

Deferred Compensation Plan BOARD REPORT 12-28

Date: April 30, 2012
To: Board of Deferred Compensation Administration
From: Staff
Subject: Plan Document Changes

*Board of Deferred
Compensation Administration
Eugene, Canzano, Chairperson
John Mumma, Vice- Chairperson
Cliff Cannon, First Provisional Chair
Tom Moutes, Second Provisional Chair
Sangeeta Bhatia, Third Provisional Chair
Michael Amerian
William Raggio
Robert Schoonover
Maggie Whelan*

Recommendation:

That the Board of Deferred Compensation Administration approve proposed changes to the City's Plan Document regarding refunds of purchase of service credit; Roth account conversions; and retiree loans.

Discussion:

Staff is proposing several changes to the Deferred Compensation Plan "Plan Document" in order to incorporate certain enhancements that will benefit Plan participants. These include modifications involving refunds of purchase of service credit; Roth conversions; and retiree loans. Staff will address each topic separately.

I. Purchase of Service Credit Refunds

Under Federal law and as permitted within the City's Plan Document, Plan participants may use their account balances to purchase service credit with the City's defined benefit pension plans. Staff was recently notified by the Department of Fire & Police Pensions ("Pensions") of certain over-contributions of amounts needed to satisfy prior purchases of service credit by their members. To the extent that those purchases involved transfers from a member's Deferred Compensation Plan account to Pensions, Pensions staff inquired about the feasibility of refunding the over-contribution back to the participant's Plan account.

The over-contributions resulted from enactment of the Public Service Purchase Ordinance No. 179813 on April 22, 2008. Included within this ordinance were provisions for adjustments in amounts needed to fund service credit purchases based on factors that may have changed between the time that the purchase was originally made and the date benefits actually become payable to the member. Pensions staff indicated that in most instances these adjustments result in refunds, and in some cases the amounts can be substantial. Presently staff is aware of one case involving a refund of approximately \$15,000.

Pensions inquired with Deferred Compensation Plan staff regarding the feasibility of returning those funds to the Deferred Compensation Plan if the source of the original purchase was a transfer from the individual's Deferred Compensation Plan account. Staff in turn contacted the Board's regulatory/technical consultant, Beverly Orth of Mercer, for input. Ms. Orth indicated that such refunds were permissible under the regulations but that the Plan

Document would need to be amended to allow for them. Ms. Orth worked with staff to develop the necessary language.

Staff is therefore recommending that the City's Plan Document, Section V be amended to revise Section (j) (paragraph 3) to read as follows:

- (j) *In the event that such defined benefit governmental plan determines that the transferred amount exceeds the actuarial cost of the purchased service for a Participant, due to changes in expected retirement date, eligible survivors, or other factors, the Plan Administrator shall accept a refund of the excess amount, as follows:*
- (1) *The Plan Administrator shall not accept a refund in excess of the original amount transferred to the defined benefit governmental plan.*
 - (2) *The excess amount shall be restored to the Participant's account in this Plan as a refund of an excess rollover amount and be ineligible for back-interest or any other retroactive valuation adjustment.*
 - (3) *The refund of the excess rollover amount shall not count as a deferral for purposes of the annual limitations on deferrals in IRC §457(b).*
 - (4) *If the Participant has previously received a full distribution of his or her Plan account, the Plan Administrator shall reactivate the prior account or establish a new Plan account, as necessary, for such Participant and the refund of the excess rollover amount shall be allocated to such account.*
 - (5) *Only rollover amounts refunded pursuant to this Section shall be treated as refunds of excess rollover amounts.*

II. Roth Conversions

As the Board is aware, the City's Plan recently added the ability for participants to save post-tax "Roth" dollars in addition to pre-tax dollars. This was pursuant to Federal legislation which allowed Section 457 plans to add "Roth 457" savings options as another tax-advantaged savings strategy.

This legislation also permitted plans to add Roth "conversion features" whereby a participant with a pre-tax balance could convert those dollars into Roth dollars by paying all of the tax at the time of conversion. The benefit of this is that future earnings on converted amounts will not be taxable. The conversion option is limited to amounts that are "eligible rollover distributions" (meaning amounts that are otherwise distributable under the law and the terms of the plan). This means that conversions cannot take place prior to separation from service.

At the time that the Plan Document was amended to add a Roth savings option into the City's Plan, the matter of allowing conversions of pre-tax balances to Roth accounts was deferred. This was because, at the time, there were very few plans that had implemented this and there were some concerns regarding the potential administrative complexity of allowing this feature. However, since that time the City's Plan Administrator, Great-West Retirement

Services, has implemented the Roth conversion feature with several of its governmental plan sponsor clients, and all practical/administrative issues have been resolved. Staff therefore requested that Ms. Orth draft the necessary revisions to the City's Plan Document to incorporate this feature. This language was sent to Board counsel for his review as well.

Staff is therefore recommending that the City's Plan Document, Section VI be amended to add a new Section (f) to read as follows:

(f) *In-Plan Rollovers*

A Participant or Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution from the Participant's Pre-Tax Contributions account contributed in a qualified rollover contribution (within the meaning of IRC §408A(e)) to a Post-Tax Contributions account under this Plan for the benefit of the Participant or Beneficiary to whom the distribution is made. Such in-plan rollover shall satisfy the requirements of IRC §402A(c)(4), including the requirement that the Participant or Beneficiary will have an amount included in gross income equal to the amount that would be includible if the distribution were not part of a qualified rollover contribution. A loan transferred in an in-plan rollover that does not change the loan's repayment schedule shall not be treated as a new loan for purposes of IRC §72(p).

