



# CITY OF *Los Angeles*

## DEFERRED COMPENSATION PLAN

### Board Report 21-20

Date: April 20, 2021

To: Board of Deferred Compensation Administration

From: Plan Governance and Administrative Issues Committee and Staff

Subject: Revised Plan Document for the City of Los Angeles Deferred Compensation Plan

#### Board of Deferred Compensation Administration

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#### Recommendation:

That the Board of Deferred Compensation Administration (Board) approve the proposed revised Plan Document for the City of Los Angeles Deferred Compensation Plan.

#### Discussion:

##### A. Background

In 1983, the City of Los Angeles established the Deferred Compensation Plan (DCP) under Internal Revenue Code Section 457 and City of Los Angeles Administrative Code (LAAC) Division 4, Chapter 14, as a voluntary supplemental retirement savings program for all employees who are members of one of the City's three primary defined benefit retirement plans.

The Board has adopted (and periodically revised) a Plan Document for the DCP. The existing adopted Plan Document is provided as **Attachment A**.


On **April 17, 2018**, the Board of Deferred Compensation Administration (Board) referred review of the Plan Document to the Plan Governance & Administrative Issues Committee (Committee). The intention of this review was not merely to incorporate regulatory updates, but to conduct a comprehensive update and review to ensure it is consistent with applicable law, regulation, and administrative processes.

##### B. Staff and Committee Review

Staff's approach in the revision process was to develop a comprehensive update, reviewing every Plan Document line and provision to ensure it was technically accurate. In preparing for the

Committee’s eventual review, eight review and revision sessions occurred between August 2019 and May 2020 involving Personnel Department staff and City Attorney staff. In addition to staff and City Attorney review, the draft was also reviewed by outside tax counsel Ice Miller and Third-Party Administrator (TPA) Voya. The revised Plan Document also incorporates certain provisions required or permitted under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), which was signed into law December 20, 2019; the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020; and the Consolidated Appropriations Act of 2021 (CRA), which was signed into law on December 27, 2020. One Plan Document Section (9.06) is marked as “Reserved” pending receipt of additional guidance from the federal government regarding modifications to rules regarding distributions for participants dying on or after January 1, 2022. That provision will be brought to the Board for update once the guidance is received.

Staff presented the proposed revised Plan Document to the Committee on **January 14, 2021**. The Committee provided staff with initial comments and edits. A subsequent meeting was held on **March 11, 2021**. The Committee provided staff with final edits which have been incorporated into **Attachment B**. Staff and the Committee recommend the Board approve the proposed revised Plan Document for the City of Los Angeles DCP.

Submitted by:   
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Steven Montagna, Chief Personnel Analyst

# CITY OF LOS ANGELES DEFERRED COMPENSATION PLAN

## PLAN DOCUMENT

*(Adopted by the City of Los Angeles Board of Deferred Compensation Administration on November 27, 2001; revised January 29, 2002; revised February 26, 2002; revised April 29, 2003; revised March 15, 2005; revised December 20, 2005; revised June 19, 2007; revised March 18, 2008; revised August 18, 2009; revised June 21, 2011; revised December 20, 2011; revised May 15, 2012; revised March 18, 2014; revised June 16, 2015.)*

### I. INTRODUCTION

Pursuant to City of Los Angeles Administrative Code Division 4, Chapter 14, the City of Los Angeles hereby establishes a §457 deferred compensation plan which shall be called the Deferred Compensation Plan (“the Plan”). This Plan has been established in accordance with the provisions of §457 and §402A of the Internal Revenue Code (“IRC”) of 1986, as amended.

### II. DEFINITIONS

- (a) **“Employer”** or **“City”** means all offices, bureaus, and departments of the City of Los Angeles and includes therein departments which have control of their own definite revenues.
- (b) **“Employee”** means any full-time Employee or officer of the City or any member of one of the City’s retirement or pension plans, excluding the Pension Savings Plan, who performs services for the City.
- (c) **“Participant”** means any Employee who has fulfilled the requirements of enrollment in the Plan.
- (d) **“Beneficiary”** means any person, trust, corporation, or firm, or any combination thereof, designated by a Participant to receive benefits under the Plan or an alternate payee under a qualified domestic relations order.
- (e) **“Participation Agreement”** means the agreement filed by an Employee with the Administrator(s) in which the Employee elects to become a Participant in the Plan.
- (f) **“Compensation”** means all wages or salaries to be paid to an Employee for services rendered, including to the extent permitted

by Treasury Regulations or other similar guidance, accrued vacation and sick pay, as well as any amounts of Deferred Compensation that may be credited to the Participant's Account. Compensation shall be taken into account at its present value and its amount shall be determined without regard to any community property laws.

- (g) **“Deferred Contribution Type”** means Compensation deferred into the Plan as either a Pre-Tax Contribution or a Post-Tax Contribution.
- (h) **“Money Type”** means contributory and/or rollover amounts held within a participant's account that are required to be separately maintained under certain IRC sections. Separate accounting will be maintained for Pre-Tax Contributions and Post-Tax Contributions and their respective investment gains and losses
- (i) **“Deferred Compensation”** means that portion of an Employee's compensation which said Employee has elected to defer in accordance with the provisions of this Deferred Compensation Plan, of which Deferred Contribution Types will be designated as either a Pre-Tax Contribution or a Post-Tax Contribution, subject to the following limitations:
  - (1) The maximum amount that may be deferred under the Plan for the taxable year of a Participant shall not exceed the lesser of (A) \$11,000 for the taxable year 2002, \$12,000 for the taxable year 2003, \$13,000 for the taxable year 2004, \$14,000 for the taxable year 2005, and \$15,000 for the taxable year 2006, and as adjusted for the cost-of-living in accordance with IRC §457 (e) (15) for taxable years beginning after December 31, 2006, or (B) 100 percent of the Participant's Includible Compensation for the taxable year.
  - (2) Provided, however, that for one or more of a Participant's last three taxable years ending prior to a Participant's Normal Retirement Age, the maximum amount that may be deferred under the Plan shall be the lesser of (A) twice the dollar amount of the applicable dollar limit for that taxable year as set forth in (1) above, or (B) the sum of (i) the limitation in (1) above for the taxable year and (ii) the limitation under (1) above (or under IRC §457(b)(2) for any year prior to 2002) for any taxable year or years which began after December 31, 1978, and in which the Participant was eligible to participate in the Plan less the amount of

Compensation deferred under the Plan for any such prior taxable year or years (disregarding any deferrals permitted under Subsection (3) below). A Participant may only utilize this Subsection (2) once, whether under this Plan or any other eligible deferred compensation plan.

- (3) Individuals who are age 50 or over prior to the end of a taxable year are eligible for an additional elective deferral which shall not exceed the lesser of (A) \$1,000 for the taxable year 2002, \$2,000 for the taxable year 2003, \$3,000 for the taxable year 2004, \$4,000 for the taxable year 2005, and \$5,000 for the taxable year 2006, and as adjusted for the cost-of-living in accordance with IRC §414(v)(2) for taxable years beginning after December 31, 2006, or (B) the excess (if any) of (i) the Participant's compensation (as defined in §415(c)(3) for the year), over (ii) any other elective deferral of the Participant for such year which are made without regard to this subsection.
- (4) Notwithstanding the preceding subsections, for a Participant who is eligible for the additional elective deferrals permitted under Subsection (3) in a taxable year that is also one of the Participant's last three taxable years prior to Normal Retirement Age, the maximum amount that may be deferred under the Plan in such taxable year shall be the greater of (A) the sum of the maximum amount in effect for such taxable year under Subsection (1) and the maximum amount in effect for such taxable year under Subsection (3), or (B) the maximum amount in effect for such taxable year under Subsection (2).

A Participant's combined Pre-Tax Contributions and Post-Tax Contributions shall not exceed the limits in paragraphs (1) through (4).

- (j) **“Post-Tax Contribution”** means a Participant's elective deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Post-Tax Contributions under §402A by the Participant in his or her Participation Agreement. A Participant's Post-Tax Contributions, and any investment gains or losses thereon, will be accounted for separately from the Participant's Pre-Tax Contributions and other Money Types.
- (k) **“Pre-Tax Contribution”** means a Participant's elective deferrals that are not includible in the Participant's gross income at the time

deferred. A Participant's Pre-Tax Contributions, and any investment gains or losses thereon, will be accounted for separately from the Participant's Post-Tax Contributions and other Money Types.

- (l) **"Includible Compensation"** means compensation as determined under IRC §457(e)(5).
- (m) **"Administrator"** means the duly authorized designee contracted for that purpose to act as the employer's agent. The Board may elect to contract with one or more Administrator(s).
- (n) **"Board"** means the Board of Deferred Compensation Administration established by the City and operating according to the provisions of City Administrative Code §4.1406. The Board is responsible for administration of the Plan.
- (o) **"Normal Retirement Age"** refers to an age, designated by the Participant, which is no later than age 70 ½ and no earlier than the earliest age at which a Participant has the right to retire under the Employer's basic pension plan and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age.
- (p) **"Severance from Employment"** means the date that an Employee has terminated employment with the City, as established by a City Department pursuant to an official payroll change document or recorded in the City Controller or DWP payroll systems.
- (q) **"Eligible Retirement Plan"** means an individual retirement account described in IRC § 408(a), an individual retirement annuity described in IRC § 408(b), an annuity plan described in IRC § 403(a) that accepts the Participant's eligible rollover distribution, a qualified trust described in IRC § 401(a) (including § 401(k) that accepts the Participant's eligible rollover distribution, a tax-sheltered annuity described in IRC § 403(b) that accepts the Participant's eligible rollover distribution, or another eligible deferred compensation plan described in IRC § 457(b) that accepts the Participant's Eligible Rollover Distribution. Effective for distributions occurring on or after January 1, 2008, 'Eligible Retirement Plan' also includes a Roth Individual Retirement Account (IRA) described in IRC § 408A. The definition in this section shall also apply in the case of an Eligible Rollover Distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order. For distributions occurring on or after January 1, 2007 for a nonspouse Beneficiary, 'Eligible Retirement Plan' means an inherited Individual Retirement Account as described in IRC § 402(c)(11). Effective for distributions of after-tax contributions (including Designated Roth Contributions) occurring on or after

January 1, 2008, 'Eligible Retirement Plan' includes a qualified trust described in IRC § 401(a) maintained by a defined benefit plan or a Roth IRA described in IRC § 408A.

- (r) **“Investment Account”** or **“Account”** means the account established for a Participant pursuant to §4.1405 of the City of Los Angeles Administrative Code.
- (s) **“Eligible Rollover Distribution”** means any distribution of all or any portion of the balance to the credit of the Participant, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under IRC § 401(a)(9); any distribution that is a deemed distribution under the provisions of IRC § 72(p); and any hardship distribution made on account of an unforeseeable emergency attributable to a Participant’s Pre-Tax Contributions or Post-Tax Contributions, unless the account is eligible for distribution irrespective of the Plan’s provisions for hardship distributions.

### III. PARTICIPATION IN THE PLAN

- (a) An Employee may become a Participant by filing a Participation Agreement with one or more Administrator(s) of the Plan or through enrollment pursuant to the provisions of the Auto-Enrollment Program (“AEP”) as specified in Section V. Compensation may be deferred for any calendar month only if a Participation Agreement has been filed or an AEP enrollment has been established before the first day of the month in which the Compensation is paid or made available. Participants may at any time change future deferral amounts (including the reduction of deferrals to zero) or redirect future deferral amounts or existing account balances to the various Plan investment options by executing such changes with the Plan Administrator(s). All such transactions will become effective as soon as is administratively feasible. All such transactions are subject to the rules and regulations established by the Board and by the Administrator(s) and governing the particular Plan investment options involved. A former Participant of this Plan, or a former participant of another governmental deferred compensation plan, who is an employee, and who received a distribution of a ‘de minimis’ amount not exceeding Three Thousand Five Hundred Dollars (\$3,500) prior to 1997 will not be ineligible to subsequently participate in the Plan.

- (b) Each election to participate in the Plan pursuant to a Participation Agreement shall specify the Deferred Contribution Type(s), the amount or percentage of Deferred Compensation attributable to each Deferred Contribution Type, and the total dollar or percentage amount of Compensation to be deferred for each payroll period. The dollar or percentage amount to be deferred shall be deducted from the Compensation otherwise payable to the Participant per payroll period; such amount shall not exceed the limits set forth herein.
- (c) Each Participant shall be deemed to have assented to all the terms and conditions of the Plan upon execution of a Participation Agreement or upon enrollment pursuant to the provisions of the AEP. No Participant shall have the power or right to sell, transfer, assign, hypothecate, or otherwise dispose of all or any part of the Investment Account or any right which the Participant may have under the Plan.

