Action Item

Agenda Item No. 5

City Manager's Approval

# *Report to the Auburn City Council*

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|---|---|
| **To:** | Honorable Mayor and City Council Members |
| **From:** | Andy Heath, Administrative Services Director |
| **Date:** | July 9, 2012 |
| **Subject:** | Hartford IRS Section 457(b) Plan Document Amendment |

## *The Issue*

Shall the City Council authorize the City Manager or his designee to sign an amended agreement between the City of Auburn and the Hartford Life Insurance Company (deferred compensation plan) as it relates to the addition of a participant loan provision, consistent with other deferred compensation plans offered by the City?

## *Conclusions and Recommendations*

Staff recommends that the City Council, by **RESOLUTION,** authorize the City Manager or his designee to sign an amended agreement between the City of Auburn and the Hartford Life Insurance Company as it relates to the addition of a participant loan provision.

## *Background*

The Administrative Services Department is responsible for the administration of employee benefits offered to eligible City employees. At the present time, the City offers the ability for employees to voluntarily participate in an eligible IRS Section 457(b) Deferred Compensation Program through any or all of the three providers currently under contract. The three providers are CalPERS, ING and the Hartford Life Insurance Company (Hartford Plan).

As a means to assure benefits offered through each of the three plans are consistent with one another, it is recommended that the Hartford Plan be amended to allow participating employees to receive as-needed loans under the terms of the plan. The loan provision, which is currently offered by the CalPERS plan and used by City employees, is administered by the deferred compensation provider and is provided at no cost the City. Employee loans are secured by funds held in their respective deferred compensation accounts, and cannot exceed one-half of the value of the account. The City facilitates the loan payback process by withholding and remitting to the plan provider an amortized amount from semi-monthly payroll checks until paid off.

The amended portion of the agreement is noted by the addition of Section 5 – Participant Loans (agreement attached).

***Alternatives Available to Council; Implications of Alternatives***

1. Authorize the City Manager or his designee to sign an amended agreement between the City of Auburn and the Hartford Life Insurance Company as it relates to the addition of a participant loan provision.

2. Do not authorize the City Manager or his designee to sign an amended agreement between the City of Auburn and the Hartford Life Insurance Company as it relates to the addition of a participant loan provision. This will result in inconsistent plan benefit offerings between the three City-sponsored deferred compensation plans.

***Fiscal Impact***

None.

# Board Resolution

**ACTION BY THE BOARD OF**

_____

**("Board")**

**OF CITY OF AUBURN ("Employer")**

**The undersigned, _____ ("Title"), hereby certifies that the following extract of resolutions below was taken from a duly called meeting of the Board:**

**RESOLVED,** that the Board has previously approved and adopted the City of Auburn Deferred Compensation Plan ("Plan") to provide employees of the Organization/Agency with retirement benefits.

**RESOLVED,** that the Board does hereby declare the intention of the Organization/Agency to continue the Plan, but reserves the right to terminate or amend the Plan at any time.

**RESOLVED,** that the members of the Board are hereby jointly and severally authorized to take such actions and to execute such documents as they deem necessary or desirable in order to carry out the intent of the foregoing resolutions and required under the Plan to make the Plan fully effective in accordance with its terms and intent.

I DO HEREBY CERTIFY **that I am the _____ ("Title) of the Organization/Agency, and the keeper of its records and seal.**

I FURTHER CERTIFY **that the above is a true, correct and complete extract of resolutions adopted at a duly called and held meeting of the Board, and that said resolutions are still in effect and have not been modified or revised and are not in conflict with the by laws of this Organization/Agency.**

IN WITNESS WHEREOF, **I have set my hand and the seal of the Organization/Agency at the meeting held on _____ day of _____ [month], _____ [year].**

**SEAL**

_____
**Signature**

_____
**Title**

## PARTICIPANT LOAN PROGRAM
## City of Auburn Deferred Compensation Plan

The City of Auburn Deferred Compensation Plan (the "Plan") provides that the Employer (the "Administrator") may, in the Administrator's sole discretion, make Plan loans to Participants. The Plan document requires that a written loan program be established which sets forth the rules and guidelines for making loans. The Administrator's decisions regarding the application or interpretations of this loan program are final and binding on Participants. The Administrator specifically reserves the right to amend these policies and procedures from time to time.

For purposes of this loan program, all terms not defined herein shall have the meanings ascribed to them in the Plan.

1. **Who is Responsible for the Participant Loan Program?** The Administrator is authorized to administer the Plan's loan program. All discretionary decisions concerning loans shall be made by the Administrator. The Administrator may make loans to Participants under the following circumstances: (a) loans shall be made available to all Participants on a reasonably equivalent basis; (b) loans shall bear a reasonable rate of interest; (c) loans shall be adequately secured; and (d) loans shall provide for periodic repayment over a reasonable period of time. No loan will be made from the Plan if it would constitute a prohibited transaction as defined in Internal Revenue Code §4975.

2. **How to Apply for a Loan.** All applications for loans shall be made by Participants to the Administrator in writing. A Participant's ability to make such application, either in writing or by electronic means, will be subject to the qualification guidelines adopted by the Administrator and as set forth in this loan program. All loan applications are subject to consideration by the Administrator in a timeframe commensurate with the form of application. In making application for a loan, a Participant may be required to provide such supporting information deemed necessary by the Administrator. This may include a financial statement, tax returns and such other financial information, which the Administrator may consider necessary and appropriate to determine whether a loan should be granted.

3. **Basis for Loan Approval.** The Administrator, in making a determination as to whether a Participant qualifies for a loan, may consider, in a uniform and nondiscriminatory manner, such criteria as a commercial lender of funds would apply in like circumstances with respect to the Participant and any other reasonable factors it deems relevant. Such criteria may include, but need not be limited to, the creditworthiness of the Participant and his or her general ability to repay the loan, the period of time the Participant has been employed by the Employer, whether adequate security has been provided for the loan, whether the Participant has defaulted on a previous loan or who has had a previous loan declared to be a deemed distribution on account of failure to timely repay a loan in accordance with its terms. The Administrator may, in its discretion, require as a condition to the granting of the loan, that the Participant provide to the Employer an election for direct, after-tax payroll withholding for the loan repayments. In addition, a loan request made during the time a decision concerning a domestic relations order is pending may be delayed until after such decision is final.

4. **Limitations on the types and amount of Loans.** With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

   i. All loans made pursuant to this program shall be considered a directed investment from the Account Balance of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant shall be credited only to the Account Balance of such Participant.

   ii. The maximum amount of a loan shall be the lesser of (a) 50% of the Participant's vested account balance; or (b) $50,000, reduced by the excess of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan was made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or, if less, one-half (½) the Participant's account balance under this Plan and all other plans of the Employer.

   iii. The minimum loan term is 12 months.

   iv. Loans are required to provide that the amount of such loan, plus interest, will be amortized over the repayment period with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, if the loan proceeds are used to acquire a principal residence of the Participant, the loan repayment period may be for a period up to thirty (30) years. This means that payments will be level throughout the repayment period, and each payment will include both principal and interest. With the consent of the Administrator, the Participant may repay the outstanding principal amount with interest to the date of repayment at any time prior to the loan due date, but may not make a partial prepayment, provided the loan obligation has not been treated as a deemed distribution by the Administrator.

   v. Reasonable and necessary fees and expenses incurred by the Plan in the origination and ongoing maintenance of the loan may be charged against the Participant's Account Balance.

   vi. Only active Participants are entitled to maintain participant loans. This means that if a Participant is not currently employed by the Employer (or a Participating Employer that has adopted the Plan), then he or she is not entitled to initiate a new Participant loan or continue to maintain an existing Participant loan.

   vii. No loan in an amount less than $1,000 shall be granted to any Participant.

   viii. A Participant may only have 2 loan(s) outstanding at any time.