III. Retiree Loans

Per Board direction, staff has been working with Great-West to implement loan capability for Plan participants who have retired or otherwise separated from service. The retiree loan feature will provide new flexibility for retired individuals who wish to defer distribution until a later age but may have temporary need for funds.

As an example, a retired participant in his or her mid-fifties may wish to take out a loan for the purpose of helping to pay for a child's college education, but then replenish the withdrawal so that the funds are available as an additional retirement resource in the participant's sixties or seventies. In this case, the loan feature allows the participant's Deferred Compensation Plan account to serve two purposes – as a substitute for a conventional loan in an earlier stage of life, and a retirement security resource later in life (once the loan is repaid). The table below provides a brief comparison of some of the differences for a retiree in taking a conventional lump-sum distribution vs. taking a loan:

Feature	Conventional Lump-Sum Withdrawal	Loan
<i>How Request Can Be Submitted</i>	Form (electronic option pending)	Electronically/ Phone/ Form
<i>Minimum/Maximum Amount</i>	Unlimited	Minimum is \$500; maximum is 50% of account or \$50,000, whichever is less
<i>Processing Time</i>	Several days to several weeks, depending on timing of departmental payroll termination processing	One day

<i>May Funds Be Returned to Plan?</i>	No	Yes
<i>Consequence of Not Repaying</i>	n/a	Declare outstanding loan balance as taxable distribution; if done as a default, will limit future option to take a new loan
<i>Repayment Term</i>	n/a	Up to 5 years for conventional loan, up to 15 years for home purchase loan
<i>Repayment Method</i>	n/a	Check, money order, ACH

Staff and Great-West have resolved the administrative complexities of administering loans for retired participants, which centered principally around repayment processing. Having addressed these issues, the Plan Document needs to be amended to indicate the service is offered by the Plan.

Staff is therefore recommending that the City's Plan Document, Section VIII be amended to revise Sections (a) and Section (h) (paragraphs 1, 3 and 5) to read as follows:

- (a) **Eligibility** – *Both ~~Only~~ active employee Participants in the Plan and Participants who have had a Severance from Employment may participate in the Loan Program. To be eligible for a Loan, a Participant must have a minimum account balance of \$2,000 at the time of loan initiation.*
- (h) **Payment Requirements** – *Scheduled payments for active employee Participants must be made by payroll deduction except in the cases of lump-sum correction of delinquencies as outlined in this Section or lump-sum early payoff. Payments for Participants who have had a Severance from Employment must be made by direct payment from the participant to the Administrator on no less than a monthly basis and in accordance with a payment schedule established by the Administrator. Payments may be made by cashiers check, money order, Automated Clearing House (ACH), or personal check. Payments made using personal check will restrict future distributions from the account for a period of 15 days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal. Loans will be considered to be in arrears and delinquent when any payment is missed. A late loan payment notice will be issued at the end of the calendar quarter in which the payment is delinquent. If the loan is not paid up-to-date by a lump sum payment (of the amount of the missed payment plus interest on the missed payment from the original due date to the payment date) by the end of the calendar quarter after the calendar quarter in which a payment in which a payment is first delinquent, the loan will be in default and considered a “deemed distribution.” In such cases, the outstanding loan balance, consisting of the principal and interest due under the terms of the loan, plus additional interest accruing through the date of default, will be reported to the Internal Revenue Service as income on a 1099R for the year in which the loan default occurs.*

Participants who have a Severance from Employment prior to the end of the loan term will be required to either pay off the loan at Severance from Employment or submit monthly payments in accordance with a payment schedule established by the Administrator. A former Participant may also avoid treatment of an unpaid loan as a “deemed distribution” and reporting of income to the Internal Revenue Service by paying the loan balance by the end of the grace period via lump sum payment. Non-payment will force a “deemed distribution” and reporting of income for the year in which the “deemed distribution” occurs.

Partial lump sum loan repayments, via cashiers check, personal check or money order, are permitted in order to catch up on a past-due amount or reduce the principal amount of the loan. If a Participant sends in a partial payment, the loan payment amount will not change but the loan would be paid off earlier. Repayments made using personal check will restrict future distributions from the account for a period of 15 days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal.

A draft of the full Plan Document with the proposed revisions noted in “track changes” format is attached to this report.

Submitted by: _____
Steven Montagna

Approved by: _____
Alejandrina Basquez

CITY OF LOS ANGELES DEFERRED COMPENSATION PLAN

PLAN DOCUMENT

(Adopted by the City of Los Angeles Board of Deferred Compensation Administration on November 27, 2001; revised January 29, 2002; revised February 26, 2002; revised April 29, 2003; revised March 15, 2005; revised December 20, 2005; revised June 19, 2007; revised March 18, 2008; revised August 18, 2009; revised June 21, 2011; revised December 20, 2011)

I. INTRODUCTION

Pursuant to City of Los Angeles Administrative Code Division 4, Chapter 14, the City of Los Angeles hereby establishes a §457 deferred compensation plan which shall be called the Deferred Compensation Plan (“the Plan”). This Plan has been established in accordance with the provisions of §457 and §402A of the Internal Revenue Code (“IRC”) of 1986, as amended.

II. DEFINITIONS

- (a) **“Employer”** or **“City”** means all offices, bureaus, and departments of the City of Los Angeles and includes therein departments which have control of their own definite revenues.
- (b) **“Employee”** means any full-time Employee or officer of the City or any member of one of the City’s retirement or pension plans, excluding the Pension Savings Plan, who performs services for the City.
- (c) **“Participant”** means any Employee who has fulfilled the requirements of enrollment in the Plan.
- (d) **“Beneficiary”** means any person, trust, corporation, or firm, or any combination thereof, designated by a Participant to receive benefits under the Plan or an alternate payee under a qualified domestic relations order.
- (e) **“Participation Agreement”** means the agreement filed by an Employee with the Administrator(s) in which the Employee elects to become a Participant in the Plan.
- (f) **“Compensation”** means all wages or salaries to be paid to an Employee for services rendered, including to the extent permitted

by Treasury Regulations or other similar guidance, accrued vacation and sick pay, as well as any amounts of Deferred Compensation that may be credited to the Participant's Account. Compensation shall be taken into account at its present value and its amount shall be determined without regard to any community property laws.