#### IV. DEFERRAL OF COMPENSATION

During each payroll period in which the Employee defers Compensation, the City Controller or the Department of Water and Power Payroll shall defer payment of such part of the Employee's Compensation as is specified by the Employee in the Participation Agreement or pursuant to the provisions of the AEP and deposit such funds into the Participant's Investment Account in the manner designated by the Participant or pursuant to the provisions of the AEP. Contributions can be made only through payroll deductions. Employees may not deposit funds from other savings. Contributions may only be deducted from an Employee's regular paycheck as received within the City's regular bi-weekly pay cycles. Special checks issued outside of those bi-weekly cycles may not be deferred except as part of alternative procedures which may be utilized specifically to permit deferrals of post-severance accrued leave.

#### V. AUTO-ENROLLMENT PROGRAM

##### (a) Definitions

- (1) The "Auto-Enrollment Program" is a program under which a Covered Employee is automatically enrolled in and contributes Default Deferrals to the Deferred Compensation Plan following an initial notice and Opt-Out Period. The Covered Employee is considered an AEP Participant once the initial Default Deferral is contributed. In the absence of an affirmative deferral election, the Default Deferral Percentage will be withheld from the AEP



Participant's compensation each pay period until such time as an affirmative deferral election is made or termination from the Plan.

- (2) A "Covered Employee" is a City employee:
  - i. Whose bargaining unit at the time of the employee's original hire is identified in a collective bargaining agreement or similar agreement between the employee's Labor Organization and the City of Los Angeles as participating in the AEP, and
  - ii. Who is an active member of the Los Angeles City Employees' Retirement System, the Water and Power Employees' Retirement System, or the Los Angeles Fire & Police Pensions system.
- (3) "AEP Participant" is a Covered Employee who has had a portion of his/her Compensation deferred from his/her payroll check pursuant to the terms of the AEP and has not taken action to opt-out or make an election to increase or decrease his/her Default Deferral Percentage. An AEP Participant will be considered a Participant under the other Sections of this Plan Document.
- (4) "Default Deferral" is the total amount deferred each pay period an AEP Participant contributes to the Plan in the absence of an affirmative deferral election.
- (5) "Default Deferral Percentage" is the percentage of pay to be deferred each pay period by an AEP Participant in the absence of an affirmative deferral election.
- (6) "Labor Organization" means an employee labor organization representing one or more bargaining units made up of City of Los Angeles employees.
- (7) "Opt-Out Period" means the period, a minimum of 30 days, after the initial notice is issued to Covered Employees enrolled through the AEP and prior to the initial Default Deferral, which will provide the Covered Employee an opportunity to make an affirmative deferral election to eliminate, decrease, or increase the Default Deferral Percentage. Any change made to the Default Deferral Percentage during this period will be considered an affirmative deferral election.
- (8) "Permissible Withdrawal Window" means the 90-day period subsequent to the initial Default Deferral during which the AEP Participant is allowed to request a full withdrawal of all Default Deferrals, with earnings and less administrative or other servicing

fees through the date of distribution. Funds from incoming transfers or rollovers from an Eligible Retirement Plan will not be distributed and will remain in the account. Should a withdrawal request be made within the Permissible Withdrawal Window, the AEP Participant will no longer be considered a Participant of the Plan unless funds remain in the account due to an incoming transfer or rollover.

(b) Rules of Application

(1) The provisions of this Section shall apply to Covered Employees effective upon the date agreed to within the collective bargaining agreement or similar agreement between the City and a Labor Organization. To the extent that any other provision of the Plan is inconsistent with the provisions of this Section, the provisions of this Section shall govern.

(2) The Default Deferral Percentage shall initially be 2% multiplied by the Covered Employee's gross, eligible bi-weekly compensation amount and shall increase 0.25% annually on the paycheck date nearest the anniversary of the first Default Deferral paycheck date. The Default Deferral Percentage shall be a pre-tax deferral amount. The Default Deferral Percentage will apply only in the absence of an affirmative deferral election.

(3) The initial Default Deferral and any subsequent Default Deferrals made within the Permissible Withdrawal Window will be invested in the Plan's FDIC-Insured Savings Account or other such interest-bearing account as may be designated by the Board. No earlier than the 91<sup>st</sup> day and no later than 120<sup>th</sup> day following the date of the initial Default Deferral, all Default Deferrals will be transferred from the FDIC-Insured Savings Account to the Moderate Profile Portfolio. Should an AEP Participant make an affirmative deferral election and change the Default Deferral Percentage or the investment option during the Permissible Withdrawal Window, assets will not be transferred to the Moderate Profile Portfolio unless the Participant elects to make such change.

(4) A Covered Employee enrolled through the AEP will have a reasonable opportunity after receipt of the notice described in paragraph (c) of this Section to make an affirmative deferral election during the Opt-Out Period regarding their Default Deferral Percentage (either to have no deferrals made or to have a different amount of deferrals made) before Default Deferrals are made on the AEP Participant's behalf. Default Deferrals being made on behalf of an AEP Participant will cease as soon as administratively feasible after the

AEP Participant makes an affirmative deferral election in a manner specified by the Plan Administrator.

(5) An affirmative deferral election by an AEP Participant is any change to or cancellation of the Default Deferral Percentage while one is an AEP Participant. An affirmative deferral election must be made within the timeframe and by the administrative method specified by the Plan Administrator.

(c) Notice Requirement

(1) Upon determination of eligibility under the AEP, the Plan shall send an initial notice to the Covered Employee at least 30 days prior to the first scheduled Default Deferral. The notice will include information related to the AEP and provide instructions on how to opt-out or change the Default Deferral Percentage. The Plan is not responsible for delays or errors in departmental payroll/human resources processing, data entry, or other such administrative or technical actions that may result in a Covered Employee not being enrolled in the AEP. No provision of the AEP shall preclude a Covered Employee from submitting a Participation Agreement.

(2) The Plan shall also send an annual notice to each AEP Participant that has yet to make an affirmative deferral election. The communication will provide notice of any scheduled increases to the Default Deferral Percentage that will occur in the upcoming year. Additional information may be added as determined by the Plan Administrator.

## VI. DISTRIBUTION OF BENEFITS

(a) **Conditions for Distributions**

Payments from a Participant's § 457 Deferred Compensation Plan account to the Participant or Beneficiary shall not be made unless one of the following events occurs:

- (1) The Participant's Severance from Employment or death;
- (2) The Participant's account meets all of the requirements for an in-service *de minimis* distribution pursuant to Section VI(i);
- (3) The Participant incurs an approved financial hardship pursuant to Section VI(h);

- (4) The Participant transfers an amount to a defined benefit governmental plan pursuant to Section VI(j); or
- (5) The Participant meets the permissible withdrawal requirements pursuant to the provisions of the AEP under Section V.

(b) **Severance from Employment**

Distributions to a Participant with a total § 457 Deferred Compensation account balance shall commence, following his or her Severance from Employment, on the regular distribution commencement date elected by the Participant, in a form and manner determined pursuant to Section VI(c).

(c) **Distribution Methods**

In the event of a Participant's Severance from Employment, the Participant may elect to receive the full amount of Deferred Compensation credited to the Participant's Investment Account, plus or minus subsequent investment gains or losses, but less any income tax required to be withheld, in any one of the following methods and in monthly, quarterly, semi-annual and annual payment frequencies:

- (1) **Lump sum payment.** The total benefits payable in one cash payment.
- (2) **Partial lump-sum payment.** Payment of a portion of the Participant's Account.
- (3) **Periodic Payment - Fixed Term.** Amounts payable in equal installments over a period of one to thirty years, e.g. ten, fifteen, or twenty years, not to exceed the life expectancy of the Participant.
- (4) **Periodic Payment - Fixed Dollar Payment.** A fixed dollar amount payment designated by the Participant payable until the account balance is depleted over a time period not to exceed the lesser of a Participant's life expectancy or thirty years.
- (5) **Periodic Payment - Fixed Dollar Amount with Cost-of-Living-Adjustment.** A fixed dollar amount payment designated by the Participant payable until the account balance is depleted over a time period not to exceed the lesser of a Participant's life expectancy or thirty years, with the payment amount adjusted annually for a cost-of-living-adjustment as based on any positive increase in the Los

Angeles/Riverside/Orange Consumer Price Index (CPI) as published by the Federal Government. In no case shall a negative reading of the aforementioned Index result in a decrease in a Participant's annual payment.

Distributions shall be made as soon as is administratively feasible following receipt of the election form.

(d) **Changes to Distribution Elections**

A Participant may elect distribution upon his or her Severance from Employment, and may amend such election, at no cost to the Participant, not more frequently than twice per calendar year. Additional amendments of distribution elections in excess of two per calendar year may require Participant-paid fees as assessed by the Plan Administrator.

(e) **Death Benefits**

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

(f) **Conformance with Internal Revenue Code (IRC)**

Notwithstanding any provision of this Plan to the contrary, all distributions hereunder shall be made in accordance with IRC §401(a)(9) and the Treasury Regulations promulgated thereunder, as well as the other distribution requirements under IRC §457(d)(2) and IRC §402A. Effective January 1, 2009, a Participant or Beneficiary may elect on an individual basis to suspend all or part of the distribution that would otherwise be required by this Section (VI)(f) for the 2009 distribution calendar year. Any amount that is distributed to a Participant or Beneficiary for the 2009 distribution year shall be treated as an Eligible Rollover Distribution only if it would be an Eligible Rollover Distribution without regard to the preceding sentence.

(g) **Qualified Domestic Relations Orders**

- (1) To the extent required under a final judgment, decree, or order meeting the requirements of IRC § 414(p), herein referred to as a Qualified Domestic Relations Order (“QDRO”), which is duly filed upon the City, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse, or a child of the Participant. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the spouse, former spouse, or child, and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the spouse, former spouse, or child making the investment selection.

Any amounts so set aside for a spouse, former spouse or a child shall be paid out in a lump sum as soon as administratively feasible following the date that the QDRO has been approved, unless the QDRO directs a different form of payment or different payment date. Withholding and income tax reporting shall be done with respect to the alternate payee under the terms of the IRC as amended from time to time.

- (2) The Plan’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse or child pursuant to this section. No amount shall be paid or set aside unless the Plan, or its agents or assigns, has been

provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the Plan from any claim with respect to such amounts in any case in which the Plan has been notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant's account for a spouse, former spouse or child, and the Participant fails to obtain an order of the court in the proceeding relieving the Plan from the obligation to comply with the QDRO.

- (3) The Plan shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate any Plan provision or any provision of IRC § 457. Neither the Plan nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a Participant's benefits under the Plan unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Plan, its agents or assigns to incur such expense, the amount of the expense may be charged against the Participant's account and thereby reduce the Plan's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Plan, its agents and assigns shall be authorized to disclose information relating to the Participant's individual account to the Participant's spouse, former spouse or child (including the legal representatives of the spouse, former spouse or child), or to a court.
- (4) Notwithstanding Sections VI(h) and IX, commencing with the date that a duly-authorized representative of the Plan receives written notification of a "domestic relations order" (as defined in IRC §414(p)(1)(B)) relating to a Participant and ending on the date that such domestic relations order is approved as a QDRO (or, if earlier, the date that a duly-authorized representative of the Plan receives written notification from the Participant and the alternate payee that the parties intend not to pursue the order), the Participant to whom the domestic relations order relates shall be prohibited from receiving a hardship withdrawal under Section VI(h) or a loan under Section IX.

- (5) A judgment, decree, or order will not fail to be a QDRO solely because it is issued after or modifies a previous judgment, decree, or order, or because of the time it is issued.

(h) **Financial Hardship**

In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to receive that part of the value of his/her Account that is reasonably needed to satisfy the emergency need by filing a written application with the Board of Deferred Compensation Administration. If such an application is approved, the Participant or Beneficiary shall be paid only such amount reasonably necessary to meet the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), but payment shall not be made to the extent that such emergency is or may be relieved through cessation of deferrals under the Plan, reimbursement or compensation from insurance or otherwise, or liquidation of the Participant's other assets to the extent that such liquidation would not itself cause severe financial hardship. An unforeseeable emergency is a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in IRC §152(a)); 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); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in IRC §152(a)) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section, the purchase of a home and the payment of college tuition are not unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the relevant facts and circumstances of each individual case. The Board shall have final authority over all applications for emergency withdrawal pursuant to this Section, except where through Board



action such authority has been specifically delegated to staff or to the Board Chairperson and/or Vice-Chairperson.