5. **Interest.** Any loan granted under this program shall bear a reasonable rate of interest. In determining such rate of interest, the Plan shall require a rate of return commensurate with the prevailing interest rate charged on similar commercial loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard shall permit

the Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms' length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Administrator shall conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances.

6. **Collateral.** The Plan shall require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan shall consider a Participant's interest under the Plan to be adequate security. However, in no event shall more than 50% of a Participant's interest in the Plan (determined immediately after the origination of the loan) be used as security for the loan.

7. **Default Procedures.** Generally, a default occurs upon the failure of a Participant to timely remit payments under the loan when due. The Administrator will consider a loan in default no later than the last business day of the calendar quarter following the calendar quarter in which the Participant failed to timely remit a scheduled payment (the cure period). The Administrator will also consider a loan in default if the Participant makes or furnishes any false representation or statement to the Plan.

8. **Consequences of Default.** At the time of such default, the Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment(s) plus accrued interest or, if a distribution is available under the terms of the Plan, request a distribution of the note. The Administrator will treat a loan that has been defaulted upon and not timely corrected during the cure period as a deemed distribution from the Plan. In such event, the outstanding balance of the loan plus accrued interest shall become taxable to the Participant as if it had been distributed and reported on a Form 1099-R issued to the Participant. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest. If repayment of a defaulted loan had been made by method other than payroll deduction, then method of loan repayment for any subsequent loans will be made by payroll deduction (pursuant to Treasury Regulation Section 1.72(p)-1 Q&A 19).

   If the loan remains in default at the time the Participant's employment with the Employer terminates for any reason, the Administrator will offset the Participant's Account Balance by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. With the consent of the Administrator, the Participant may elect to repay the outstanding principal with all accrued interest to the date of repayment as a lump sum.

   In the event a loan is outstanding on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan. At the time of such default, the Participant's estate will not have the opportunity to repay the loan. In such event, the outstanding balance of the loan note shall be foreclosed and distributed from the Plan, and become taxable to the Participant's estate and reported on a Form 1099-R issued to the Participant's estate.

9. Notwithstanding the foregoing, Participants will be allowed to suspend payments for a bona fide leave of absence and the loan will not default during such leave to the extent provided below:

   The Plan may suspend the obligation to repay a loan made to a Participant for any part of a period during which the Participant is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, even if the suspension exceeds one year and even if the term of the loan is extended. However, to avoid a default, the loan repayments shall resume upon the completion of such period of military service and the loan shall be repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan plus the period of military service. Suspended loan payments may also be allowed in certain other circumstances or for reasons provided for in applicable IRS guidance, as issued from time to time.

   The Plan may suspend the obligation to repay a loan made to a Participant for a period during which the Participant is on a bona fide leave of absence (other than for military service) either without pay or at a rate of pay (after applicable employment withholdings) that is less than the amount of the installment payments required under the terms of the loan. Such period may not exceed one year. Loan interest accrued during such period must be paid no later than the latest permissible term of the loan. Installment payments due after the end of the leave period must not be less than the installment payments required under the terms of the original loan. Repayment of suspended payments may be made by either increasing the amount of installment payments upon the Participant's return to work or by making a lump sum payment for the suspended payments at any time prior to the latest permissible term of the loan.

10. Upon satisfaction of the criteria established for granting a loan, the Administrator may grant the Plan loan request. The Administrator shall then require that the Participant execute all documents necessary to establish the Plan loan, including a promissory note and payroll deduction agreement, a truth-in-lending disclosure and such other documents, which will provide the Plan with adequate security.

Adopted this _____day of _____, 20_____.

Employer (signature) _____

Name: (please print) _____

TITLE:_____

# CITY OF AUBURN DEFERRED COMPENSATION PLAN

**Effective Date of This Document June 30, 2012**

Neither The Hartford nor any of its employees can provide legal or tax advice in connection with the execution of this specimen document. Prior to execution of this document, you should consult with your legal or tax advisor on whether this document is appropriate for your plan.

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# 457(b) PLAN DOCUMENT

# DEFERRED COMPENSATION PLAN

## PREAMBLE

Adoption of Plan

The City of Auburn Deferred Compensation Plan (hereinafter "the Plan"), an eligible deferred compensation plan within the meaning of Section 457(b) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code"), of a State or local government as described in Code Section 457(e)(1)(A), adopted by City of Auburn (hereinafter the "Employer") effective June 30, 2012.

Purpose of Plan

The primary purpose of this Plan is to permit Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of his or her current compensation until death, retirement, severance from employment, or other event, in accordance with the provisions of the Code Section 457(b), with other applicable provisions of the Code, and in accordance with the General Statutes of the State.

Status of Plan

It is intended that the Plan shall qualify as an eligible deferred compensation plan within the meaning of Code Section 457(b) sponsored by an eligible employer within the meaning of Code Section 457(e)(1)(A), i.e., a State, political subdivision of a State, and agency or instrumentality of a State or political subdivision of a State.

Tax Consequences of Plan

The Employer does not and cannot represent or guarantee that any particular federal or State income, payroll, or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own counsel or other representative regarding all tax or other consequences of participation in this Plan.

## SECTION I
## DEFINITIONS

### 1.1 Plan Definitions

For purposes of this Plan, the following words and phrases have the meaning set forth below, unless a different meaning is plainly required by the context:

An **"Account Balance"** means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section VII for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8)).

The **"Administrator"** means the Employer. The term Administrator includes any person or persons, committee, or organization appointed by the Employer to administer the Plan.

An **"Annual Deferral"** means the amount of Compensation deferred in any calendar year.

The **"Beneficiary"** of a Participant means the person or persons (or, if none, the Participant's estate) who is entitled under the provisions of the Plan to receive a distribution in the event the Participant dies before receiving distribution of his or her entire interest under the Plan.

The **"Code"** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended from time to time. Reference to a Code Section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The **"Compensation"** of a Participant means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, including, as applicable, compensation attributable to services as an independent contractor, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section II).

Any payments described below made to a Participant after a Severance from Employment shall qualify as Compensation for purposes of the Plan, but only if the payments are made by the later of (a) the end of the calendar year in which the Severance from Employment occurred or (b) within 2 ½ months of such Severance from Employment:

(a) Payments that, absent a Severance from Employment, would have been paid to the Participant while the Participant continued in employment with the Employer, but only if such payments constitute regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or a shift differential), commissions, bonuses or other similar compensation.

(b) Payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued.

Any payment that is not described above shall not be considered Compensation if it is paid after the date of the Participant's Severance from Employment, even if it is paid within 2 ½ months of such date. Thus, for example, Compensation does not include severance pay.

