



# CITY OF LODI

# COUNCIL COMMUNICATION

AGENDA TITLE: Consideration of Agreements with Great Western Bank  
for City of Lodi's Deferred Compensation Plan

MEETING DATE: October 20, 1993

PREPARED BY: Assistant City Manager

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute the attached agreements with Great Western Bank for the City's Deferred Compensation Plan.

BACKGROUND: Great Western Bank is restructuring their method of operation and is asking the City to sign the attached agreements. The Deferred Compensation Committee has reviewed these documents and recommends that the City Council approve them.

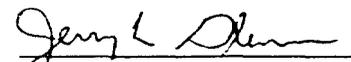
There are restrictions in the Plan and some fees in the Plan that the Committee does not care for, but we recognize the business necessity for them. The new Plan does not offer a fixed interest rate and has some new fees for those holding mutual funds.

The primary reasons for our recommendation to approve these agreements are:

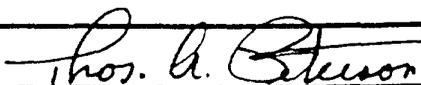
- 1) We are presently doing business with Great Western and we avoid the trauma of change;
- 2) They provide an investment vehicle which is insured by the FDIC;
- 3) They provide a set of investment options which some employees are reluctant to drop.

FUNDING: No change.

Respectfully submitted,

  
\_\_\_\_\_  
Jerry L. Glenn  
Assistant City Manager

JLG/vc

APPROVED: 

\_\_\_\_\_  
THOMAS A. PETERSON  
City Manager



recycled paper

RESOLUTION NO. 93-13:

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A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING AGREEMENTS WITH GREAT WESTERN BANK  
FOR CITY OF LODI'S DEFERRED COMPENSATION PLAN

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WHEREAS, Great Western Bank is restructuring their method of operation and is asking the City to sign new agreements; and

WHEREAS, the Deferred Compensation Committee has reviewed these documents and recommends that the City Council approve them;

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby authorize the City Manager to execute the new agreements with Great Western Bank for the City's Deferred Compensation Plan.

Dated: October 20, 1993

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I hereby certify that Resolution No. 93-132 was passed and adopted by the Lodi City Council in a regular meeting held October 20, 1993 by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Jennifer M. Perrin  
City Clerk

93-132

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I hereby certify that Resolution No. 93-132 was passed and adopted by the Lodi City Council in a regular meeting held October 20, 1993 by the following vote:

Ayes: Council Members - Mann, Sieglock, Snider and Pennino  
(Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

  
Jennifer M. Perrin  
City Clerk

93-132

CITY COUNCIL

PHILLIP A. PENNINO, Mayor  
JACK A. SIEGLOCK  
Mayor Pro Tempore  
RAY G. DAVENPORT  
STEPHEN J. MANN  
JOHN R. (Randy) SNIDER

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634  
FAX (209) 333-6795

THOMAS A. PETERSON  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
BOB McNATT  
City Attorney

November 1, 1993

Great Western Bank  
Attn: Roy Leff  
Deferred Compensation Department  
19850 Plummer Street  
Chatsworth, California 91311

Dear Mr. Leff:

Enclosed please find two executed copies of the Deferred Compensation Agreement, and two executed copies of the FICA - Substitute, Deferred Compensation Plan Agreement, which were approved by the Lodi City Council at its meeting of October 20, 1993.

Please return one executed copy of each agreement to our office upon execution by your Vice President. Should you have any questions regarding this matter, please feel free to contact our office.

Very truly yours,

  
Peggy Nicolini  
Deputy City Clerk

pn/

LDEFCOMP/TXTA.02J

RESOLUTION NO. 93-132

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FOR CITY OF LODI'S DEFERRED COMPENSATION PLAN

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- Ayes: Council Members - Mann, Sieglock, Snider and Pennino (Mayor)
- Noes: Council Members - Davenport
- Absent: Council Members - None

The Foregoing Document Is Certified  
To Be A Correct Copy Of The Original  
On File In This Office.

*Jennifer M. Perrin*  
Jennifer M. Perrin  
City Clerk

Peggy Nicolini  
Deputy City Clerk, City Of Lodi

93-132

By *Peggy Nicolini*  
Dated: 11-1-93

**DEFERRED COMPENSATION PLAN  
ADMINISTRATION AGREEMENT**

20th<sup>9</sup>

This Agreement is effective this ~~1st~~ day of October 1993, by and between GREAT WESTERN BANK, a Federal Savings Bank, its officers, employees and agents, hereinafter collectively referred to as GREAT WESTERN, and the CITY OF LODI, its officers, employees and agents, hereinafter collectively referred to as AGENCY.

