

## **CITY OF CENTENNIAL 457(b) PLAN**

Deferred Compensation Plan CL2009

Restated August 1, 2013

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PLAN EXECUTION

## INTRODUCTION

The Employer previously established a deferred compensation plan on January 1, 2006.

The plan has been designed and is intended to meet the requirements of section 457 of the Internal Revenue Code of 1986, including any later amendments to the Code.

The Employer is of the opinion that the plan should be changed. It believes that the best means to accomplish these changes is to completely restate the plan's terms, provisions and conditions. The restatement, effective August 1, 2013, is set forth in this document and is substituted in lieu of the prior document.

## ARTICLE I FORMAT AND DEFINITIONS

### SECTION 1.01--FORMAT.

Words and phrases defined in the DEFINITIONS SECTION of Article I shall have that defined meaning when used in this Plan, unless the context clearly indicates otherwise.

These words and phrases have an initial capital letter to aid in identifying them as defined terms.

### SECTION 1.02--DEFINITIONS.

**Account** means, for a Participant, his share of the Plan Fund. Separate accounting records are kept for those parts of his Account that result from:

- (a) Pre-tax Salary Deferral Contributions
- (b) Roth Salary Deferral Contributions
- (c) Transfer Contributions
- (d) Rollover Contributions

A Participant's Account shall be reduced by any distribution of his Vested Account. A Participant's Account shall participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund. His Account is subject to any minimum guarantees applicable under the Annuity Contract or other investment arrangement and to any expenses associated therewith.

**Active Participant** means an Eligible Employee who is actively participating in the Plan according to the provisions in the ACTIVE PARTICIPANT SECTION of Article II.

**Age 50 Catch-up Dollar Amount** means, for any taxable year, the amount established under Code Sections 414(v)(2)(B) and (C) applicable as set forth below:

Calendar Year in Which Taxable Year Begins	Age 50 Catch-up Dollar Amount
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000 adjusted for cost-of-living after 2006 in accordance with Code Section 414(v)(2)(C)

**Annuity Contract** means the annuity contract or contracts into which the Trustee enters with the Insurer for guaranteed benefits, for the investment of Contributions in separate accounts, and for the payment of benefits under this Plan. The term Annuity Contract as it is used in this Plan shall include the plural unless the context clearly indicates the singular is meant.

**Applicable Dollar Amount** means, for any taxable year, the amount established under Code Section 457(e)(15) applicable as set forth below:

Calendar Year in Which Taxable Year Begins	Applicable Dollar Amount
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000 adjusted for cost-of-living after 2006 in accordance with Code Section 457(e)(15)(B)

**Beneficiary** means the person or persons named by a Participant to receive any benefits under the Plan when the Participant dies. See the BENEFICIARY SECTION of Article X.

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

**Compensation** means all payments made to an Employee by the Employer as remuneration for services rendered, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income. Compensation shall also include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 132(f)(4), or 457. Compensation shall also include employee contributions "picked up" by a governmental entity and, pursuant to Code Section 414(h)((2), treated as Employer contributions.

For Plan Years beginning on or after July 1, 2007, Compensation for a Plan Year shall also include Compensation paid by the later of 2 1/2 months after an Employee's Severance from Employment with the Employer maintaining the Plan or the end of the Plan Year that includes the date of the Employee's Severance from Employment with the Employer maintaining the Plan, if (i) the payment is regular Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or (iii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Beginning January 1, 2009, Compensation shall include Differential Wage Payments.

**Contributions** means

- Salary Deferral Contributions
- Transfer Contributions
- Rollover Contributions

as set out in Article III, unless the context clearly indicates only specific contributions are meant.

**Designated Beneficiary** means the individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-4 of the regulations.

**Differential Wage Payments** means any payments which are made by an Employer to an individual with respect to any period during which the individual is performing Qualified Military Service while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing service for the Employer.

**Direct Rollover** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Distributee** means an Employee or former Employee. In addition, the Employee's (or former Employee's) surviving spouse and the Employee's (or former Employee's) spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse. For distributions made after December 31, 2006, a Distributee includes the Employee's (or former Employee's) nonspouse Designated Beneficiary, in which case, the distribution can only be transferred to a traditional IRA or Roth IRA established on behalf of the nonspouse Designated Beneficiary for the purpose of receiving the distribution.

**Eligible Employee** means any Employee of the Employer including elected officials.

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

If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an Eligible Retirement Plan with respect to such portion shall include only (i) another designated Roth account of the individual from whose Account the payments or distributions were made or (ii) a Roth IRA of such individual.

**Eligible Rollover Distribution** means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) any unforeseeable emergency distribution; (iv) the portion of any other distribution(s) that is not includible in gross income; and (v) any other distribution(s) that is reasonably expected to total less than \$200 during a year. For purposes of the \$200 rule, a distribution from a designated Roth account and a distribution from other accounts under the Plan shall be treated as made under separate plans.

**Employee** means an individual who is employed by the Employer.

Beginning January 1, 2009, the term Employee shall include any individual receiving Differential Wage Payments.

**Employer** means City of Centennial.

**Employer Contributions** means Salary Deferral Contributions as set out in Article III.

**Entry Date** means the date an Employee first enters the Plan as an Active Participant. See the ACTIVE PARTICIPANT SECTION of Article II.

**Inactive Participant** means a former Active Participant who has an Account. See the INACTIVE PARTICIPANT SECTION of Article II.