For years beginning after December 31, 2008, (a) a Participant receiving a differential wage payment, as defined by Code §3401(h)(2), by reason of qualified military service (within the meaning of Code Section 414(u)), is treated as an Employee of the Employer making the payment and (b) the differential wage payment is treated as Compensation.

An "**Employee**" means each natural person who is employed by the Employer as a common law employee on a full time basis and any employee in an elected or appointed position; provided, however, that the term Employee shall not include a leased employee or any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

Any individual who is not treated by the Employer as a common law employee of the Employer shall be excluded from Plan participation even if a court or administrative agency determines that such individual is a common law employee of the Employer, unless the Employer has included the individual in Plan participation as an independent contractor.

An "**Employer**" means the eligible employer (within the meaning of Code Section 457(e)(1)) that has adopted the Plan. In the case of an eligible employer that is an agency or instrumentality of a political subdivision of a State within the meaning of Code Section 457(e)(1)(A), the term Employer shall include any other agency or instrumentality of the same political subdivision that has adopted the Plan.

"**Includible Compensation**" means, with respect to a taxable year, the Participant's compensation as defined in Code Section 415(c)(3) and the regulations thereunder, for services performed for the Employer. The amount of Includible Compensation is determined without regard to any community property laws.

"**Normal Retirement Age**" means age 65.

In the event a Participant is a qualified police or firefighter (as defined under Code Section 415(b)(2)(H)(ii)(I)) Normal Retirement Age means age 50.

A Participant's Normal Retirement Age must be the same as his or her normal retirement age under any other eligible deferred compensation plan or plans sponsored by the Employer. The designation of a Normal Retirement Age under the Plan does not compel retirement with the Employer.

The "**Participant**" means an individual who is currently deferring Compensation, 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. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

"**Plan Year**" means the calendar year.

"**Severance from Employment**" means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). Solely for the purpose of determining whether the Participant is entitled to receive a distribution of his or her Account Balance pursuant to Section 6.2, a Participant shall be treated as having incurred a severance from employment during any period the Participant is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days.

The "**State**" means the State that is the Employer or of which the Employer is a political subdivision, and any agency, or instrumentality, including any agency or instrumentality of a political subdivision of the State, or the State in which the Employer is located.

The "**Trust Fund**" means the trust fund created under and subject to a trust agreement or a custodial account or contract described in Code Section 401(f) held on behalf of the Plan.

The "**Valuation Date**" means each business day.

## SECTION II
## PARTICIPATION AND CONTRIBUTIONS

### 2.1 Eligibility

Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer.

### 2.2 Election

An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and to have that amount contributed as an Annual Deferral on his or her behalf) and filing such election with the Administrator. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. Any such election shall remain in effect until a new election is filed. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The deferral agreement shall also include designation of investment funds and a designation of Beneficiary.

### 2.3 Commencement of Participation

An Employee shall become a Participant as soon as administratively practicable following the date the Employee files an election pursuant to Section 2.2. Such election shall become effective no later than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

### 2.4 Amendment of Annual Deferral Election, Investment Direction, or Beneficiary Designation

Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

### 2.5 Information Provided by the Participant

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b).

## 2.6 Contributions Made Promptly

Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, or earlier if required by law.

## 2.7 Employer Contributions

Nothing in this Plan prohibits the Employer from making annual deferrals to the Account Balance of a Participant on a non-elective basis, subject to the Participant's contribution limits in Section III.

(a) A Participant who becomes disabled while performing qualified military service and cannot therefore return to employment shall nevertheless be treated as having returned to employment as an Employee immediately prior to his or her disability date and shall be entitled to have Employer Contributions made to his or her Account Balance as provided in the preceding paragraph. The Administrator shall determine whether a Participant is disabled on the basis of medical evidence satisfactory to it.

## 2.8 Leave of Absence

Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

## 2.9 Disability

A disabled Participant (as determined by the Administrator) may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

## 2.10 Protection of Persons Who Serve in a Uniformed Service

An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

A reemployed Employee shall also be entitled to an allocation of any additional Employer Contributions, if applicable, that such Employee would have received under the Plan had the Employee continued to be employed as an eligible Employee during the period of qualified military service. Such restorative Employer Contributions (without interest), if applicable, shall be remitted by the Employer to the Plan on behalf of the Employee within 90 days after the date of the Employee's reemployment or, if later, as of the date the contributions are otherwise due for the year in which the applicable qualified military service was performed.

### 2.11 Corrective Measures

In the event that an otherwise eligible Employee is erroneously omitted from Plan participation, or an otherwise ineligible individual is erroneously included in the Plan, the Employer shall take such corrective measures as may be permitted by applicable law. Such measures may include, in the case of an erroneously omitted Employee, contributions made by the Employer to the Plan on behalf of such Employee equal to the missed deferral opportunity, subject to the Participant's contribution limits in Section III, and, in the case of an erroneously included individual, a payment by the Employer to such individual of additional compensation in an amount equal to the amount of the individual's elective deferrals under the Plan.

## SECTION III
## LIMITATIONS ON AMOUNTS DEFERRED

### 3.1 Basic Annual Limitation

(a) The maximum amount of the Annual Deferral and, if applicable, Employer Contributions under the Plan for any calendar year shall not exceed the lesser of:

(i) The "applicable dollar amount" (as defined in paragraph (b) below); or

(ii) The Participant's Includible Compensation for the calendar year.

(b) The "applicable dollar amount" means the amount established under Code Section 457(e)(15), as indexed, and in accordance with Section 3.4(a).

(c) Rollover amounts received by the Plan under Treasury Regulation Section 1.457-10(e) and any plan-to-plan transfer into the Plan made pursuant to Section 7.2 shall not be applied against the Annual Deferral limit.

### 3.2 Age 50 Catch-up Annual Deferral Contributions

A Participant who will attain age 50 or more by the end of a calendar year is permitted to elect an additional amount of Annual Deferral for the calendar year, up to the maximum age 50 catch-up Annual Deferral limit under §414(v)(2), as indexed.

The amount of the age 50 catch-up Annual Deferral for any calendar year cannot exceed the amount of the Participant's Compensation, reduced by the amount of the elective deferred compensation, or other elective deferrals, made by the Participant under the Plan and in accordance with Section 3.4(a).

The age 50 catch-up Annual Deferral limit is not available to a Participant for any calendar year for which the Special Section 457 Catch-up Limitation described in Section 3.3 is available and applied.

### 3.3 Special Section 457 Catch-up Limitation

Notwithstanding the provisions of Sections 3.1 and 3.2, with respect to a year that is one of 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 Section 3.3 exceeds the amount computed under Sections 3.1 and 3.2, then the Annual Deferral limit under this Section 3.3 shall be the lesser of:

(a) An amount equal to two (2) times the Section 3.1 Applicable Dollar Amount for such year; or

(b) The sum of:

(i) An amount equal to (A) the aggregate Section 3.1 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 (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(ii) An amount equal to (A) 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 Sections 3.2 and 3.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 3.4(c)) made by or on behalf of the Participant for such years.

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

### 3.4 Special Rules

For purposes of this Section III, the following rules shall apply:

(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 Section III. For this purpose, the 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 Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) Pre-Participation Years. In applying Section 3.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.1 or any other plan ceiling required by Code Section 457(b).

