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CITY OF STOCKTON
DEFERRED COMPENSATION PLAN

Effective Date of This Document 4-16-14

City of Stockton

Deferred Compensation Plan and Trust

PREAMBLE

The City of Stockton Deferred Compensation Plan and Trust (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 Stockton (hereinafter the "Employer") effective December 31, 2012. This Plan is the continuation in restated form of the City of Stockton Deferred Compensation Plan originally dated October 24, 1982. This Plan has been adopted pursuant to Resolution No. 30-047, dated October 24, 1972, and is effective as of such date.

Purpose of Plan

The primary purpose of this Plan is to permit Employees of the City of Stockton to enter into an agreement which will provide for deferral of payment of a portion of their current compensation until death, retirement, Termination of Employment, or other event, in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, and other applicable sections of the IRS 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 Section 457(b) of the Code sponsored by an Eligible Governmental 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 City of Stockton 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 own attorney or other representative regarding all tax or other consequences of participation in this Plan.

ARTICLE I DEFINITIONS

1.1 Plan Definitions

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

"Account" A vessel established with an Institution by the Employer for the purpose of depositing amounts deferred from the compensation of a Participant. An account may include one or more approved investments of an Institution, or may be a bookkeeping account for identification purposes if amounts deferred for several Participants are combined in one or more approved investments of an Institution. The balance in an Account will include amounts invested and earnings credited thereto, less distributions made pursuant to the Plan

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

"Annual Deferral" The amount of Compensation deferred in any calendar year.

"Beneficiary" Any person designated by the Participant to receive an annuity, death benefit, or other benefit under the provisions of this Plan, by reason of such Participant's death.

"Code" The Internal Revenue Code of 1986, as amended, unless otherwise stated.

"Compensation" The total of all wages or salaries which are paid by the Employer to, or for the benefit of, an Employee for services rendered, calculated without deduction for any portion thereof deferred under the provisions of this Plan or for any amounts contributed to any program established pursuant to Code Sections 403(b), 401(k), 408(k)(6), or 501(c)(18).

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; and
- (c) 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.

"Contracts" An annuity agreement (fixed and/or variable) entered into with the Provider(s) selected by the City of Stockton.

"Deferred Compensation" That portion of an Employee's compensation that said Employee has elected to defer in accordance with the provisions of this Plan.

"Direct Rollover" Any distribution of all or any portion of the balance for further credit to an Eligible Retirement Plan, as defined in Section 401(a) of the Code, specified by the Participant.

"Distribution Calendar Year" The 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.

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".

"Eligible Deferred Compensation Plan" The Plan that satisfies the requirements of Code Section 457(b) and the regulations thereunder.

"Eligible Governmental Employer" A State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.

"Employer" The City of Stockton.

"Employee" Any full-time Employee of the Employer who receives Compensation.

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

"Life Expectancy" 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 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 Life Expectancy as computed by use of the Single Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 1.

"Normal Retirement Age" Any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State or tax-exempt entity (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70 ½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the special section 457 catch-up in this paragraph (c)(3), an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors.

(B) Special rule for eligible plans of qualified police or firefighters. An eligible plan with participants that include qualified police or firefighters as defined under section 415(b)(2)(H)(ii)(I) may designate a normal retirement age for such qualified police or firefighters that is earlier than the earliest normal retirement age designated under the general rule of paragraph (c)(3)(I)(A) of this section, but in no event may the normal

retirement age be earlier than age 40. Alternatively, a plan may allow a qualified police or firefighter participant to designate a normal retirement age that is between age 40 and age 70 ½.

"Participant" Any Employee or Retired Employee of the Employer, who elects to take part in this Plan by signing a Participation Agreement.

"Participant's 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)).

"Participation Agreement" An agreement filed by an Employee to elect or modify participation in the Plan.

"Participant Account" The account established and maintained on behalf of a Participant to reflect the total value of his interest under the terms of this Plan.

"Plan" The City of Stockton Deferred Compensation Plan and Trust, an Eligible Deferred Compensation Plan.

"Plan Provider(s)" The financial institution selected through the City's RFP process to govern the City's 457 Plan(s).

"Plan Year" The calendar year during which the Plan becomes effective, and each succeeding year during the existence of this Plan.