**Includible Compensation** means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in section 1.62-2(c) of the regulations)), and excluding the following:

- (1) employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan, or any distributions from a plan of deferred compensation;
- (2) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (4) other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludible from the gross income of the Employee).

For Plan Years beginning on or after July 1, 2007, Includible Compensation for a Plan Year shall also include compensation paid by the later of 2 1/2 months after an Employee's Severance from Employment with the Employer maintaining the Plan or the end of the Plan Year that includes the date of the Employee's Severance from Employment with the Employer maintaining the Plan, if (i) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or (iii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Includible Compensation shall also include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 132(f)(4), or 457.

Includible Compensation shall be determined without regard to any community property laws.

Beginning January 1, 2009, Includible Compensation shall include Differential Wage Payments.

**Insurer** means the insurance company or companies named by the Trustee in its discretion or as directed under the Trust Agreement to issue Annuity Contracts.

**Investment Fund** means the total of Plan assets, excluding the guaranteed benefit policy portion of any Annuity Contract. All or a portion of these assets may be held under the Trust Agreement.

The Investment Fund shall be valued at current fair market value as of the Valuation Date. The valuation shall take into consideration investment earnings credited, expenses charged, payments made, and changes in the values of the assets held in the Investment Fund.

The Investment Fund shall be allocated at all times to Participants, except as otherwise expressly provided in the Plan. The Account of a Participant shall be credited with its share of the gains and losses of the Investment Fund. That part of a Participant's Account invested in a funding arrangement which establishes one or more accounts or investment vehicles for such Participant thereunder shall be credited with the gain or loss from such accounts or investment vehicles. The part of a Participant's Account which is invested in other funding arrangements shall be credited with a proportionate share of the gain or loss of such investments. The share shall be determined by multiplying the gain or loss of the investment by the ratio of the part of the Participant's Account invested in such funding arrangement to the total of the Investment Fund invested in such funding arrangement.

**Mandatory Distribution** means a distribution to a Participant that is made without the Participant's consent and is made to the Participant before he attains the older of age 62 or his Normal Retirement Age.

**Normal Retirement Age** means age 59 1/2.

**Participant** means either an Active Participant or an Inactive Participant.

**Plan** means the deferred compensation plan of the Employer set forth in this document, including any later amendments to it.

**Plan Administrator** means the person or persons who administer the Plan.

The Plan Administrator is the Employer.

**Plan Fund** means the total of the Investment Fund and the guaranteed benefit policy portion of any Annuity Contract. The Investment Fund shall be valued as stated in its definition. The guaranteed benefit policy portion of any Annuity Contract shall be determined in accordance with the terms of the Annuity Contract and, to the extent that such Annuity Contract allocates contract values to Participants, allocated to Participants in accordance with its terms. The total value of all amounts held under the Plan Fund shall equal the value of the aggregate Participants' Accounts under the Plan.

**Plan Year** means a period beginning on a Yearly Date and ending on the day before the next Yearly Date.

**Pre-tax Salary Deferral Contributions** means a Participant's Salary Deferral Contributions that are not includible in the Participant's gross income at the time deferred.

**Primary Beneficiary** means an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the death of the Participant.

**Qualified Military Service** means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the U.S. Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

**Reentry Date** means the date a former Active Participant reenters the Plan. See the ACTIVE PARTICIPANT SECTION of Article II.

**Rollover Contributions** means the Rollover Contributions which are made by an Eligible Employee or an Inactive Participant according to the provisions of the ROLLOVER CONTRIBUTIONS SECTION of Article III.

**Roth Salary Deferral Contributions** means a Participant's Salary Deferral Contributions that are not excludible from the Participant's gross income at the time deferred and have been irrevocably designated as Roth Salary Deferral Contributions by the Participant in his salary deferral agreement.

**Salary Deferral Contributions** means contributions made by the Employer in accordance with salary deferral agreements between the Employer and Eligible Employees. See the EMPLOYER CONTRIBUTIONS SECTION of Article III.

Salary Deferral Contributions means Pre-tax Salary Deferral Contributions and Roth Salary Deferral Contributions, unless the context clearly indicates only one is meant.

**Severance from Employment** means an Employee has died, retired, or otherwise had a severance from employment with the Employer. The Plan Administrator shall determine if a Severance from Employment has occurred in accordance with the regulations under Code Section 401(k).

**Transfer Contributions** means the contributions transferred by an Eligible Employee to this Plan from an eligible plan under Code Section 457(b) according to the provisions of the TRANSFER CONTRIBUTIONS SECTION of Article III.

**Trust Agreement** means an agreement of trust between the Employer and Trustee established for the purpose of holding and distributing the Trust Fund under the provisions of the Plan. The Trust Agreement may provide for the investment of all or any portion of the Trust Fund in the Annuity Contract.

**Trust Fund** means the total funds held under the Trust Agreement.

**Trustee** means the party or parties named in the Trust Agreement. The term Trustee as it is used in this Plan is deemed to include the plural unless the context clearly indicates the singular is meant.

**Unforeseeable Emergency** means severe financial hardship to a Participant resulting from (i) an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in Code Section 152(a)); (ii) 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 natural disaster); (iii) the need to pay for funeral expenses of the Participant's spouse or dependent (as defined in Code Section 152(a)); or 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 definition, neither the purchase of a home nor the payment of college tuition is an Unforeseeable Emergency. A severe financial hardship shall also include expenses described in (i) and (iii) (relating to medical and funeral expenses, respectively) of a Primary Beneficiary.

