

RESOLUTION NO. 83-104

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI ADOPTING
AMENDED CITY OF LODI DEFERRED COMPENSATION PLAN

RESOLVED that the City Council of the City of Lodi does hereby adopt amended City of Lodi Deferred Compensation Plan, a copy of which is attached hereto, marked Exhibit K-2, and thereby made a part hereof.

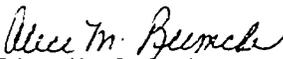
Dated: September 21, 1983

I hereby certify that Resolution No. 83-104 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 21, 1983 by the following vote:

Ayes: Council Members - Snider, Pinkerton, Reid and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - Murphy


Alice M. Reimche
City Clerk

City of Lodi

DEFERRED COMPENSATION PLAN

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MASTER PLAN

City of Lodi

Deferred compensation Plan

This DEFERRED COMPENSATION PLAN is established and adopted by City of Lodi (the "Employer") on _____, 19____, effective as of _____, 19____ for the benefits of its eligible persons.

I.

NAME AND PURPOSE

1.01 Name. The name of this Plan is the City of Lodi DEFERRED COMPENSATION PLAN (the "Plan").

1.02 Purpose. It is the primary purpose of the Plan to permit Eligible Employees to enter into agreements with the Employer which will provide for deferral of payment of a portion of their compensation until death, Disability, Separation From Service, or other events as provided herein, in accordance with the provisions of Sections 53213-53214 of the Government Code of California. It is intended that the Plan constitute an "eligible State deferred compensation plan" within the meaning of, and that the Plan satisfy the requirements of, Code Section 457(b).

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II.

DEFINITIONS

2.01 "Administrator." Administrator shall mean the duly authorized person, persons or designees appointed by the City to act as the Employer's agent in administering the Plan.

2.02 "Advisory Committee." Advisory Committee shall mean that body which shall be designated by the City to operate and oversee the Plan.

2.03 "Beneficiary." Beneficiary shall mean any person, including Participant's estate, whose interest in the Plan is derived from the Participant and who is designated by the Participant to receive a pension, annuity, death benefit, or other benefit under the provisions of the Plan.

2.04 "Code." Code shall mean the Internal Revenue Code of 1954, as amended or supplemented from time to time or superseded by federal laws of similar effect, and any regulations promulgated thereunder.

2.05 "Compensation." Compensation shall mean the sum of the full basic salary and overtime pay, paid to an Employee for Service during a Plan Year. Compensation shall

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be taken into account at its present value. However, if Compensation is subject to a Substantial Risk of Forfeiture, such Compensation shall be taken into account and valued in the Plan Year in which such Compensation is no longer subject to a Substantial Risk of Forfeiture.

2.06 "Deferred Compensation." Deferred Compensation shall mean that portion of an Employee's Includible Compensation which such Employee has elected to defer in accordance with the provisions of this Plan. Deferred Compensation shall be taken into account at its present value. However, if the Deferred Compensation is subject to a Substantial Risk of Forfeiture, such Compensation shall be taken into account and valued in the Plan Year in which such Compensation is no longer subject to a Substantial Risk of Forfeiture.

2.07 "Disability." Disability shall mean substantial permanent incapacity, physically or mentally, to perform the Participant's usual duties in the Employer's Service, as determined by the Advisory Board on the basis of medical examination and advice.

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2.08 "Employee." Employee shall mean any officer or full-time regular Employee of the Employer.

2.09 "Eligible State Deferred Compensation Plan." Eligible State Deferred Compensation Plan shall mean a plan described in Code Section 457(b).

2.10 "Employer." Employer or "City" shall mean all officers, bureaus, departments and districts of City of Lodi.

2.11 "Employment Period" or "Pay Period." Employment Period or Pay Period shall mean the biweekly period established by the Employer during which occurs Service of an Eligible Employee upon which Compensation is based.

2.12 "Enrollment Period." Enrollment Period shall mean January 1 to December 31. This plan has an unlimited enrollment period. An Employee is eligible to enroll once full time status is granted.

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2.13 "Includible Compensation." Includible Compensation shall mean Compensation which (taking into account the provisions of Code Sections 457(b) and 403(b) is currently includible in gross income. Amounts of Compensation for this purpose shall be determined without regard to community property laws.

2.14 "Investment Fund." Investment Fund shall mean the total amount of Deferred Compensation from all Participants, which amount shall be held as a part of the general assets of the Employer.