(c) Pre-2002 Coordination Years. For purposes of Section 3.3(b)(ii)(B), "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 3.3(b)(ii)(B) 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) Disregard Excess Deferral. For purposes of Sections 3.1, 3.2, and 3.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year if excess deferrals under the plan are distributed, as described in Section 3.5. 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.

### 3.5 Correction of Excess Deferrals

If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral 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 Annual Deferral, 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 as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

## SECTION IV
## INVESTMENT RESPONSIBILITIES

### 4.1 Investment of Deferred Amount

Each Participant or Beneficiary shall direct the investment of amounts held in his or her Account Balance under the Plan among the investment options of the Trust Fund. The investment of amounts segregated on behalf of an alternate payee pursuant to a Plan approved domestic relations order (as defined under Code Section 414(p)) may be directed by such alternate payee to the extent provided in such order. In the absence of such direction, such amounts shall be invested in the same manner as they were immediately before such segregation was made on account of such order. Each Account Balance shall share in any gains or losses of the investment(s) in which such account is invested.

### 4.2 Investment Election for Future Contributions

A Participant may amend his or her investment election at such times and by such manner and form as prescribed by the Administrator. Such election will, unless specifically stated otherwise, apply only to future amounts contributed under the Plan.

### 4.3 Investment Changes for an Existing Account Balance

The Participant, Beneficiary, alternate payee, or Administrator may elect to transfer amounts in his Account Balance among and between those investments available under the Trust Fund at such times and by such manner and form prescribed by the Administrator, subject further to any restrictions or limitations placed on any investment by the Administrator to be uniformly applied to all Participants.

### 4.4 Investment Responsibility

To the extent that a Participant, Beneficiary, or alternate payee exercises control over the investment of amounts credited to his Account Balance, the Employer, the Administrator, and any other fiduciary of the Plan shall not be liable for any losses that are the direct and necessary result of investment instructions given by a Participant, Beneficiary or an alternate payee.

### 4.5 Default Investment Fund

The Employer shall maintain a Default Investment Fund which shall be held and administered under the Trust Fund. Any Participant who does not make an investment election on the deferral agreement provided by the Administrator will have his contributions invested in the Default Investment Fund until such time he provides investment direction under Sections 4.2 and 4.3. Additionally, a Beneficiary or alternate payee who does not make an investment election will have his Account Balance invested in the Default Investment Fund until such time he provides investment direction under Section 4.3. The interest of each Participant, Beneficiary, or alternate payee under the Plan in the Default Investment Fund shall be an undivided interest.

### 4.6 Statements

The Administrator will cause statements to be issued periodically to reflect the contributions and actual earnings posted to the Account Balances.

## SECTION V
## LOANS

### 5.1 Loans

The Employer may elect to make loans available to Participants who are Employees. If the Employer has elected to make loans available to Participants who are Employees, the Employer shall establish written guidelines governing the granting and administration of loans, which are hereby incorporated into and made part of the Plan provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Section V. To the extent such guidelines are more restrictive than the provisions of the Plan and are not inconsistent with the provisions of Code Section 72(p) and regulations issued thereunder, the guidelines shall be controlling.

Except as modified by the Plan's loan program policy and procedures adopted by the Administrator, the following rules shall apply to loans under the Plan. Any loans that are issued under the Plan shall be administered in a manner consistent with the requirements of Code Section 72(p), Treasury Regulations 1.72(p) and any other applicable guidance issued thereunder.

### 5.2 Maximum Loan Amount

No loan to a Participant hereunder may exceed the lesser of:

(a) $50,000, reduced by the excess (if any) of (i) the highest outstanding balance of loans from the Plan during the preceding 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) over (ii) the outstanding balance of loans from the Plan on the date the loan is approved by the Administrator; or

(b) one half of the value of the Participant's Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 5.2, any loan from any other plan maintained by a participating employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Section 5.2 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

### 5.3 Terms of Loan

The terms of the loan shall:

(a) charge a reasonable interest rate commensurate with current interest rates charged for loans made under similar circumstances by persons in the business of lending money (subject to the requirements of the Servicemembers Civil Relief Act).

(b) require that the minimum loan term be 12 months;

(c) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence (as defined in Code Section 121) of the Participant;

(d) require substantially level amortization of such loan with payments not less frequently than quarterly throughout the repayment period. Notwithstanding the foregoing, if so provided in the written guidelines applicable to Plan loans, the amortization schedule may be waived and payments suspended while a Participant is on a leave of absence from employment with an Employer (for periods in which the Participant does not perform military service as described in paragraph (d)), provided that all of the following requirements are met:

(i) Such leave is either without pay or at a reduced rate of pay that, after withholding for employment and income taxes, is less than the amount required to be paid under the amortization schedule;

(ii) Payments resume after the earlier of (1) the date such leave of absence ends or (2) the one-year anniversary of the date such leave began;

(iii) The period during which payments are suspended does not exceed one year;

(iv) Payments resume in an amount not less than the amount required under the original amortization schedule; and

(v) The waiver of the amortization schedule does not extend the period of the loan beyond the maximum period permitted under this Section 5.3.

(e) If a Participant is absent from employment with any participating employer for a period during which he or she performs services in the uniformed services (as defined in chapter 45 of title 38 of the United States Code), whether or not such services constitute qualified military service, the suspension of payments shall not be taken into account for purposes of applying paragraph (d) of this Section 5.3 provided that all of the following requirements are met:

(i) Payments resume upon completion of such military service;

(ii) Payments resume in an amount not less than the amount required under the original amortization schedule and continue in such amount until the loan is repaid in full;

(iii) Upon resumption, payments are made no less frequently than required under the original amortization schedule and continue under such schedule until the loan is repaid in full; and

(iv) The loan is repaid in full, including interest accrued during the period of such military service, no later than the maximum period otherwise permitted under this Section V extended by the period of such military service.

(f) The loan shall be evidenced by a legally enforceable agreement that demonstrates compliance with the provisions of this Section.

**5.4 Security for Loan; Default**

(a) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's Account Balance in the Plan invested in such loan.

(b) Default. In the event that a Participant fails to make a loan payment under this Section V on the last business day before the end of the calendar quarter following the quarter in which the payment is due, unless payment is not made because the Participant is on a bona fide leave of absence as determined by the Administrator and the amortization schedule is suspended while the Participant is on leave of absence from employment with an Employer, a default on the loan shall occur. In the event of such default, (i) all remaining payments on the loan shall be immediately due and payable (including accrued interest) at the time of the default, and (ii) interest shall continue to accrue on the outstanding loan balance until the loan is foreclosed.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator may take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

**5.5 Repayment**

A Participant shall be required, as a condition to receiving a loan, to enter into an agreement for the repayment of the loan in accordance with a method set forth in the written guidelines governing the granting of Plan loans that are established by the Employer pursuant to Section 5.1.

A Participant may prepay the entire outstanding balance of his or her loan at any time (but may not make a partial prepayment).