"Required Beginning Date" For distribution purposes, 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 the 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.

"Roth Contributions" The amount of any Annual Deferral elected by a Participant that is irrevocably designated by the Participant as being made pursuant to, and intended to comply with, Code Section 402A. Roth Contributions are includable in the Participant's taxable gross income at the time they are contributed to the Plan and have been irrevocably designated as Roth Annual Deferrals by the Participant in their deferral agreement. The Administrator shall establish and maintain for the Employee a separate account for any Roth Contributions made to the Plan, to which only Roth Contributions and the income attributable thereto shall be allocated. Roth Contributions also includes any contributions made to another eligible retirement plan that are rolled over to the Plan by the Participant and so designated as Roth contributions at the time they were contributed to such other plan.

"Severance from Employment" The date that the Employee separates service, within the meaning of Section 402(e)(4)(D) of the Code. A Participant shall also be treated as having been severed 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.

"Trust Fund" The vehicle 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.

“Unforeseeable Emergency” Severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary (as defined in Section 152(a) of the Code) of the Participant; Loss of the Participants or Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary.

ARTICLE II PARTICIPATION AND CONTRIBUTIONS

2.1 Participation

Any full time Employee may elect to become a Participant in the Plan and to defer payment of part of his compensation not yet earned by executing a written Participation Agreement and filing it with the Employer. The Employer shall defer payment of Participant compensation in the amount specified in each Participation Agreement filed with the Employer. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

2.2 Participation Agreement

The Administrator shall establish a written Participation Agreement that shall contain, among other provisions, a provision whereby the Participant specifies:

- (a) that portion of his/her Compensation that is to be deferred.
- (b) his/her investment preference.
- (c) a Beneficiary or Beneficiaries, including one or more contingent Beneficiaries, to receive any benefits which may be payable under this Plan or upon the death of the Participant.
- (d) that the Participant together with his heirs, successors, and assigns, holds harmless the City of Stockton from any liability hereunder for all acts performed in good faith, including acts relating to the investment of deferred amounts and/or the City's investment preference hereunder.

The option and payment frequency selected may be changed at any time prior to the earliest distribution date for benefits provided in the Plan for a Participant and may not thereafter be modified.

2.3 Agreement Effective Date

An Employee shall become a Participant as soon as administratively practicable following the date the Employee files an election pursuant to Sec. 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 Participation Agreement

The Participant may, at any time, revise his participation election, including a change in the amount of his Annual Deferrals, his investment direction and his designated Beneficiary.

The revised participation election may also include a change in the Participant's designation of the amount of the Annual Deferral elected by the Participant that is to be treated as Roth Contributions.

Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as soon as administratively practicable.

2.5 Regular Contributions

The regular contribution is the amount of compensation that may be deferred by a Participant subject to the following limitations:

- (a) **Calendar Year Maximum** - The maximum amount a Participant may defer during a calendar year to this and/or any other Eligible Deferred Compensation Plan, shall not exceed the lesser of (i) the applicable dollar amount as set forth in Section 457(e)(15) of the Code, or (ii) 100% of the Participant's Includible Compensation. If a Participant defers an amount greater than the Calendar Year Maximum stated in this paragraph 2.5(a), or as allowed in the Code, the excess deferrals will be distributed to the Participant pursuant to Section 2.11.
- (b) **Pay Period Minimum** - The minimum amount a Participant may defer is \$15.00 per pay period.
- (c) **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.

2.6 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. This amount is 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.

2.7 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 3.4.

The age 50 catch-up Annual Deferral limit is not available to a Participant in any calendar year for which the Pre-Retirement Catch-up (described in Section 2.8) is applied.