2.15 "Normal Retirement Age." Normal Retirement Age shall mean (a) the later of the earliest age at which the Participant has the right to retire under the Employer's basic pension plan without consent of the Employer and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a later specified age in the Employer's basic pension plan or age 70-1/2 or (b) for a Participant who continues to work beyond the age specified in subsection (a), the date or age designated by the Participant; provided, however, that such date or age

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shall not be later than the mandatory retirement age provided by the Employer, or the date or age at which the Participant separates from Service.

2.16 "Participant." Participant shall mean any Eligible Employee who has fulfilled the requirements of enrollment in the Plan.

2.17 "Participation Account." Participation Account shall mean the book account of the Employer to which is credited the Participant's Deferred Compensation, together with any interest, dividends, gains, losses, or the like credited or debited thereto.

2.18 "Participation Agreement." Participation Agreement shall mean the written agreement executed and filed by an Eligible Employee with the Employer pursuant to Section 3.01, in which such Eligible Employee elects to become a Participant in the Plan.

2.19 "Plan." Plan shall mean this Deferred Compensation Plan of City of Lodi.

2.20 "Service." Service shall mean employment of an Employee by the Employer.

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2.21 "Separation from Service." Separation from Service for an Employee shall have the same meaning as is given under Code Section 402(e) (4) (A) (iii) relating to lump sum distributions. This includes, but is not limited to, death, retirement for reasons of age or permanent disability, resignation or discharge.

2.22 "State." State shall mean (a) a State, (b) a political subdivision of a State, and (c) an agency or instrumentality of a State or political subdivision of a State.

2.23 "Substantial Risk of Forfeiture." Substantial Risk of Forfeiture shall mean that rights to compensation are conditioned upon the future performance of substantial Service by any individual.

2.24 "Unforeseeable Emergency." Unforeseeable Emergency shall mean severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in code Section 152(a) of the Participant, loss of the Participant's property due to a casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, to the extent for which the hardship is not relieved by the receipt of payment through reimbursement or insurance

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compensation or otherwise. Unforeseeable Emergency shall not include the need to send a child to college or the desire to purchase a home.

2.25 Other Definitions. All other terms of this Plan, as now in effect or hereinafter amended, which are not defined herein shall be interpreted and defined within the meaning given thereto by the Code.

III.

PARTICIPATION

3.01 Eligibility.

(a) Initial Enrollment Period. Eligible Employees may elect to become a Participant in the Plan by executing a Participation Agreement and filing it with the Employer. A Participation Agreement entered into pursuant to this subsection shall become effective the pay period following execution of such Participation Agreement by the Employer unless the Eligible Employee designates a later Employment Period for such purpose. Compensation shall be deferred for any pay period only if a Participation Agreement providing for such deferral has been entered into by the Eligible Employee and the Employer prior to the beginning of such month.

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3.02 Continuation of Participation. Elections to participate pursuant to Section 3.01 shall remain in force unless terminated as provided in Section 3.03.

3.03 Termination Other Than By Separation From Service. The Participant may terminate participation in the Plan, for reasons other than by the Participant's Separation from Service, by written notice to the Employer at least fourteen (14) days prior to the commencement of the Pay Period for which the revocation is to be effective. The Participant shall not be permitted to file a new Participation Agreement until at least ninety (90) days after termination of such Participant's former participation in the Plan. No amounts shall be payable to a Participant upon termination of participation in the Plan unless otherwise due pursuant to Chapter VI of this Plan.

3.04 Amount of Deferral. Each written election to participate in the Plan shall specify the dollar amount of Compensation to be deferred. The amount to be deferred shall be deducted from the Compensation otherwise payable to the Participant, but shall not be less than Ten Dollars (\$10.00) per Pay Period; nor shall such amount exceed limits set forth in Chapter IV of this Plan.

3.05 Changes In Amount of Deferred Compensation. The Participant may elect to increase or decrease the amount

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of Compensation to be deferred by written notice to the Advisory Board of the Participant's intention to amend at least thirty (30) days prior to the commencement of the Payroll Period for which the increase or decrease is to become effective; provided, however, that a Participant may not elect to amend Participant's Participation Agreement more than 2 times per calendar year. An election by a Participant to amend the Participation Agreement for the sole purpose of increasing or decreasing the amount of compensation to be Deferred shall not be deemed a termination of the Participant's participation in the Plan.

3.06 Investment Objectives. A Participant may select, pursuant to Section 5.08, one or more investment objectives designated by the Employer, provided that the amount deferred for each objective is not less than Ten Dollars (\$10.00) per Pay Period. All deferred amounts shall be as whole dollars only. Actual investments made by the Employer are subject to the Employer's discretion as provided within Section 5.07.