**Valuation Date** means the date on which the value of the assets of the Investment Fund is determined. The value of each Account which is maintained under this Plan shall be determined on the Valuation Date. In each Plan Year, the Valuation Date shall be the last day of the Plan Year. At the discretion of the Plan Administrator, Trustee, or Insurer (whichever applies), assets of the Investment Fund may be valued more frequently. These dates shall also be Valuation Dates.

**Vested Account** means the vested part of a Participant's Account. The Participant's Vested Account is equal to his Account.

The Participant's Vested Account is nonforfeitable. The percentage used to determine that portion of a Participant's Account attributable to Employer Contributions which is nonforfeitable is 100%.

**Yearly Date** means January 1, 2006, and each following January 1.

## **ARTICLE II**

### **PARTICIPATION**

#### **SECTION 2.01--ACTIVE PARTICIPANT.**

- (a) An Employee shall first become an Active Participant (begin active participation in the Plan) on the earliest date on which he is an Eligible Employee. This date is his Entry Date.

Each Employee who was an Active Participant under the Plan on July 31, 2013, shall continue to be an Active Participant if he is still an Eligible Employee on August 1, 2013, and his Entry Date shall not change.

- (b) An Inactive Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

Upon again becoming an Active Participant, he shall cease to be an Inactive Participant.

- (c) A former Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

There shall be no duplication of benefits for a Participant under this Plan because of more than one period as an Active Participant.

#### **SECTION 2.02--INACTIVE PARTICIPANT.**

An Active Participant shall become an Inactive Participant (stop accruing benefits under the Plan) on the earlier of the following:

- (a) the date the Participant ceases to be an Eligible Employee, or  
(b) the effective date of complete termination of the Plan under Article VIII.

An Employee or former Employee who was an Inactive Participant under the Plan on July 31, 2013, shall continue to be an Inactive Participant on August 1, 2013. Eligibility for any benefits payable to the Participant or on his behalf and the amount of the benefits shall be determined according to the provisions of the prior document, unless otherwise stated in this document.

#### **SECTION 2.03--CESSATION OF PARTICIPATION.**

A Participant shall cease to be a Participant on the date he is no longer an Eligible Employee and his Account is zero.

## ARTICLE III

### CONTRIBUTIONS

#### SECTION 3.01--EMPLOYER CONTRIBUTIONS.

The amount of Employer Contributions for any Plan Year is specified in (a) below subject to the limitations in (b) below:

(a) Amount of Employer Contributions.

- (1) Salary Deferral Contributions. The amount of each Salary Deferral Contribution for a Participant shall be equal to a portion of his Compensation as elected in his salary deferral agreement. Salary deferral agreements shall be made, changed, or terminated according to procedures and limitations set up by the Plan Administrator. The salary deferral agreement must be in writing and completed before the beginning of the month in which Salary Deferral Contributions are to begin. However, a new Employee may make Salary Deferral Contributions for the month in which he first becomes an Employee if he completes a salary deferral agreement on or before the day he becomes an Employee. Unless the salary deferral agreement specifies a later effective date, a change in the amount of Salary Deferral Contributions shall take effect as of the first day of the following month or as soon as administratively practicable if later. A Participant may elect to designate all or any portion of his future Salary Deferral Contributions as Roth Salary Deferral Contributions.

Salary Deferral Contributions are 100% vested when made.

Employer Contributions are allocated according to the provisions of the ALLOCATION SECTION of this article.

(b) Limitation on Employer Contributions.

- (1) Basic Limit. For any taxable year of the Participant, Employer Contributions shall not exceed the lesser of
  - (i) the Applicable Dollar Amount, or
  - (ii) 100% of the Participant's Includible Compensation for the taxable year.
- (2) Age 50 Catch-up Limit. A Participant who would attain age 50 by the end of the taxable year is permitted to elect an additional amount of Salary Deferral Contributions, up to the Age 50 Catch-up Dollar Amount.
- (3) Special Section 457 Catch-up Limit. If the applicable taxable year is one of a Participant's last three taxable years ending before the taxable year in which he attains Normal Retirement Age and the limit determined under this (3) exceeds the limit on Employer Contributions under (1) and (2) above, then the limit on Employer Contributions for such taxable year shall be the lesser of
  - (i) an amount equal to 2 times the Applicable Dollar Amount, or

- (ii) the sum of
  - A. an amount equal to
    - 1. the aggregate basic limit in (1) above for the current taxable year plus each prior taxable year beginning after December 31, 2001 during which the Participant was eligible to participate in this Plan, minus
    - 2. the aggregate amount of compensation that the Participant deferred under the Plan during such years disregarding any age 50 catch-up contributions permitted under Code Section 414(v), plus
  - B. an amount equal to
    - 1. the aggregate basic limit referred to in Code Section 457(b)(2) for each prior taxable year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was eligible to participate in this Plan (determined without regard to Code Section 457(b)(3)), minus
    - 2. the aggregate contributions to pre-2002 coordination plans for such years.
- (4) Special Rules. For purposes of this (b), the following rules shall apply:
  - (i) 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 (b). For this purpose, the Plan Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Plan Administrator receives from the Participant sufficient information concerning his participation in such other plan.
  - (ii) Prior Taxable Years. In applying (3) above, a taxable year shall be taken into account only if
    - A. the Participant was eligible to participate in the Plan during all or a portion of the taxable year and
    - B. compensation deferred, if any, under the Plan during the year was subject to the basic limit described in (1) above or any other plan ceiling required by Code Section 457(b).