WHEREAS, AGENCY, pursuant to and in compliance with Internal Revenue Code Section 457, has established a Deferred Compensation Plan, hereinafter referred to as PLAN; and

WHEREAS, AGENCY desires to utilize GREAT WESTERN in connection with the administration of the PLAN; and

WHEREAS, GREAT WESTERN desires to provide such services subject to the terms and conditions set forth herein;

Now therefore, AGENCY and GREAT WESTERN agree as follows:

1. DESIGNATION: AGENCY hereby designates GREAT WESTERN as a Depository Institution and Administrator for deferred compensation funds.
2. TERM: This Agreement shall remain in effect until it is terminated by one or both parties in accordance with the provisions of this agreement. This Agreement may be terminated by either party, with or without "Cause" as that term may be defined herein, and without obligation, upon the giving of one hundred twenty (120) days' written notice by the party terminating the Agreement to the other party.
3. DEFAULT: In the event the Agreement is terminated for "Cause" (which shall mean the failure of either party to perform any or all of its obligations as defined herein), the non-defaulting party shall give the defaulting party written notice, specifying the particulars of the default. If such default is not cured within sixty (60) days from the date in

which notice of default is given, the non-defaulting party may terminate the Agreement effective thirty (30) days after the end of the sixty (60) day period.

4. INVESTMENT OPTIONS: GREAT WESTERN agrees to accept deferred compensation plan funds for investment in the following:

A. The Great Western Bank Liquid Account ("GWBLA").

- (a) The rate/yield on the GWBLA account will be a variable rate, which may change as often as daily.
- (b) All participants with funds invested in the GWBLA, whether they are active, inactive, or in distribution, will have interest credited to their account at a rate/yield which is subject to change daily.

B. The Great Western Bank Certificate of Deposit ("GWBCD")

- (a) Certificates of deposit for terms of three (3) years or five (5) years will be offered.
- (b) The minimum certificate of deposit will be \$1000. A participant may purchase only one GWBCD for a given term, each quarter.
- (c) The interest rate will be a fixed rate during the term of the certificate. The rate/yield for new certificates will be set at the beginning of each calendar quarter.<sup>1</sup>
- (d) There will be an interest penalty of 180 days' simple interest for early withdrawals. The penalty will not be imposed for separation from service, hardship withdrawal, or plan-to-plan transfer where the participant re-employs with another eligible employer.

The following will apply to the foregoing Savings Products:

- (a) Interest earnings will accrue daily commencing on the date the funds are posted (as defined below) to the Participant's account by GREAT WESTERN. Interest earnings will be credited monthly on the

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<sup>1</sup>Pre-existing GWBCDs (certificates of deposit which were entered into during a previous contract with GREAT WESTERN) will retain their original maturity date and interest rate, but will be renewed under the terms described above.

last day of the month, and will be automatically reinvested to allow for monthly compounding. The 365/360 day method will be used.

- (b) Each such account shall be subject to rules, regulations and statutes to which GREAT WESTERN is subject.
- (c) Plan funds invested in the GWBLA and GWBCD are backed by the full faith and credit of the U.S. Government and are also insured by the Federal Deposit Insurance Corporation, an agency of the Federal Government, up to \$100,000 per participant. Great Western will collateralize any amounts invested in the GWBLA and the GWBCD in excess of FDIC insurance limits, if required, in accordance with applicable law.

C. Mutual Funds

- (a) The mutual funds listed in Exhibit A will be available to Plan Participants.
- (b) Dividends will be automatically reinvested into the mutual fund.
- (c) Mutual Funds are not savings accounts, and are not insured or guaranteed by any government agency or by GREAT WESTERN.
- (d) Sales charges may be imposed on mutual fund investments by the mutual fund provider. These charges will be disclosed in the prospectus and would be separate from any fees or charges described in this agreement.

D. GREAT WESTERN reserves the right to add or delete investment options during the term of this agreement by providing 30 days' written notice of such change to AGENCY.

E. Participants will be permitted to change their investment options as often as they wish, however they shall be subject to any applicable penalty or charge imposed for such change.

5. ESTABLISHMENT OF ACCOUNTS:

- A. ENROLLMENT SERVICES: GREAT WESTERN agrees to process, or arrange to have processed, the enrollment of eligible employees who elect to participate in the PLAN. GREAT WESTERN agrees to provide informational and promotional material pursuant to the PLAN for distribution to employees of AGENCY, subject to approval of such material by AGENCY, such approval not to be unreasonably withheld. AGENCY agrees to allow and facilitate the periodic distribution of such material to employees.

GREAT WESTERN agrees to conduct, or arrange to have conducted, group presentations periodically for employees of AGENCY, to explain the PLAN. AGENCY agrees to facilitate the scheduling of such presentations and to provide facilities at which satisfactory attendance can be expected. GREAT WESTERN agrees that qualified personnel will be made available periodically to discuss the PLAN with individual employees of AGENCY.

- B. DEFERRALS: The minimum participant deferral per pay period shall be not less than \$10.00.

C. AGENCY agrees to:

- (a) Cause appropriate deductions to be made from such payroll(s) as may be applicable and send the funds representing the total participant deferrals to GREAT WESTERN.

- (b) Provide to GREAT WESTERN, in such electronic or magnetic media designated by GREAT WESTERN, a deferral listing with respect to participant sub-accounts to include not less than the following:

1. Name of Participant
2. Social Security Number of participant
3. Amount to be credited to participant's sub-account(s)

- (c) Funds may be sent by wire transfer, through an automated clearinghouse or by check in accordance with written instructions provided by GREAT WESTERN. Failure to follow the written instructions provided by GREAT WESTERN may result in delay of posting to Participant accounts.