## SECTION VI
## DISTRIBUTIONS

### 6.1 Distributions from the Plan

(a) Earliest Distribution Date. Payments from a Participant's Account Balance shall not be made earlier than:

(i) the Participant's Severance from Employment pursuant to Section 6.2

(ii) the Participant's death pursuant to Section 6.3

(iii) Plan termination under Section 10.3

(iv) an unforeseeable emergency withdrawal pursuant to Section 6.10(a), if permitted under the Plan

(v) a de minimis account balance distribution pursuant to Section 6.10(b), if permitted under the Plan

(vi) a rollover account withdrawal pursuant to Section 6.10(c), if permitted under the Plan

(vii) attainment of age 70 ½ withdrawal pursuant to Section 6.10(d), if permitted under the Plan

(viii) Qualified Military Service Deemed Severance withdrawal pursuant to Section 6.10(e), if permitted under the Plan

(ix) Qualified Military Reservist withdrawal pursuant to Section 6.10(f) , if permitted under the Plan

(x) Qualified Distributions for Retired Public Safety Officers pursuant to Section 6.11, if permitted under the Plan

(b) Latest Distribution Date. In no event shall any distribution under this Section VI begin later than the Participant's "required beginning date". Such required minimum distributions must be made in accordance with Section 6.6.

(c) Amount of Account Balance. Except as provided in Section 6.3, the amount of any payment under this Section VI shall be based on the amount of the Account Balance as of the Valuation Date.

### 6.2 Benefit Distributions Upon Severance from Employment

Upon Severance from Employment (other than due to death), a Participant may elect to commence distribution of benefits at any time after such Severance from Employment by filing a

request with the Administrator before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than his or her "required beginning date".

Distributions required to commence under this section shall be made in the form of benefit provided under Section 6.5. Distributions postponed until the Participant's "required beginning date" will be made in a manner that meets the requirements of Section 6.6.

### 6.3 Distributions on Account of Participant's Death

Upon receipt of satisfactory proof of the Participant's death, the designated Beneficiary may file a request with the Administrator to elect a form of benefit provided under Section 6.5 and made in a manner that meets the requirements of Section 6.6.

(a) Death of Participant Before Distributions Begin. If the Participant dies before his or her distributions begin, the designated Beneficiary may elect to have distributions to be made (i) in full within 5 years of the Participant's death (5-year rule) or (ii) in installments over the designated Beneficiary's "life expectancy" (life expectancy rule).

If the designated Beneficiary does not make an election by September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death or if the Participant's spouse is the sole designated Beneficiary by December 31 of the year the Participant would have attained age 70 ½.

(b) Death of Participant On or After Date Distributions Begin. If the Participant dies on or after his or her distributions began, the Participant's Account Balance shall be paid to the Beneficiary at least as rapidly as under the payment option used before the Participant's death.

For purposes of this Section, a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code Section 414(u)) will be deemed to have resumed employment in accordance with the Participant's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death and to have terminated employment on the actual date of death for purposes of determining the entitlement of the Participant's survivors to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan, in accordance with the provisions of Code Sections 401(a)(37), 414(u)(9), and 457(g)(4).

### 6.4 Distribution of Small Account Balances Without Participant's Consent

Notwithstanding any other provision of the Plan to the contrary, if the amount of a Participant's or Beneficiary's Account Balance (including the rollover contribution separate account) is not in excess of the amount specified below on the date that payments commence under Section 6.2 or on the date the Administrator is notified of the Participant's death, the Administrator may direct

payment without the Participant's or Beneficiary's consent as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

(a) The Plan does not provide for distribution of small Account Balances without Participant or Beneficiary consent.

### 6.5 Forms of Distribution

In an election to commence benefits under Section 6.2, a Participant entitled to a distribution of benefits under this Section VI may elect to receive payment in any of the following forms of distribution:

(a) a lump sum payment of the Participant's total Account Balance.

(b) partial distribution of the Participant's Account Balance.

(c) in a series of installments over a period of years (payable on a monthly, quarterly, semi-annual or annual basis) which extends no longer than the life expectancy of the Participant as permitted under Code Section 401(a)(9).

(d) a purchase of a single premium nontransferable annuity contract for such term and in such form as the Participant selects that provides for payments in the form of an irrevocable annuity each calendar year of amounts not less than the amount required under Code Section 401(a)(9).

### 6.6 Minimum Distribution Requirements

(a) General Rules.

Notwithstanding anything in this Plan to the contrary, distributions from this Plan shall commence and be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder. Additionally, the requirements of this Section 6.6 will take precedence over any inconsistent provisions of the Plan.

(b) Time and Manner of Distribution.

(i) 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".

(ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year

in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), then distributions to the "designated Beneficiaries" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If the Participant's sole "designated Beneficiary" is not the Participant's spouse, then distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(D) If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(E) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph (b)(ii), other than subsection (b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph (ii) and paragraph (d), unless subsection (b)(ii)(D) applies, distributions are considered to begin on the Participant's "required beginning date". If subsection (b)(ii)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

(iii) Death of Participant On or After Distributions Begin. If the Participant dies on or after distributions begin and before depleting his or her Account Balance, distributions must commence to the "designated Beneficiary" by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iv) Forms of Distribution. Unless the Participant's Account Balance is distributed in the form of an annuity contract or in a lump sum on or before the Participant's "required beginning date", as of the first distribution calendar year, distributions will be made in accordance with paragraphs (c) and (d). If the Participant's

interest is distributed in the form of an annuity contract, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9).

(c) Required Minimum Distributions During the Participant's Lifetime.

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

(A) The quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2 using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(B) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3 using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year".

(ii) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this paragraph (c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

For purposes of this Section 6.6(d), the Participant's and Beneficiary's "life expectancy" determination will use the Single Life Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

(i) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary", determined as follows:

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

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

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

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

(B) No Designated Beneficiary.

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

(ii) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

Except as provided in this Section, 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 follows:

(1) 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.

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

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

(B) No Designated Beneficiary.

If the Participant dies 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 distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.

If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole "designated Beneficiary", and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (b)(ii)(A), this subparagraph (d)(ii) will apply as if the surviving spouse were the Participant.

(e) Definitions.

(i) A Participant's "required beginning date" is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70 ½ or (2) retires due to Severance from Employment. If the Participant postpones the required distribution due in calendar year he or she attains age 70 ½ or severs employment, to the "required beginning date", the second required minimum distribution must be taken by the end of that year.

(ii) Participant's "designated Beneficiary" means the individual who is designated as the Beneficiary under Section 8.1 and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4.

(iii) A "distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year the Participant attains age 70 ½ or retires, if later. 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 subparagraph (b)(ii).

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".

(iv) A married Participant's "life expectancy", whose spouse is the sole Beneficiary and is more than 10 years younger than the Participant, means the Participant's and spouse Beneficiary's life expectancy as computed by use of the Joint and Last Survivor Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 3. All other Participants will have his or her life expectancy computed by use of the Uniform Lifetime Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 2. A deceased Participant's or Beneficiary's "life expectancy" means his or her life expectancy as computed by use of the Single Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 1.

(v) A "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 Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(f) Special Provision Applicable to 2009 Required Minimum Distributions.

A Participant who would otherwise be required to receive a minimum distribution from the Plan in accordance with Code Section 401(a)(9) for the 2009 "distribution calendar year" may elect not to receive any such distribution that is payable with respect to the 2009 "distribution calendar year".

Notwithstanding the provisions of Section 6.9(b)(iii), the Administrator may permit a Participant who receives a minimum distribution from the Plan for the 2009 "distribution calendar year" to make a direct rollover of such distribution to an "eligible retirement plan" in accordance with the provisions of Section 6.9.