3.07 Election of Method of Distribution. Each Participant may elect, prior to the earliest distribution date provided under this Plan, distribution of benefit options and payout options as provided in Chapter VI. If a Participant voluntarily terminates employment prior to retirement, the Participant may alternatively request that the

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election of the method of distribution of payment of benefits be postponed until such Participant reaches an age not later than Normal Retirement Age.

The Employer shall give due consideration to such requests but shall not be bound by them. Final determination regarding the method and manner of all distributions from the Plan shall, at all times, be at the discretion of the Employer.

3.08 Effect of Execution of Participation Agreement.

Each participant shall be deemed to have assented to all the terms and conditions of the Plan upon execution of a Participation Agreement. No Participant or Beneficiary shall have the power or right to sell, transfer, assign, hypothecate, or otherwise dispose of all or any part of the Participant's Participation Account or any right which the Participant or Beneficiary may have under the Plan, except as provided in Chapter VIII.

3.09 Effect of Community Property Laws on Participant's Interest in the Plan.

(a) Creation of community property interest.

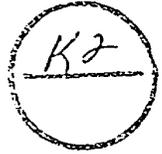
If a Participant's interest in his or her Compensation is or becomes community property, in whole or in part, such Participant shall immediately so notify the Employer, and such Participant's spouse shall immediately sign and assent to the

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Participation Agreement and Designation of Beneficiary Form then in effect and any subsequent version thereof.

(b) Division of Participant's community property interest. If the Participant's interest in the Plan is community property of the Participant and the Participant's spouse, in whole or in part, and a community property interest is awarded, in whole or in part, to the Participant's spouse pursuant to proceedings for legal separation, dissolution, nullity or other proceedings to terminate the marriage, then that portion of the Participant's interest in the Plan awarded to the Participant's spouse shall be paid to the Participant's spouse under one of the options described in Section 6.01; provided that the amount so paid shall not exceed the balance of the Participant's Participation Account and further provided that the amount of Deferred Compensation credited to the Participant's Participation Account shall be reduced accordingly. If the Participant's interest is being distributed to the Participant in any manner other than by way of a single payment at the time the Participant's spouse is awarded a community property interest therein, then the Employer shall, at its discretion, pay such interest awarded to the Participant's spouse by the same method by which such funds are being distributed to the Participant, provided that the payments to the Participant shall be reduced accordingly.

3.10 Plan-to-Plan Transfers.



(a) Transfer to another plan. A Participant who separates from Service in order to accept employment with an entity other than the Employer, which entity also sponsors an Eligible State Deferred Compensation Plan, and who becomes a participant in such plan (the "transferee plan") shall have the balance in such Participant's Participation Account automatically transferred to the transferee plan. Payments of benefits will not commence upon the Participant's Separation from Service, notwithstanding any other provision of this Plan, if (1) the Employer and the entity sponsoring the transferee plan are located within the same State; and (2) the transferee plan provides for the acceptance of such balance.

(b) Transfer from another plan. A Participant who, in order to accept employment with the Employer, terminated employment with an entity other than the Employer, which entity also sponsors an Eligible State Deferred Compensation Plan, and who was a participant in such plan (the "transferor plan") shall, upon receipt by the Plan of the amounts deferred by such Participant in the transferor plan, have such Participant's Participation Account credited with the balance of such Participant's account in the transferor plan if (1) the Employer and the entity sponsoring the transferor plan are located within the same State and (2) the

transferor plan provides for the automatic transfer of such balance.

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Subject to Sections 3.06 and 5.07, the Employer may invest and reinvest the amounts deferred by such Participant in the transferor plan and credited to such Participant's Participation Account; provided, however, that in no event shall the value of such amounts deferred and credited be reduced by such investment or reinvestment.

IV.

LIMITATION OF
DEFERRAL OF COMPENSATION

4.01 Regular Years. During each Employment Period in which an Eligible Employee is a Participant in the Plan, the Employer shall defer payment of such part of the Participant's Compensation as is specified in the Participant's Participation Agreement provided that, except as provided in Section 4.02, no Participant may defer under the Plan during a taxable year more than the lesser of:

(a) Seven Thousand Five Hundred Dollars (\$7,500), or

(b) One-third (1/3) of the Participant's Includible Compensation.