(d) Funds will be posted no later than the business day following the day on which the funds and the deferral listing are received by GREAT WESTERN. GREAT WESTERN will not be liable for any delay in posting if AGENCY fails to send either the funds representing deferral amounts or deferral information in accordance with GREAT WESTERN's instructions to the central processing site designated by GREAT WESTERN.

(e) Authorize GREAT WESTERN to establish personal identification numbers ("PINs") for each participant and shall require Participants to use such PINs to obtain certain services as designated by GREAT WESTERN.

D. GREAT WESTERN agrees to:

(a) Establish a sub-account for each participant.

(b) Post and credit the amounts sent by AGENCY to the sub-account(s) of Participants in accordance with the latest written instructions on file with GREAT WESTERN.

6. PARTICIPANT SERVICES:

A. GREAT WESTERN will provide a dedicated toll free telephone number which shall be operative, Monday through Friday 8 a.m.-5 p.m. Pacific time, each business day. Using this number participants may: effectuate exchanges of account values between Investment Options; process changes to deferrals, and obtain information about participant accounts. AGENCY authorizes GREAT WESTERN to honor instructions which may be submitted by participants. The actions described herein (and in B., C. and D. below) may be effectuated by telephone, facsimile transmission or mail. If such service is requested by telephone, Participant shall use his/her PIN. Telephone conversations may be recorded to provide confirmation and verification of transactions.

B. GREAT WESTERN will provide Plan participants unlimited opportunities to increase (within limitations of Sec. 457) or decrease deferral amounts. All requests to increase or decrease deferral amounts will be processed by GREAT WESTERN within five (5) business days of receipt of the request and will be effective as soon as administratively practical by AGENCY.

- C. GREAT WESTERN will provide Plan participants unlimited opportunities to redirect future deferral amounts to any other Investment Product offered by the Plan. All requests will be processed within five (5) business days of receipt and be effective with the next following pay period deferral.
- D. GREAT WESTERN will provide participants unlimited opportunities to exchange existing account balances from one investment option offered by the Plan to another (except for the limitation described in Section 4 above). Exchange requests for mutual funds will be processed with the fund being "sold" by the date following the date GREAT WESTERN receives such instructions and will be effective in the new fund not later than the day following GREAT WESTERN's receipt of funds from the "sold" fund.
- E. GREAT WESTERN will provide participants, if they request, a fund prospectus and an annual report for each mutual fund offered by the Plan.
- F. GREAT WESTERN will provide participants consolidated quarterly statements detailing participant's year-to-date deferral amounts, account balance information that includes changes in account value since the previous report date and any fees or charges assessed against the Participant account. Participants shall be informed that they must notify GREAT WESTERN within thirty (30) days of receipt of their statements or confirmation of their investments, to report any errors to GREAT WESTERN. GREAT WESTERN will not be liable for any errors not reported within this time frame.
- G. GREAT WESTERN agrees to mail 90% of these statements to participants within fifteen (15) business days after the end of each calendar quarter, and 100% of the statements to participants within eighteen (18) business days after the end of each calendar quarter. GREAT WESTERN will have no responsibility to report, or account for the accuracy of information applicable to periods prior to the effective date such Plan was administered by GREAT WESTERN.
- H. GREAT WESTERN will provide certain standard reports quarterly to AGENCY to enable AGENCY to effectively monitor all accounting and record-keeping processes. These reports will include combined data for an entire Plan. (Fees and charges assessed will be disclosed in these reports.) In addition, all services will be provided in accordance with the attached Exhibit B.

- I. GREAT WESTERN agrees to maintain, for a reasonable time, the records necessary to produce the above mentioned reports, and agrees that all records shall be the property of AGENCY. AGENCY agrees that all related computer tapes, disks and programs shall remain the property of GREAT WESTERN.

7. DISTRIBUTIONS:

- A. GREAT WESTERN will assist the participant in preparing necessary forms to select his/her distribution option.
- B. Participants electing a payment of a lump sum amount will receive distribution of their account within ten (10) business days of the earliest date permitted by the Plan. However, GREAT WESTERN shall initiate the processing of all approved emergency/hardship requests upon receipt.
- C. GREAT WESTERN will provide necessary forms and process payments from the participant's account, to the company selected by the Plan to provide annuity options to participants. Participant will be required to submit properly completed forms to GREAT WESTERN in a time frame necessary to effectuate the "payment begin date" requested by participant.
- D. GREAT WESTERN shall offer to participants for distribution of their account a designated amount payment option. Payments shall be made on a monthly, quarterly, semi-annual or annual basis as specified by the participant, in equal installments (not less than \$25.00 per payment) until the amount applied, adjusted each business day for investment results, is exhausted. The final installment will be the sum remaining at the time such payment is due.
- E. GREAT WESTERN shall also offer to Plan participants a designated period payment option with a variable payment. Payments shall be made monthly, quarterly or annually for any specified number of years as permitted by the Plan, at the discretion of the Plan participant. The amount of each variable payment shall be determined by dividing the Participant's current portfolio balance by the number of remaining payments.
- F. All payment options are available for all investment options. Participants selecting the options in D or E above shall be subject to the same fees and charges, and permitted the same exchange opportunities, as an active or inactive participant as defined by the Plan. Processing of these options will be completed by GREAT WESTERN upon receipt of properly completed forms, in a

time frame necessary to effectuate the "payment begin date" requested by participant of either the first or the fifteenth of the month. All distributions will be made pro-rata from each of the Participant's investment options.