The Administrator may also permit a Participant or former Participant who has received a minimum distribution for the 2009 "distribution calendar year" to roll over such distribution back into the Plan, provided the requirements of Code Section 402(c), as modified by Notice 2009-82, extending the 60-day rollover deadline, and the requirements of Section 7.1 are otherwise satisfied. If the distribution received by the Participant included amounts in addition to the minimum required under Code Section 401(a)(9), the Administrator may allow the Participant to include a portion or all of the amount that was not a minimum distribution in the Rollover Contribution made to the Plan in accordance with this paragraph.

The provisions of this Section 6.6(f) are effective for minimum payments made for the 2009 "distribution calendar year" and do not include any minimum payment that is made in 2009, but is attributable to a different year (i.e., the participant reached his required beginning date in 2008, but payment of the 2008 minimum is not made until 2009).

### 6.7 Payments to Minors and Incompetents

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator or a court of competent jurisdiction may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

### 6.8 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown in the Administrator's records; (b) use of the Internal Revenue Service letter forwarding program under IRS Revenue Procedure 94-22; (c) use of a commercial locator service, the internet or other general search method; (d) use of the Social Security Administration search program; or (e) use such other methods as the Administrator believes prudent.

If the Participant or Beneficiary has not responded within 6 months, the Plan shall continue to hold the benefits due such person until, in the Administrator's discretion, the Plan is required to take other action under applicable law.

Notwithstanding the foregoing, if the Administrator is unable to locate a person entitled to benefits hereunder after applying the search methods set forth above, then the Administrator, in its sole discretion, may pay an amount that is immediately distributable to such person in a direct rollover to an individual retirement plan designated by the Administrator.

## 6.9 Direct Rollover

(a) A Participant or Beneficiary (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p)) who is entitled to an "eligible rollover distribution" may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an "eligible retirement plan" specified by the Participant or Beneficiary in a direct rollover.

(b) For purposes of this Section 6.9, an "eligible rollover distribution" means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payment made not less frequently than annually for the life or life expectancy of the Participant or the joint lives or life expectancies of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more (ii) any distribution made as a result of an unforeseeable emergency, or (iii) any distribution that is a required minimum distribution under Code Section 401(a)(9).

In addition, an "eligible retirement plan" with respect to the Participant, the participant's spouse, or the Participant's spouse or former spouse who is an alternate payee under a domestic relations order as defined in Code Section 414(p) means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a), (iv) a qualified defined contribution plan described in Code Section 401(a), (v) an annuity contract described in Code Section 403(b), (vi) an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, or (vii) effective for distributions made on or after January 1, 2008, a Roth IRA, as described in Code Section 408A, provided, that for distributions made before January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B).

Notwithstanding any other provision of this Section 6.9(b), a plan or contract described in clause (iii), (iv), (v), or (vi) above shall not constitute an "eligible retirement plan" with respect to a distribution of Roth Contributions unless such plan or contract separately accounts for such distribution, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) A Beneficiary who is not the spouse of the deceased Participant may elect a direct rollover of a distribution to an individual retirement account described in Code Section 408(b) or to a Roth individual retirement account described in Code Section 408A(b) ("IRA"), provided that the distributed amount satisfies all the requirements to be an eligible rollover distribution. The direct rollover must be made to an IRA established on behalf of the designated Beneficiary that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). The IRA must be established in a manner that identifies it as an IRA with respect to a deceased Participant and also identifies the

deceased Participant and the Beneficiary. This Section applies to distributions made on or after January 1, 2007.

**6.10 Inservice Distributions**

(a) Unforeseeable Emergency Distributions. If the Participant who has not incurred a Severance from Employment or Beneficiary has an unforeseeable emergency, the Administrator may approve a single sum distribution of the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.10(a), Treasury Regulation Section 1.457-6(c) or other regulatory guidance. The Administrator shall determine whether an unforeseeable emergency exists based on relevant facts and circumstances, and Treasury Regulation Section 1.457-6(c) or other regulatory guidance.

(i) An unforeseeable emergency is defined as a severe financial hardship resulting from the following:

(A) an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary";

(B) loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);

(C) the need to pay for the funeral expenses of a Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or "primary Beneficiary" of the Participant;

(D) the need to pay for medical expenses of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary" which are not reimbursed or compensated by insurance or otherwise, including non-refundable deductibles, as well as for the cost of prescription drug medication;

(E) the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence; or

(F) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. However, except as otherwise specifically provided in this Section 6.10(a), certain circumstances are not considered an unforeseen emergency such as the purchase of a home or the payment of college tuition or credit card debt.

For purposes of this paragraph, if the Participant is not deceased, a "primary Beneficiary" shall be limited to a primary Beneficiary under the Plan, which is an individual who is named as a Beneficiary pursuant to Section 8.1 and has an unconditional right to all or a portion of the Participant's Account Balance upon the death of the Participant, and which shall not include a contingent beneficiary. Additionally, dependent shall be limited to the definition under Code Section 152(a), and, for taxable years beginning on or after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B).

(ii) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable 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 deferrals under the Plan if the cessation of deferrals would alleviate the financial need.

(iii) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable 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).

(b) De minimis Account Balance Distributions. A Participant before Severance of Employment may request a distribution of his or her total Account Balance (excluding the rollover contribution separate account), which shall be paid in a lump sum payment as soon as practical following the direction if (i) the total Account Balance does not exceed $5,000 (or the dollar limit under Code Section 411(a)(11), if greater), (ii) the Participant has not previously received a distribution of their total Account Balance payable to the Participant under this Section 6.10(b), and (iii) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

The Plan does not permit the Administrator to direct payments under the terms of this Section 6.10(b) without the Participant's consent.

(c) Rollover Account Distributions. If a Participant has a separate account attributable to rollover contributions under the Plan, the Participant before Severance of Employment may at any time elect to receive an inservice distribution of all or any portion of the amount held in the rollover separate account.

(d) Age 70 ½ Distributions. Prior to Severance from Employment, a Participant may withdraw all or a portion of his or her Account Balance on or after first day of the calendar year in which the Participant shall attain age 70½.

(e) Qualified Military Service Deemed Severance Distributions. Notwithstanding any other provision of the Plan to the contrary, a Participant before Severance of Employment who

is absent from employment because of service with the uniformed services (as described in United Stated Code, Title 38, Chapter 43) for more than 30 days shall be treated as if he had incurred a severance from employment for purposes of receiving a distribution. A Participant who is deemed to have incurred a severance from employment hereunder may elect to receive a withdrawal from his or her Annual Deferrals.

If a participant receives a distribution in accordance with this Section 6.10(e) and would not otherwise be entitled to receive a distribution under the Plan other than this section, his or her Annual Deferrals shall be suspended for at least 6 months after receipt of the withdrawal. However, if the distribution is also a "qualified reservist distribution", the suspension shall not apply. For purposes of this Section 6.10(e), a "qualified reservist distribution" means a distribution to a reservist or national guardsman who is ordered or called to active duty after September 11, 2001, either (i) for an indefinite period or (ii) for a period longer than 179 days, provided such distribution is made during the period beginning on the date the Participant is ordered or called to active duty and ending on the date the Participant's active duty period closes.