- (g) **"Deferred Contribution Type"** means Compensation deferred into the Plan as either a Pre-Tax Contribution or a Post-Tax Contribution.
- (h) **"Money Type"** means contributory and/or rollover amounts held within a participant's account that are required to be separately maintained under certain IRC sections. Separate accounting will be maintained for Pre-Tax Contributions and Post-Tax Contributions and their respective investment gains and losses
- (i) **"Deferred Compensation"** means that portion of an Employee's compensation which said Employee has elected to defer in accordance with the provisions of this Deferred Compensation Plan, of which Deferred Contribution Types will be designated as either a Pre-Tax Contribution or a Post-Tax Contribution, subject to the following limitations:
 - (1) The maximum amount that may be deferred under the Plan for the taxable year of a Participant shall not exceed the lesser of (A) \$11,000 for the taxable year 2002, \$12,000 for the taxable year 2003, \$13,000 for the taxable year 2004, \$14,000 for the taxable year 2005, and \$15,000 for the taxable year 2006, and as adjusted for the cost-of-living in accordance with IRC §457 (e) (15) for taxable years beginning after December 31, 2006, or (B) 100 percent of the Participant's Includible Compensation for the taxable year.
 - (2) Provided, however, that for one or more of a Participant's last three taxable years ending prior to a Participant's Normal Retirement Age, the maximum amount that may be deferred under the Plan shall be the lesser of (A) twice the dollar amount of the applicable dollar limit for that taxable year as set forth in (1) above, or (B) the sum of (i) the limitation in (1) above for the taxable year and (ii) the limitation under (1) above (or under IRC §457(b)(2) for any year prior to 2002) for any taxable year or years which began after December 31, 1978, and in which the Participant was eligible to participate in the Plan less the amount of Compensation deferred under the Plan for any such

prior taxable year or years (disregarding any deferrals permitted under Subsection (3) below). A Participant may only utilize this Subsection (2) once, whether under this Plan or any other eligible deferred compensation plan.

- (3) Individuals who are age 50 or over prior to the end of a taxable year are eligible for an additional elective deferral which shall not exceed the lesser of (A) \$1,000 for the taxable year 2002, \$2,000 for the taxable year 2003, \$3,000 for the taxable year 2004, \$4,000 for the taxable year 2005, and \$5,000 for the taxable year 2006, and as adjusted for the cost-of-living in accordance with IRC §414(v)(2) for taxable years beginning after December 31, 2006, or (B) the excess (if any) of (i) the Participant's compensation (as defined in §415(c)(3) for the year), over (ii) any other elective deferral of the Participant for such year which are made without regard to this subsection.
- (4) Notwithstanding the preceding subsections, for a Participant who is eligible for the additional elective deferrals permitted under Subsection (3) in a taxable year that is also one of the Participant's last three taxable years prior to Normal Retirement Age, the maximum amount that may be deferred under the Plan in such taxable year shall be the greater of (A) the sum of the maximum amount in effect for such taxable year under Subsection (1) and the maximum amount in effect for such taxable year under Subsection (3), or (B) the maximum amount in effect for such taxable year under Subsection (2).

A Participant's combined Pre-Tax Contributions and Post-Tax Contributions shall not exceed the limits in paragraphs (1) through (4).

- (j) **"Post-Tax Contribution"** means a Participant's elective deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Post-Tax Contributions under §402A by the Participant in his or her Participation Agreement. A Participant's Post-Tax Contributions, and any investment gains or losses thereon, will be accounted for separately from the Participant's Pre-Tax Contributions and other Money Types.
- (k) **"Pre-Tax Contribution"** means a Participant's elective deferrals that are not includible in the Participant's gross income at the time deferred. A Participant's Pre-Tax Contributions, and any investment gains or losses thereon, will be accounted for

separately from the Participant's Post-Tax Contributions and other Money Types.

- (l) **"Includible Compensation"** means compensation as determined under IRC §457(e)(5).
- (m) **"Administrator"** means the duly authorized designee contracted for that purpose to act as the employer's agent. The Board may elect to contract with one or more Administrator(s).
- (n) **"Board"** means the Board of Deferred Compensation Administration established by the City and operating according to the provisions of City Administrative Code §4.1406. The Board is responsible for administration of the Plan.
- (o) **"Normal Retirement Age"** refers to an age, designated by the Participant, which is no later than age 70 ½ and no earlier than the earliest age at which a Participant has the right to retire under the Employer's basic pension plan and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age.
- (p) **"Severance from Employment"** means the date that an Employee has terminated employment with the City, as established by a City Department pursuant to an official payroll change document or recorded in the City Controller or DWP payroll systems.
- (q) **"Eligible Retirement Plan"** means an individual retirement account described in IRC § 408(a), an individual retirement annuity described in IRC § 408(b), an annuity plan described in IRC § 403(a) that accepts the Participant's eligible rollover distribution, a qualified trust described in IRC § 401(a) (including § 401(k)) that accepts the Participant's eligible rollover distribution, a tax-sheltered annuity described in IRC § 403(b) that accepts the Participant's eligible rollover distribution, or another eligible deferred compensation plan described in IRC § 457(b) that accepts the Participant's Eligible Rollover Distribution. Effective for distributions occurring on or after January 1, 2008, 'Eligible Retirement Plan' also includes a Roth Individual Retirement Account (IRA) described in IRC § 408A. The definition in this section shall also apply in the case of an Eligible Rollover Distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order. For distributions occurring on or after January 1, 2007 for a nonspouse Beneficiary, 'Eligible Retirement Plan' means an inherited Individual Retirement Account as described in IRC § 402(c)(11). Effective for distributions of after-tax contributions (including Designated Roth Contributions) occurring on or after January 1, 2008, 'Eligible Retirement Plan' includes a qualified trust described in IRC § 401(a) maintained by a defined benefit plan or a Roth IRA described in IRC § 408A.