G. GREAT WESTERN will be responsible for preparing and filing all reports required by federal and state taxing authorities through the effective date of the termination of the contract. AGENCY shall be responsible for all reporting requirements for periods prior to the effective date of this contract, or after the termination date of this contract. GREAT WESTERN will be responsible for the annual filing of individual 1099 or W-2 forms, unless by contract between AGENCY and an Investment Provider, the forms are prepared by the Investment Provider that provides annuity payments to participants. GREAT WESTERN shall withhold income taxes from distributions as required, and remit said taxes to appropriate regulatory authorities. GREAT WESTERN shall also prepare and file periodic and annual tax returns for said amounts withheld.

H. GREAT WESTERN agrees to provide plan participants anticipating retirement or other separation from service with illustrations indicating monthly benefit payments at an assumed interest rate for savings accounts or an assumed rate of earnings for mutual fund investments. Such assumed interest rate or rate of earnings shall be for illustration purposes only. The actual interest rate/yield paid on savings products during distribution shall change quarterly and shall always be as described in Section 4 above. For mutual funds, earnings will be those actually earned.

8. TERMINATION: Upon the effective date of termination of this Agreement, the following shall occur:

- a. GREAT WESTERN will no longer accept deferrals. In addition, upon notification of termination, GREAT WESTERN will cease opening GWBCDs.
- b. GREAT WESTERN will provide AGENCY a copy of all records relating to participant sub-accounts, in hard copy or such other form as mutually agreed upon between GREAT WESTERN and AGENCY, within ninety (90) days after the effective date of termination.
- c. If termination is due to either party exercising the right of termination described in Section 2 above, within 90 days of the effective date of termination, GREAT

WESTERN shall transfer savings account balances (less any early withdrawal penalty imposed on GWBCDs) to AGENCY, or to such other entity as AGENCY may designate in writing. GREAT WESTERN reserves the right to maintain GWBCDs until maturity. Mutual funds will be transferred to AGENCY or to such other entity as AGENCY may designate in writing.

- d. Notwithstanding any provision to the contrary, if termination is for Cause (as that term is herein defined), the disbursement of funds shall occur within forty-five (45) days of the effective date of termination.
  - e. Accounts in distribution will be transferred to AGENCY or its designee in accordance with the time frame described above.
  - f. The transfer/termination fee described below.
9. FEES AND EXPENSES: In consideration of its services under the Plan:
- A. A fee will be charged by GREAT WESTERN. The determination of the amount of the fee will be based upon the Plan's total assets being serviced by GREAT WESTERN ("Total Plan Assets"). This fee will be applied to the value of the Participant's non-savings investments for which GREAT WESTERN is providing administrative services. The fee will be calculated and assessed on applicable Participant accounts balances on the last day of each month. The fee categories or "bands" are as follows:

<u>Band</u>	<u>Total Plan Assets</u>	<u>Annual Fee</u>	<u>Monthly Fee</u>
1	\$ 0 - \$999,999	.80%	.0666%
2	\$ 1,000,000 - \$ 4,999,999	.45%	.0375%
3	\$ 5,000,000 - \$ 9,999,999	.34%	.0283%
4	\$10,000,000 - \$19,999,999	.30%	.0250%
5	≥ \$20,000,000	.28%	.0233%

- B. The band assignment for the first quarter of this contract will be based upon the reasonable, good faith representation AGENCY makes to GREAT WESTERN about the dollar amount of the AGENCY's Total Plan Assets (savings and non-savings options). If services commence during the first 60 days of a calendar quarter, AGENCY shall have until the last day of that calendar quarter to reach the dollar level to support the band assignment. If services commence during the last 30 day's of a calendar quarter, AGENCY shall have until the last day of the next

following calendar quarter to reach the dollar level to support the band assignment. If at the end of the stated calendar quarter, the actual dollar amounts of Total Plan Assets are different from the amount represented by AGENCY, then AGENCY shall be placed into the band which reflects the actual Total Plan Assets. The fee for the first month of this contract will be prorated for the number of days in the month for which services are provided.