2.8 Pre-Retirement Catch-Up Contributions

A Participant may defer an additional amount under this section for one or more of the last three calendar years ending before attaining the Participant's Normal or Deferred Retirement Date, hereinafter referred to as "Pre-Retirement catch-up." The use of Pre-Retirement catch-up is subject to the following restrictions:

- (a) The maximum amount a Participant may defer each calendar year to this or any other Eligible Deferred Compensation Plan shall not exceed the lesser of these two amounts:
 - (1) twice the dollar limit in effect under section 2.5(a) hereunder, or
 - (2) the maximum amount that may be deferred at section 2.5(a) plus any Employer provided compensation eligible for deferral that was not deferred for any prior taxable year which began after December 31, 1978.
- (b) To use Pre-Retirement catch-up, a Participant must declare a retirement age, which may be any age at or after which the Participant qualified for Normal Retirement eligibility, but no later than age 70-1/2. This declaration does not compel retirement.
- (c) The Pre-Retirement catch-up provision may not be used during the calendar year that the Participant ceases to be an Employee.
- (d) Any Participant may use the Pre-Retirement catch-up provision only once, whether under this Plan or any other eligible Deferred Compensation Plan.
- (e) Participants may continue to make regular contributions after they are no longer eligible to use Pre-Retirement catch-up.
- (f) To use Pre-Retirement catch-up, a Participant who is a qualified public safety members (police or firefighter) as defined under Section 514(b)(a)(H)(ii)(I) of the Code may declare a retirement age that is between 50 and 70 ½.

For purposes of this section, Normal Retirement Date means the date a Participant retires pursuant to the Employer's Retirement Plan without reduced benefits. Deferred Retirement Date means the date beyond the Normal Retirement Date designated by the Participant. Such date shall not exceed the earlier of (i) the Employer's mandatory retirement age (if applicable), or (ii) the date on which the Participant incurs a severance from employment.

2.9 Eligible Rollover Contributions

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", 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).

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 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.

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).

To the extent that the Plan accepts rollover contributions attributable to Roth Contributions, the Administrator shall account for such contributions separately from other rollover contributions. In administering rollover contributions attributable to Roth Contributions, the Administrator shall be entitled to rely on a statement from the distributing plan's administrator identifying (i) the Participant's basis in the rolled over amounts and (ii) the date on which the Participant's 5-taxable-year period of participation (as required under Code Section 402A(d)(2) for a qualified distribution of Roth Contributions) started under the distributing plan. If the 5-taxable-year period of participation under the distributing plan would end sooner than the Participant's 5-taxable-year period of participation under the Plan, the 5-taxable-year period of participation applicable under the distributing plan shall continue to apply with respect to the Roth Contributions included in the rollover contribution. Roth Contributions that are rolled over to the Plan shall be subject to the provisions of the Plan applicable to Roth Contributions rather than the provisions of the Plan applicable to rollover contributions.

2.10 Employer Contributions

Nothing in this Plan provided the requirements of IRS regulation 1.457 and other federal rules and provisions are first amended as part of the Plan, prohibits the Employer from making deposits to a Participant Account as additional compensation for services rendered, subject to the Participant's regular contribution limits.

A Participant who dies while performing qualified military service shall be treated as having returned to employment as an Employee immediately prior to his death and shall be entitled to have Employer Contributions made to his Account Balance as provided in the preceding paragraph.

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 disability date and shall be entitled to have Employer Contributions made to his 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.

2.11 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. If a Participant to whom distribution must be made in accordance with the preceding sentence has made Roth Contributions for the year, the amount distributed as an excess deferral shall be made first from pre-tax Annual Deferrals, then from Roth Contributions for the year unless otherwise specified.

2.12 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.

2.13 Disability

A disabled Participant (as determined by the Administrator) may elect Annual Deferrals during any portion of the period of his 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.

2.14 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. 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 participation in such other plan.

ARTICLE III INVESTMENT RESPONSIBILITIES

3.1 Investment of the Deferred Amount

Amounts deferred or contributed pursuant to Article II shall be held for the exclusive benefit of Participants and their Beneficiaries in trust or under one or more Contracts. All amounts so held will be allocated to the appropriate Participant Accounts. The Administrator or Plan Provider(s) shall provide various options for the investment of deferred amounts by the Participant or their Beneficiaries, and shall monitor and evaluate the appropriateness of continued offerings by the Plan. Each Participant shall direct the investment of amounts held in his Participant Account under the plan. The investment of amounts segregated on behalf of an alternate payee pursuant to a Plan Approved Domestic Relations Order 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 Participant Account shall share in any gains or losses of the investment(s) in which such account is invested.

3.2 Amendment of Investment Election

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

3.3 Investment Changes

A Participant may elect to transfer amounts in his Account among and between those investments available under trust and/or Contract 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.