4.02 Years Immediately Preceding Retirement.

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(a) Limited catch-up. For any of the Participant's last three (3) taxable years ending before the attainment of Normal Retirement Age, no Participant may defer under the Plan more than the lesser of:

(1) Fifteen Thousand Dollars (\$15,000),
or

(2) The sum of:

(A) The limit provided in Section 4.01 otherwise applicable to the taxable year, plus

(B) The sum for all taxable years before the taxable year of the difference for each year between the limit provided in Section 4.01 applicable to such prior taxable year and the amount of Compensation for such prior taxable year actually deferred. A prior taxable year shall be taken into account under this subsection (B) of this subsection (2) only if such taxable year begins after December 31, 1978; the Participant was eligible to participate in the Plan during all or any portion of such taxable year; and the Compensation deferred during the taxable year was subject to the limit provided in Section 4.01. For purposes of this subsection (B) of this subsection (2), a Participant

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will be considered eligible to participate in the Plan for a taxable year if the Participant performs services for the Employer, either as an Employee or an Independent Contractor; and a prior taxable year includes a taxable year in which the Participant was eligible to participate in an Eligible State Deferred Compensation Plan sponsored by an entity other than the Employer, provided that the Employer and the entity sponsoring such other plan are located within the same State.

(b) Restriction on limited catch-up. No Participant may elect more than once to defer Compensation in accordance with the limit provided in this Section or such limit provided in any other Eligible State Deferred Compensation Plan.

4.03 Participants in More Than One Deferred Compensation Plan. For any Participants who are also participants of more than one Eligible State Deferred Compensation Plan, the amount of Compensation deferred for all such plans during any taxable year shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00), as modified by the adjustment under Section 4.02.

4.04 Participants in Certain Annuity Plans. For any Participant who is also a participant in a qualifying employer-purchased annuity described in Code Section 403(b), the amounts excluded in any taxable year under such plan

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shall be treated as amounts deferred for purposes of Sections 4.01, 4.02, and 4.03 and the amounts deferred under Sections 4.01, 4.02, and 4.03 shall be treated as amounts excluded under Code Section 403(b) (2) (A) (ii).

V.

ADMINISTRATION OF THE PLAN

5.01 Designation of Advisory Board. The Employee shall designate six (6) persons to serve as an administrative committee to act in the Employer's behalf. Any such designation may be subsequently changed by the Employer.

Any action of the Advisory Board shall be deemed action of the Employer and shall be deemed to be taken in accordance with the original legislation granting authority to the Advisory Board to act in behalf of the Employer.

5.02 Authority. One or more authorized members of the Advisory Board may execute any document or documents on behalf of the Employer. The Employer shall accept and rely exclusively upon any direction or document executed by such authorized member(s) as representing action by the Employer until the Employer revokes such designation.

5.03 Rights and Duties. The Advisory Board shall enforce this Plan in accordance with its terms and shall be

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charged with its general administration. The Advisory Board shall exercise all of its discretion in a uniform manner and shall have all necessary power to accomplish those purposes, including but not limited to the power:

(a) To determine all questions relating to the eligibility of Employees to participate;

(b) To compute and certify to the Employer the amount and kind of benefits payable to Participants and their Beneficiaries;

(c) To maintain all data, records, documents, and papers, pertaining to the administration of a Plan;

(d) To authorize all disbursements by the Employer from the Investment Fund;

(e) Subject to the limitations set forth in Section 5.07, to direct the investments to be made by the Employer in a manner consistent with the investment authorized by this Plan;

(f) To make such rules for the regulation of the Plan as are not inconsistent with the terms hereof, which determination shall be conclusive and binding on all Participants, applicants for participation in the Plan, Beneficiaries

and the Administrator;

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(g) To hear and rule on grievances against the Administrator as set out in Section 5.05.

5.04 Advice, Consultation and Delegation of Authority. The Employer may employ or contract with any one or more persons or organizations to render consultation and/or advice and/or to perform services with regard to responsibilities of the Advisory Board under the Plan. Said Administrator shall be selected by the Employer after consideration of recommendations by the Advisory Board. The Administrator shall be governed by the Advisory Board. Persons or organizations eligible to act as Administrator may include, without limitation, actuaries, attorneys, accountants, and pension, benefits, financial, and administrative consultants.

(a) Administrator's capacity. Any such person so employed or independently contracted for shall act in advisory consulting capacity only and shall not constitute a fiduciary solely for reason of so acting; and the employment or contracting of any such persons shall not relieve the Advisory Board from its responsibility under this Plan.

(b) Allocation of duties to Administrator. The Advisory Board may, from time to time, allocate to the Administrator any of the Board's rights, powers, duties,

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and/or responsibilities (including, without limitation, the power to approve applicants for participation), and/or the Advisory Board may delegate to the Administrator any of its rights, powers, duties, and/or responsibilities with respect to the operation and administration of the Plan. No such allocation or delegation shall be deemed to have occurred unless the same be in writing to the Employer. Any such allocation and delegation shall be reviewed at least annually and shall be terminable upon such notice to the Employer as the Advisory Board deems reasonable and prudent under the circumstances.