(i) **De Minimis Accounts**

Notwithstanding any other provisions of the Plan to the contrary, if the total amount payable to a Participant under the Plan does not exceed Five Thousand Dollars (\$5,000) or such other amount under IRC §411(a)(11)(A) and (i) no amount has been deferred under the Plan with respect to the Participant during the two (2) year period ending on the date of the distribution, and (ii) there has been no prior distribution under the Plan to the Participant pursuant to this provision, the Participant may elect to receive a distribution or the Employer may distribute the Participant's entire account without the consent of the Participant. Such distribution shall be made in a lump sum.

(j) **Purchase of Defined Benefit Plan Service Credit**

If a Participant is also a Participant in a defined benefit governmental plan (as defined in IRC § 414(d)), such Participant may request the Plan Administrator to transfer amounts from his or her account for (i) the purchase of permissive service credit (as defined in IRC § 415(n)(3)(A)) under such plan, or (ii) a repayment to which IRC § 415 does not apply by reason of IRC § 415(k)(3). Such transfer requests shall be made directly to the defined benefit governmental plan. Post-Tax Contributions shall not be used for the purchase of permissive service credit or a repayment to a defined benefit governmental plan.

In the event that such defined benefit governmental plan determines that the transferred amount exceeds the actuarial cost of the purchased service for a Participant, the Plan Administrator shall accept a refund of the excess amount, as follows:

- (1) The Plan Administrator shall not accept a refund in excess of the original amount transferred to the defined benefit governmental plan.
- (2) The excess amount shall be restored to the Participant's account in this Plan as a refund of an excess rollover amount and be ineligible for back-interest or any other retroactive valuation adjustment.

- (3) The refund of the excess rollover amount shall not count as a deferral for purposes of the annual limitations on deferrals in IRC §457(b).
- (4) If the Participant has previously received a full distribution of his or her Plan account, the Plan Administrator shall reactivate the prior account or establish a new Plan account, as necessary, for such Participant and the refund of the excess rollover amount shall be allocated to such account.
- (5) Only rollover amounts refunded pursuant to this Section shall be treated as refunds of excess rollover amounts.

(k) **Distribution of Excess Deferrals**

- (1) If the Administrator determines that the amount of a Participant's deferrals under this Plan for a taxable year, combined with the Participant's deferrals under any other eligible deferred compensation plan maintained by the City for such taxable year, exceeds the limitations on deferrals set forth in IRC §457(b) and IRC §402 and the Treasury Regulations promulgated thereunder, such excess deferral will be distributed to the Participant, with allocable net income, as soon as administratively practicable after such determination.
- (2) If the Participant provides written notification to the Administrator that the amount of the Participant's deferrals under this Plan for a taxable year, combined with the Participant's deferrals under any other eligible deferred compensation plan maintained by an employer other than the City for such taxable year, exceeds the limitations on deferrals set forth in IRC §457(b) and the Treasury Regulations promulgated thereunder, such excess deferral will be distributed to the Participant, with allocable net income, as soon as administratively practicable after such notification.

(l) **Designation of Money Type**

Except as provided in paragraph (j), Participants may designate a Money Type or Money Types for all Plan distributions, not including Loans. If a participant does not designate a Money Type designation, distributions shall be prorated across all Money Types, except as provided in paragraph (j).

(m) **Qualified Distribution**

A “qualified distribution” (as defined in IRC §402A(d)(2)) from a Participant’s Post-Tax Contributions shall not be included in the Participant’s gross income for federal income tax purposes to the extent provided in IRC §402A.

(n) **Distributions for Health Insurance Premiums of Retired Public Safety Officers**

Effective for distributions made after December 31, 2011, a Participant who is an eligible retired public safety officer (as defined in IRC §402(l)(4)(B)) and who has separated from service as a public safety officer with the Employer, may elect a distribution to be paid by the Plan from the Participant’s account directly to an insurer for payment of qualified health insurance premiums (as defined in IRC §402(l)(4)(D)), up to \$3,000 per taxable year (or such other limitation prescribed in IRC §402(l)(2)). Such election shall be made in accordance with procedures established by the Plan Administrator(s).

(o) **Auto-Enrollment Program Permissible Withdrawals**

An AEP Participant may request a withdrawal within the applicable Permissible Withdrawal Window of all Default Deferrals with earnings, less administrative or other servicing fees through the date of distribution as provided for under Section V.

## VII. TRANSFERS AND ROLLOVERS

- (a) **Transfers to the Plan.** If the Participant was formerly a participant in an eligible deferred compensation plan maintained by another governmental employer, and if such plan permits the direct transfer of the Participant’s interest therein to the Plan, then the Plan shall accept assets representing the value of such interest; provided, however, that the Participant has had a severance from employment with that prior employer, become an Employee of the City and established an Account with this Plan. The Board may require such documentation from the predecessor plan as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of IRC § 457, that such plan is maintained by a governmental employer, and to assure that transfers are provided under such plan. The Plan shall establish and maintain separate accounting for any eligible rollover distribution paid to the Plan from any eligible governmental plan under IRC §457(b). The Plan shall separately account for any Post-Tax Contributions paid to the Plan from any eligible retirement

plan that is an eligible governmental plan under IRC §457(b). If the Participant was formerly a participant in the City of Los Angeles Pension Savings Plan (whether or not he or she has had a Severance from Employment), then the Plan shall accept, in a direct transfer, assets representing the value of the Participant's interest in the City of Los Angeles Pension Savings Plan; provided, however, that the Participant has established an Account with this Plan.

Amounts transferred pursuant to this Section shall be held, accounted for, administered and otherwise treated in the same manner as Compensation deferred by the Participant under this Plan except that such amounts shall not be considered Compensation deferred under the Plan in the taxable year of such transfer in determining the maximum deferral under Article II.

- (b) **Transfers from the Plan.** If a Participant has a Severance from Employment and begins performing services for another governmental employer maintaining an eligible deferred compensation plan which provides for the receipt of transfers, and provided that payments under this Plan have not begun, such Participant may request a transfer of all or a portion of his or her account to the eligible deferred compensation plan of the other governmental employer. If a Participant becomes a participant in the City of Los Angeles Pension Savings Plan (whether or not he or she has had a Severance from Employment), and provided that payments under this Plan have not begun, such Participant may request a transfer of all or a portion of his or her account to the City of Los Angeles Pension Savings Plan.

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

No transfers shall be made from a Participant's Post-Tax Contributions unless the receiving plan allows Post-Tax contributions under IRC §402A.

- (c) **Rollovers to Plan.** The Plan shall accept a rollover contribution on behalf of a Participant or Employee who may become a Participant and maintains an account with the City's Plan. A rollover contribution for purposes of this subsection is an Eligible Rollover Distribution from any (i) plan qualified under IRC § 401(a) or §403(a); (ii) tax-sheltered annuity or custodial account described in IRC § 403(b); (iii) individual retirement account or annuity described in IRC § 408; or (iv) eligible deferred compensation plan described in IRC § 457(b). The Plan shall establish and maintain for the Participant separate accounting for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC §457(b). The Plan shall establish and maintain separate accounting for any Post-Tax Contributions paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC §457(b). Prior to accepting any rollover contribution, the Administrator may require that the Participant or Employee establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of the IRC. A Participant's rollover contribution shall be held in a separate rollover account or accounts, as the Administrator shall determine from time to time and to the extent required or permitted by Treasury Regulations or other similar guidance, and may involve additional administrative fees as designated by the Plan Administrator.
- (d) **Rollovers from Plan.** To the extent administratively practicable, a Participant or Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant or Beneficiary in a direct rollover.
- (e) **Payments.** Payments from a Participant's rollover account(s) may be made at any time.
- (f) **In-Plan Rollovers.** A Participant or Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution from the Participant's Pre-Tax Contributions account contributed in a qualified rollover contribution (within the meaning of IRC §408A(e)) to a Post-Tax Contributions account under this Plan for the benefit of the Participant or Beneficiary to whom the distribution is made. Such in-plan rollover shall satisfy the requirements of IRC §402A(c)(4), including the requirement that the Participant or Beneficiary will have an amount included in gross income equal to the amount that would be includible if the distribution were not part of a qualified rollover contribution. A loan transferred in an

in-plan rollover that does not change the loan's repayment schedule shall not be treated as a new loan for purposes of IRC §72(p).

- (g) **In-Plan Transfers.** A Participant or Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of the Participant's Pre-Tax Contributions not otherwise distributable transferred to a Post-Tax Contributions account, within the meaning of IRC §402A(c)(4)(E). Such in-plan transfer shall satisfy the requirements of IRC §402A(c)(4)(E).

## VIII. BENEFICIARIES

Each Participant shall have the right to designate a Beneficiary or Beneficiaries, including contingent Beneficiaries, to receive any benefits which may be payable under the Plan upon the death of such Participant. The designation may be made, and may be revoked or changed, only by a written instrument (in form acceptable to the Board of Deferred Compensation Administration and the Administrator) signed by the Participant and filed with the Administrator before his or her death. In the absence of a designation and at any other time when there is no existing Beneficiary designated by the Participant, the Participant's Beneficiary shall be his or her spouse or registered domestic partner, living 30 days after the date of Participant's death, or if not, his or her children (by blood or adoption) equally (with children of a deceased child to share equally the share of such deceased child). If a Beneficiary cannot be determined pursuant to the preceding sentence, the Beneficiary shall be the Participant's estate.

## IX. LOAN PROGRAM

A Loan Program is hereby established for the Plan, the effective date for which will be the earliest date that all administrative and operational requirements for such program have been met. The Loan Program shall operate under the following requirements:

- (a) **Eligibility** – Both active employee Participants in the Plan and Participants who have had a severance from employment may participate in the Loan Program. To be eligible for a Loan, a Participant must have a minimum account balance of \$2,000 at the time of loan initiation.
- (b) **Minimum and Maximum Loan Amounts** – The minimum loan amount available to a Participant for a loan is \$1,000. The maximum loan amount available is \$50,000, reduced by the

highest outstanding loan balance during the past twelve months, or 50% of the account balance, whichever is less.

- (c) **Number of Loans Permitted** – Participants are only permitted to have two loans outstanding. An outstanding loan is defined as any loan with an outstanding balance that is being repaid or not yet repaid, whether or not the loan has ever been in default. If a Participant has two outstanding loans and wishes to initiate another loan, the Participant must first repay at least one of the current outstanding loans in full.
- (d) **Cost** – Each Participant will be required to pay a loan origination fee and ongoing maintenance fee as established by the Plan recordkeeper and approved by the Board. Loan recipients will be required to bear the full cost of the Loan Program.
- (e) **Distribution of Loan Amount** – Loan distribution amounts will be prorated across all Money Types and all available Core investment options excluding the brokerage window.
- (f) **Types of Loans Available:**
  - (i) General Purpose Loan – A General Purpose Loan will have a duration of one to five years as designated by the Participant at the time of loan application. No reason or documentation will be required other than a signed promissory note. The interest rate for this loan type will be fixed for the life of the loan. The interest rate will be 2% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.
  - (ii) Principal Residence Loan – A Principal Residence Loan will have a duration of one to fifteen years as designated by the Participant at the time of loan application. This loan may be utilized only for the purchase of a primary residence. The interest rate for this loan type will be 2% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.
- (g) **Interest** – Interest paid on loans is not deductible.
- (h) **Payment Requirements** – Scheduled payments for active employee Participants must be made by payroll deduction except in the cases of lump-sum correction of delinquencies as outlined in this Section or lump-sum early payoff. Payments for Participants who have had a severance from employment must be made by

direct payment from the Participant to the Administrator on no less than a monthly basis and in accordance with a payment schedule established by the Administrator. Payments may be made by cashiers check, money order, Automated Clearing House (ACH), or personal check. Payments made using personal check will typically restrict future distributions from the account for a period of 10 calendar days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal. Any payment received will be applied to the first immediately due payment; in instances when there are previously missed payments, any payments subsequently received will be applied to the earliest missed payment(s) first.