- (r) **“Investment Account”** or **“Account”** means the account established for a Participant pursuant to §4.1405 of the City of Los Angeles Administrative Code.
- (s) **“Eligible Rollover Distribution”** means any distribution of all or any portion of the balance to the credit of the Participant, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under IRC § 401(a)(9); any distribution that is a deemed distribution under the provisions of IRC § 72(p); and any hardship distribution made on account of an unforeseeable emergency attributable to a Participant’s Pre-Tax Contributions or Post-Tax Contributions, unless the account is eligible for distribution irrespective of the Plan’s provisions for hardship distributions.

III. PARTICIPATION IN THE PLAN

- (a) An Employee may become a Participant by filing a Participation Agreement with one or more Administrator(s) of the Plan. Compensation may be deferred for any calendar month only if a Participation Agreement has been entered into before the first day of the month in which the Compensation is paid or made available. Participants may at any time change future deferral amounts (including the reduction of deferrals to zero) or redirect future deferral amounts or existing account balances to the various Plan investment options by executing such changes with the Plan Administrator(s). All such transactions will become effective as soon as is administratively feasible. All such transactions are subject to the rules and regulations established by the Board and by the Administrator(s) and governing the particular Plan investment options involved. A former Participant of this Plan, or a former participant of another governmental deferred compensation plan, who is an employee, and who received a distribution of a ‘de minimis’ amount not exceeding Three Thousand Five Hundred Dollars (\$3,500) prior to 1997 will not be ineligible to subsequently participate in the Plan.
- (b) Each election to participate in the Plan shall specify the Deferred Contribution Type(s), the amount of deferred Compensation attributable to each Deferred Contribution Type, and the total

dollar amount of Compensation to be deferred for each payroll period. The amount to be deferred shall be deducted from the Compensation otherwise payable to the Participant, but shall not be less than fifteen dollars (\$15.00) per payroll period. Such amount must be in whole dollars and shall not exceed the limits set forth herein.

- (c) 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 shall have the power or right to sell, transfer, assign, hypothecate, or otherwise dispose of all or any part of the Investment Account or any right which the Participant may have under the Plan.

IV. DEFERRAL OF COMPENSATION

During each payroll period in which the Employee has elected to defer Compensation under a Participation Agreement, the City Controller and Department of Water and Power Payroll shall defer payment of such part of the Employee's Compensation as is specified by the employee in the Participation Agreement and deposit such funds into the Participant's Investment Account in the manner designated by Participant. Contributions can be made only through payroll deductions. Employees may not deposit funds from other savings. Contributions may only be deducted from an Employee's regular paycheck as received within the City's regular bi-weekly pay cycles. Special checks issued outside of those bi-weekly cycles may not be deferred except as part of alternative procedures which may be utilized specifically to permit deferrals of post-severance accrued leave.

V. DISTRIBUTION OF BENEFITS

(a) **Conditions for Distributions**

Payments from a Participant's § 457 Deferred Compensation Plan account to the Participant or Beneficiary shall not be made unless one of the following events occurs:

- (1) The Participant's Severance from Employment or death;

- (2) The Participant's account meets all of the requirements for an in-service *de minimis* distribution pursuant to Section V(i);
- (3) The Participant incurs an approved financial hardship pursuant to Section V(h); or
- (4) The Participant transfers an amount to a defined benefit governmental plan pursuant to Section V(j).

(b) **Severance from Employment**

Distributions to a Participant with a total § 457 Deferred Compensation account balance shall commence, following his or her Severance from Employment, on the regular distribution commencement date elected by the Participant, in a form and manner determined pursuant to Section V(c).

(c) **Distribution Methods**

In the event of a Participant's Severance from Employment, the Participant may elect to receive the full amount of Deferred Compensation credited to the Participant's Investment Account, plus or minus subsequent investment gains or losses, but less any income tax required to be withheld, in any one of the following methods and in monthly, quarterly, semi-annual and annual payment frequencies:

- (1) **Lump sum payment.** The total benefits payable in one cash payment.
- (2) **Partial lump-sum payment.** Payment of a portion of the Participant's Account.
- (3) **Periodic Payment - Fixed Term.** Amounts payable in equal installments over a period of one to thirty years, e.g. ten, fifteen, or twenty years, not to exceed the life expectancy of the Participant.
- (4) **Periodic Payment - Fixed Dollar Payment.** A fixed dollar amount payment designated by the Participant payable until the account balance is depleted over a time period not to exceed the lesser of a Participant's life expectancy or thirty years.
- (5) **Periodic Payment - Fixed Dollar Amount with Cost-of-Living-Adjustment.** A fixed dollar amount payment designated by the Participant payable until the account balance is depleted over a time period not to exceed the

lesser of a Participant's life expectancy or thirty years, with the payment amount adjusted annually for a cost-of-living-adjustment as based on any positive increase in the Los Angeles/Riverside/Orange Consumer Price Index (CPI) as published by the Federal Government. In no case shall a negative reading of the aforementioned Index result in a decrease in a Participant's annual payment.