- (iii) Contributions to Pre-2002 Coordination Plans. For purposes of (3)(ii)B.2. above, "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 taxable year are only taken into account for purposes of (3)(ii)B.2. above, 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.
- (iv) Disregard Excess Deferral. For purposes of (1), (2), and (3) above, 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 (5) below. 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.
- (5) Correction of Excess Deferrals. If the Employer Contributions on behalf of a Participant for any taxable year exceeds the limitations described above, or the Employer Contributions on behalf of a Participant for any taxable 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 Plan Administrator, then the Employer Contributions, to the extent Employer Contributions are in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

However, in no event can a Participant's Salary Deferral Contributions be more than the Participant's Compensation for the taxable year.

### **SECTION 3.01A--ROLLOVER CONTRIBUTIONS.**

A Rollover Contribution may be made by an Eligible Employee or Inactive Participant if the following conditions are met:

- (a) The Contribution is a Participant's Rollover Contribution or a direct rollover of an Eligible Rollover distribution made from the types of plans specified below.

Direct Rollovers. The Plan will accept a direct rollover of an Eligible Rollover Distribution from (i) a qualified plan described in Code Section 401(a) or 403(a), excluding after-tax employee contributions and any portion of a designated Roth account; (ii) an annuity contract described in Code Section 403(b), excluding after-tax employee contributions and any portion of a designated Roth account; and (iii) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant's Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an Eligible Rollover Distribution from (i) a qualified plan described in Code Section 401(a) or 403(a), excluding distributions of a designated Roth account; (ii) an annuity contract described in Code Section 403(b), excluding distributions of a designated Roth account; and (iii) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant's Rollover Contributions from IRAs. The Plan will accept a Participant Rollover Contribution of the portion of a distribution from an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b) that is eligible to be rolled over and would otherwise be includible in the Participant's gross income.

In the case of an Inactive Participant, the Contribution must be of an amount distributed from another plan of the Employer.

- (b) The Contribution is of amounts that the Code permits to be transferred to an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (c) The Contribution is made in the form of a direct rollover under Code Section 401(a)(31) or is a rollover made under Code Section 402(c) or 408(d)(3)(A) within 60 days after the Eligible Employee or Inactive Participant receives the distribution.
- (d) The Eligible Employee or Inactive Participant furnishes evidence satisfactory to the Plan Administrator that the proposed rollover meets conditions (a), (b), and (c) above.

A Rollover Contribution shall be allowed in cash only and must be made according to procedures set up by the Plan Administrator.

If the Eligible Employee is not an Active Participant when the Rollover Contribution is made, he shall be deemed to be an Active Participant only for the purpose of investment and distribution of the Rollover Contribution. Employer Contributions shall not be made for or allocated to the Eligible Employee until the time he meets all of the requirements to become an Active Participant.

A separate accounting record shall be maintained for that part of his Rollover Contributions consisting of amounts that were not distributed from an eligible plan under Code Section 457(b) and any portion of a designated Roth account, including the portion that would not have been includible in the Participant's gross income if the contributions were not rolled over into this Plan.

### **SECTION 3.02--TRANSFER CONTRIBUTIONS.**

If an Eligible Employee formerly participated in an eligible plan under Code Section 457(b), the trustee or plan administrator of that plan may transfer funds to this Plan on behalf of the Eligible Employee. Transfer of rollover amounts shall not be permitted if the Plan does not permit such rollover amounts and, if permitted, such amounts shall be treated as a rollover amount made to this Plan. The transferred funds other than rollover amounts shall be called a Transfer Contribution and shall be made according to procedures set up by the Plan Administrator.

If the Eligible Employee is not an Active Participant when the Transfer Contribution is made, he shall be deemed to be an Active Participant only for the purpose of investment and distribution of the Transfer

Contribution. Employer Contributions shall not be made for or allocated to the Eligible Employee until the time he meets all of the requirements to become an Active Participant.

Transfer Contributions made by an Eligible Employee shall be credited to his Account. Transfer Contributions are 100% vested when made.

**SECTION 3.03--ALLOCATION.**

Salary Deferral Contributions shall be allocated to Participants for whom such Contributions are made under the EMPLOYER CONTRIBUTIONS SECTION of this article. Such Contributions shall be allocated when made and credited to the Participant's Account.

## **ARTICLE IV**

### **INVESTMENT OF CONTRIBUTIONS**

#### **SECTION 4.01--INVESTMENT AND TIMING OF CONTRIBUTIONS.**

The handling of Contributions and Plan assets is governed by the provisions of the Trust Agreement and any other document duly entered into by or with regard to the Plan that govern such matters. To the extent permitted by the Trust Agreement or such other documents, the parties named below shall direct the Contributions to the Trust for investment in any of the investment options or investment vehicles available under the Trust Agreement and may request the transfer of amounts resulting from those Contributions between such investment options and investment vehicles. To the extent that a Participant who has investment direction fails to give timely direction, the amount for which no investment direction is in place shall be invested in such investment options and investment vehicles as provided in the service and expense agreement or such other documents duly entered into by or with regard to the Plan that govern such matters. The Employer shall have investment direction for amounts which have not been allocated to Participants. To the extent an investment is no longer available, the Employer may require that amounts currently held in such investment be reinvested in other investments.