- C. Before AGENCY shall be subsequently placed into another band, AGENCY's Total Plan Assets must be of a dollar amount to justify the change at the end of two consecutive quarters.
  - D. AGENCY may cause its fee to be reduced by using automated transmission of participant and deferral information. This transmission must be in a format designated by GREAT WESTERN. Use of this option will reduce the annual fee by .01%. When available, AGENCY may also reduce its fee by use of the automated voice response system. Use of this option will reduce the annual fee by .01%.
  - E. GREAT WESTERN will deduct the fee from each Participant sub-account at the end of each month. Except for the first month of this contract, fees will be assessed against the Participants sub-account commencing with the first month of this contract.
  - F. There shall be a Transfer/termination fee not to exceed \$25.00 per participant, only when either the individual participant or AGENCY elects a total Plan transfer (other than a plan-to-plan transfer where the participant separates from service and re-employs with another eligible agency) or termination from the GREAT WESTERN Plan. In any other situation, no fee shall be assessed. In addition, this fee shall not be assessed if this contract is terminated by AGENCY for cause.
  - G. The fees associated with each band will remain in effect until June 30, 1996 (unless the contract is terminated sooner by either party). Any change shall be effective 30 day's after written notice is provided to AGENCY.
10. CONFIDENTIALITY: GREAT WESTERN agrees that all information supplied to and all work processed or completed by GREAT WESTERN shall be kept confidential and will not be disclosed except as required by law.
11. PRIVACY OF CONTRACT: GREAT WESTERN and Plan Participants shall have no privity of contract with each other.

12. **TITLE AND OWNERSHIP:** In accordance with the provisions of Internal Revenue Code Section 457, all account(s) established under this Agreement shall be held in the name of AGENCY.
13. **CIRCUMSTANCES EXCUSING PERFORMANCE:** Neither party to the Contract shall be in default by reason of failure to perform in accordance with its terms if such failure arises out of causes beyond reasonable control and without fault or negligence on their part. Such causes may include, but are not limited to, acts of God or public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine or restrictions, freight embargoes, and unusually severe weather.
14. **INDEMNIFICATION:** GREAT WESTERN agrees to be solely responsible to AGENCY for any and all services performed by GREAT WESTERN, its agents or its employees under this Agreement. GREAT WESTERN shall be responsible for any error or negligence committed by GREAT WESTERN, its agents, or its employees. AGENCY shall be responsible for any error or negligence committed by AGENCY, its agents or its employees.
15. **ASSIGNABILITY:** No party to this Agreement shall assign the same without the express written consent of the other party, which consent not to be unreasonably withheld. This provision shall not restrict GREAT WESTERN's right to delegate certain recordkeeping or other services to an agent. Unless agreed to by the parties, no such assignment shall relieve any party to this Agreement of any duties or responsibilities herein.
16. **PARTIES BOUND:** This Agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.
17. **APPLICABLE LAW:** This Agreement shall be construed in accordance with the laws operating within the State of California.
18. **ARBITRATION:** Any dispute which arises between the parties with respect to any of the terms of this Agreement, whether such dispute arises during the term of the Contract and any extension period, or after the termination, shall be resolved through binding arbitration. Arbitration shall be conducted in accordance with commercial rules of either the American Arbitration Association ("AAA") or the Judicial Arbitration and Mediation Service ("JAMS"). Each party agrees to waive its right, if any, to a jury trial and punitive damages. Each party shall bear its own costs, including attorney fees, related to the arbitration proceedings.

19. **UNLAWFUL PROVISIONS:** In the event any provisions of this Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Agreement, but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. Notwithstanding anything contained herein to the contrary, no party to this Agreement will be required to perform or render any services hereunder, the performance or rendition of which would be in violation of any laws relating thereto.
20. **MODIFICATION:** This writing is intended both as the final expression of the Agreement between the parties and as a complete statement of the terms of the Agreement, pursuant to California Code of Civil Procedure Section 1856 or its successor(s). No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
21. **NO WAIVER:** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision in the Agreement and either party may, at any time, enforce the provision previously waived, unless a modification to this Agreement has been executed.
22. **SEVERABILITY:** The provisions of this Contract are severable, and, if for any reason a clause, sentence, paragraph, or other part of this Contract shall be determined to be invalid by a court or federal or state agency, board, or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions of this Contract which can be given effect without the invalid provision.
23. **NOTICES:** All notices and demand to be given under this Agreement by one party to another shall be given by certified or United States mail, addressed to the party to be notified or upon whom a demand is being made, at the respective addresses set forth in this Agreement or such other place as either party may, from time to time, designate in writing to the other party. Notice shall be deemed received on the earlier of, three days from the date of mailing, or the day the notice is actually received by the party to whom the notice was sent.

If to GREAT WESTERN

GREAT WESTERN BANK  
Deferred Compensation Department  
9221 Corbin Avenue  
Northridge, California 91324  
Attn: Roy Leff

If to AGENCY

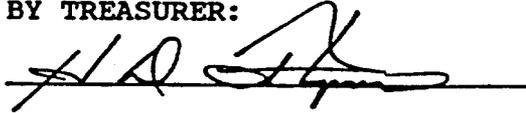
CITY OF LODI  
P.O. Box 3006  
Lodi, California 95241-1910  
Attn: Jerry L. Glenn

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the date first written above.

