amount or percentage (or clearly state the method or manner in which the amount or percentage is to be determined) of the participant's account to be segregated for the separate sub-account of the alternate payee.
5. The court order must specify the date of segregation if the Participant is not yet receiving payout under the Plan, or, if the participant is currently receiving payout, the court order must specify the beginning date of transfer of the Participant's benefits and the amount or percentage (or clearly state the method by which the amount or percentage is to be determined).
6. The court order must specify whether earnings or losses on the amount segregated will accrue to the account subsequent to the segregation date until distributed and if not must clearly state that the amount to be segregated and distributed is without earnings or losses regardless of when distributed. The latter (segregation and later distribution without earnings or losses) will generally only be allowed if the order requires an immediate distribution.
7. The court must describe the form of benefit payment and timing, which must be consistent with the Plan. The Plan now permits an immediate lump sum distribution to an alternate payee.

C. Domestic Relations Orders -- Provisions Not Acceptable. The Plan Administrator shall not accept a Domestic Relations Order that provides for any of the following:

1. The court order requires the purchase of investments or distribution of benefits in a form or method other than those provided by the Plan.
2. The court order does not clearly specify the amount or percentage or clearly describe a method of calculating the amount or percentage to be segregated.
3. The court order specifies a tax treatment of the benefits that is inconsistent with the tax code (i.e., taxes to be paid by the alternate payee or the participant.) The order may state that the tax characterization of the distribution may be determined by Internal Revenue Service regulations and rulings.
4. The court order assigns the benefits to the alternate payee in violation of the non-assignment provisions of the Plan.

If a domestic relations order contains any of the above provisions, the Plan Administrator may reject the order and require the Participant to obtain a new order conforming to these requirements.

D. Alternate Payee Sub-Account. When a qualified domestic relations order has been accepted by the Plan Administrator, an alternate payee sub-account will be established in the alternate payee's name.

1. The assets will be segregated into a sub-account for the alternate payee, and the sub-account will be subject to the same terms and conditions of the Plan as if the alternate payee were a participant.
2. The alternate payee will be allowed to manage the sub-account, transfer its assets among the investment options offered by the Plan, request a distribution and receive a separate account statement.
3. The alternate payee's sub-account will be subject to the same administrative fees, restrictions on investment transfers, and the ordinances and administrative rules established for the Plan.
4. The alternate payee assumes all risks inherent in participating in the Plan and its investment selections.
5. The alternate payee will be allowed to designate a beneficiary or beneficiaries for the sub-account.
6. The alternate payee may, if eligible under the Plan, receive unforeseeable hardship withdrawals or an in-service distribution.
7. The alternate payee will be responsible for keeping the Plan Administrator informed of changes in address, and the City or its Plan Administrator shall not be responsible for the failure to receive notices or the alternate payee's failure to timely exercise options under the Plan because of the alternate payee's failure to keep the Plan Administrator informed of address changes.
8. The alternate payee will be eligible to receive distribution at his or her election unless the order specifies otherwise. A divorce by itself without

further proof of hardship shall not be considered an emergency hardship for purposes of an emergency hardship withdrawal.

9. The City will comply with all applicable tax reporting and withholding requirements when complying with an order requiring segregation of benefits to the alternate payee or when making a distribution of benefits to the alternate payee pursuant to the provisions of the Plan. The participant must seek independent tax advice concerning the tax consequences of any distribution, as the City will not be responsible for advising either party regarding the tax consequences of any particular distribution required by an otherwise acceptable qualified domestic relations order. The City may seek tax advice or a ruling with regard to the tax characterization of the distribution, and delay distribution until a ruling is received.
10. If, subsequent to the establishment of a sub-account, the alternate payee becomes an employee of the City and enrolls in the Deferred Compensation Plan, the alternate payee's sub-account must be segregated from the alternate payee's new deferred compensation account.

Rule F-3. Election of distribution date for separated Participants. If you have already separated from City service prior to the date the Plan was amended in 1998, and you have not commenced payment of your benefits or previously elected a beginning date for commencement of your benefits, you will be treated as having made an election to defer distribution.

Rule F-4. Plan Committee meetings and mailing address. The Plan Committee will conduct a regular business meeting every quarter (typically in mid-February, mid-May, mid-August and mid-November). The date, time and location of the meetings will be announced in quarterly participant statements. If the location, date or time is changed or the meeting is cancelled, the Plan Committee will be notified and a notice will be posted outside the location two working days in advance of the scheduled meeting date.

Correspondence to the Plan Committee can be sent to the City of Seattle Personnel Department, 700 5th Ave., Suite 5500, P.O. Box 34028, Seattle, WA 98124-4028.

G. Interpretive Rules

Rule G-1. Under-utilization Limitation for Earlier Years. In order to satisfy IRS §1.457-4(c)(3), under-utilization limitations, a participant can apply the years of his or her City employment on or after November 1, 1985, while he or she was eligible to participate in the City Plan, to calculate the “plan ceiling” for purposes of the “catch-up” provision in Section 2.4.

Rule G-2. Coordination with Certain Other Deferrals. In accord with Section 457(c)(2), as to an individual who participates in two or more Section 457 deferred compensation plans in any taxable year and upon a request from you, the City will take into account and reduce the maximum amount that you may defer under the City Plan in that taxable year by the amount you are contributing to that plan.