Distributions shall be made as soon as is administratively feasible following receipt of the election form.

(d) **Changes to Distribution Elections**

A Participant may elect distribution upon his or her Severance from Employment, and may amend such election, at no cost to the Participant, not more frequently than twice per calendar year. Additional amendments of distribution elections in excess of two per calendar year may require Participant-paid fees as assessed by the Plan Administrator.

(e) **Death Benefits**

- (1) Upon the Participant's death, the Participant's remaining account balance(s) will be distributed to the Beneficiary commencing after the City and the Plan Administrator receive satisfactory proof of the Participant's death (or on the first regular distribution commencement date thereafter as the City or the Plan Administrator may establish from time to time), unless prior to such date the Beneficiary elects a deferred commencement date, in a form and manner determined pursuant to Section (V)(c) above.
- (2) If there are two or more Beneficiaries, the provisions of this section shall be applied to each Beneficiary separately with respect to each Beneficiary's share in the Participant's account.
- (3) If the Beneficiary dies after beginning to receive benefits but before the entire account balance has been distributed, the remaining account balance shall be paid to the estate of the Beneficiary in a lump sum.
- (4) Under no circumstances shall the City or the Plan be liable to the Beneficiary for the amount of any payment made in

the name of the Participant before the Administrator receives satisfactory proof of the Participant's death.

(f) **Conformance with Internal Revenue Code (IRC)**

Notwithstanding any provision of this Plan to the contrary, all distributions hereunder shall be made in accordance with IRC §401(a)(9) and the Treasury Regulations promulgated thereunder, as well as the other distribution requirements under IRC §457(d)(2) and IRC §402A. Effective January 1, 2009, a Participant or Beneficiary may elect on an individual basis to suspend all or part of the distribution that would otherwise be required by this Section (V)(f) for the 2009 distribution calendar year. Any amount that is distributed to a Participant or Beneficiary for the 2009 distribution year shall be treated as an Eligible Rollover Distribution only if it would be an Eligible Rollover Distribution without regard to the preceding sentence.

(g) **Qualified Domestic Relations Orders**

- (1) To the extent required under a final judgment, decree, or order meeting the requirements of IRC § 414(p), herein referred to as a Qualified Domestic Relations Order ("QDRO"), which is duly filed upon the City, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or a child of the Participant. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the spouse, former spouse, or child, and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the spouse, former spouse, or child making the investment selection.

Any amounts so set aside for a spouse, former spouse or a child shall be paid out in a lump sum as soon as administratively feasible following the date that the QDRO has been approved, unless the QDRO directs a different form of payment or different payment date. Withholding and income tax reporting shall be done with respect to the alternate payee under the terms of the IRC as amended from time to time.

- (2) The Plan's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse or child pursuant to this section. No amount shall be paid or set aside unless the Plan, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the Plan from any claim with respect to such amounts in any case in which the Plan has been notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant's account for a spouse, former spouse or child, and the Participant fails to obtain an order of the court in the proceeding relieving the Plan from the obligation to comply with the QDRO.
- (3) The Plan shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate any Plan provision or any provision of IRC § 457. Neither the Plan nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a Participant's benefits under the Plan unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Plan, its agents or assigns to incur such expense, the amount of the expense may be charged against the Participant's account and thereby reduce the Plan's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Plan, its agents and assigns shall be authorized to disclose information relating to the Participant's individual account to the Participant's spouse, former spouse or child (including the legal representatives of the spouse, former spouse or child), or to a court.
- (4) Notwithstanding Sections V(h) and VIII, commencing with the date that a duly-authorized representative of the Plan receives written notification of a "domestic relations order" (as defined in IRC §414(p)(1)(B)) relating to a Participant and ending on the date that such domestic relations order is approved as a QDRO (or, if earlier, the date that a duly-authorized representative of the Plan receives written notification from the Participant and the alternate payee that the parties intend not to pursue the order), the Participant to

whom the domestic relations order relates shall be prohibited from receiving a hardship withdrawal under Section V(h) or a loan under Section VIII.

- (5) A judgment, decree, or order will not fail to be a QDRO solely because it is issued after or modifies a previous judgment, decree, or order, or because of the time it is issued.

(h) **Financial Hardship**

In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to receive that part of the value of his/her Account that is reasonably needed to satisfy the emergency need by filing a written application with the Board of Deferred Compensation Administration. If such an application is approved, the Participant or Beneficiary shall be paid only such amount reasonably necessary to meet the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), but payment shall not be made to the extent that such emergency is or may be relieved through cessation of deferrals under the Plan, reimbursement or compensation from insurance or otherwise, or liquidation of the Participant's other assets to the extent that such liquidation would not itself cause severe financial hardship. An unforeseeable emergency is a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in IRC §152(a)); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in IRC §152(a)) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section, the purchase of a home and the payment of college tuition are not unforeseeable emergencies. The determination as to

whether such an unforeseeable emergency exists shall be based on the relevant facts and circumstances of each individual case. The Board shall have final authority over all applications for emergency withdrawal pursuant to this Section, except where through Board action such authority has been specifically delegated to staff or to the Board Chairperson and/or Vice-Chairperson.

(i) **De Mimos Accounts**

Notwithstanding any other provisions of the Plan to the contrary, if the total amount payable to a Participant under the Plan does not exceed Five Thousand Dollars (\$5,000) or such other amount under IRC §411(a)(11)(A) and (i) no amount has been deferred under the Plan with respect to the Participant during the two (2) year period ending on the date of the distribution, and (ii) there has been no prior distribution under the Plan to the Participant pursuant to this provision, the Participant may elect to receive a distribution or the Employer may distribute the Participant's entire account without the consent of the Participant. Such distribution shall be made in a lump sum.