AGENCY

GREAT WESTERN

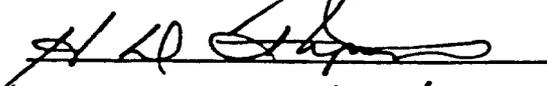
BY TREASURER:

  
\_\_\_\_\_

BY: \_\_\_\_\_

VICE PRESIDENT

BY FINANCE DIRECTOR:

  
\_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

DATE SIGNED: 10/29/93

  
THOMAS A. PETERSON, CITY MANAGER

DATE SIGNED: October 25, 1993

Attest:   
Jennifer M. Perrin  
City Clerk

EXHIBIT A

AMERICAN MUTUAL FUNDS

Investment Company of America (ICA)  
Growth Fund of America (GFA)  
Bond Fund of America (BFA)  
Income Fund of America (IFA)

TWENTIETH CENTURY INVESTORS, INC.

Select Fund  
Growth Fund  
Ultra Fund  
Balanced Fund

FIDELITY INVESTMENTS

Fidelity Magellan  
Fidelity Equity-Income  
Fidelity Retirement Growth  
Fidelity Puritan

SIERRA TRUST FUNDS

Growth and Income Fund  
U.S. Government Securities Fund  
International Growth Fund  
Emerging Growth Fund  
Corporate Income Fund

METROPOLITAN - ANNUITIES

Single Premium Immediate Annuity

**AGREEMENT**

**DEFERRED COMPENSATION**

**CITY OF LODI**

**GREAT  
WESTERN  
GW.**

**FICA - SUBSTITUTE**

**DEFERRED COMPENSATION PLAN AGREEMENT**

This Agreement is effective this ~~15th~~<sup>20th</sup> day of October, by and between GREAT WESTERN BANK, a Federal Savings Bank, hereinafter referred to as GREAT WESTERN, and the CITY OF LODI, its officers, employees and agents, hereinafter collectively referred to as AGENCY.

WHEREAS, AGENCY, pursuant to and in compliance with Sections 3121(b)(7)(F) and 457(b) of the Internal Revenue Code of 1986, has established a Deferred Compensation Plan, hereinafter referred to as PLAN; and

WHEREAS, AGENCY desires to utilize GREAT WESTERN in connection with the administration of the PLAN; and

WHEREAS, GREAT WESTERN desires to provide such services subject to the terms and conditions set forth herein;

Now therefore, AGENCY and GREAT WESTERN agree as follows:

1. DESIGNATION: AGENCY hereby designates GREAT WESTERN as a Depository Institution and Administrator for deferred compensation funds invested in GREAT WESTERN. It is recognized and agreed that GREAT WESTERN will only maintain a FICA substitute Plan if GREAT WESTERN is one of the administrators for AGENCY's 457 Plan.
2. TERM: This Agreement shall remain in effect until it is terminated by one or both parties in accordance with the provisions of this agreement. This Agreement may be terminated by either party, with or without "Cause" as that term may be defined herein, and without obligation, upon the giving of one hundred twenty (120) days' written notice by the party terminating the Agreement to the other party.
3. DEFAULT: In the event the Agreement is terminated for "Cause" (which shall mean the failure of either party to perform any or all of its obligations as defined herein), the non-defaulting party shall give the defaulting party written notice, specifying the particulars of the default. If such default is not cured within sixty (60) days from the date in which notice of default is given, the non-defaulting party may terminate the Agreement effective thirty (30) days after the end of the sixty (60) day period.

4. **INVESTMENT:** GREAT WESTERN agrees to accept deferred compensation plan funds for investment in the Great Western Bank Liquid Account ("GWBLA").
- (a) The rate/yield on the GWBLA account will be a variable rate, which may change as often as daily.
  - (b) All participants with funds invested in the GWBLA, whether they are active, inactive, or in distribution, will earn interest at a rate/yield which is subject to change daily.
  - (c) Interest earnings will accrue daily commencing on the date the funds are posted (as defined below) to the Participant's account by GREAT WESTERN. Interest earnings will be credited monthly on the last day of the month, and will be automatically reinvested to allow for monthly compounding. The 365/360 day method will be used.
  - (d) Each such account shall be subject to rules, regulations and statutes to which GREAT WESTERN is subject.
  - (e) Plan funds invested in the GWBLA are backed by the full faith and credit of the U.S. Government and are also insured by the Federal Deposit Insurance Corporation, an agency of the Federal Government, up to \$100,000 per participant. Great Western will collateralize any amounts invested in the GWBLA in excess of FDIC insurance limits, if required, in accordance with applicable law.

5. **ESTABLISHMENT OF ACCOUNTS:**

- A. **ENROLLMENT SERVICES:** GREAT WESTERN agrees to process, or arrange to have processed, the enrollment of eligible employees. GREAT WESTERN agrees to provide informational and promotional material pursuant to the PLAN for distribution to employees of AGENCY, subject to approval of such material by AGENCY, such approval not to be unreasonably withheld. AGENCY agrees to allow and facilitate the periodic distribution of such material to employees.
- B. **DEFERRALS:** The minimum participant deferral per pay period shall be not less than 7.5% of wages.
- C. **AGENCY agrees to:**
  - (a) Cause appropriate deductions to be made from such payroll(s) as may be applicable and send the funds

representing the total participant deferrals to GREAT WESTERN.