The Participant shall direct the investment of Contributions and transfer of amounts resulting from Contributions.

Notwithstanding any contrary provision of the Plan, including any Annuity Contract issued under the Plan, in accordance with Code Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in a trust or one or more annuity contracts, as defined in Code Section 401(g), for the exclusive benefit of Participants and Beneficiaries under the Plan and for defraying reasonable expenses of administering the Plan. For purposes of this paragraph, a trust must be established under the Plan pursuant to a written agreement that constitutes a valid trust under the law of the state in which the Employer is located. For purposes of this paragraph an annuity contract shall be issued by an insurance company qualified to do business in the state where the contract was issued and may not include any life, health or accident, property, casualty, or liability insurance contract.

All amounts of compensation deferred under the Plan shall be transferred to a trust or an annuity contract described in Code Section 401(f), within a period that is not longer than reasonable for the proper administration of the Accounts of Participants.

## **ARTICLE V**

### **BENEFITS**

#### **SECTION 5.01--DEATH BENEFITS.**

If a Participant dies before his Vested Account is distributed to him under the provisions of this article or the SMALL AMOUNTS SECTION of Article X, his Vested Account shall be distributed according to the distribution of benefits provisions of Article VI and the provisions of the SMALL AMOUNTS SECTION of Article X.

#### **SECTION 5.02--SEVERANCE BENEFITS.**

If an Inactive Participant's Vested Account is not payable under the SMALL AMOUNTS SECTION of Article X, he may elect to receive a distribution of his Vested Account after his Severance from Employment. A distribution under this paragraph shall be a severance benefit and shall be distributed to the Participant according to the distribution of benefits provisions of Article VI.

A Participant may not elect to receive a distribution under the provisions of this section after he again becomes an Employee until he subsequently has a Severance from Employment and meets the requirements of this section.

If an Inactive Participant does not receive an earlier distribution, upon his Required Beginning Date, his Vested Account shall be distributed. A distribution under this paragraph shall be a severance benefit and shall be distributed to the Participant according to the distribution of benefit provisions of Article VI.

If an Inactive Participant does not receive an earlier distribution, upon his death, his Vested Account shall be distributed according to the provisions of the DEATH BENEFITS SECTION of this article.

Beginning January 1, 2009, a Participant who has been performing Qualified Military Service for a period of more than 30 days is deemed to have had a Severance from Employment for purposes of requesting a distribution of his Vested Account. The Plan will suspend Contributions for six months after receipt of the distribution.

#### **SECTION 5.03--WHEN BENEFITS START.**

- (a) Benefits shall begin by the Participant's Required Beginning Date, as defined in the DEFINITIONS SECTION of Article VII.
- (b) The Participant's Vested Account which does not result from Rollover Contributions may not be distributed to a Participant or to his Beneficiary (or Beneficiaries) in accordance with the Participant's or Beneficiary's (or Beneficiaries') election, earlier than his Severance from Employment or age 70 1/2. Such amount may also be distributed upon:
  - (1) Termination of the Plan, as permitted in Article VIII.
  - (2) The Unforeseeable Emergency of the Participant as permitted in the WITHDRAWAL BENEFITS SECTION of this article.

Beginning January 1, 2009, the Participant's Vested Account may be distributed if the Participant is deemed to have a Severance from Employment as described in Code Section 414(u)(12)(B)(i).

#### **SECTION 5.04--TRANSFERS FROM THE PLAN.**

If an Inactive Participant has a Severance from Employment and accepts employment with another employer which maintains an eligible plan under Code Section 457(b) and the new employer's plan provides for the transfer and the Participant will have an amount deferred under the other plan immediately after the transfer at least equal to the amount of the transfer, the Inactive Participant may elect to transfer his Vested Account to the plan maintained by the new employer. Such transfer is in full settlement of benefits otherwise payable with respect to the amount transferred.

A Participant may elect to transfer all or a portion of his Vested Account to a defined benefit governmental plan (as defined in Code Section 414(d)) of the same state as the Employer if such plan includes provisions allowing such transfer and the transfer is either

- (a) For the purchase of permissive past service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan; or
- (b) A repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

Such transfer may be made before Severance from Employment.

#### **SECTION 5.05--WITHDRAWAL BENEFITS.**

Unforeseeable Emergency. Before his Severance from Employment, a Participant may withdraw all or any portion of his Vested Account in the event of an Unforeseeable Emergency. The Participant's request for a withdrawal shall include his statement such an Unforeseeable Emergency exists and explain its nature.

No withdrawal shall be allowed which is in excess of the amount reasonably required to satisfy the Unforeseeable Emergency (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution) or to the extent such Unforeseeable Emergency can be relieved from other resources that are reasonably available to the Participant.

The Participant's request for a withdrawal shall include his written statement that the amount requested does not exceed the amount needed to meet the Unforeseeable Emergency. The Participant's request for a withdrawal shall include his written statement that the Unforeseeable Emergency cannot be relieved:

- (1) through reimbursement or compensation by insurance or otherwise;
- (2) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause a severe financial hardship; or
- (3) by cessation of deferrals under the Plan.

The Plan Administrator will establish uniform, nondiscriminatory guidelines to use in determining if an Unforeseeable Emergency exists. The Plan Administrator's determination shall be final. The Participant has no legal or equitable right to such a withdrawal.