(j) **Purchase of Defined Benefit Plan Service Credit**

If a Participant is also a Participant in a defined benefit governmental plan (as defined in IRC § 414(d)), such Participant may request the Plan Administrator to transfer amounts from his or her account for (i) the purchase of permissive service credit (as defined in IRC § 415(n)(3)(A)) under such plan, or (ii) a repayment to which IRC § 415 does not apply by reason of IRC § 415(k)(3). Such transfer requests shall be made directly to the defined benefit governmental plan. Post-Tax Contributions shall not be used for the purchase of permissive service credit or a repayment to a defined benefit governmental plan.

In the event that such defined benefit governmental plan determines that the transferred amount exceeds the actuarial cost of the purchased service for a Participant, due to changes in expected retirement date, eligible survivors, or other factors, the Plan Administrator shall accept a refund of the excess amount, as follows:

(1) The Plan Administrator shall not accept a refund in excess of the original amount transferred to the defined benefit governmental plan.

- (2) The excess amount shall be restored to the Participant's account in this Plan as a refund of an excess rollover amount and be ineligible for back-interest or any other retroactive valuation adjustment.
- (3) The refund of the excess rollover amount shall not count as a deferral for purposes of the annual limitations on deferrals in IRC §457(b).
- (4) If the Participant has previously received a full distribution of his or her Plan account, the Plan Administrator shall reactivate the prior account or establish a new Plan account, as necessary, for such Participant and the refund of the excess rollover amount shall be allocated to such account.
- (5) Only rollover amounts refunded pursuant to this Section shall be treated as refunds of excess rollover amounts.

(k) **Distribution of Excess Deferrals**

- (1) If the Administrator determines that the amount of a Participant's deferrals under this Plan for a taxable year, combined with the Participant's deferrals under any other eligible deferred compensation plan maintained by the City for such taxable year, exceeds the limitations on deferrals set forth in IRC §457(b) and IRC §402A and the Treasury Regulations promulgated thereunder, such excess deferral will be distributed to the Participant, with allocable net income, as soon as administratively practicable after such determination.
- (2) If the Participant provides written notification to the Administrator that the amount of the Participant's deferrals under this Plan for a taxable year, combined with the Participant's deferrals under any other eligible deferred compensation plan maintained by an employer other than the City for such taxable year, exceeds the limitations on deferrals set forth in IRC §457(b) and the Treasury Regulations promulgated thereunder, such excess deferral will be distributed to the Participant, with allocable net income, as soon as administratively practicable after such notification.

(l) Designation of Money Type

Except as provided in paragraph (j), Participants may designate a Money Type or Money Types for all Plan distributions, not including Loans. If a participant does not designate a Money Type designation, distributions shall be prorated across all Money Types, except as provided in paragraph (j).

(m) Qualified Distribution

A “qualified distribution” (as defined in IRC §402A(d)(2)) from a Participant’s Post-Tax Contributions shall not be included in the Participant’s gross income for federal income tax purposes to the extent provided in IRC §402A.

(n) Distributions for Health Insurance Premiums of Retired Public Safety Officers

Effective for distributions made after December 31, 2011, a Participant who is an eligible retired public safety officer (as defined in IRC §402(l)(4)(B)) and who has separated from service as a public safety officer with the Employer, may elect a distribution to be paid by the Plan from the Participant’s account directly to an insurer for payment of qualified health insurance premiums (as defined in IRC §402(l)(4)(D)), up to \$3,000 per taxable year (or such other limitation prescribed in IRC §402(l)(2)). Such election shall be made in accordance with procedures established by the Plan Administrator(s).

VI. TRANSFERS AND ROLLOVERS

- (a) **Transfers to the Plan.** If the Participant was formerly a participant in an eligible deferred compensation plan maintained by another governmental employer, and if such plan permits the direct transfer of the Participant’s interest therein to the Plan, then the Plan shall accept assets representing the value of such interest; provided, however, that the Participant has had a severance from employment with that prior employer, become an Employee of the City and established an Account with this Plan. The Board may require such documentation from the predecessor plan as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of IRC § 457, that such plan is maintained by a governmental employer, and to assure that transfers are provided under such plan. The Plan shall establish and maintain separate accounting for any eligible rollover

distribution paid to the Plan from any eligible governmental plan under IRC §457(b). The Plan shall separately account for any Post-Tax Contributions paid to the Plan from any eligible retirement plan that is an eligible governmental plan under IRC §457(b). If the Participant was formerly a participant in the City of Los Angeles Pension Savings Plan (whether or not he or she has had a Severance from Employment), then the Plan shall accept, in a direct transfer, assets representing the value of the Participant's interest in the City of Los Angeles Pension Savings Plan; provided, however, that the Participant has established an Account with this Plan.

Amounts transferred pursuant to this Section shall be held, accounted for, administered and otherwise treated in the same manner as Compensation deferred by the Participant under this Plan except that such amounts shall not be considered Compensation deferred under the Plan in the taxable year of such transfer in determining the maximum deferral under Article II.

- (b) **Transfers From the Plan.** If a Participant has a Severance from Employment and begins performing services for another governmental employer maintaining an eligible deferred compensation plan which provides for the receipt of transfers, and provided that payments under this Plan have not begun, such Participant may request a transfer of all or a portion of his or her account to the eligible deferred compensation plan of the other governmental employer. If a Participant becomes a participant in the City of Los Angeles Pension Savings Plan (whether or not he or she has had a Severance from Employment), and provided that payments under this Plan have not begun, such Participant may request a transfer of all or a portion of his or her account to the City of Los Angeles Pension Savings Plan.