- (b) Provide to GREAT WESTERN, in such electronic or magnetic media designated by GREAT WESTERN, a deferral listing with respect to participant sub-accounts to include not less than the following:
  - 1. Name of Participant
  - 2. Social Security Number of participant
  - 3. Amount to be credited to participant's sub-account(s)
- (c) Funds may be sent by wire transfer, through an automated clearinghouse or by check in accordance with written instructions provided by GREAT WESTERN. Failure to follow the written instructions provided by GREAT WESTERN may result in delay of posting to Participant accounts.
- (d) Funds will be posted no later than the business day following the day on which the funds and the deferral listing are received by GREAT WESTERN. GREAT WESTERN will not be liable for any delay in posting if AGENCY fails to send either the funds representing deferral amounts or deferral information in accordance with GREAT WESTERN's instructions to the central processing site designated by GREAT WESTERN.
- (e) Authorize GREAT WESTERN to establish personal identification numbers ("PINs") for each participant and shall require Participants to use such PINs to obtain certain services as designated by GREAT WESTERN.

D. GREAT WESTERN agrees to:

- (a) Establish a sub-account for each participant.
- (b) Credit the amounts sent by AGENCY to the sub-account of the various participants in accordance with the latest written instructions on file with GREAT WESTERN.

6. PARTICIPANT SERVICES:

- A. GREAT WESTERN will provide participants quarterly statements detailing participant's year-to-date deferral amounts, account balance information that includes changes in account value since the previous report date and any fees or charges (if any) assessed against the Participant account. Participants shall be informed that they must notify GREAT WESTERN within thirty (30) days of receipt of their statements or confirmation of their investments, to report any errors to GREAT WESTERN. GREAT WESTERN will not be liable for any errors not reported within this time frame.
- B. GREAT WESTERN agrees to mail 90% of these statements to participants within fifteen (15) business days after the end of each calendar quarter, and 100% of the statements to participants within eighteen (18) business days after the end of each calendar quarter. GREAT WESTERN will have no responsibility to report, or account for the accuracy of information applicable to periods prior to the effective date such Plan was administered by GREAT WESTERN.
- C. GREAT WESTERN will provide certain standard reports quarterly to AGENCY to enable AGENCY to effectively monitor all accounting and record-keeping processes. These reports will include combined data for an entire Plan. In addition, all services (where appropriate) will be provided in accordance with the attached Exhibit B. Great Western further agrees that it will ensure that all participant accounts are input in accordance with the appropriate participation agreements. All address changes will be input within two weeks of receipt of notice.
- D. GREAT WESTERN agrees to maintain, for a reasonable time (i.e. as may be required under any pertinent state or federal records retention laws), the records necessary to produce the above mentioned reports, and agrees that all records shall be the property of AGENCY. AGENCY agrees that all related computer tapes, disks and programs shall remain the property of GREAT WESTERN, except that GREAT WESTERN shall, as requested by AGENCY, return all used computer tapes.

7. DISTRIBUTIONS:

- A. GREAT WESTERN will assist the participant in preparing necessary forms to effectuate distribution.
- B. Participants will receive a lump sum distribution of their account within ten (10) business days of the earliest date permitted by the Plan.

- C. GREAT WESTERN will be responsible for preparing and filing all reports required by federal and state taxing authorities through the effective date of the termination of the contract. AGENCY shall be responsible for all reporting requirements for periods prior to the effective date of this contract, or after the termination date of this contract. GREAT WESTERN will be responsible for the annual filing of individual 1099 or W-2 forms, unless by contract between AGENCY and an Investment Provider, the forms are prepared by the Investment Provider that provides annuity payments to participants. GREAT WESTERN shall withhold income taxes from distributions as required, and remit said taxes to appropriate regulatory authorities. GREAT WESTERN shall also prepare and file periodic and annual tax returns for such amounts withheld.
8. TERMINATION: Upon the effective date of termination of this Agreement, the following shall occur:
- a. GREAT WESTERN will no longer accept deferrals.
  - b. GREAT WESTERN will provide AGENCY a copy of all records relating to participant sub-accounts, in hard copy or such other form as mutually agreed upon between GREAT WESTERN and AGENCY, within ninety (90) days after the effective date of termination.
  - c. If termination is due to either party exercising the right of termination described in Section 2 above, within 90 days of the effective date of termination, GREAT WESTERN shall transfer savings accounts to AGENCY, or to such other entity as AGENCY may designate in writing.
  - d. Notwithstanding any provision to the contrary, if termination is for Cause (as that term is herein defined), the disbursement of funds shall occur within forty-five (45) days of the effective date of termination.
  - e. There shall be a transfer/termination fee assessed to AGENCY on each participant account only when either the Participant or AGENCY elects a total Plan transfer or termination from the GREAT WESTERN Plan. The fee shall not exceed the lesser of \$25.00 per participant, or the amount permitted by applicable law or regulation. The fee will not be imposed for distribution events, hardship withdrawals, or plan-to-plan transfers where the participant separates from service and re-employs with another eligible agency.