Loans will be considered to be in arrears and delinquent when any payment is missed. A late loan payment notice will be issued at the end of the calendar quarter in which the payment is delinquent. If the loan is not paid up-to-date by a lump sum payment (of the amount of the missed payment plus interest on the missed payment from the original due date to the payment date) by the end of the calendar quarter after the calendar quarter in which a payment in which a payment is first delinquent, the loan will be in default and considered a “deemed distribution.” In such cases, the outstanding loan balance, consisting of the principal and interest due under the terms of the loan, plus additional interest accruing through the date of default, will be reported to the Internal Revenue Service as income on a 1099R for the year in which the loan default occurs. It is the sole responsibility of the Participant to ensure loan payments via payroll deduction are taken appropriately or that payments are otherwise transmitted to the Administrator by the payment due date to avoid the tax consequences associated with a defaulted loan.

Despite any grace periods permitted with respect to late loan payments, if a loan has not been fully repaid by the end of its term, the outstanding balance will be treated as a “deemed distribution” and reported to the Internal Revenue Service as income. Thereafter no further efforts will be made at correction or accrual of interest liability. If the Participant has a loan that defaulted at any time in the past, they will not be eligible to take out subsequent loans unless any outstanding loans are being repaid or have been paid in full or offset. Participants who have a Severance from Employment must first offset or pay in full any defaulted balances prior to issuance of a new loan.



Participants who have a Severance from Employment prior to the end of the loan term will be required to either pay off or offset the loan at Severance from Employment or submit monthly payments in accordance with a payment schedule established by the Administrator. A former Participant may also avoid treatment of an unpaid loan as a “deemed distribution” and reporting of income to the Internal Revenue Service by paying the loan balance by the end of the grace period via lump sum payment. Non-payment will force a “deemed distribution” and reporting of income for the year in which the “deemed distribution” occurs.

As required by federal tax regulations, the defaulted loan of a Participant will remain recorded until a qualifying event occurs, even though income has been reported to the Internal Revenue Service.

Partial lump sum loan repayments, via cashiers check, personal check or money order, are permitted in order to catch up on a past-due amount or reduce the principal amount of the loan. If a Participant sends in a partial payment, the loan payment amount will not change but the loan would be paid off earlier. Repayments made using personal check will typically restrict future distributions from the account for a period of 10 calendar days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal.

- (i) **Leave of Absence** – If a Participant who has an outstanding loan incurs an authorized leave of absence, ceases loan repayment, and his or her rate of pay (after income and employment tax withholding) is not sufficient to meet the required repayment under the terms of the loan, then the loan will not be deemed in default for a period equal to the lesser of (A) the length of the leave of absence, or (B) one year, as long as the loan (including interest that accrues during the leave of absence) is repaid by the latest permissible term of the loan and the amount of the installments due after the leave of absence ends is not less than the amount required under the terms of the original loan. The Participant must notify the Plan of the authorized leave of absence by completing and submitting the proper form to the Plan Administrator prior to and upon return from the approved leave of absence. Notwithstanding the preceding provisions, loan repayments during a period of military service will be suspended under this Plan as permitted under IRC §414(u)(4). In accordance with IRC §414(u), a loan suspended because of military service will not be deemed in default even if the suspension exceeds one year, as long as loan repayments resume upon completion of the military service and

the loan (including interest that accrues during the military leave) is repaid by the end of the period equal to the sum of the latest permissible term of the loan plus the period of military service.

- (j) **Compliance** – The Loan Program established under the Plan is intended to comply with the requirements of IRC §72(p) and §457 and the Treasury Regulations promulgated thereunder.

#### X. AMENDMENT OF PLAN DOCUMENT

The Board may amend the Plan Document at any time consistent with applicable law and consistent with the governing provisions of the Plan as contained in the City of Los Angeles Administrative Code.

#### XI. SELECTION OF CONTRACTORS/PLAN DESIGN

Pursuant to Los Angeles Administrative Code §4.1406, the Board has the authority to contract for Plan administration, investments, consulting services, auditing services and all other functions related to administration/oversight of the Plan. The Board has the authority to periodically review the structure of the City's Plan for the purpose of determining and implementing Plan design changes.

#### XII. MISCELLANEOUS

- (a) Any written notice required or permitted under the Plan, if directed to the City, shall be sent to its principal office and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at the last known address for such person as it appears in the City's records or as indicated on the Participant's account.
- (b) Deductions for employee contributions to all City retirement plans shall be made without reference to amounts deferred pursuant to this Plan and shall be based upon the gross salary the Participant would receive if the Participant had not elected to defer income.
- (c) Each Participant in the Plan shall be deemed to have waived any rights to periodic payments of salaries or wages pursuant to the provisions of the Charter concerning periodic payment of salaries or wages to officers and Employees of the City.
- (d) Qualified Military Service. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with IRC §414(u). In accordance with IRC §414(u), an Employee who is

reemployed by the City after a period of “qualified military service” (as defined in IRC §414(u)(5)) shall be permitted to defer additional compensation up to the maximum amount that the Employee would have been permitted to defer under the Plan (in accordance with the limitations set forth in Section II(g)) during the period of qualified military service if he or she had continued to be employed by the City during such period. Such an Employee shall be permitted to defer compensation, and to specify Deferred Contribution Type(s), with respect to the period of qualified military service during the period which begins on the date of reemployment with the City and has the same length as the lesser of (1) the product of three and the period of qualified military service; or (2) five years. For purposes of the definition of “Includible Compensation” in Section II(h), an Employee who is in qualified military service shall be treated as receiving compensation from the City during such period of qualified military service equal to (1) the compensation the Employee would have received during such period if he or she were not in qualified military service, based on the rate of pay the Employee would have received from the City but for his or her absence during the period of qualified military service; or (2) if the compensation the Employee would have received during such period is not reasonably certain, the Employee’s average compensation from the City during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment preceding the qualified military service). Should a Participant die while performing qualified military service after December 31, 2006, such Participant’s Beneficiaries are entitled to receive any additional Plan benefits (other than contributions) that would have been provided had the Participant resumed employment with the City and then terminated employment on account of death.

- (e) If any provision of this Plan Document is held invalid or unenforceable, then such provision shall be severed herefrom and such invalidity or unenforceability shall not effect the other provisions herein, which shall remain in full force and effect.

**THE CITY OF LOS ANGELES  
DEFERRED COMPENSATION PLAN**

**PLAN DOCUMENT**

As Amended and Restated Effective \_\_\_\_\_, 2021

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**THE CITY OF LOS ANGELES  
DEFERRED COMPENSATION PLAN**

**ARTICLE I**

**ESTABLISHMENT AND RESTATEMENT OF THE PLAN DOCUMENT**

**Section 1.01. Plan Establishment and History.**

The City of Los Angeles (“City”), a charter city and a political subdivision of the State of California, is an “eligible employer” described in Section 457(e)(1) of the Internal Revenue Code (“Code”) of 1986, as amended. The City established a Deferred Compensation Plan (“Plan”) for the employees of the City pursuant to the Los Angeles Administrative Code (“LAAC”) Section 4.1400 on February 13, 1981. The original Plan Document was adopted as of that same date. The Plan is considered an Employee benefit plan or savings plan for purposes of California Civil Code Section 5106(b), as amended from time to time, or its successor sections.

The Plan Document was restated by the City of Los Angeles Board of Deferred Compensation on November 27, 2001.<sup>1</sup> The Plan Document is amended and restated, herein, effective \_\_\_\_\_, 2021.

**Section 1.02. Compliance with Section 457 of the Internal Revenue Code.**

The Plan is an eligible deferred compensation plan within the meaning of Section 457(b)(1) of the Code, and the regulations thereunder (regarding deferred compensation plans of state and local governments and tax-exempt organizations).

**ARTICLE II**

**CONSTRUCTION AND DEFINITIONS**

**Section 2.01. Construction and Governing Law.**

(a) This Plan Document shall be interpreted, enforced and administered in accordance with the City of Los Angeles Charter (“Charter”) and LAAC, and when not inconsistent with the Charter or LAAC, or expressly provided otherwise herein, the laws of the State of California without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate, and *vice versa*.

(c) The headings and subheadings herein are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan Document.

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<sup>1</sup> Revised January 29, 2002; revised February 26, 2002; revised April 29, 2003; revised March 15, 2005; revised December 20, 2005; revised June 19, 2007; revised March 18, 2008; revised August 18, 2009; revised June 21, 2011; revised December 20, 2011; revised May 15, 2012; revised March 18, 2014; revised June 16, 2015.



(d) If any provision of the Plan Document is held to violate the Code or held illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan Document.

(e) In resolving any conflict between provisions of the Plan Document and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan Document, the interpretation that causes the Plan to (i) constitute an eligible deferred compensation plan under the provisions of Section 457(b) of the Code, (ii) be a governmental plan as defined in Section 414(d) of the Code, and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

**Section 2.02. Definitions.** When the initial letter of a word or phrase is capitalized herein the meaning of such word or phrase shall be as follows:

(a) “Account” means the aggregate of the following separate bookkeeping accounts maintained for each Participant or alternate payee reflecting his or her interest under the Plan as follows:

(1) “Pre-Tax Contribution Account” means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Pre-Tax Contributions made pursuant to Section 4.01 or 4.02.

(2) “Roth Contribution Account” means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Roth Contributions made pursuant to Section 4.01 or 4.02.

(3) “Rollover Contribution Account” means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions pursuant to Section 4.03. There shall be the following separate subaccounts under the Rollover Contribution Account:

(i) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from a Code Section 457(b) plan within the meaning of Section 4.03(a);

(ii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from a Code Section 457(b) plan within the meaning of Section 4.03(a) that consists of Roth elective deferrals within the meaning of Section 4.03(b);

(iii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from an eligible retirement plan within the meaning of Section 4.03(a) other than a Code Section 457(b) plan; and

(iv) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from an eligible retirement plan within the meaning of Section 4.03(a) other than a Code Section 457(b) plan that consists of Roth elective deferrals within the meaning of Section 4.03(b).

(4) “Transfer Contribution Account” means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions pursuant to Section 4.04.

(b) “Administrator” means the Board or the duly authorized representative contracted to act on behalf of the Board.

(c) “Applicable Form” means the appropriate form as designated and furnished by the Administrator to make any election or provide any notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(d) “Auto-Enrollment Program” or “AEP” means the program under which a Covered Employee is automatically enrolled in and contributes to the Plan, as described in Section 4.02. “Board” means the Board of Deferred Compensation Administration.

(e) “City” means the City of Los Angeles, California.

(f) “Code” means the Internal Revenue Code of 1986, as amended from time to time.

(g) “Compensation” means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Participant's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Participant's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Article 4). Compensation shall be taken into account at its present value and its amount shall be determined without regard to any community property laws. Effective March 1, 2012, Compensation shall include differential wage payments (as such term is defined in Code Section 3401(h)(2)). To the extent permitted by federal law and Treasury Regulations (“Treas. Reg.”) or other similar guidance, Compensation also includes accrued bona fide sick, vacation, or other leave pay which may be paid to a Participant by the later of two and one-half (2 ½) months after a Participant's Separation from Employment or by the end of the calendar year that includes the date of such Separation from Employment so long as the Employee would have been able to use the leave if employment had continued.

(h) “Contributions” mean Pre-Tax Contributions, Roth Contributions, Rollover Contributions, and Transfer Contributions.

(i) “Cost-of-Living Adjustment” means the cost-of-living adjustment as prescribed by the Code for any applicable year.

(j) “Designated Beneficiary” means an individual who is not an Eligible Designated Beneficiary designated by a Participant to receive benefits under the Plan as of the date of death of the Participant.

(k) “Entity Beneficiary” means any partnership, trust, corporation, limited liability company or firm, or any combination thereof, that is not a Designated Beneficiary or an Eligible

Designated Beneficiary but designated by a Participant to receive benefits under the Plan as of the date of death of the Participant. “Elective Deferral” means Pre-Tax Contributions and Roth Contributions made in accordance with Section 4.01.

(l) “Eligible Designated Beneficiary” means an individual described under Code Section 401(a)(9)(E)(ii) and related Treasury Regulations and IRS pronouncements as of the date of death of the Participant.

(m) “Employee” means any individual who renders services to the City in exchange for regular Compensation and who is eligible to participate in the Plan, excluding the Pension Savings Plan.

(n) “Employer” or “City” means all offices, bureaus, and departments of the City of Los Angeles and includes therein departments which have control of their own definite revenues.