3.4 Investment Responsibility

Where a Participant exercises control over the investment of amounts credited to his/her Participation Account, the Employer shall not be liable for any loss, which results from such Participant's exercise of control.

3.5 Statements

The Employer will cause to be issued statements quarterly to reflect the actual earnings, gains, contributions and losses posted to the Participation Accounts.

ARTICLE IV PARTICIPANT LOANS

4.1 Participant 457 Loans

The deferred compensation loan feature provides eligible Plan Participants the ability to borrow funds from their Plan Account Balance. The portion of the Participant's Account Balance that is equal to the amount of the loan is used as collateral for the loan.

4.2 Loan Eligibility

Loans are available to all active Employees with funds on deposit in the 457 Plan. Loan proceeds will be taken pro-rata from all available investment options. Upon separation of service or distribution to the Participant, Beneficiary or alternate payee, if the Account Balance is not paid in full with the final paycheck, the account will be reduced by the amount of any outstanding loan balance.

4.3 Loan Type/Term

Two types of loans will be available; General Purpose Loan, with terms of 1 – 5 years. And a Primary Residence Loan, terms are 1 – 20 years.

4.4 Loan Amounts

The minimum loan amount is \$1,000.

The maximum loan amount is 50% of the Participant's vested Account Balance, up to a maximum of \$50,000.

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

- (a) \$50,000, reduced by the excess (if any) of 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); 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).

4.5 Loan Payment Process

Repayment will occur via semi-monthly payroll deductions in substantially equal installments of principal and interest. Partial pre-payments will not be permitted. A Participant may prepay the entire outstanding balance of his loan at any time (but may not make a partial prepayment). Remittance will be by payroll deduction, cashier's check or money order.

4.6 Interest rate

The rate of interest for a loan will be 1% over prime and fixed for the term of the loan.

4.7 Loan Fees

Fees may be charged for various services associated with the application for and issuance of loans, as well as annual maintenance. All applicable fees will be debited from the Participant's Account Balance and/or from the Participant's loan repayment prior to crediting the repayment of principal and interest to the Participants account.

4.8 Loan Application Process

All loans must be requested in writing on an application, and submitted to the Employer. Check processing can take up to 10 calendar days from the date the application is received. Any Employee who is legally married at the time of application must have spouse sign a "Spousal Consent Form."

4.9 Outstanding Loans While Providing Military Service

If a Participant is absent from employment 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 4.3 provided that all of the following requirements are met:

- (a) Payments resume upon completion of such military service;
- (b) 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;
- (c) 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
- (d) 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 IV extended by the period of such military service.

4.10 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, unless payment is not made because the Participant is on a bona fide leave of absence as determined by the Administrator, a default on the loan shall occur. In the event of such default, all remaining payments on the loan shall be immediately due and payable (including accrued interest) at the time of the default, and 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 estate shall be his Beneficiary as to the portion of his interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

ARTICLE V DISTRIBUTIONS

5.1 Eligibility

Distribution may be taken under any of the following circumstances, subject further to the provisions of this Article IV:

- (a) On account of an unforeseeable emergency;
- (b) Non-participation;
- (c) Attainment of age 70-1/2, whether or not still employed;
- (d) Severance from employment; or
- (e) Participant's death.
- (f) Qualified Military Service Deemed Severance withdrawal pursuant to Section 5.16, if permitted under the Plan;
- (g) Qualified Military Reservist withdrawal pursuant to Section 5.17, if permitted under the Plan
- (h) Plan termination; or
- (i) A rollover account withdrawal.

5.2 Unforeseeable Emergency Distribution

A Participant may apply for a lump sum withdrawal of funds from the Plan under certain emergency conditions. The Employer will evaluate the request for conformity with its interpretation of the application regulations.