A request for withdrawal shall be made in such manner and in accordance with such rules as the Employer will prescribe for this purpose (including by means of voice response or other electronic means under circumstances the Employer permits). A withdrawal benefit shall be distributed in a lump sum.

**ARTICLE VI**  
**DISTRIBUTION OF BENEFITS**

**SECTION 6.01--FORM OF DISTRIBUTION.**

- (a) Severance Benefits. The only form of severance benefit is a single sum payment.
- (b) Death Benefits. The only form of death benefit is a single sum payment.

**SECTION 6.02--ELECTION PROCEDURES.**

The Participant shall make any election under this section in writing. The Plan Administrator may require such individual to complete and sign any necessary documents as to the provisions to be made. Any election permitted under (a) below shall be subject to the election provisions of (b) below.

- (a) Death Benefits. A Participant may elect his Beneficiary.
- (b) Election. The Participant may make an election at any time before he dies. The Participant may revoke the election made (or make a new election) at any time and any number of times before he dies.

## ARTICLE VII

### REQUIRED MINIMUM DISTRIBUTIONS

#### SECTION 7.01--APPLICATION.

The optional forms of distribution are only those provided in Article VI. An optional form of distribution shall not be permitted unless it meets the requirements of this article. The timing of any distribution must meet the requirements of this article.

#### SECTION 7.02--DEFINITIONS.

For purposes of this article, the following terms are defined:

**Distribution Calendar Year** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under (b)(2) of the REQUIRED MINIMUM DISTRIBUTIONS SECTION of this article. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

**Life Expectancy** means life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9, Q&A-1, of the regulations.

**Participant's Account Balance** means the Account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

**Required Beginning Date** means, for a Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

#### SECTION 7.03--REQUIRED MINIMUM DISTRIBUTIONS.

(a) General Rules.

- (1) The requirements of this article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. The provisions of this article apply to calendar years beginning after December 31, 2002.

- (2) All distributions required under this article shall be determined and made in accordance with the regulations under Code Section 401(a)(9), including the incidental death benefit requirement in Code Section 401(a)(9)(G) and the regulations thereunder.

(b) Time and Manner of Distribution.

- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below). Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below). Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iv) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this (b)(2), other than (b)(2)(i), will apply as if the surviving spouse were the Participant.

For purposes of this (b)(2) and (d) below, unless (b)(2)(iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If (b)(2)(iv) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under (b)(2)(i) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under (b)(2)(i) above), the date distributions are considered to begin is the date distributions actually commence.

- (3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with (c) and (d) below. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the regulations.
- (c) Required Minimum Distributions During Participant's Lifetime.
- (1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
    - (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2, of the regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
    - (ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3, of the regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
  - (2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this (c) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.
- (d) Required Minimum Distributions After Participant's Death.
- (1) Death On or After Date Distributions Begin.
    - (i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:
      - A. The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
      - B. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving

spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

C. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of the September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in (d)(1) above, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below). Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

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

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under (b)(2)(i) above, this (d)(2) will apply as if the surviving spouse were the Participant.

(e) Election of 5-year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule in (b)(2) and (d)(2) above applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under (b)(2) above if no such election is made, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

## SECTION 7.04--TRANSITION RULES.

- (a) Required Minimum Distributions. To the extent the Plan was effective before January 1, 2003, required minimum distributions were made pursuant to (1) through (2) below.
- (1) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Code Section 401(a)(9) and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the 1987 Proposed Regulations).
  - (2) 2001 and 2002. Required minimum distributions for calendar years 2001 and 2002 were made pursuant to the proposed regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the 2001 Proposed Regulations). Distributions were made in 2001 under the 1987 Proposed Regulations prior to June 14, 2001, and the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.
- (b) Other Distribution Requirements. To the extent the Plan was effective before January 1, 2002, the distribution requirements of Code Sections 457(d)(2)(B) and (C) as in effect prior to such date, were met for calendar years ending before such date.

## ARTICLE VIII

### TERMINATION OF THE PLAN

The Employer expects to continue the Plan indefinitely but reserves the right to terminate the Plan in whole or in part at any time upon giving written notice to all parties concerned.

The Participant's Account shall continue to participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund until his Vested Account is distributed.

The Participant's entire Vested Account shall be paid in a single sum to the Participant as of the effective date of complete termination of the Plan. The payment is in full settlement of all benefits otherwise payable.

Upon complete termination of the Plan, no more Employees shall become Participants and no more Contributions shall be made.

The assets of this Plan shall not be paid to the Employer at any time, except that, after the satisfaction of all liabilities under the Plan, any assets remaining may be paid to the Employer. The payment may not be made if it would contravene any provision of law.

## **ARTICLE IX**

### **ADMINISTRATION OF THE PLAN**

#### **SECTION 9.01--ADMINISTRATION.**

Subject to the provisions of this article, the Plan Administrator has complete control of the administration of the Plan. The Plan Administrator has all the powers necessary for it to properly carry out its administrative duties. Not in limitation, but in amplification of the foregoing, the Plan Administrator has complete discretion to construe or interpret the provisions of the Plan, including ambiguous provisions, if any, and to determine all questions that may arise under the Plan, including all questions relating to the eligibility of Employees to participate in the Plan and the amount of benefit to which any Participant or Beneficiary may become entitled. The Plan Administrator's decisions upon all matters within the scope of its authority shall be final.