(o) “HEART” means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

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

(q) “Investment Funds” means the mutual funds, collective investment funds, insurance company separate accounts, annuity contracts, or other investment vehicles, including Self-Directed brokerage accounts, made available to Participants for the investment of their Accounts. The Administrator, in its sole and absolute discretion, shall select the Investment Funds and may add or delete Investment Funds.

(r) “Money Type” means contributory and/or rollover amounts held within a participant's account that are required to be separately maintained under certain Code sections. Separate accounting will be maintained for Pre-Tax Contributions and Roth Contributions and their respective investment gains and losses.

(s) “Normal Retirement Age” means the age elected by the Participant on the Applicable Form that is (i) on or after the age at which the Participant can retire and receive an unreduced benefit from the Employer's pension plan and (ii) not later than age seventy and one-half (70 ½). If the Participant will not become eligible to receive benefits from the Employer's pension plan, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½.

(t) “Participant” means an Employee who is currently enrolled in or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.

(u) “Participation Agreement” means the online, telephonic, or written agreement filed by an Employee with the Administrator in which the Employee elects to become a Participant in the Plan under Section 4.01. “Plan” means the City of Los Angeles Deferred Compensation Plan established under LAAC section 4.1400.

(v) “Plan Document” means the Plan description provided in this document.

(w) “Plan Amendment Date” means the date the restatement is adopted by the Board.

(x) “Plan Effective Date” means February 13, 1981.

(y) “Plan Year” means the calendar year.

(z) “Person” means an individual, a trust, estate, partnership, association, company, limited liability company, or corporation.

(aa) “Pre-Tax Contributions” mean a Participant's elective deferrals that are not includible in the Participant's gross income at the time deferred as set forth under Section 4.01 or 4.02. A Participant's Pre-Tax Contributions, and any investment gains or losses thereon, will be accounted for separately from the Participant's Roth Contributions.

(bb) “Qualified Roth Distribution” means a distribution from a Roth Contribution Account after the Participant has satisfied a five (5) year tax holding period and has attained age fifty-nine and one-half (59½), died, or become disabled, in accordance with Code Section 402A(d). The five (5) year tax holding period is the period of five (5) consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five (5) consecutive taxable years have been completed.

(cc) “Rollover Contributions” mean the contributions made to the Plan pursuant to Section 4.03.

(dd) “Roth Contributions” mean contributions made to the Plan by the Employer at the election of a Participant under a Participation Agreement that have been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contributions the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election.

(ee) “Secondary Beneficiary” means any individual, trust, partnership, corporation, limited liability company, or firm, or any combination thereof, designated by or upon an account being established for an Entity Beneficiary, Designated Beneficiary or Eligible Designated Beneficiary to receive benefits under the Plan or their respective estate as determined under California law.

(ff) “Separation from Employment” means the date when the Employee ceases to (a) render services to the City in exchange for remuneration, and (b) be eligible to contribute to one the City's retirement or pension plans, excluding the Pension Savings Plan, without regard to any

services rendered by such employee to the City following such date pursuant to section 1164(b) of the City of Los Angeles Charter.

(gg) “Service Provider” means a Person selected by the Board to provide services to the Plan.

(hh) “Staff” means Employees of the City who provide assistance and support to the Board.

(ii) “Transfer Contribution” means contributions made to the Plan pursuant to Section 4.04.

(jj) “Trust” means the separate fund holding all assets and income of the Plan, including amounts, assets, and income held in custodial accounts or annuity contracts as authorized by Code Section 457(g) and established under LAAC § 4.1404.

(kk) “Trust Fund” means the assets of the Trust.

(ll) “Trustee” means the Board or any Person designated and appointed by the Board to serve as trustee or successor trustee of the Trust.

(mm) “USERRA” means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(nn) “Valuation Date” means the date on which the assets and the Participant's Accounts shall be valued. All daily transactions shall be based on that day's closing market values. Value of the Participant's Account shall be adjusted in accordance with daily values.

(oo) “Vested” means an unconditional, legally enforceable, and non-forfeitable interest in an Account

### **ARTICLE III**

#### **ELIGIBILITY AND PARTICIPATION**

##### **Section 3.01. Participation.**

(a) An Employee who is a Participant on the day before the Effective Date of this amended and restated Plan Document shall continue to be a Participant on the Effective Date.

(b) An Employee may become a Participant in the Plan immediately after commencement of employment or reemployment with the Employer.

(c) To become a Participant under the Plan, an Employee must complete the Applicable Forms, which may include a Participation Agreement and enrollment, beneficiary designation, and investment election forms, and return them to the Administrator. Subject to Section 4.02, an Employee who fails to complete the Applicable Forms shall be deemed to have waived all of his or her rights under the Plan, provided that such Employee may become a Participant in the Plan at

any time thereafter by completing the Applicable Forms and returning them to the Administrator. The dollar or percentage amount to be deferred shall be deducted from the Compensation otherwise payable to the Participant per payroll period; such amount shall not exceed the limits set forth herein.

(d) Each Participant shall have the right to designate a beneficiary or beneficiaries to receive any benefits which may be payable under the Plan upon the death of such Participant. The designation may be made, and may be revoked or changed, only by a written instrument (in form acceptable to the Board of Deferred Compensation Administration and the Administrator) signed by the Participant and filed with the Administrator before his or her death. In the absence of a designation or at any time when there is no beneficiary designated by the Participant, the Participant's beneficiary shall be proscribed under California law.

(e) Each Participant shall be deemed to have assented to all the terms and conditions of the Plan upon execution of a Participation Agreement or upon enrollment pursuant to the provisions of the AEP. No Participant shall have the power or right to sell, transfer, assign, hypothecate, or otherwise dispose of all or any part of the Account or any right which the Participant may have under the Plan.

(f) An Employee shall become a Participant pursuant to the provisions of the AEP under Section 4.02.

### **Section 3.02. Cessation of Contributions.**

A Participant shall cease to be eligible for Contributions under the Plan when he or she experiences a Separation of Employment or the Plan is terminated.

## **ARTICLE IV**

### **CONTRIBUTIONS**

#### **Section 4.01. Elective Deferrals.**

(a) Participation Agreement. Subject to the limitations under Article V, an Employee who has satisfied the participation requirements under Section 3.01 may enter into a written Participation Agreement agreeing to contribute each pay period Pre-Tax Contributions and/or Roth Contributions to the Plan equal to a specified percentage or dollar amount of his or her Compensation, as permitted by the Internal Revenue Code and the Administrator. The Administrator may establish a minimum Elective Deferral amount, and this amount may be amended from time to time.

(b) Effective Date of Deferrals. Elective Deferrals shall begin as soon as administratively practicable following the date specified in the Participation Agreement, or, if later or if no date is specified, as soon as administratively practicable after the Participation Agreement is filed with the Administrator. Notwithstanding the preceding, the Participation Agreement shall become effective no earlier than the first pay date of the month following the month in which the Participation Agreement is executed and submitted to the Administrator; provided, however, that a new Employee may defer Compensation payable in the calendar month during which he or she

first becomes an Employee if he or she enters into a Participation Agreement before the first day on which he or she performs services for the Employer.

(c) Payment of Elective Deferrals to the Trust. Elective Deferrals shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trustee by the Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than fifteen (15) business days following the end of the month in which such amount is withheld from the Compensation of the Participant.

(d) Amendment of Deferral Election. A Participant may change his or her election to make Pre-Tax Contributions and/or Roth Contributions at any time by entering into a new Participation Agreement. Any such changes shall be effective as soon as administratively practicable following the date specified in the new Participation Agreement, or, if later, as soon as administratively practicable after the Participation Agreement is filed with the Administrator; provided that the Participation Agreement shall become effective no earlier than the first pay date of the month following the month in which the Participation Agreement is executed and submitted to the Administrator.

(e) Termination of Deferral Election. A Participant may terminate his or her election to make Elective Deferrals at any time by filing the Applicable Form with the Administrator, which shall be effective as soon as administratively practicable after the Applicable Form is filed with the Administrator.

(f) Change in Status. An election to make Elective Deferrals shall not be valid with respect to any period during which the Participant is not an Employee. No election to make, change, or discontinue Elective Deferrals shall be given retroactive effect.

(g) Rules and Procedures. The Administrator may establish additional rules and procedures governing the manner and timing of elections by Participants to make, change, or discontinue Elective Deferrals.

#### **Section 4.02. Automatic Elective Deferrals.**

(a) Automatic Elective Programs (“AEP”). Notwithstanding Section 4.01 or any other provision of the Plan Document, in accordance with Code Section 414(w), an Employee who is a Covered Employee shall be automatically enrolled in the Plan pursuant to this Section. The Plan is not responsible for delays or errors in departmental payroll/human resources processing, data entry, or other such administrative or technical actions that may result in a Covered Employee not being enrolled in the AEP.

(b) Definitions.

(1) “AEP Participant” is a Covered Employee who has had a portion of his/her Compensation deferred from his/her payroll check pursuant to the terms of this Section 4.02 and has not taken action to opt-out or make an election to increase or decrease his/her deferrals, change or add Roth Contributions, or change his/her investment option.

(2) “Covered Employee” means an Employee:

(i) Whose bargaining unit at the time of the employee's original hire is identified in a collective bargaining agreement or similar agreement between the employee's Labor Organization and the City of Los Angeles as participating in the AEP, and;

(ii) Who is an active member of the Los Angeles City Employees' Retirement System, the Water and Power Employees' Retirement System, or the Los Angeles Fire & Police Pensions System.

(3) “Default Deferral” is the total amount of Pre-Tax Contributions deferred each pay period an AEP Participant contributes to the Plan in the absence of a Participation Agreement pursuant to Section 4.01.

(4) “Labor Organization” means an employee labor organization representing one or more bargaining units made up of City of Los Angeles employees.

(5) “Opt-Out Period” means the period, a minimum of 30 days, after the initial notice described in paragraph (e) below is issued to Covered Employees enrolled through the AEP and prior to the initial Default Deferral, which will provide the Covered Employee an opportunity to make an affirmative deferral election under Section 4.01. Any change made during this period shall be considered an affirmative deferral election.

(6) “Permissible Withdrawal Window” means the 90-calendar day period subsequent to the initial Default Deferral during which a Participant is allowed to request a full withdrawal of all Default Deferrals, with earnings and less administrative or servicing fees through the date of distribution. Funds from incoming transfers or rollovers from an Eligible Retirement Plan will not be distributed and will remain in the account. Should a withdrawal request be made within the Permissible Withdraw Window, the AEP Participant will no longer be considered a Participant of the Plan unless funds remain in the account due to an incoming transfer or rollover.

(c) Rules of Application

(1) Automatic Contribution Arrangement. A Covered Employee shall be deemed to have elected to contribute Default Deferrals to the Plan, for the Plan Year and each subsequent Plan Year, in an amount equal to 2% each bi-weekly pay period and shall increase 0.25% annually on the paycheck date nearest the anniversary of the first automatic elective deferral paycheck date. The preceding sentence shall not apply if, within a reasonable period of time (pursuant to policy established by the Administrator which shall be uniformly applied on a nondiscriminatory basis) after receipt of the notice described in paragraph (3) below, the Covered Employee affirmatively elects not to make Elective Deferrals to the Plan or affirmatively elects to make Pre-Tax Contributions and/or Roth Contributions under the Plan in a greater or lesser amount pursuant to Section 4.01.

(2) Investment of Default Deferrals. The initial Default Deferrals and any subsequent Default Deferrals made within the Permissible Withdrawal Window will be



invested in the Plan's FDIC-Insured Savings Account or other such interest-bearing account as may be designated by the Administrator. No earlier than the 91<sup>st</sup> day and no later than the 120<sup>th</sup> day following the date of the initial Default Deferral, all Default Deferrals will be transferred from the FDIC-Insured Savings Account to the Moderate Profile Portfolio. Should an AEP Participant make an affirmative deferral election under Section 4.01 during the Permissible Withdraw Window, assets will not be transferred to the Moderate Profile Portfolio unless the Participant elects to make such change.

(3) Required Notice. Prior to making Default Deferrals to the Plan on behalf of any Covered Employee, and at least thirty (30) days but not more than ninety (90) days before the beginning of each Plan Year thereafter, the Employer shall provide notice to the Covered Employee that explains:

(i) the amount and timing of Default Deferrals;

(ii) how Default Deferrals will be invested in the absence of an investment election by the Participant;

(iii) the Covered Employee's right to modify or terminate automatic Default Deferrals, including to have contributions designated as Roth Contributions;

(iv) the procedures for exercising the Covered Employee's right to make an affirmative election under the Plan;

(v) the timing for implementation of any such election;

(vi) the Covered Employee's right to make a withdrawal of Default Deferrals in accordance with paragraph (h); and

(vii) the risks associated with investing in the market, including the possible loss of contributions.