Requests for transfers must be made to the Plan Administrator. If an amount is to be transferred pursuant to this provision, the Plan Administrator shall transfer such amount directly to the eligible deferred compensation plan of the other employer, and the value of the amount transferred immediately after the transfer shall be at least equal to the value of the amount transferred immediately before the transfer. Amounts transferred to another eligible deferred compensation plan shall be treated as distributed from this Plan and this Plan shall have no further responsibility to the Participant or any Beneficiary with respect to the amount transferred.

No transfers shall be made from a Participant's Post-Tax Contributions unless the receiving plan allows Post-Tax contributions under IRC §402A.

- (c) **Rollovers to Plan.** The Plan shall accept a rollover contribution on behalf of a Participant or Employee who may become a Participant and maintains an account with the City's Plan. A rollover contribution for purposes of this subsection is an Eligible Rollover Distribution from any (i) plan qualified under IRC § 401(a) or §403(a); (ii) tax-sheltered annuity or custodial account described in IRC § 403(b); (iii) individual retirement account or annuity described in IRC § 408; or (iv) eligible deferred compensation plan described in IRC § 457(b). The Plan shall establish and maintain for the Participant separate accounting for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC §457(b). The Plan shall establish and maintain separate accounting for any Post-Tax Contributions paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC §457(b). Prior to accepting any rollover contribution, the Administrator may require that the Participant or Employee establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of the IRC. A Participant's rollover contribution shall be held in a separate rollover account or accounts, as the Administrator shall determine from time to time and to the extent required or permitted by Treasury Regulations or other similar guidance, and may involve additional administrative fees as designated by the Plan Administrator.
- (d) **Rollovers from Plan.** To the extent administratively practicable, a Participant or Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant or Beneficiary in a direct rollover.
- (e) **Payments.** Payments from a Participant's rollover account(s) may be made at any time.

(f) In-Plan Rollovers

A Participant or Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution from the Participant's Pre-Tax Contributions account contributed in a qualified rollover contribution (within the meaning of IRC §408A(e)) to a Post-Tax Contributions account under this Plan for the

Formatted: Bullets and Numbering

benefit of the Participant or Beneficiary to whom the distribution is made. Such in-plan rollover shall satisfy the requirements of IRC §402A(c)(4), including the requirement that the Participant or Beneficiary will have an amount included in gross income equal to the amount that would be includible if the distribution were not part of a qualified rollover contribution. A loan transferred in an in-plan rollover that does not change the loan's repayment schedule shall not be treated as a new loan for purposes of IRC §72(p).

VII. BENEFICIARIES

Each Participant shall have the right to designate a Beneficiary or Beneficiaries, including contingent Beneficiaries, to receive any benefits which may be payable under the Plan upon the death of such Participant. The designation may be made, and may be revoked or changed, only by a written instrument (in form acceptable to the Board of Deferred Compensation Administration and the Administrator) signed by the Participant and filed with the Administrator before his or her death. In the absence of a designation and at any other time when there is no existing Beneficiary designated by the Participant, the Participant's Beneficiary shall be his or her spouse or registered domestic partner, living 30 days after the date of Participant's death, or if not, his or her children (by blood or adoption) equally (with children of a deceased child to share equally the share of such deceased child). If a Beneficiary cannot be determined pursuant to the preceding sentence, the Beneficiary shall be the Participant's estate.

VIII. LOAN PROGRAM

A Loan Program is hereby established for the Plan, the effective date for which will be the earliest date that all administrative and operational requirements for such program have been met. The Loan Program shall operate under the following requirements:

- (a) **Eligibility** – ~~Both Only~~ active employee Participants in the Plan and Participants who have had a severance from employment may participate in the Loan Program. To be eligible for a Loan, a Participant must have a minimum account balance of \$2,000 at the time of loan initiation.
- (b) **Minimum and Maximum Loan Amounts** – The minimum loan amount available to a Participant for a loan is \$1,000. The maximum loan amount available is \$50,000, reduced by the

highest outstanding loan balance during the past twelve months, or 50% of the account balance, whichever is less.

- (c) **Number of Loans Permitted** – Participants are only permitted to have two loans outstanding. If a Participant has two outstanding loans and wishes to initiate another loan, the Participant must first repay at least one of the current outstanding loans in full.
- (d) **Cost** – Each Participant will be required to pay a loan origination fee and ongoing maintenance fee as established by the Plan recordkeeper and approved by the Board. Loan recipients will be required to bear the full cost of the Loan Program.
- (e) **Distribution of Loan Amount** – Loan distribution amounts will be prorated across all Money Types and all available Core investment options excluding the brokerage window.
- (f) **Types of Loans Available:**
 - (i) General Purpose Loan – A General Purpose Loan will have a duration of one to five years as designated by the Participant at the time of loan application. No reason or documentation will be required other than a signed promissory note. The interest rate for this loan type will be fixed for the life of the loan. The interest rate will be 2% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.
 - (ii) Principal Residence Loan – A Principal Residence Loan will have a duration of one to fifteen years as designated by the Participant at the time of loan application. This loan may be utilized only for the purchase of a primary residence. The interest rate for this loan type will be 2% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.
- (g) **Interest** – Interest paid on loans is not deductible.
- (h) **Payment Requirements** – Scheduled payments for active employee Participants must be made by payroll deduction except in the cases of lump-sum correction of delinquencies as outlined in this Section or lump-sum early payoff. Payments for Participants who have had a severance from employment must be made by direct payment from the Participant to the Administrator on no less than a monthly basis and in accordance with a payment schedule established by the Administrator. Payments may be made

by cashiers check, money order, Automated Clearing House (ACH), or personal check. Payments made using personal check will restrict future distributions from the account for a period of 15 days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal. Loans will be considered to be in arrears and delinquent when any payment is missed. A late loan payment notice will be issued at the end of the calendar quarter in which the payment is delinquent. If the loan is not paid up-to-date by a lump sum payment (of the amount of the missed payment plus interest on the missed payment from the original due date to the payment date) by the end of the calendar quarter after the calendar quarter in which a payment in which a payment is first delinquent, the loan will be in default and considered a “deemed distribution.” In such cases, the outstanding loan balance, consisting of the principal and interest due under the terms of the loan, plus additional interest accruing through the date of default, will be reported to the Internal Revenue Service as income on a 1099R for the year in which the loan default occurs.