5.05 Grievances Against Administrator.

(a) Claims. A claim is a request for a Plan benefit by a Participant, Beneficiary or applicant for participation in the Plan. A claim is filed when the requirements of this section have been met. A claim may be filed by delivering a written communication to the Administrator.

(b) Notification to Claimant of Decision.

(1) If a claim is wholly or partially denied, notice of the decision, meeting the requirements of subsection (c) of this Section, shall be furnished to the claimant within ninety (90) days after receipt of the claim,

unless special circumstances require an extension of time for processing of the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period. In no event shall such extension exceed a period of ninety (90) days from the end of such initial period. The extension notice shall indicate the special circumstances requiring extension of time and the date by which the Advisory Board expects to render the final decision.



(2) If notice of the denial of a claim is not furnished in accordance with subsection (1) of this subsection (b), the claim shall be deemed denied, and the claimant shall be permitted to proceed to the review stage described in subsection (d) of this Section.

(c) Contents of Notice. The Administrator shall provide to every claimant who was denied a claim for benefits written notice setting forth in a manner calculated to be understood by the claimant:

(1) The specific reason or reasons for the denial;

(2) Specific reference to pertinent Plan provisions on which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect a claim and an explanation of why such material or information is necessary; and

(4) Appropriate information as to the steps to be taken if the Participant or Beneficiary wishes to submit his or her claim for review.

(d) Review Procedure.

(1) Upon denial of a claim, a claimant or his or her duly authorized representative may appeal the denied claim to the Advisory Board. The claimant or his or her duly authorized representative may

(A) request a review upon written application to the Advisory Board;

(B) review pertinent documents;

and

(C) submit issues and comments in writing.

(2) A claimant must file any request for review of a denied claim within sixty (60) days after receipt by the claimant of written notification of denial of

the claim.

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(e) Decision on Review.

(1) A decision by the Advisory Board shall be made promptly and shall not ordinarily be made later than sixty (60) days after the Advisory Board's receipt of a request for a review, unless special circumstances (such as the need to hold a hearing if the Advisory Board so determines) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of a request for a review.

(2) If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension.

(3) The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific reference to the pertinent Plan provisions on which the decision is based.

(4) The decision on review shall be furnished to the claimant within the appropriate time

described in subsection (1) of this subsection (e). If the decision on review is not furnished within such time, the claim shall be deemed denied on review.

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5.06 Investment Fund. The Employer shall maintain a separate fund to provide a convenient method of setting aside a portion of its assets to meet the Employer's obligations under the Plan. The fund shall at all times remain a part of the general assets of the City and shall remain available for payment of City obligations. The fund shall be credited with the Deferred Compensation of the Participants at such times as the Compensation would have been payable to individual Employees (or Independent Contractors) if they were not Participants in the Plan. The Employer may delegate these administration and coordination of Plan functions to the Administrator.

Neither the existence of this Plan, the fund, any Participation Agreement, nor any Participation Account shall be deemed to create a trust or custodial account on behalf of, or for the benefit of, any Participant of the Plan or Beneficiaries thereof. The City shall at all times be the legal and beneficial owner of all assets in the Investment Fund including any and all dividends, capital gains distributions, interest or other income payable on any of the Employer's investments of Deferred Compensation. No Participant of the Plan or Beneficiaries thereof shall have, by reason of the

Plan, Participant's Agreement, or Participation Account, any secured or preferred interest in, or to, any assets of the Employer. The Participant and the Beneficiaries thereof shall have only the right to receive the benefits payable under the Plan as provided in Chapter VI. The Employer shall have the sole right to vote any shares of stock which it may acquire by such investment.

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5.07 Investments of Deferred Compensation Funds.

The Employer may, from time to time, invest and reinvest amounts of Deferred Compensation in one or more types of investments authorized by California Government Code §53609, as now in effect or as the same may be amended or revised from time to time, which in the Employer's sole judgment will best achieve the Employer's objectives.

The Employer may, but is not required to, invest Deferred Compensation biweekly in the investment vehicles provided for in this Plan pursuant to Section 5.08.

5.08 Eligible Investment Objectives. The Employer may allow Participants to choose any investments allowed by the State of California as the Advisory Board may from time to time make available. Actual investment by the Employer in any of these objectives is subject to Section 5.07.