(d) Opt-Out Period. A Covered Employee enrolled through the AEP will have a reasonable opportunity after receipt of the notice described in paragraph (e) to make an affirmative deferral election to modify or terminate Default Deferrals by filing the Applicable Form under Section 4.01 during the Opt-Out Period. Default Deferrals shall become effective the first pay date following the end of the Participant's Opt-Out Period.

(e) Continuing Effect. Except as provided in paragraph (h), Default Deferrals under this Section 4.02 shall remain in effect until the Participant affirmatively elects to modify or terminate Default Deferrals by filing the Applicable Form under Section 4.01.

(f) 90-Calendar Day Withdrawal Window. An Employee may request a withdrawal of any Default Deferrals made under this Section 4.02, provided that such request must be made no later than ninety (90) calendar days after the date Default Deferrals are first withheld from Compensation. Distributions made pursuant to this paragraph (f) are not counted against the contribution limitations under Article V. Unless the Employee affirmatively elects otherwise, any

withdrawal request shall be treated as an affirmative election under Section 4.01 to terminate Plan participation unless funds remain in the Account due to an incoming transfer or rollover.

(g) Payment of Default Deferrals to the Trust. Default Deferrals shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trust Fund by the Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than fifteen (15) business days following the end of the month in which such amount is withheld from the Compensation of the Participant.

(h) Default Deferrals shall be allocated to the Pre-Tax Contribution Account of the Participant as of the date of contribution.

(i) The Administrator may establish additional rules and procedures governing the administration of Default Deferrals.

**Section 4.03. Rollover Contributions to the Plan.**

(a) A Participant may contribute to the Plan as a Rollover Contribution a distribution from:

(1) a Code Section 401(a) or 403(a) qualified plan, excluding after-tax employee contributions;

(2) a Code Section 403(b) plan, excluding after-tax employee contributions;

(3) a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A);

(4) a Code Section 408 individual retirement account or annuity, with respect to the portion of the distribution that is eligible to be rolled over and would otherwise be includible in gross income;

(5) a Coronavirus Distribution, described in subsection 9.04(e), provided a Participant makes the contribution within 36 months from the date of the Coronavirus Distribution.; or

(6) an RMD distribution from the Plan received in 2020.

Except with regard to a contribution under subparagraphs (a)(5) and (a)(6), a Rollover Contribution under this paragraph shall be made directly from such prior plan, or if such amount was distributed to the Participant, shall be made within sixty (60) days after the Employee receives the rollover amount.

(b) A Participant may also contribute to the Plan as a Rollover Contribution a distribution from a Roth elective deferral account under a Code Section 401(a) plan, a Code Section 403(b) plan, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A), but only to the extent

that the Rollover Contribution is made directly from such prior plan and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) A Rollover Contribution shall be subject to the Trustee's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code.

(d) A Rollover Contribution shall be allocated to a Rollover Contribution Account as of the date of the contribution; provided, however, that separate subaccounts shall be maintained to reflect Rollover Contributions from Code Section 457(b) plans and plans other than Code Section 457(b) plans, and separate subaccounts shall be maintained to reflect Rollover Contributions from elective deferral accounts and Roth elective deferral accounts, as provided in Section 2.02(a).

(e) Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Funds in which to invest his or her Rollover Contribution.

**Section 4.04. Transfers to the Plan.**

(a) Subject to the conditions set forth in this subsection (a), the Plan shall accept a Transfer Contribution on behalf of a Participant who was formerly a participant in an eligible deferred compensation plan maintained by another governmental employer.

(b) The Plan shall only accept a transfer that satisfies the following conditions:

(1) The Participant has separated from employment with the prior governmental employer;

(2) The Participant has established an Account with the Plan;

(3) The transferor plan permits the transfer;

(4) The Participant whose amounts are being transferred will have a deferred amount immediately after the transfer at least equal to the deferred amount with respect to that Participant immediately before the transfer; and

(5) The transfer satisfies such other rules and policies established by the Administrator.

(c) The Plan shall accept, in a direct transfer, assets representing the value of a Participant's interest in the City of Los Angeles Pension Savings Plan; provided, however, that the Participant has established an Account with this Plan.

(d) A Transfer Contribution shall be allocated to the Transfer Contribution Account of the Participant as of the date of the transfer.

**Section 4.05. Leave of Absence.**

During a paid leave of absence, Contributions shall continue to be made for a Participant on the basis of Compensation paid by the Employer during the leave. No Contributions shall be made on behalf of a Participant who is on an unpaid leave of absence.

**Section 4.06. Disability.**

To the extent a Participant has Compensation, such individual who has not had a Separation from Employment may make Elective Deferrals during any period of time that he or she is disabled, as determined under Code Section 22(e)(3).

**Section 4.07. Expenses of Plan.**

All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Investment Funds. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

**ARTICLE V**

**LIMITATIONS ON CONTRIBUTIONS**

**Section 5.01. Elective Deferral Limits.**

(a) **Basic Annual Limitation.** The maximum amount of Elective Deferrals to the Plan for any calendar year shall be limited to the lesser of (i) the applicable dollar amount as provided in Code Section 457(e)(15) or (ii) the Participant's Includible Compensation as provided in Code Section 457(b)(2). The applicable dollar amount is \$19,500 for 2020, increased thereafter by the Cost-of-Living Adjustment.

(b) **Age 50 Catch-Up Annual Deferral Contributions.** A Participant who attains the age of fifty (50) or more by the end of a calendar year, and who is contributing up to the applicable dollar amount under paragraph (a), may make additional Elective Deferrals, as set forth under Code Section 414(v), in an amount of up to \$6,500 beginning the calendar year 2020 increased thereafter by the Cost-of-Living Adjustment.

(c) **Special Section 457 Catch-Up Limitation.** If the applicable year falls within a Participant's last three (3) calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this paragraph (c) exceeds the amount computed under paragraphs (a) and (b), then the Elective Deferrals limit under this Article V shall be the lesser of:

(1) An amount equal to two (2) times the applicable dollar amount set forth in paragraph (a) for such year (\$39,000 beginning calendar year 2020); or

(2) The sum of:

(i) An amount equal to (i) the aggregate paragraph (a) limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(ii) An amount equal to (i) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to paragraph (b) or (c)), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans (as defined by Treasury regulations and as provided in Section 5.03(c) herein) for such years.

However, in no event can the Elective Deferrals be more than the Participant's Compensation for the year.

**Section 5.02. Coordination of Limits.**

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

(b) Pre-Participation Years. In applying Section 5.01(c), a year shall be taken into account only if:

(1) the Participant was eligible to participate in the Plan during all or a portion of the year; and

(2) Compensation deferred, if any, under the Plan during the year was subject to the applicable dollar amount described in Section 5.01(a) or any other plan ceiling required by Code Section 457(b).

(c) Pre-2002 Coordination Years. For purposes of Section 5.01(c)(2)(ii) "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account

for purposes of Section 5.01(c)(2)(ii) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

(d) Current Rule. For 2002 and thereafter, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Code Section 403(b) or to a 401(k) plan pursuant to Code Section 402(e)(3) shall not reduce the maximum Elective Deferrals under Section 5.01.

(1) An individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 5.04. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

(2) The Participant is responsible for ensuring coordination of these limits.

**Section 5.03. Correction of Excess Deferrals.**

(a) If the Elective Deferrals on behalf of a Participant for a calendar year exceeds the limitations described above, or the Elective Deferrals on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Elective Deferrals, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any allocable thereto), shall be distributed to the Participant in accordance with the requirements for excess deferrals under the Code.

(b) Excess Elective Deferrals shall be distributed from the following accounts in the following order:

- (1) other eligible deferred compensation plan or plans;
- (2) a Participant's Roth Contributions to this Plan; and
- (3) a Participant's Pre-Tax Contributions to this Plan.

**ARTICLE VI**

**ACCOUNTING**

**Section 6.01. Participant Accounts.**

The Administrator shall establish and maintain adequate records to reflect the Accounts of each Participant, Entity Beneficiary, Designated Beneficiary, Eligible Designated Beneficiary, and/or Secondary Beneficiary (collectively "Beneficiaries" or "Beneficiary" as the context so requires). Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Investment Fund. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 6.02. Participant Statements.**

The Administrator shall provide to each Participant or his or her respective applicable Beneficiaries a quarterly statement, reflecting the value of the Participant's Account as of the end of each quarter and shall provide similar information to the Administrator upon its request. Such quarterly statement shall be furnished to the Participant in the manner designated or permitted by the Administrator.

**Section 6.03. Value of Account.**

The value of the Account is the value as of any Valuation Date as determined by the Administrator.

**ARTICLE VII**

**INVESTMENT OF CONTRIBUTIONS**

**Section 7.01. Investment Funds.**

(a) All Contributions under the Plan shall be transferred to the Trust to be held, managed, invested, and distributed in accordance with the provisions of the Plan Document and the Investment Funds as applicable.

(b) Participants' Accounts shall be invested in one or more of the Investment Funds available to Participants under the Plan as selected by the Administrator and communicated to Participants. The Administrator's current selection of Investment Funds is not intended to limit future additions or deletions of Investment Funds.

(c) A Participant shall have the right to direct the investment of his or her Account by filing the Applicable Form with the Administrator. A Participant may change his or her investment election as often as determined by the Administrator. A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Fund to another Investment Fund, subject to the limitations of the Investment Fund(s), by filing a request on the Applicable Form with the Administrator.

**Section 7.02. Default Investments.**

If a Participant does not have a valid and complete investment direction on file with the Administrator on the Applicable Form, Contributions may be invested in a default fund selected by the Administrator in its sole discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

## **ARTICLE VIII**

### **TRUST**

#### **Section 8.01. Trust Fund.**

All Contributions under the Plan shall be part of the Trust Fund in accordance with the provisions of the Plan, Plan Document, and the Investment Funds, as applicable. All assets held in connection with the Plan, including all Contributions, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property or rights, shall be held in, managed, invested and distributed in Trust as part of the Trust Fund, in accordance with the provisions of the Plan Document. All benefits under the Plan shall be distributed solely from the Trust Fund, and the City shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan Document.

#### **Section 8.02. Trust Status.**

The Trust Fund shall be held in Trust for the exclusive benefit of the Participants and Beneficiaries under the Plan in accordance with Code Section 457(g). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and their Beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code Section 457(g)(2).

## **ARTICLE IX**

### **DISTRIBUTIONS**

#### **Section 9.01. Distribution Restrictions.**

(a) A Participant's Account may not be distributed to the Participant or his or her Entity Beneficiary, Eligible Designated Beneficiary, or Designated Beneficiary except as otherwise provided in this Article IX.

(b) Notwithstanding paragraph (a), a Participant may request a distribution from his or her Rollover Contribution Account at any time.

(c) Any distribution from the Plan being made to a Participant who previously commenced a distribution following a Separation from Employment in accordance with subsection 9.04(b) shall cease upon the reemployment of such Participant by the Employer during the pendency of Participant's period of reemployment.

#### **Section 9.02. Distributions for Health Insurance Premiums of Retired Public Safety Officers.**

As set forth under Code Section 457(a)(3), beginning January 1, 2012, a Participant who is an eligible retired public safety officer (as defined in Code Section 402(l)(4)(B)) and who has separated from service as a public safety officer with the Employer, may elect a distribution to be paid by the Plan from the Participant's account directly to an insurer for payment of qualified health



insurance premiums (as defined in Code Section 402(l)(4)(D)), up to \$3,000 per taxable year (or such other limitation prescribed in Code Section 402(l)(2)). Such election shall be made in accordance with procedures established by the Administrator.

### **Section 9.03. Distribution of Small Account Balances.**

Upon a written request to the Administrator, a Participant may elect to receive a distribution of his or her Account in a lump sum if the Account balance does not exceed \$5,000 (or such other dollar limit provided under Code Section 411(a)(11), if greater) without regard to amounts attributable to rollover contributions, provided that no Elective Deferrals have been made by the Participant during the two-year period immediately prior to the date of distribution, and the Participant has not previously received a distribution of his or her Account under this Section 9.03.