9. **CONFIDENTIALITY:** GREAT WESTERN agrees that all information supplied to and all work processed or completed by GREAT WESTERN shall be kept confidential and will not be disclosed except as required by law.
10. **PRIVITY OF CONTRACT:** GREAT WESTERN and Plan Participants shall have no privity of contract with each other.
11. **TITLE AND OWNERSHIP:** In accordance with the provisions of Internal Revenue Code Sections 457 and 3121 (b)(7)(F), all account(s) established under this Agreement shall be held in the name of AGENCY.
12. **CIRCUMSTANCES EXCUSING PERFORMANCE:** Neither party to the Contract shall be in default by reason of failure to perform in accordance with its terms if such failure arises out of causes beyond reasonable control and without fault or negligence on their part. Such causes may include, but are not limited to, acts of God or public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine or restrictions, freight embargoes, and unusually severe weather.
13. **INDEMNIFICATION:** GREAT WESTERN agrees to be solely responsible to AGENCY for any and all services performed by GREAT WESTERN, its agents or its employees under this Agreement. GREAT WESTERN shall be responsible for any error or negligence committed by GREAT WESTERN, its agents, or its employees. AGENCY shall be responsible for any error or negligence committed by AGENCY, its agents or its employees.
14. **ASSIGNABILITY:** No party to this Agreement shall assign the same without the express written consent of the other party, which consent not to be unreasonably withheld. This provision shall not restrict GREAT WESTERN's right to delegate certain recordkeeping or other services to an agent. Unless agreed to by the parties, no such assignment shall relieve any party to this Agreement of any duties or responsibilities herein.
15. **PARTIES BOUND:** This Agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.
16. **APPLICABLE LAW:** This Agreement shall be construed in accordance with the laws operating within the State of California.
17. **ARBITRATION:** Any dispute which arises between the parties with respect to any of the terms of this Agreement, whether such dispute arises during the term of the Contract and any extension period, or after the termination, shall be resolved through binding arbitration. Arbitration shall be conducted

in accordance with commercial rules of either the American Arbitration Association ("AAA") or the Judicial Arbitration and Mediation Service ("JAMS"). Each party agrees to waive its right, if any, to a jury trial or punitive damages. Each party shall bear its own costs, including attorney fees, related to the arbitration proceedings.

18. **UNLAWFUL PROVISIONS:** In the event any provisions of this Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Agreement, but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. Notwithstanding anything contained herein to the contrary, no party to this Agreement will be required to perform or render any services hereunder, the performance or rendition of which would be in violation of any laws relating thereto.
19. **MODIFICATION:** This writing is intended both as the final expression of the Agreement between the parties and as a complete statement of the terms of the Agreement, pursuant to California Code of Civil Procedure Section 1856 or its successor(s). No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
20. **NO WAIVER:** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision in the Agreement and either party may, at any time, enforce the provision previously waived, unless a modification to this Agreement has been executed.
21. **SEVERABILITY:** The provisions of this Contract are severable, and, if for any reason a clause, sentence, paragraph, or other part of this Contract shall be determined to be invalid by a court or federal or state agency, board, or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions of this Contract which can be given effect without the invalid provision.
22. **NOTICES:** All notices and demand to be given under this Agreement by one party to another shall be given by certified or United States mail, addressed to the party to be notified or upon whom a demand is being made, at the respective addresses set forth in this Agreement or such other place as either party may, from time to time, designate in writing to the other party. Notice shall be deemed received on the earlier of, three days from the date of mailing, or the day the notice is actually received by the party to whom the notice was sent.

If to GREAT WESTERN

GREAT WESTERN BANK  
Deferred Compensation Department  
19850 Plummer Street  
Chatsworth, California 91311  
Attn: Roy Leff

If to AGENCY

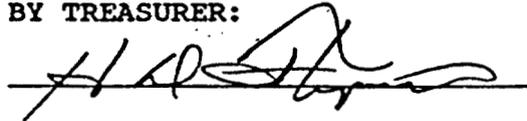
CITY OF LODI  
221 W. Pine Street  
Lodi, California 95241  
Attn: Jerry Glenn

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the date first written above.

AGENCY

GREAT WESTERN

BY TREASURER:

  
\_\_\_\_\_

BY: \_\_\_\_\_

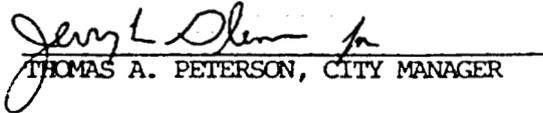
VICE PRESIDENT

BY FINANCE DIRECTOR:

  
\_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

DATE SIGNED: 10/29/93

  
\_\_\_\_\_  
THOMAS A. PETERSON, CITY MANAGER

DATE SIGNED: October 25, 1993

Attest:   
Jennifer M. Perrin  
City Clerk