The Participant must satisfy the Employer that all of the following conditions are met before the Employer may authorize the emergency withdrawal:

- (a) Major unexpected and unreimbursable expenses that were not foreseeable and are beyond the Employee's control;
 - (1) 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";
 - (2) Loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);
 - (3) The need to pay for the funeral expenses of a Participant or Beneficiary, the Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or the Participant's "Primary Beneficiary";
 - (4) 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 not covered under any insurance plan;

- (5) The imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence; or
- (6) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.
- (b) The unforeseeable emergency event involves the Participant, or their spouse or any Beneficiary that qualifies under Section 152(a) of the Code;
- (c) The financial burden created must be the legal obligation of the Participant.
- (d) All other financial sources, such as insurance payments and attempts to obtain loans have been exhausted;
- (e) All assets must be liquidated, except where liquidation would itself cause severe financial hardship;
- (f) The amount of the requested withdrawal is limited to the amount reasonably necessary to meet the financial emergency; and
- (g) Great financial hardship will occur if the withdrawal is not permitted.

Withdrawals are not authorized for expenses related to the death or illness of any family member, other than a spouse or minor children, or for budgetable expenses such as automobile or college costs, a home down payment, or expenses relative to divorce proceedings. Any remaining benefits shall be paid upon retirement, severance from employment or death in accordance with the Plan.

The decision of the Employer concerning Emergency Withdrawals shall be final as to all Participants.

5.3 Benefit Distribution Upon Severance from Employment (other than due to death)

A Participant may elect to commence distribution of benefits at any time 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 "required beginning date".

5.4 Distribution for Certain Non-Participating Participant's

If the total amount of a Participant's Account under the Plan, excluding amounts attributable to Rollover Contributions, does not exceed the dollar limit under Code Section 411(a)(11)(a), the Participant may elect to receive (or the Employer may elect to pay to the Participant without the Participant's consent) the total amount in a single sum payment within 60 days of such election; provided, however, such amount may be distributed pursuant to this section 4.3 only if: (a) no amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and (b) there has been no prior distribution under the Plan to such Participant.

5.5 Provisions Required Pursuant to Code Section 401(a)(9) and Implementing Treasury Regulations:

The distribution provisions of the Plan are in accordance with requirements of Section 401(a)(9) of the Code, the incidental death benefit requirements of Section 401(a)(9) of the Codes; Section 1.409(a)(9)-2 thru 1.402(a)(9)-9 of the treasury regulations, implementing Section 401. The provisions of Section 401(a)(9), the treasury regulations, and any other provision prescribed by the Commissioner in Revenue Ruling Notices, and other guidance published in the Internal Revenue Bulletin shall override any distribution options, in this Plan which are inconsistent with said diction, regulation, notices, and other guidance published in the Internal Revenue Bulletin.

In accordance with Section 401(a)(9), distribution of the Participant's entire account shall commence no later than April 1 following the calendar year in which he/she attained age 70 ½ or retires from service, whichever is later. If a Participant attains the age of 70 ½ after June 30, then his required distribution date shall commence in the second calendar year immediately following the attainment of that age. Unless the form of distribution is in a single lump sum payment, distribution shall be made over a period not to exceed the Life Expectancy of the Participant, or the joint Life Expectancy of the Participant and his Beneficiary and if the surviving Beneficiary dies before the date of his Life Expectancy then at the time of his death. Except as noted below, distributions shall be determined by the Life Expectancy and distribution period table published by the Department of Treasury and where applicable the Single Life Table and the Uniform Lifetime Table. However, if the sole Beneficiary is the Participant spouse and who is less than 10 (Ten) years younger than the Participant then the distribution periods shall be determined by the Joint and Last Survivors Tables published by the Department of the Treasury and may be found under IRS regulation 1-409(a)(9)-9. Any Beneficiary who is deemed an incidental Beneficiary shall under the provisions of Section 401(g) of the Code be treated as a Plan designated Beneficiary for purposes of determining the minimum distribution requirements under section (401)(a)(9) and any optional provisions under this Plan.

5.6 Distribution On Account of the 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 5.7 and made in a manner that meets the requirements of Section 5.8.

- (a) Beneficiary Death of Participant Before Distributions Begin. If the Participant dies before his 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 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 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.

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).