(f) Qualified Military Reservist Distributions. Notwithstanding any other provision of the Plan to the contrary, a Participant who is a member of a reserve component (as defined in Section 101 of Title 37 of the United States Code) who is ordered or called to active duty for a period in excess of 179 days, or for an indefinite period, may elect to receive a withdrawal of all or any portion of his or her Annual Deferrals. Any distribution made to a Participant pursuant to this Section 6.10(f) must be made during the period beginning on the date the Participant is ordered or called to active duty and ending on the close of his active duty period.

### 6.11 Qualified Distributions for Retired Public Safety Officers

A Participant who is an "eligible retired public safety officer" may elect to have qualified health insurance premiums deducted from amounts to be distributed to the Participant from the Plan, and to have such amounts paid directly to the insurer or group health plan, subject to the provisions of this Section 6.11. "Qualified health insurance premiums" include premiums for accident and health insurance (including under a self-insured plan) or qualified long-term care insurance contracts for the Participant and the Participant's spouse and dependents. It is intended that, pursuant to Code Section 402(l), the distribution shall be excluded from the Participant's gross income to the extent that the aggregate amount of the distributions does not exceed the amount used to pay the qualified health insurance premiums of the Participant and the Participant's spouse and dependents.

(a) A Participant shall qualify as an "eligible retired public safety officer" for purposes of this Section 6.11 only if the Participant is an individual who separated from service, either by reason of disability (as determined by the Administrator) or after attainment of normal retirement age, as a public safety officer with the Employer. Consequently, a public safety officer who retires before the attainment of normal retirement age is not an eligible retired public safety officer unless the public safety officer retires by reason of disability (as determined by the Administrator).

(b) For purposes of this Section 6.11, the term "public safety officer" means an individual serving the Employer in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew.

(c) In order to avoid unintended taxation, the aggregate amount that a Participant elects to have directly distributed to an insurer or group health plan pursuant to this Section 6.11 for any calendar year shall be limited to $3,000. Moreover, for purposes of applying this $3,000 limitation, distributions with respect to the Participant that are used to pay for qualified health insurance premiums from all qualified retirement plans of the Employer shall be aggregated.

## SECTION VII
## ROLLOVERS AND PLAN TRANSFERS

### 7.1 Eligible Rollover Contributions to the Plan

(a) A Participant who is an Employee or a Participant who has separated from service and has an Account Balance and who is entitled to receive an eligible rollover distribution from another "eligible retirement plan", as defined in 6.9(b) excluding the direct rollover of after-tax contributions, may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an "eligible retirement plan" within the meaning of Code Section 402(c)(8)(B).

(b) If an Employee makes a rollover contribution to the Plan of amounts that have previously been distributed to him or her, the Employee must deliver to the Administrator the cash that constitutes his or her rollover contribution within 60 days of receipt of the distribution from the distributing "eligible retirement plan". Such delivery must be made in the manner prescribed by the Administrator.

(c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is an eligible governmental plan under Code Section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is not an eligible governmental plan under Code Section 457(b).

### 7.2 Plan-to-Plan Transfers to the Plan

At the direction of the Employer, the Administrator may permit Participants or Beneficiaries who are participants or beneficiaries in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this Section 7.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's or Beneficiary's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section III.

### 7.3 Plan-to-Plan Transfers from the Plan

(a) At the direction of the Employer, the Administrator may permit Participants or Beneficiaries to elect to have all or any portion of his or her Account Balance transferred to another eligible governmental plan within the meaning of Treasury Regulatory Section 1.457-2(f), if the other eligible governmental plan provides for the receipt of transfers, the Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer, and the conditions of subparagraph (i), (ii), or (iii) are met.

(i) A transfer from the Plan to another eligible governmental plan is permitted in the case of a transfer for a Participant if the Participant has had a Severance from Employment with the Employer and is performing services for the entity maintaining the other eligible governmental plan.

(ii) A transfer from the Plan to another eligible governmental plan is permitted if:

(A) The transfer is to another eligible governmental plan within the same State as the Plan;

(B) All the assets held by the Plan are transferred; and

(C) A Participant or Beneficiary whose amounts deferred are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.

(iii) A transfer from the Plan to another eligible governmental plan of the Employer is permitted if:

(A) The transfer is to another eligible governmental plan of the Employer (and, for this purpose, an employer is not treated as the Employer if the Participant's compensation is paid by a different entity); and

(B) A Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.

(b) Upon the transfer of assets under this Section 7.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 7.3, and to assure that the transfer

is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b).

### 7.4 Permissive Service Credit Transfers

(a) 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, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 7.4(a) may be made before the Participant has had a Severance from Employment and without regard to whether the defined benefit governmental plan is maintained by the Employer. The distribution rules applicable to the defined benefit governmental plan to which any amounts are transferred under this Section 7.4 shall apply to the transferred amounts and any benefits attributable to the transferred amounts.

(b) A transfer may be made under Section 7.4(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan, including service credit for periods for which there is no performance of services, service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan, and service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Code Section 415(n)(3)(C)(i)) of an educational organization described in Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed, without application of the limitations of Code Section 415(n)(3)(B) in determining whether the transfer is for the purchase of permissive service credit, or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

## SECTION VIII
## BENEFICIARY

### 8.1 Designation

A Participant has the right, by written notice filed with the Administrator, to designate one or more beneficiaries to receive any benefits payable under the Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he or she has the burden for executing and filing, with the Administrator, a proper beneficiary designation form.

The form for this purpose shall be provided by the Administrator. The form is not valid until it is signed, filed with the Administrator by the Participant, and accepted by the Administrator. Upon the Participant filing the form and acceptance by the Administrator, the form revokes all beneficiary designations filed prior to that date by the Participant.

If no such designation is in effect upon the Participant's death, or if no designated Beneficiary survives the Participant, the Beneficiary shall be the Participant's estate.

## SECTION IX
## ADMINISTRATION AND ACCOUNTING

### 9.1 Administrator

The Administrator shall have the responsibility and authority to control the operation and administration of the Plan in accordance with the terms of the Plan, the Code and regulations thereunder, and any State law as applicable.

The Administrator may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Administrator. The Administrator shall have the right to designate a plan coordinator or other party of its choice to perform such services under this agreement as may be mutually agreed to between the Administrator and the plan coordinator or other party. Notwithstanding any other provisions to the contrary, the Administrator agrees that it shall be solely responsible to the Employer for any and all services performed by a plan coordinator, subcontractor, assignee, or designee under this agreement.

The Administrator has full and complete discretionary authority to determine all questions of Plan interpretation, policy, participation, or benefit eligibility in a manner consistent with the Plan's documents, such determinations shall be conclusive and binding on all persons except as otherwise provided by law.

### 9.2 Administrative Costs

All reasonable expenses of administration may be paid out of the Plan assets unless paid (or reimbursed) by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of his or her duties under the Plan, including, but not limited to, fees of accountants, counsel, investment managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator in carrying out the instructions of Participants as to the directed investment of his or her accounts and other specialists and his or her agents, and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account Balance of an individual a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee or to the Participant for Plan loans. If liquid assets of the Plan are insufficient to cover the fees of the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund described in Section 11.1.