5.09 Participation Accounts. The City shall cause

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to be established for each Participant a Participation Account to provide a convenient method of measuring the City's obligations to the Participant under the Plan. The City shall cause to have credited to each Account amounts equal to the Compensation deferred by the Participant under the Plan. The assets of the Account shall be invested in such investments as the Plan may allow pursuant to Section 5.08. Participation Accounts shall at all times remain part of the general assets of the City and shall remain available for the payment of City obligations. Each Participant's Participation Account shall further be credited with earnings, gains, or losses applicable to such investments. Each Participation Account will be valued at least quarterly.

5.10 Costs of Administration. The City shall not be liable for any costs incurred in the administration of the Plan. Such costs shall be borne by the Plan itself, with the costs to be paid from the assets of the Investment Fund.

5.11 Amendment and Termination of the Plan. This Plan may be amended, modified, or terminated by the City at any time, or the City may, without amending or terminating the Plan, cease to set aside assets under the Plan. No amendment or termination of the Plan or cessation of the setting aside of assets shall reduce or impair the rights of any Participant or Beneficiary which may have already accrued. Upon termination of the Plan, the City may at its option, distribute

to all Participants an amount equal to the balance of their Participation Accounts as of the month-end following such termination pursuant to any of the provisions of Section 6.01. Such amendment, modification, or termination of the Plan, in whole or in part, shall not take effect with respect to a Participant until the Employer delivers to each Participant a written copy of such amendment, modification, or notice of termination.

5.12 Non-discriminatory Exercise of Discretion.

In exercising the discretion granted to the Employer, Administrator or Advisory Board by this Plan, the respective parties shall exercise such discretions in a uniform and non-discriminatory manner.

VI.

DISTRIBUTION OF BENEFITS

6.01 Distribution After Separation From Service.

(a) Payout options. In the event of a Participant's Separation From Service, the balance of the Participant's Participation Account shall be distributed to the Participant in any one or more of the following methods so elected by the Participant, subject to the Employer's discretion, pursuant to Section 3.07:

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

(2) Life annuity. An annuity payable annually, quarterly or monthly to the Participant during a period of years measured by the lifetime of the Participant or the Participant's spouse if so selected; however, in no event shall the Employer distribute to the Participant, Participant's spouse, and/or Beneficiary(s) more than the balance in the Participant's Participation Account. If the Employer finances this distribution with the purchase of an annuity pursuant to Section 6.04, no amounts will be payable to the Participant, his or her estate, or any Beneficiary(s) upon the death of the measuring life.

(3) Joint and survivor annuity. An annuity payable annually, quarterly or monthly to the Participant and the Participant's spouse during a period of years measured by the joint life and last survivor expectancy of the Participant and Participant's spouse; however, in no event shall the Employer distribute to the Participant, Participant's spouse, and/or Beneficiary(s) more than the balance in the Participant's Participation Account. If the Employer finances this distribution with the purchase of an annuity pursuant to Section 6.04, no amounts will be payable to the estate of Participant or Participant's spouse, or to any Beneficiary of Participant or Participant's spouse, at the

death of the survivor of Participant and Participant's spouse.

(4) Payments for a specified period - Participant as recipient. Annual, quarterly or monthly payments to Participant over a term not to exceed thirty (30) years, which term does not exceed the life expectancy of the Participant, in amounts calculated to liquidate the Participant's Participation Account as of the last payment. In the event of the death of the Participant before the end of the selected term, the payments will continue to the named Beneficiary for a period not exceeding the lesser of (A) the life of the named Beneficiary (or any shorter period), if the named Beneficiary is the Participant's spouse or (B) fifteen (15) years, if the named Beneficiary is not the Participant's spouse.

(5) Payments for a specified period - Participant and/or Participant's spouse as recipients. Annual, quarterly or monthly payments to Participant and/or Participant's spouse over a term not to exceed thirty (30) years, which term does not exceed the joint life and last survivor expectancy of the Participant and Participant's spouse in amounts calculated to liquidate the Participant's Participation Account as of the last payment. In the event of the death of the Participant and the Participant's spouse before the end of the selected term, the payments will continue to the named Beneficiary for a period not exceeding the lesser of (A) the amount of years

remaining under the selected term or (B) fifteen (15) years. Ka

(b) Election to postpone payout. When a Participant voluntarily terminates employment prior to retirement, the Participant may alternatively request that the Employer withhold the payment of benefits until such Participant reaches an age no later than the Normal Retirement Age. This election must be made, if at all, prior to the earliest distribution date allowable under this Plan.