Despite any grace periods permitted with respect to late loan payments, if a loan has not been fully repaid by the end of its term, the outstanding balance will be treated as a “deemed distribution” and reported to the Internal Revenue Service as income. Thereafter no further efforts will be made at correction or accrual of interest liability. If the Participant has a loan that defaulted at any time in the past, they will not be eligible to take out subsequent loans.

Participants who have a Severance from Employment prior to the end of the loan term will be required to either pay off the loan at Severance from Employment or submit monthly payments in accordance with a payment schedule established by the Administrator. A former Participant may also avoid treatment of an unpaid loan as a “deemed distribution” and reporting of income to the Internal Revenue Service by paying the loan balance by the end of the grace period via lump sum payment. Non-payment will force a “deemed distribution” and reporting of income for the year in which the “deemed distribution” occurs.

The Participant’s outstanding loan balance will be offset upon receiving any type of distribution after Severance from Employment. As required by federal tax regulations, the defaulted loan of a Participant will remain recorded until a qualifying event occurs, even though income has been reported to the Internal Revenue Service.

Partial lump sum loan repayments, via cashiers check, personal check or money order, are permitted in order to catch up on a past-due amount or reduce the principal amount of the loan. If a Participant sends in a partial payment, the loan payment amount will not change but the loan would be paid off earlier. Repayments made using personal check will restrict future distributions from the account for a period of 15 days to ensure fund availability. Certified methods of repayment will be immediately available for withdrawal.

Formatted: Font: Bookman Old Style, 12 pt

Formatted: Font: Bookman Old Style, 12 pt

- (i) **Leave of Absence** – If a Participant who has an outstanding loan incurs an authorized leave of absence, ceases loan repayment, and his or her rate of pay (after income and employment tax withholding) is not sufficient to meet the required repayment under the terms of the loan, then the loan will not be deemed in default for a period equal to the lesser of (A) the length of the leave of absence, or (B) one year, as long as the loan (including interest that accrues during the leave of absence) is repaid by the latest permissible term of the loan and the amount of the installments due after the leave of absence ends is not less than the amount required under the terms of the original loan. Notwithstanding the preceding provisions, loan repayments during a period of military service will be suspended under this Plan as permitted under IRC §414(u)(4). . In accordance with IRC §414(u), a loan suspended because of military service will not be deemed in default even if the suspension exceeds one year, as long as loan repayments resume upon completion of the military service and the loan (including interest that accrues during the military leave) is repaid by the end of the period equal to the sum of the latest permissible term of the loan plus the period of military service.
- (j) **Compliance** – The Loan Program established under the Plan is intended to comply with the requirements of IRC §72(p) and §457 and the Treasury Regulations promulgated thereunder.

IX. AMENDMENT OF PLAN DOCUMENT

The Board may amend the Plan Document at any time consistent with applicable law and consistent with the governing provisions of the Plan as contained in the City of Los Angeles Administrative Code.

X. SELECTION OF CONTRACTORS/PLAN DESIGN

Pursuant to Los Angeles Administrative Code §4.1406, the Board has the authority to contract for Plan administration, investments, consulting services, auditing services and all other functions related to administration/oversight of the Plan. The Board has the authority to periodically review the structure of the City's Plan for the purpose of determining and implementing Plan design changes.

XI. MISCELLANEOUS

- (a) Any written notice required or permitted under the Plan, if directed to the City, 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 City's records.
- (b) Deductions for employee contributions to all City retirement plans shall be made without reference to amounts deferred pursuant to this Plan and shall be based upon the gross salary the Participant would receive if the Participant had not elected to defer income.
- (c) Each Participant in the Plan shall be deemed to have waived any rights to periodic payments of salaries or wages pursuant to the provisions of the Charter concerning periodic payment of salaries or wages to officers and Employees of the City.
- (d) Qualified Military Service. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with IRC §414(u). In accordance with IRC §414(u), an Employee who is reemployed by the City after a period of "qualified military service" (as defined in IRC §414(u)(5)) shall be permitted to defer additional compensation up to the maximum amount that the Employee would have been permitted to defer under the Plan (in accordance with the limitations set forth in Section II(g)) during the period of qualified military service if he or she had continued to be employed by the City during such period. Such an Employee shall be permitted to defer compensation, and to specify Deferred Contribution Type(s), with respect to the period of qualified military service during the period which begins on the date of reemployment with the City and has the same length as the lesser of (1) the product of three and the period of qualified military service; or (2) five years. For purposes of the definition of "Includible Compensation" in Section II(h), an Employee who is in qualified military service shall be treated as receiving compensation from the City during such period of qualified military service equal to (1) the compensation the Employee would

have received during such period if he or she were not in qualified military service, based on the rate of pay the Employee would have received from the City but for his or her absence during the period of qualified military service; or (2) if the compensation the Employee would have received during such period is not reasonably certain, the Employee's average compensation from the City during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment preceding the qualified military service). Should a Participant die while performing qualified military service after December 31, 2006, such Participant's Beneficiaries are entitled to receive any additional Plan benefits (other than contributions) that would have been provided had the Participant resumed employment with the City and then terminated employment on account of death.