### **Section 9.04. Distribution Options.**

(a) **In-Service Distributions.** Notwithstanding the provisions of subsection 9.04(b) and (c), but with regard to the provisions of subsection 9.04(f), beginning January 1, 2020, a Participant may commence a distribution of his or her Account in the calendar year in which the Participant attains age 59 ½.

(b) **Separation from Employment.** Subject to the provisions under this Section, the terms of the Investment Funds, together with any restrictions established by the Administrator, a Participant may commence a distribution of his or her Account any time following a Separation of Employment by filing the Applicable Forms with the Administrator, without regard to any services performed by the Participant for the City pursuant to Charter Section 1164(b).

(c) **Required Minimum Distributions.** A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½ (age 72 for distributions required to be made after December 31, 2019, with respect to a Participant who would have attained age 70½ after December 31, 2019) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Separation from Employment. The amount of any such required minimum distribution discussed herein shall be determined in accordance with Code Section 401(a)(9) and the regulations thereunder as applicable to a governmental plan as defined in Code Section 414(d).

(d) **Elective Suspension of Required Minimum Distributions for 2020.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 but for the enactment of Code Section 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving periodic or installment distributions that are equal to the 2020 RMDs, will receive those distributions for 2020 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(e) **Coronavirus Related Distributions.** Beginning January 1, 2020 through December 30, 2020, or such other date as proscribed by the Code Participant may elect a coronavirus related distribution ("Coronavirus Distribution") in an amount up to \$100,000 provided the Participant attests to any one of the following:

(1) Participant is diagnosed with virus SARS-CoV-2 or with coronavirus disease (COVID-19) (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention ("CDC");

(2) Participant's spouse or dependent is so diagnosed with COVID-19 by a test approved by the CDC, or

(3) Participant who experiences adverse financial consequences as a result of

(i) the Participant, the Participant's Spouse, or a member of the Participant's household (1) being quarantined, (2) being furloughed or laid off or having work hours reduced due to such virus or disease, (3) being unable to work due to lack of child care due to such virus or disease, (4) having a reduction in pay (or self-employment income) due to such virus or disease, or (5) having a job offer rescinded or start date for a job delayed due to such virus or disease;

(ii) closing or reducing hours of a business owned or operated by the Participant, the Participant's Spouse, or a member of the Participant's household due to such virus or disease; or

(iii) other factors as determined by the Secretary of the Treasury (or the Secretary's delegate).

(f) Distribution Forms to Participant. On or before the date of a distribution described in subsections 9.04(a) through (c), a Participant may elect a distribution under any of the following forms of payment:

(1) **Lump sum payment.** The total benefits payable in one cash payment.

(2) **Partial lump-sum payment.** Subject to subsection 9.04(g), payment of a portion of the Participant's Account with the remaining balance to be paid in the manner set forth under subparagraph 9.04(f)(3) through (f)(4).

(3) **Periodic Payment - Fixed Term.** Subject to Section 9.04(c), amounts payable in equal installments over the lesser of, a period of one to thirty years or the life expectancy of the Participant.

(4) **Periodic Payment - Fixed Dollar Payment.** Subject to Section 9.04(c), a fixed dollar amount payment over a time period not to exceed, the lesser of, a Participant's life expectancy or thirty years

(g) Distribution of Entire Interest. Distributions of a Participant's entire interest in the Plan must occur over the life of the Participant or the lives of the Participant and Designated Beneficiary but not exceeding beyond either the life expectancy of the Participant or the life expectancy of the Participant and Designated Beneficiary. Notwithstanding any other provision of the Plan Document, the elected form of distribution shall comply with required distribution rules under Code Section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan

defined in Code Section 414(d), including any minimum distribution incidental benefit requirements.

**Section 9.05. Distributions for Participants Dying on or before December 31, 2021.**

(a) Upon the death of the Participant, the Participant's Beneficiaries may elect to receive the Participant's Account in any form permitted under Section 9.04. If there are two or more Beneficiaries, the provisions of this section shall be applied to each Beneficiary separately with respect to each beneficiary's share in the Participant's account. However, if the Beneficiary of the Participant is the Participant's estate, the benefit will be payable only in a single lump sum. If such Beneficiary dies after beginning to receive benefits but prior to the depletion of such beneficiary's entire account balance has been distributed, the remaining account balance shall be paid to such Beneficiary's Secondary Beneficiary in a lump sum or in accordance with state law, if there's no Secondary Beneficiary. Notwithstanding any other provision in the Plan Document to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code Section 414(d), including any minimum distribution incidental benefit requirements.

(b) For an Eligible Designated Beneficiary who is the Participant's surviving spouse, distributions after the Participant's death must begin to be distributed by the later of December 31 of the calendar year immediately following the year of the Participant's death or December 31 of the calendar year in which the Participant would have attained age 72. Payments to a surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. Alternatively, the surviving spouse may elect to receive a total distribution of the Participant's Account by no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) In cases where a Beneficiary is not the Participant's surviving spouse, distributions after the Participant's death must either (1) begin to be distributed no later than December 31 of the calendar year immediately following the year of the Participant's death, payable over a period not to exceed the Beneficiary's life expectancy; or (2) be distributed no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If required minimum distributions under Code Section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant's Account shall be distributed to the Beneficiary at least as rapidly as under the method of distribution in effect prior to the Participant's death.

**Section 9.06. Distributions for Participants Dying on or After January 1, 2022.**

[RESERVED]

**Section 9.07. In-Plan Roth Transfers.**

(a) Any vested amount held in an Account for a Participant (other than an amount held in a Roth Account) is eligible for Direct Rollover to the Participant's Roth Contribution Account under the Plan, even if the vested amount is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under Section 9, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to such Account.

(b) A Participant's election under this Section shall be subject to the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the Treasury Regulations thereunder, and any subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account transferred to a Roth Contribution Account under Section 9.07 shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) The Plan shall provide written information regarding in-Plan Roth transfers under this Section, for amounts that are otherwise distributable under this Section to the extent required by Code Section 402(f).

(e) A loan transferred in an in-plan rollover that does not change the loan's repayment schedule shall not be treated as a new loan for purposes of Code Section 72(p).

**Section 9.08. Distributions for Births or Adoption.**

(a) Distribution. If a Participant experiences a qualified birth or adoption as described under Code Section 72(t)(H), the Participant may elect to receive a withholding tax-free distribution in an amount up to \$5,000 as provided under Code Section 72(t)(H)(ii) within one year from the date of a qualified birth or adoption.

(b) Repayment of Distribution. As provided Under Code Section 72(t)(H)(v), any Participant who has elected to receive a distribution described in Section 9.08(a) may make one or more contributions to an eligible retirement plan in an aggregate amount not to exceed the amount distributed under Section 9.08(a).

**Section 9.09. Unforeseeable Financial Emergency Distributions.**

(a) Distribution. If the Participant has an unforeseeable emergency before retirement or other Separation from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 9.07. The Participant's distribution request shall specify the reason for the Unforeseeable Financial Emergency, as defined herein, and specify the amount the Participant wishes to withdraw to meet the need caused by the Unforeseeable Financial Emergency.

(b) "Unforeseeable Financial Emergency" means a severe financial hardship of the Participant resulting from:

(1) an illness or accident of the Participant, the Participant's Spouse, the Participant's dependent (as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), or a Beneficiary of the Participant;

(2) loss of the Participant'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 funeral expenses of the Participant's Spouse, the Participant's Dependent (as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), or a Beneficiary of the Participant; or

(4) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 9.07, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) Unforeseeable Financial Emergency Distribution Standard. A distribution due to an Unforeseeable Financial Emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of Elective Deferrals under the Plan.

(d) Distribution Necessary to Satisfy Emergency Need. Distributions due to an Unforeseeable Financial Emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(e) Administrator Determines Unforeseeable Financial Emergency. The Administrator must determine whether the circumstances of the Participant constitute an Unforeseeable Financial Emergency within the meaning of Subsection 9(b). Following a uniform procedure, the Administrator's determination shall take into account the facts or circumstances of each individual case deemed necessary or advisable by the Administrator, and the Participant shall be required to submit any evidence of his or her circumstances that the Administrator requires.

(f) Reasonable Fee. The Administrator may charge a reasonable fee, as approved by the Board, for processing Unforeseeable Financial Emergency distributions.

#### **Section 9.10. Transfer to Defined Benefit Governmental Plan.**

(a) Subject to Subsection 9.10(b), if a Participant is also a Participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, such Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan

for, (i) the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under such plan, or (ii) a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). Such transfer requests shall be made directly to the defined benefit governmental plan. A transfer under this Section may be made before the Participant has had a Separation from Employment.

(b) No portion of the Participant's Account attributable to Roth Contributions or Roth Rollover Contributions may be transferred under this Section 9.10.

#### **Section 9.11. Transfers from and to the Plan.**

(a) Transfers to eligible deferred compensation plan of another governmental employer. If a Participant has a Separation from Employment and begins performing services for another governmental employer that maintains an eligible deferred compensation plan which provides for the receipt of transfers, such Participant may request a transfer of all or a portion of his or her Account to the eligible deferred compensation plan of the other governmental employer provided that distributions under this Plan have not commenced. The amount deferred under the other plan immediately after the transfer must be at least equal to the amount transferred.

(b) Transfers to the City of Los Angeles Pension Savings Plan. If a Participant becomes a participant in the City of Los Angeles Pension Savings Plan (whether or not he or she has had a Separation from Employment), such Participant may request a transfer of all or a portion of his or her Account to the City of Los Angeles Pension Savings Plan, provided that distributions under the Plan have not commenced.

#### **Section 9.12. Disaster Relief Distributions.**

Notwithstanding any other provision of the Plan, a Participant may receive a qualified disaster distribution from the Plan in accordance with relief announced by the Internal Revenue Service or adopted by federal law for individuals who suffered economic losses as a result of natural disasters declared by the President of the United States in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Eligibility for a qualified disaster distribution and the terms for repayment shall be determined by the terms of the disaster declaration and guidance issued by the Internal Revenue Service, if any, or in the applicable federal law. Except where inconsistent with the applicable disaster relief announcement or law, the provisions of Section 9.9 and Article X of the Plan apply, respectively, to any unforeseeable emergency withdrawal or loan made pursuant to this section.

## ARTICLE X

### LOANS

#### **Section 10.01. General Loan Provisions.**

(a) Loans. A Participant shall be entitled to receive a loan from the Plan subject to the provisions of this Article. A Participant may apply for a loan by completing the Applicable Forms. The minimum amount of a loan is \$1,000.

(b) Maximum Loan Amount. Except as provided under Section 9.12 or subsection (c), the maximum amount of a loan from the Plan, when added to the outstanding balance of all other loans from the Plan, shall not exceed the lesser of:

(1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or

(2) One half (1/2) of the value of the Participant's vested Account Balance.

(c) Maximum Loan Amount Due to Covid-19. For the period beginning March 27, 2020 through September 23, 2020 with respect to a Participant described in subsection 9.04(e), subsection 10.01 (b)(1) shall be applied by substituting "\$100,000 for "\$50,000," and subsection 10.01(b)(2) shall be applied by substituting "the value of the Participant's vested Account Balance" for "one half (1/2) of the value of the Participant's vested Account Balance."

(d) Allocation from Accounts. Loan distributions shall be prorated across all Money Types and all available investment options excluding the brokerage window.

(e) Loan fees. Each Participant will be required to pay a loan origination fee, ongoing maintenance fee, and any other costs related to the Participant's loan application, as established by the Administrator, unless otherwise waived in whole or in part, and approved by the Board, as applicable.

#### **Section 10.02. Loan Administration and Terms.**

(a) The loan program described in this Article shall be administered by the Administrator. All loans shall be subject to the approval of the Administrator.

(b) The rate of interest shall be 2% over the Prime Rate, as published in the Wall Street Journal on the first business day of the month before the loan is originated.

(c) Each loan shall be amortized on a substantially level basis with payments not less frequently than bi-weekly throughout the repayment period. The period of repayment shall be no less than one (1) year and no more than to five (5) years as designated by the Participant at the time of loan application. Notwithstanding the foregoing, if the proceeds of the loan are used to

acquire a dwelling which within a reasonable time is to be used as the Participant's principal residence, the period of repayment shall be no less than one (1) year and no more than fifteen (15) years as designated by the Participant at the time of loan application.