(c) Death of Participant in Service. In the event of death of the Participant while the Participant is in Service, the Employer shall not commence payment of benefits until ninety (90) days after notification of the death of the Participant, in compliance with State laws governing the payment of death benefits.

(d) Continued investment of Participation Account. A Participant's Participation Account may continue to be invested until, in the Employer's sole judgment, cash is to be withdrawn for payment of benefits.

(e) Commencement of benefit payout. Except as provided in subsection (c) of this Section, all payments of benefits will commence on the first day of the third calendar month following Participant's termination of employment, except where the Participant has elected to not receive

payments until the date provided under subsection (b) of this Section. If such election has been made, payment of benefits will commence on the first day of the month following the Participant's applicable birthday.

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6.02 Distribution Before Separation From Service - Unforeseeable Emergency. In the event of an Unforeseeable Emergency of the Participant, the Employer may cause to be distributed to the Participant such amounts, and in such methods, that the Employer may, in its discretion, deem appropriate.

6.03 Changes in Distributions. Notwithstanding any other provision of this Plan, the Employer may at any time change the time or methods of distribution of benefits under the Plan. The Employer may, at its discretion, discharge in full its obligations under the Plan to any Participant, or following the death of the Participant, to the Participant's Beneficiary or Beneficiaries, by distributing an amount equal to the balance of the Participant's Participation Account.

6.04 Purchase of Annuity by Employer. In connection with the financing of any distribution under Section 6.01 by an annuity not otherwise provided for as an eligible investment pursuant to Section 5.08 of this Plan, the Employer may cause to be purchased from an insurance company of Employer's choice

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a fixed or variable annuity policy at such time as the Participant becomes eligible for monthly distributions. The Employer shall be the owner of such annuity policy, and the rights of the Participant shall be limited to the right to receive monthly payments pursuant to such policy. All obligations of the Employer with respect to the Plan shall be frozen in amount at the time the annuity policy is delivered to the Employer.

6.05 Withholding of Taxes. Notwithstanding any other provision in this Plan, upon distribution of benefits the Employer shall withhold applicable federal and state income taxes and any other amounts required by law.

6.06 Satisfaction of Payment. Any payment to a Participant or to such person's legal representative or Beneficiary, in accordance with the provisions of the Plan, shall, to the extent of such payment only, be in full satisfaction of all claims hereunder against the Administrator, the Advisory Board, and the Employer, any of whom may require such Participant, legal representative, or Beneficiary as a condition precedent to such payment to execute a receipt and release therefore in such form as shall be determined by the Administrator, the Advisory Board, or the Employer, as applicable. The Employer does not guarantee the Plan, the Participants, former Participants, or their Beneficiaries against loss of or depreciation in value of any right or

benefit that any of them may acquire under the terms of the Plan. Further, the Employer does not warrant any tax benefits of the Plan. (K2)

VII.

EMPLOYER PARTICIPATION

Notwithstanding any other provisions of this Plan, the Employer may make additional deposits in the Deferred Compensation Fund as additional Compensation for services to be rendered by the Employee [or Independent Contractor] to the Employer during an employment period; provided, (a) the Employee has elected to have such additional Compensation deferred, invested, and distributed pursuant to this Plan, prior to the Employment Period in which the Compensation will be earned, and (b) that such additional deposits shall not exceed the maximum deferral permitted in Sections 4.01 and 4.02.

VIII.

NON-ASSIGNABILITY

8.01 Non-Assignability. Benefits provided under the Plan may not be anticipated, assigned (either at law or in equity), alienated, or made subject to attachment, garnishment, levy, execution or other legal or equitable process, except as provided in this Section.

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8.02 "Assignment" and "Alienation." For purposes of this Section, the terms "assignment" and "alienation" include:

(a) any arrangement providing for the payment to the Employer of benefits which would otherwise be due to a Participant under the Plan, and

(b) any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a Participant or Beneficiary a right or interest enforceable against the Plan in, or to, all or any part of a Plan benefit payment which is, or may become, payable to the Participant or Beneficiary.

For the purposes of this Section, the terms "assignment" and "alienation" do not include, and Section 3.04 does not apply to, the following arrangements:

(1) any arrangement for the withholding of federal, state, or local tax on Plan benefit payments;

(2) any arrangement for the recovery by the Plan of overpayments of benefits previously made to a Participant;

(3) any arrangement for the direct deposit of benefit payments to an account in a bank, savings and loan association, or credit union, provided such arrangement is not part of an arrangement constituting an assignment or alienation; or

(4) any arrangement for the transfer of benefit rights from the Plan to another plan.