Unless otherwise set out in the Plan or Annuity Contract, the Plan Administrator may delegate recordkeeping and other duties which are necessary for the administration of the Plan to any person or firm which agrees to accept such duties. The Plan Administrator shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the consultant or actuary appointed by the Plan Administrator and upon all opinions given by any counsel selected or approved by the Plan Administrator.

The Plan Administrator shall receive all claims for benefits by Participants, former Participants, and Beneficiaries. The Plan Administrator shall determine all facts necessary to establish the right of any claimant to benefits and the amount of those benefits under the provisions of the Plan. The Plan Administrator may establish rules and procedures to be followed by claimants in filing claims for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan.

#### **SECTION 9.02--EXPENSES.**

Expenses of the Plan, to the extent that the Employer does not pay such expenses, may be paid out of the assets of the Plan provided that such payment is consistent with any law to which the Plan is subject. Such expenses include, but are not limited to, expenses for recordkeeping and other administrative services; fees and expenses of the Trustee or Annuity Contract; expenses for investment education service; and direct costs that the Employer incurs with respect to the Plan.

#### **SECTION 9.03--RECORDS.**

All acts and determinations of the Plan Administrator shall be duly recorded. All these records, together with other documents necessary for the administration of the Plan, shall be preserved in the Plan Administrator's custody.

Writing (handwriting, typing, printing), photostating, photographing, microfilming, magnetic impulse, mechanical or electrical recording, or other forms of data compilation shall be acceptable means of keeping records.

#### **SECTION 9.04--DELEGATION OF AUTHORITY.**

All or any part of the administrative duties and responsibilities under this article may be delegated by the Plan Administrator to a retirement committee. The duties and responsibilities of the retirement committee shall be set out in a separate written agreement.

### **SECTION 9.05--EXERCISE OF DISCRETIONARY AUTHORITY.**

The Employer, Plan Administrator, and any other person or entity who has authority with respect to the management, administration, or investment of the Plan may exercise that authority in its/his full discretion, subject only to the duties imposed under any law to which the Plan is subject. This discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration. The exercise of authority will be binding upon all persons; will be given deference in all courts of law; and will not be overturned or set aside by any court of law unless found to be arbitrary and capricious or made in bad faith.

### **SECTION 9.06--TRANSACTION PROCESSING.**

Transactions (including, but not limited to, investment directions, trades, loans, and distributions) shall be processed as soon as administratively practicable after proper directions are received from the Participant or such other parties. No guarantee is made by the Plan, Plan Administrator, Trustee, Insurer, or Employer that such transactions will be processed on a daily or other basis, and no guarantee is made in any respect regarding the processing time of such transactions.

Notwithstanding any other provision of the Plan, the Employer, the Plan Administrator, or the Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, the Plan Administrator, or the Trustee.

Administrative practicality will be determined by legitimate business factors (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) and in no event will be deemed to be less than 14 days. The processing date of a transaction shall be binding for all purposes of the Plan and considered the applicable Valuation Date for any transaction.

## **ARTICLE X**

### **GENERAL PROVISIONS**

#### **SECTION 10.01--AMENDMENTS.**

The Employer may amend this Plan at any time, including any remedial retroactive changes (within the time specified by Internal Revenue Service regulations), to comply with any law or regulation issued by any governmental agency to which the Plan is subject. The Employer may correct obvious and unambiguous typographical errors and cross references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

An amendment may not diminish or adversely affect any accrued interest or benefit of Participants or their Beneficiaries nor allow reversion or diversion of Plan assets to the Employer at any time, except as may be required to comply with any law or regulation issued by any governmental agency to which the Plan is subject.

#### **SECTION 10.02--DIRECT ROLLOVERS.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan 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.

In the event of a Mandatory Distribution of an Eligible Rollover Distribution greater than \$1,000 in accordance with the SMALL AMOUNTS SECTION of this article, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, the Plan Administrator will pay the distribution in a Direct Rollover to an individual retirement plan designated by the Plan Administrator.

For purposes of determining whether a Mandatory Distribution is greater than \$1,000, a designated Roth account and all other accounts under the Plan shall be treated as accounts held under two separate plans and shall not be combined, and Rollover Contributions shall be disregarded.

In the event of any other Eligible Rollover Distribution to a Distributee in accordance with the SMALL AMOUNTS SECTION of this article (or which is a small amounts payment under Article VIII at complete termination of the Plan), if the Distributee does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover or to receive the distribution directly, the Plan Administrator will pay the distribution to the Distributee.

#### **SECTION 10.03--PROVISIONS RELATING TO THE INSURER AND OTHER PARTIES.**

The obligations of an Insurer shall be governed solely by the provisions of the Annuity Contract. The Insurer shall not be required to perform any act not provided in or contrary to the provisions of the Annuity Contract. Each Annuity Contract when purchased shall comply with the Plan. See the CONSTRUCTION SECTION of this article.

Any issuer or distributor of investment contracts or securities is governed solely by the terms of its policies, written investment contract, prospectuses, security instruments, and any other written agreements entered into with the Trustee with regard to such investment contracts or securities.

Such Insurer, issuer or distributor is not a party to the Plan, nor bound in any way by the Plan provisions. Such parties shall not be required to look to the terms of this Plan, nor to determine whether the Employer, the Plan Administrator, or the Trustee have the authority to act in any particular manner or to make any contract or agreement.

Until notice of any amendment or termination of this Plan or a change in Trustee has been received by the Insurer at its home office or an issuer or distributor at their principal address, they are and shall be fully protected in assuming that the Plan has not been amended or terminated and in dealing with any party acting as Trustee according to the latest information which they have received at their home office or principal address.