- (d) Loans may not be “rolled over” to a new loan or re-financed.
- (e) Participant may only have two loans outstanding at any time.
- (f) Repayment Agreements.

(1) The Participant shall be required, as a condition of the Administrator’s approval, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, except in the cases of a lump-sum correction of delinquencies as outlined in Section 10.03 or a lump-sum early payoff.

(2) Participants who have had a Separation from Employment shall make direct payments to the Administrator on a no less than monthly basis and in accordance with a payment schedule established by the Administrator. Payments may be made by cashier's check, money order, Automated Clearing House (ACH), personal check, or such other method of payment acceptable to the Administrator.

(3) A Participant may prepay a loan. The Participant may either make a partial payment of principal or a full payment of the entire outstanding balance of the loan. Prepayments on loans are applied to the outstanding principal owed and do not preclude a Participant from making regularly scheduled payments.

**Section 10.03. Default.**

(a) Security. Any loan to a Participant shall be secured by a pledge of the portion of the Participant’s interest in the Plan invested in such loan.

(b) Delinquent Loan. Except as provided under subparagraph (g), a Participant’s loan shall be delinquent if any loan payment is not made on or before the payment due date and the Administrator does not receive the payment by the last day of the calendar quarter following the calendar quarter in which it is due. The Administrator shall provide the Participant any and all notices of delinquency.

(c) Defaulted Loan. If the Administrator does not receive the delinquent loan payment(s), including interest on the missed payment from the original due date to the payment date, in a lump sum, by the last business day of the calendar quarter following the calendar quarter in which the payment is due, the loan shall be in default. The Administrator shall notify the Participant any and all notices of default.

(d) Repayment of Defaulted Loan. In the event of a defaulted loan under this Article, the loan shall be subject to the following provisions:



(1) all remaining payments on the loan shall be immediately due and payable within sixty (60) days of the date of default; and

(2) the interest rate imposed on the outstanding loan balance shall be the greater of the stated interest or the interest rate effective as of the first day of the calendar month immediately following the month in which any such loan default occurs.

(e) Defaulted Loan Treated as a Distribution. Subject to time period specified under subparagraph (d)(1) herein, a defaulted loan shall be treated as a distribution includable in gross income as set forth under Code Section 72(p)(1) and without regard to Code Section 72(t).

(f) Prohibition of Future Loans. Participant shall be permanently ineligible for any future loans from the Plan unless any outstanding loans are being repaid or have been paid in full or offset. Participants who have a Separation from Employment and have returned to employment with the Employer must first offset or pay in full any defaulted balances prior to issuance of a new loan.

(g) Loan Forbearance. With respect to a Participant described in subsection 9.04(e), any failure to make a loan repayment due or owing on March 27, 2020 through December 31, 2020 shall not cause such loan to be considered a Delinquent Loan nor be considered in Default if the participant elects to defer repayment. If the participant elects to defer repayment, on January 1, 2021, the remaining principal of the loan and any interest accruing during the suspension period shall be reamortized over a period that is up to one (1) year longer than the original term of the loan or otherwise be treated as a Delinquent Loan and subject to the provisions herein.

**Section 10.04. Leave of Absence.**

(a) If a Participant who has an outstanding loan incurs an authorized leave of absence, and either ceases loan repayment or such Participant's rate of pay (after income and employment tax withholding) is not sufficient to allow repayment under the terms of the loan, based on the sole discretion of the Administrator, the loan will not be deemed in default for a period equal to the lesser of:

(1) the length of the leave of absence; or

(2) one (1) year, as long as the loan (including interest that accrues during the leave of absence) is repaid by the latest permissible term of the loan and the amount of the installments due after the leave of absence ends is not less than the amount required under the terms of the original loan.

The Participant must notify the Plan of the authorized leave of absence by completing and submitting the proper form to the Administrator prior to and upon return from the approved leave of absence.

(b) Military Leave Repayment Period. Notwithstanding the preceding provisions, loan repayments during a period of military service will be suspended as permitted under Code Section 414(u)(4). In accordance with Code Section 414(u), a loan suspended because of military service will not be deemed in default even if the suspension exceeds one year, as long as loan repayments

resume upon completion of the military service and the loan (including interest that accrues during the military leave) is repaid by the end of the period equal to the sum of the term of the loan plus the period of military service.

## **ARTICLE XI**

### **VESTING**

A Participant shall be one hundred percent (100%) Vested in his or her Accounts at all times as provided under Treasury Regulation section 1.457-8(a).

## **ARTICLE XII**

### **ROLLOVERS FROM THIS PLAN**

#### **Section 12.01. Plan Distributions and Withholding Requirements.**

Notwithstanding any provisions of the Plan Document that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

#### **Section 12.02. Definitions for this Article.**

For purposes of this Article, the following definitions shall apply.

(a) “Direct Rollover” means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) “Distributee” means a Participant, the Participant’s Eligible Designated Beneficiary, or the Participant's former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p), and a Participant's Designated Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(c) Notwithstanding anything in the Plan Document to the contrary that otherwise would limit a Distributee's election under this Article XII, and to the extent allowed under the applicable provisions of the Code, a Distributee who is a Designated Beneficiary, but not a surviving spouse, spouse or former spouse who is an alternate payee, may elect at the time and in the manner prescribed by the Administrator, to have all or any part of his or her Account that qualifies as an Eligible Rollover Distribution paid in a direct trustee-to-trustee transfer to an Eligible Retirement Plan that is an individual retirement plan described in clause (i) or (ii) of Code Section 402(c)(8)(B). If such a transfer is made: (1) the transfer shall be treated as an Eligible Rollover Distribution, (2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C), and (3) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such individual retirement plan.

- (d) “Eligible Retirement Plan,” as defined under Code Section 402(c)(8)(B), means:
- (1) an individual retirement account described in Code Section 408(a);
  - (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
  - (3) any annuity plan described in Code Section 403(a);
  - (4) a plan described in Code Section 403(b);
  - (5) a qualified plan described in Code Section 401(a);
  - (6) a Code Section 457(b) eligible deferred compensation plan 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;
  - (7) a Roth individual retirement account described in Code Section 408A(e) provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs; and
  - (8) a SIMPLE IRA described in Code Section 408(p)(1), provided that the rollover contribution is made after the two (2) year period described in Code Section 72(t)(6).

In the case of a distribution to a Designated Beneficiary, an Eligible Retirement Plan means the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(e) “Eligible Rollover Distribution,” as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, excluding the following:

- (1) 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 (10) years or more;
- (2) any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (3) the portion of any distribution that is not includible in gross income; however, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, although such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified retirement plan described in Code Section 401(a) that agrees to separately account for amounts so

transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(4) any distribution which is made upon the financial hardship of the Participant;  
and

(5) other items designated by regulations, or promulgated by the Internal Revenue Service in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

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**Section 12.03. Direct Rollover.**

A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Administrator. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Sections 402, 403, or 408.

**ARTICLE XIII**

**ADMINISTRATION OF THE PLAN**

**Section 13.01. Authority of the Board.**

The Board is responsible for performing the duties required to operate the Plan in accordance with LAAC and the Plan Document. In connection therewith, the Board may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may, from time to time, amend or rescind such rules or regulations.

**Section 13.02. Powers of the Board.**

The Board shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Board may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Board may deem expedient and the Board should be the sole and final judge of such expediency. Actions of the Board are subject to the provisions of City Charter Section 245.

**Section 13.03. Delegation by Board.**

The Board may delegate to the Staff, an individual, committee, or organization to carry out certain of the Board's duties or responsibilities under the Plan. Any such Staff, individual, committee or organization delegated such duties or responsibilities shall perform them until revoked by the Board, which in the Board's sole discretion, may occur without cause or advance notice.

**Section 13.04. Employment of Service Providers.**

The Board may employ one or more Service Providers to perform those delegated responsibilities under the Plan.

## ARTICLE XIV

### AMENDMENT AND TERMINATION OF THE PLAN

#### Section 14.01. Amendment and Termination.

While it is expected that the Plan shall continue indefinitely, the City reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further Contributions to the Plan at any time, through the actions of the Board. The City may amend the Plan Document, consistent with the LAAC.

#### Section 14.02. Distribution Upon Termination of the Plan.

Pursuant to LAAC Section 4.1409, the City has the right to completely terminate the Plan at any time and in its sole discretion. Upon termination of the Plan and subject to the provisions in this Section, the Board, together with the City, shall arrange for the suitable distribution of Plan assets, including the possibility of transfer to another 457 plan or plans. Any pay out to Participants and Beneficiaries or a successor plan upon termination of the Plan shall not occur until, (i) all provisions of the law with respect to such termination have been complied with, and, (ii) a determination has been made of the fair market value of the assets of the Plan, such determination to be provided by a qualified valuation Service Provider, and (iii) a determination by such valuation Service Provider that the Plan has sufficient assets to discharge, when due, all obligations of the Plan.

## ARTICLE XV

### MISCELLANEOUS

#### Section 15.01. Non-Alienation.

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

#### (b) Qualified Domestic Relations Orders.

(1) Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the right of an alternate payee within the meaning of Code Section 414(p)(8) to all or a portion of a Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p).

(2) Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the alternative payee and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant.

All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the alternate payee making the investment selection.

(3) Any amounts so set aside for an alternate payee under subsection (b)(2), may be paid in whole or in part to such payee or in the fashion so designated by such payee, as soon as administratively feasible, following the date that the QDRO has been approved, unless the QDRO directs a different form of payment or different payment date. Withholding and income tax reporting shall be done with respect to the alternate payee under the terms of the Code as amended from time to time.

(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Spouse such amounts as are permitted to be offset in accordance with Code Section 401(a)(13)(C).

(d) Notwithstanding paragraph (a), the Administrator may pay from Participant's or Beneficiary's Account under the Plan the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. Except in the case of an alternate payee within the meaning of Code Section 414(p)(8), under no circumstances may a payment under this paragraph (d) take place before a Participant has a Separation from Employment or reaches age fifty nine and one-half (59 ½), whichever is earlier.

#### **Section 15.02. Military Service.**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, and Code Sections 401(a)(37) and 414(u). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five (5) years following the resumption of employment or (ii) a period equal to three (3) times the period of the interruption or leave. Such Elective Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Employer.

(c) To the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed

employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(d) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer shall be treated as an Employee of the Employer who is a Participant eligible to make Elective Deferrals during such service and the differential wage payment shall be treated as Compensation and Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**Section 15.03. Limitation of Rights and Obligations.**

Neither the establishment nor maintenance of the Plan, nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person any right or claim against the City, Board, or Service Provider

(b) as a contract or agreement between the City, the Board, or Service Provider, and any Participant or other person; or

(c) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the City, the Board, or any Participant to continue or terminate the employment relationship at any time.

**Section 15.04. Federal and State Taxes.**

It is intended that Pre-Tax Contributions, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until distributed to Participants or Beneficiaries as provided in the Plan Document, and that Roth Contributions and earnings thereunder are excludable from gross income for federal and state income tax purposes when paid to Participants or Beneficiaries to the extent that they are Qualified Distributions. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in the Plan.

**Section 15.05. Mistaken Contributions.**

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant, subject to any federal and/or state income taxes.



**Section 15.06. Erroneous Payments.**

If the Administrator makes any payment that according to the terms of the Plan Document and the benefits provided hereunder should not have been made, the Administrator may recover that incorrect payment, exercising all reasonable diligence in accordance with state law, whether or not it was made due to the error of the Administrator, from the person to whom it was made or from any other appropriate party.

**Section 15.07. Payments to Minors or Participants Deemed to be Incompetent.**

If a Participant or Beneficiary, entitled to receive any benefits hereunder, is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court of competent jurisdiction, benefits shall be paid to such person's custodian or legal guardian for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**Section 15.08. Missing or Lost Participants.**

In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including but not limited to using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them. In the event that the Administrator is unable to locate a Participant or Beneficiary entitled to benefits under the Plan, the Trustee may close the Participant's Account and may transfer the money in the Account to the employer accumulation reserve or other reserve account that the Plan may have. The City shall restore the Participant's Account and shall debit the employer accumulation reserve accordingly if the Participant or Beneficiary subsequently applies for retirement benefits under this Plan.

**Section 15.09. Written Notice.**

Any written notice required or permitted under the Plan Document, if directed to the City, shall be sent to its principal office and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at the last known address for such person as it appears in the City's records or as indicated on the Participant's account.

**Section 15.10.    No Reversion.**

Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the City or the Administrator, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan.

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