8.03 Assignment after Payout Commences. Once a Participant or Beneficiary begins receiving benefits under the Plan, the Participant or Beneficiary may assign or alienate the right to future benefit payments.

8.04 Payment to Third Party. An arrangement whereby a Participant or Beneficiary directs the Plan to pay all, or any portion, of a Plan benefit payment to a third party (including the Participant's employer) will not constitute an "assignment or alienation" if:

(a) it is revocable at any time by the Participant or Beneficiary; and

(b) the third party files a written acknowledgement with the Administrator which states that the third party has no enforceable right in, or to, any Plan benefit payments or portion thereof (except to the extent of payments

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actually received pursuant to the terms of the arrangement). For purposes of this subsection, a blanket written acknowledgement for all Participants and Beneficiaries who are covered under the arrangement with the third party is sufficient. The written acknowledgement must be filed with the Administrator not later than ninety (90) days after the arrangement is entered into.

8.05 Participant's Debts to the Employer. Notwithstanding any other provision of this Chapter, if at the time of distribution of Participant's Participation Account, the Participant has an outstanding obligation to the Employer for any reason, Employer may elect to collect the amount due by offsetting such amount against the balance of the Participant's Participation Account.

IX.

EMPLOYER'S LIABILITIES

9.01 Discretion re: Investments. The Employer may, but is not required to, invest funds pursuant to agreements between Participants and the Employer in accordance with the request made by each Participant at the time of enrollment or change in enrollment, prospectively only. The Employer shall retain the right to approve or disapprove such investment request. Any action by the Employer in investing funds, or approving of any such investment of funds

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shall not be considered either an endorsement or guarantee of any investment, nor shall it be considered to be a test of the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided in Section 5.07.

9.02 Indemnity. The Employer does not warrant the tax benefit of the Plan. The Plan shall indemnify and hold harmless the Employer, members of the Advisory Board, the Administrators, and any other persons to whom any fiduciary responsibility with respect to the Plan is allocated or delegated from and against any and all liabilities, costs, and expenses incurred by such persons as a result of any act, or omission to act, in connection with the performance of such persons' duties, responsibilities and obligations under the Plan other than such liabilities, costs and expenses as may result from the negligence, gross negligence, bad faith, willful conduct, and/or criminal acts of such persons.

X.

MISCELLANEOUS

10.01 Status of Participants. Neither the establishment of the Plan nor any modification thereof, nor the establishment 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 of employment of a Employee or Participant be modified or in any way affected hereby.

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10.02 Condition of the Plan. It is a condition of the Plan, and each Employee by participating herein expressly agrees, that he shall look solely to the general assets of the Employer for payment of any benefit to which he is entitled under the Plan.

10.03 Governing Law. This Plan shall be construed, administered and enforced according to the Code and the laws of the State of California.

10.04 Designation of Beneficiaries. Each Participant shall have the right, by written notice to the Employer, to designate Beneficiaries to receive any benefit to which said Participant may be entitled in the event of the Participant's death prior to the completion of distribution of benefits. If the Participant's interest in the Plan is a community property interest, said written notice must be signed by the Participant's spouse. If no such designation is in effect at a Participant's death, the Participant's Beneficiary shall be the Participant's estate, or if no executor or administrator is appointed within six (6) months after the Participant's death, the Employer shall direct said benefits to be paid to the Beneficiary or Beneficiaries designated in his last Will, or if there is no Will, then to the heirs

at law of the Participant.

10.05 No Right of Future Employment. Nothing in the Plan shall be construed as conferring upon any Participant any right to continue employment with the Employer.

10.06 Gender. As used in this Plan the masculine, feminine, or neuter gender and the singular or plural number shall be deemed to include the other unless the context clearly indicates otherwise.

10.07 Persons Affected by Plan. 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 authorized representatives.

10.08 Communications. Except as otherwise expressly provided, any notice or other communication required or permitted under this Plan shall be in writing, and if directed to the Employer, shall be sent to its principal office and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at the last known address for such person as it appears in the Employer's records.

10.09 Waiver of Rights to Salary. Each Participant in the Plan shall be deemed to have waived any rights to periodic payments of salaries or wages with respect to any

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Deferred Compensation pursuant to the provisions of appropriate salary resolutions and ordinances concerning periodic payment of salaries or wages to officers and Employees of the Employer.

10.10 Headings. Headings used in the Plan are inserted for convenience of reference only.

10.11 Interpretation. If any provision of the Plan shall be susceptible of more than one (1) interpretation, such provision shall be interpreted in a manner consistent with the qualification of the Plan as an Eligible State Deferred Compensation Plan within the meaning of Code Section 457(b).