#### **SECTION 10.04--EMPLOYMENT STATUS.**

Nothing contained in this Plan gives an Employee the right to be retained in the Employer's employ or to interfere with the Employer's right to discharge any Employee.

#### **SECTION 10.05--RIGHTS TO PLAN ASSETS.**

An Employee shall not have any right to or interest in any assets of the Plan upon termination of employment or otherwise except as specifically provided under this Plan, and then only to the extent of the benefits payable to such Employee according to the Plan provisions.

Any final payment or distribution to a Participant or his legal representative or to any Beneficiaries of such Participant under the Plan provisions shall be in full satisfaction of all claims against the Plan, the Plan Administrator, the Insurer, the Trustee, and the Employer arising under or by virtue of the Plan.

#### **SECTION 10.06--BENEFICIARY.**

Each Participant may name a Beneficiary to receive any death benefit that may arise out of his participation in the Plan. The Participant may change his Beneficiary from time to time. The Participant's Beneficiary designation and any change of Beneficiary shall be subject to the provisions of the ELECTION PROCEDURES SECTION of Article VI.

It is the responsibility of the Participant to give written notice to the Plan Administrator of the name of the Beneficiary on a form furnished for that purpose. The Plan Administrator may maintain records of Beneficiary designations for Participants before their Retirement Dates. However, the Plan Administrator may delegate to another party the responsibility of maintaining records of Beneficiary designations. In that event, the written designations made by Participants shall be filed with such other party.

If there is no Beneficiary named or surviving when a Participant dies, the Participant's Beneficiary shall be the Participant's surviving spouse, or where there is no surviving spouse, the executor or administrator of the Participant's estate.

#### **SECTION 10.07--NONALIENATION OF BENEFITS.**

Benefits payable under the Plan are not subject to the claims of any creditor of any Participant, Beneficiary, or spouse. A Participant, Beneficiary, or spouse does not have any rights to alienate, anticipate, commute, pledge, encumber or assign any of such benefits. The preceding sentences shall not apply to a domestic relations order. A domestic relations order is a judgement, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital

property rights of a spouse or former spouse, child, or other dependent of the Participant made pursuant to the domestic relations law of any State. Payment may be made pursuant to a domestic relations order without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

#### **SECTION 10.08--CONSTRUCTION.**

The validity of the Plan or any of its provisions is determined under and construed according to Federal law and, to the extent permissible, according to the laws of the state in which the Employer has its principal office. In case any provision of this Plan is held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included.

In the event of any conflict between the provisions of the Plan and the terms of any Annuity Contract issued hereunder, the provisions of the Plan control.

#### **SECTION 10.09--LEGAL ACTIONS.**

No person employed by the Employer; no Participant, former Participant, or their Beneficiaries; nor any other person having or claiming to have an interest in the Plan is entitled to any notice of process. A final judgment entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have an interest in the Plan.

#### **SECTION 10.10--SMALL AMOUNTS.**

If the value of the Participant's Vested Account does not exceed the dollar limit under Code Section 411(a)(11)(A), his entire Vested Account shall be distributed as of the earlier of the date he dies, or the date he has a Severance from Employment for any other reason (the date the Employer provides notice to the record keeper of the Plan of such event, if later). For purposes of this section, if the Participant's Vested Account is zero, the Participant shall be deemed to have received a distribution of such Vested Account. This is a small amounts payment.

In the event a Participant does not elect to have a small amounts payment paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly and his Vested Account is greater than \$1,000, a Mandatory Distribution will be made in accordance with the DIRECT ROLLOVERS SECTION of this article. If his Vested Account is \$1,000 or less, the Participant's entire Vested Account shall be paid directly to him.

If a small amounts payment is made on or after the date the Participant dies, the small amounts payment shall be made to the Participant's Beneficiary. If a small amounts payment is made while the Participant is living, the small amounts payment shall be made to the Participant.

The small amounts payment is in full settlement of all benefits otherwise payable. No other small amounts payment shall be made.

#### **SECTION 10.11--WORD USAGE.**

The masculine gender, where used in this Plan, shall include the feminine gender and the singular words, as used in this Plan, may include the plural, unless the context indicates otherwise.

The words "in writing" and "written," where used in this Plan, shall include any other forms, such as voice response or other electronic system, as permitted by any governmental agency to which the Plan is subject.

**SECTION 10.12--MILITARY SERVICE.**

Notwithstanding any provision of this Plan to the contrary, the Plan shall provide contributions, benefits, and service credit with respect to Qualified Military Service in accordance with Code Section 414(u).

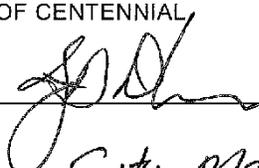
Beginning January 1, 2007, a Participant who dies on or after January 1, 2007 while performing Qualified Military Service is treated as having resumed and then terminated employment on account of death, in accordance with Code Section 401(a)(37) and any subsequent guidance. The survivors of such Participant are entitled to any additional benefits provided under the Plan on account of death of the Participant.

By executing this Plan, the Employer acknowledges having counseled to the extent necessary with selected legal and tax advisors regarding the Plan's legal and tax implications.

Executed this 29<sup>th</sup> day of July 2013.

CITY OF CENTENNIAL

By: \_\_\_\_\_

  
\_\_\_\_\_  
City Manager  
Title