5.7 Forms of Distribution

Except in the event of the Participant's death, the full amount credited to the Participant's Account shall be distributed, as instructed by the Participant, under one of the following payment options:

- (a) A single sum payment;
- (b) Payments for a specified period where amounts are paid in installments not in excess of the Participant's allowable Life Expectancy or joint Life Expectancy of the Participant and his/her Beneficiary.
- (c) Annuity for a period certain of five (5) to thirty (30) years, but not in excess of the Participant's allowable Life Expectancy
- (d) A life annuity
- (e) A life annuity with period certain guaranteed, with the guaranty that if at the annuitant's death payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected must be either ten (10) or fifteen (15) years if the Beneficiary is not a spousal Beneficiary. For a spousal Beneficiary, the guaranteed period to be elected may be either ten (10), fifteen (15) or twenty (20) years but may not exceed the Life Expectancy of the Participant and his spousal Beneficiary; or
- (f) A joint and survivor annuity payable during the lifetime of the Participant and his/her Beneficiary.

5.8 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 will take precedence over any inconsistent provisions of the Plan.
- (b) Time and Manner of Distribution
 - (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date".
 - (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - i. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, 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.

- ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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)(2), other than subsection (b)(2)(i), will apply as if the surviving spouse were the Participant.
 - vi. For purposes of this subparagraph (2) and paragraph (iv), unless subsection (b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date". If subsection (b)(2)(v) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(2)(i). 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)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.
- (3) Death of Participant On or After Distributions Begin. If the Participant dies on or after distributions begin and before depleting his 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.
- (4) 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 (iii) and (iv). 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).

5.9 Required Minimum Distributions During the Participant's Lifetime

- (a) 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:
- (1) The 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 quotient obtained by dividing the "Participant's Account Balance" by the distribution "Distribution Calendar Year"; or

- (2) 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".
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this paragraph beginning with the first "Distribution Calendar Year" and up to and including the "Distribution Calendar Year" that includes the Participant's date of death.

5.10 Required Minimum Distributions After Participant's Death.

For purposes of this Section, 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.

- (a) Death On or After Date Distributions Begin.
- (1) 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:
 - i. 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.
 - ii. 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.
 - iii. If the Participant's surviving spouse is not the Participant's sole "Designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiaries" 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.
 - (2) 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 to the State of California as unclaimed property.

(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)(2)(i), this subparagraph will apply as if the surviving spouse were the Participant.

5.11 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 5.8 (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 this section.

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 this section 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 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).

5.12 Payment Frequency

If the Participant has elected a payment option requiring installment payments, the Participant may also elect to have such payment made either monthly, quarterly, semiannually or annually.

5.13 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. "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" 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 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 5.10 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.

5.14 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.

5.15 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.

5.16 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 States 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 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 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.

5.17 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 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.

ARTICLE VI BENEFICIARY

6.1 Designation

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

The Employer shall provide the form for this purpose. It is not binding on the Employer until it is signed, filed with the Employer by the Participant, and accepted by the Employer.

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. If no estate executor or administrator is appointed and qualified within one hundred twenty (120) days after the Participant's death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, and third, to a surviving parent or parents.

ARTICLE VII NON-ASSIGNABILITY

7.1 Non-Assignability

Neither the Participant nor the Participant's Beneficiary, nor any other designee, shall have any right to commute, sell, assign, pledge, hypothecate, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and nontransferable.

Except to the extent otherwise provided by law, no payments shall be subject to attachment, garnishment or execution, or be transferable in the event of bankruptcy or insolvency.

7.2 Domestic Relations Orders

The Administrator may affect a Participant's Account Balance for a "Qualified Domestic Relations Order" (QDRO) 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.

7.3 IRS Levy

Notwithstanding Section 7.1, 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.

ARTICLE VIII ROLLOVERS AND PLAN TRANSFERS

8.1 Eligible Plan-to-Plan Transfers Into the Plan

All or a portion of an Employee's benefit may be transferred from another Eligible Deferred Compensation Plan maintained by the Employer or another employer and credited to the Participant's Account under this Plan, if:

- (a) the transferor plan provides that such transfer can be made; and
- (b) where the transfer is from a plan of another employer, the Employee has severed employment with such other employer.

As it deems necessary, the Employer may require such documentation from the transferor plan to affect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer agrees to hold such other assets in trust under the Plan.

Any amounts transferred that have been deferred during the current calendar years will be considered deferrals subject to current calendar year deferral limitations.

If a transfer, occurring on or after January 1, 2002, is associated with a distributable event and the Employee is eligible to receive an eligible rollover distribution as defined in Section 402(c)(4) of the Code, such transfer will be considered a Rollover Contribution.