### 9.3 Paperless Administration

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally

applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Participant Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

## SECTION X
## AMENDMENTS

### 10.1 Amendment

The Employer may at any time either prospectively or retroactively amend the Plan by notifying Participants of such action. The Employer shall not have the right to reduce or affect the value of any Participant's Account Balance or any rights accrued under the Plan prior to amendment.

### 10.2 Conformation

The Employer shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Code to be administered in a manner inconsistent with Code Section 457, the Employer shall correct such inconsistency within the period provided in Code Section 457(b).

### 10.3 Plan Termination

In the event of the termination of the Plan, all Account Balances shall be disposed to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Section VI or Section VII as soon as reasonably practicable following the Plan's termination. The Employer shall not have the right to reduce or affect the value of any Participant's account or any rights accrued under the Plan prior to termination of the Plan. The Participant's or Beneficiary's written consent to the commencement of distribution shall not be required regardless of the value of his or her Account Balance.

## SECTION XI
## TRUST FUND

### 11.1 Trust Fund

All amounts in a Participant's or Beneficiary's Account Balance, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust, custodial agreement, annuity contract, or similar agreement under the laws of the State. All investments, amounts, property, and rights held under the Trust Fund shall be held in trust for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. Prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, no part of the assets and income of the Trust Fund may be used for, or diverted to, for purposes other than for the exclusive benefit of Participants and their Beneficiaries. The Employer has no beneficial interest in the Trust Fund and no part of the Trust Fund shall ever revert to the Employer, directly or indirectly, provided, however, that a contribution or any portion thereof made by the Employer through a mistake of fact under Section 12.4 shall upon written request of the Employer, reduced by losses attributable thereto, shall be returned to the Employer.

## SECTION XII
## MISCELLANEOUS

### 12.1 Non-Assignability

Except as provided in Sections 12.2 and 12.3, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so shall be void except to such extent as may be required by law.

### 12.2 Domestic Relation Orders

The Employer shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

Notwithstanding Section 12.1, the Administrator may affect a Participant's Account Balance for a "qualified domestic relations order" as defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

### 12.3 IRS Levy

Notwithstanding Section 12.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service to the Plan 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.

### 12.4 Mistaken Contributions

Notwithstanding any other provision of the Plan or the Trust Fund to the contrary, in the event any contribution of an Employer is made under a mistake of fact (and not a Plan operational error), such contribution may be returned to the Employer within one year after the payment of the contribution. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

### 12.5 Employment

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall the terms or employment of any Employee be modified or in any way affected hereby.

### 12.6 Successors and Assigns

The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

### 12.7 Written Notice

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Administrator shall be sent to the designated office of the Administrator, and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his or her last known address as it appears on the Administrator's record. To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Administrator, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under the Plan through the use of any other medium acceptable to the Administrator. Such other medium may include, but is not necessarily limited to, electronic or telephonic medium. In addition, any communication or disclosure to or from Participants or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law.

### 12.8 Total Agreement

This Plan and Participant deferral election, and any subsequently adopted Plan amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

### 12.9 Gender

As used herein the masculine shall include the neuter and the feminine where appropriate.

### 12.10 Controlling Law

This Plan is created and shall be construed, administered and interpreted in accordance with Code Section 457 and the regulations thereunder, and under laws of the State as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

**IN WITNESS WHEREOF,** the Employer has executed this Plan document this _____ day of _____, _____.

City of Auburn

SEAL

By _____

Name_____

Title_____

Attest:

_____ _____

Title (Witness)

# 457(b) PLAN DOCUMENT CERTIFICATION

**This form must be submitted to The Hartford along with your signed Specimen document.**

| | |
|---|---|
| Employer Name: City of Auburn | |
| Plan Name: City of Auburn Deferred Compensation Plan | |
| Effective Date of Plan: June 30, 2012 | Hartford Group Number: 060017 |

Please select one of the following below:

- ☐ I, the undersigned employer representative, certify that the employer has adopted The Hartford's specimen 457(b) Plan Document without any modifications and have provided The Hartford with a copy of the adopted plan document.
- ☐ I, the undersigned employer representative, certify that the employer has adopted The Hartford's specimen 457(b) Plan Document with modifications and have provided The Hartford with a copy of the adopted document. I understand that the modifications will need to be approved by The Hartford to ensure that they conform to our Contract and Administrative Services Agreement with The Hartford, and their record keeping system and product. The provisions we have modified are as follows:

| Plan Sections | Modifications |
|---|---|
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| | |
|---|---|
| Name of Authorized Signer: (please print) | |
| Signature: | Date: |

GN - 060017
GPLANLVL – CORRSPND

**AMENDMENT TO**
**ADMINISTRATIVE SERVICES AGREEMENT**

**PARTICIPANT LOANS**

**WHEREAS,** Hartford Life Insurance Company, a Connecticut corporation (hereinafter "**Hartford Life**") entered into an Administrative Services Agreement (hereinafter "**Agreement**") effective **January 1, 1989** with the **City Of Auburn** (hereinafter "**Plan Sponsor**") to provide certain nondiscretionary recordkeeping, reporting and processing services to the **City Of Auburn Deferred Compensation Plan** (hereinafter "**Plan**") on behalf of the Plan Sponsor; and

**WHEREAS,** Hartford Life and the Plan Sponsor desire and agree to amend the Agreement;

**NOW THEREFORE,** effective **June 30, 2012,** the Agreement is hereby amended as set forth herein. The terms of the Agreement shall apply herein except as may be otherwise provided by the terms of this Amendment.

A new Section 5.5 is hereby made a part of the Agreement as follows:

"**5.5** Participant Loans - The Plan Sponsor shall notify Hartford Life in writing of each Participant the Plan Sponsor has determined is entitled to receive a loan under the terms of the Plan. Loan requests will be processed within one business day following receipt by Hartford Life. The loan agreement and promissory note outlining the terms of the loan will be mailed with the distribution by Hartford Life within three business days following trade settlement. Hartford Life will prepare an amortization schedule for the loan based upon the data provided, a copy of which will be sent to the Plan Sponsor. Loans from a Participant's Account will be accounted for separately and repayments of the loans will be allocated to the Participant's Account in accordance with the instructions filed with Hartford Life by the Plan Sponsor. Loan repayments will be submitted to, or received by, Hartford using one or more of the administrative methods offered by Hartford and selected in writing by the Plan Sponsor. In the event that a repayment is less than or exceeds the amount expected under the amortization schedule on file at The Hartford, the payment will be applied to the next payment(s) due under such schedule without reamortization. Hartford Life will provide the Plan Sponsor a listing of Participant loans that are in arrears. The Plan Sponsor shall notify Hartford Life in writing of any Participant loan it considers to be in default. For loans in default, where Hartford Life processed and distributed such loan, Hartford Life will prepare and file the appropriate federal tax reporting form. The provisions of Section 5.4 shall also apply to tax reporting under this paragraph."

**IN WITNESS WHEREOF,** the parties hereto have caused this Amendment to be signed.

For the Plan Sponsor:

By: _____ Date: _____

Name: Andrew Heath Title: Admin Services Director

For Hartford Life Insurance Company:

By: Paula Knake Date: March 22, 2012

Name: Paula Knake Title: Assistant Vice President

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