Revenue Ruling 2004-12, provides that, so long as the rollover contributions are separately accounted for, the Plan will permit participants to withdrawal amounts attributable to rollover contributions at any time.

8.2 Plan-to-Plan Transfers Out of the Plan

All or a portion of a Participant Account may be transferred to another Eligible Deferred Compensation Plan maintained by another employer, if:

- (a) the transferee plan provides that such transfer can be made; and
- (b) where the transfer is to a plan of another employer, the Employee has severed employment.

Upon the completion of such transfer, the Plan and Employer are discharged of any liability to the Participant to pay amounts so transferred.

As it deems necessary, the Employer may require such documentation from the other plan to affect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457 and the applicable regulations.

If a transfer, occurring on or after January 1, 2002, is associated with a distributable event and the distribution is an eligible rollover distribution as defined in Section 402(c)(4) of the Code, such transfer will be considered a Direct Rollover (see 8.5).

8.3 Permissive Service Credit Transfers

Effective on or after January 1, 2002, a Participant may elect to have all or a portion of a his/her Participant Account directly transferred to a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is:

- (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan; or
- (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof.

8.4 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 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:
 - (1) 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
 - (2) any distribution made as a result of an unforeseeable emergency, or
 - (3) 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 8.5, 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.

- (4) 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. Section 8.5 applies to distributions made on or after January 1, 2007.

ARTICLE IX ADMINISTRATION AND ACCOUNTING

9.1 Administration by Employer

This Plan shall be administered by the Employer, which shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The Employer may employ investment counsel to provide advice concerning categories of investment, investment guidelines and investment policy, provided, however, that the advice or recommendations of any such investment counsel shall not be binding on the Employer.

The Employer may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Employer. 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 subcontractor, assignee, or designee under this agreement.

9.2 Paperless Administration

To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Plan Administrator, Trustee, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under this Plan through the use of media other than paper. Such alternative media may include, but is not necessarily limited to, electronic or telephonic media.

9.3 Administrative Costs

The Employer shall determine, in a manner deemed fair and equitable, the administrative costs associated with the withholding of Deferred Compensation amounts pursuant to this Plan or in making investments or otherwise administering or implementing the Plan. The Employer may withhold or collect, or have withheld or collected, such costs, in such manner as he deems equitable either (1) from the compensation deferred pursuant to the Plan, the income produced from the compensation deferred pursuant to the Plan, the income produced from any investment, whether or not augmented, or (2) from the organization receiving such investment where required by law to collect therefrom or, if not so required, where mutually satisfactory to such organization and the Administrator. The Administrator may remit or direct the remission of appropriate amounts so withheld or collected to the Employer.

ARTICLE X AMENDMENTS

10.1 Right to Amend, Modify and Terminate

The Employer may at any time modify or terminate 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 or any rights accrued under the Plan prior to modification or termination.

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 Service 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, distribution of benefits shall be made to Participants and Beneficiaries pursuant to the distribution guidelines in Article V or the rollover/transfer provisions of Article XIII.

ARTICLE XI EXCLUSIVE BENEFIT

11.1 Exclusive Benefit – 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 12.7 shall upon written request of the Employer, reduced by losses attributable thereto, shall be returned to the Employer.

ARTICLE XII MISCELLANEOUS

12.1 Retirement System Integration

Benefits payable by and deductions for Employee contributions to, any retirement system of the Employer shall be computed without reference to amounts deferred pursuant to this Plan.

12.2 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.

12.3 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.

12.4 Written Notice

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Employer shall be sent to the designated office of the Employer, and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his last known address as it appears on the Employer's record.

12.5 Total Agreement

This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. The Participant may rely upon no oral statement regarding the Plan.

12.6 Gender

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

12.7 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. 8 Controlling Law

This Plan is created and shall be construed, administered and interpreted in accordance with Section 457 of the Code and the regulations thereunder and under the laws of the State of domicile of the Employer 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.

This modified and amended Plan Document is duly executed by:


KURT O. WILSON - CITY MANAGER

Date: 4/16/14


LAURA K. MONTES - DEPUTY CITY MANAGER II

Date: 4-16-14

ATTEST:

CLERK OF THE CITY OF STOCKTON

By: 

