

**THE CITY OF PHOENIX
DEFERRED COMPENSATION PROGRAM
PLAN DOCUMENT AND TRUST**

(Effective September 2, 2004)

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In accordance with Chapter 2, Article 35, Phoenix City Code (as the same may be amended from time to time), and as provided in Section 457 of the Internal Revenue Code of 1986, as amended, the City of Phoenix, Arizona, hereby adopts the City of Phoenix Deferred Compensation Program (hereinafter referred to as the "PLAN"). The PLAN consists of the provisions set forth in this document, and is applicable to each PUBLIC EMPLOYEE who participates in the PLAN. The PLAN is effective as to each such PUBLIC EMPLOYEE upon the date such PUBLIC EMPLOYEE becomes a PARTICIPANT by executing with the ADMINISTRATOR the PARTICIPATION AGREEMENT referred to herein or when the CITY contributes FRINGE amounts to the PLAN on behalf of the PUBLIC EMPLOYEE.

ARTICLE I

Definitions

- 1.01. The following terms shall, for purposes of this PLAN, have the meaning set forth below.
- (a) ADMINISTRATOR means the person, department, agency or organization appointed by the EMPLOYER to administer the PLAN.
 - (b) ALTERNATE PAYEE means a person entitled to receive a benefit under the PLAN through a community property distribution order.
 - (c) BENEFICIARY means the person or entity properly designated by a PARTICIPANT pursuant to the rules and procedures established by the ADMINISTRATOR to receive the PARTICIPANT'S benefits under this PLAN.
 - (d) BOARD means the City of Phoenix Deferred Compensation Management Board for the PLAN or its designee.
 - (e) CITY means the City of Phoenix, Arizona, a body politic, or any agencies, departments, subdivisions or instrumentalities thereof.
 - (f) COMPENSATION means all payments made to an EMPLOYEE by the EMPLOYER as remuneration for services rendered, including salaries and fees.
 - (g) DEFERRED COMPENSATION means the amount of COMPENSATION that a PARTICIPANT elects to defer into the PLAN, including amounts deferred pursuant to a PARTICIPATION AGREEMENT and FRINGE amounts contributed to the PLAN on behalf of the PARTICIPANT.
 - (h) DEFERRED COMPENSATION ACCOUNT means the separate bookkeeping account maintained by the ADMINISTRATOR within the PLAN for a PARTICIPANT for amounts of COMPENSATION deferred into the PLAN.
 - (i) ELIGIBLE RETIREMENT PLAN means an ELIGIBLE RETIREMENT PLAN as defined in IRC Section 402(c)(8)(B).

- (j) ELIGIBLE ROLLOVER ACCOUNT means the separate bookkeeping account maintained by the ADMINISTRATOR within the PLAN for a PARTICIPANT for amounts of ELIGIBLE ROLLOVER DISTRIBUTIONS.
- (k) ELIGIBLE ROLLOVER DISTRIBUTIONS means an ELIGIBLE ROLLOVER DISTRIBUTION as defined in IRC Section 402(c)(4), including ELIGIBLE ROLLOVER DISTRIBUTIONS to a surviving spouse under IRC Section 402(c)(9).
- (l) EMPLOYEE or PUBLIC EMPLOYEE means any person, including elected or appointed officials or INDEPENDENT CONTRACTORS, receiving any type of COMPENSATION from the EMPLOYER or any agencies, departments, subdivisions or instrumentalities thereof, for services rendered.
- (m) EMPLOYER means the City of Phoenix, a body politic, or any agencies, departments, subdivisions or instrumentalities thereof, for which services are rendered by a PARTICIPANT.
- (n) FRINGE means the amount contributed by the CITY to the PLAN on behalf of a PARTICIPANT.
- (o) INCLUDIBLE COMPENSATION has the meaning given to the term 'participant's compensation' by IRC section 415(c)(3).
- (p) INDEPENDENT CONTRACTOR means any person receiving any type of COMPENSATION from the EMPLOYER or any of its agencies, departments, subdivisions or instrumentalities for which services are rendered pursuant to one or more written or oral contracts, if such person is not an EMPLOYEE.
- (q) IRC means the Internal Revenue Code of 1986, as now in effect or as hereafter amended.
- (r) NORMAL RETIREMENT AGE means age 70 ½ unless an alternate NORMAL RETIREMENT AGE is designated by the PARTICIPANT. If a PARTICIPANT elects an alternate NORMAL RETIREMENT AGE, the PARTICIPANT must designate such alternate NORMAL RETIREMENT AGE by written instrument to the ADMINISTRATOR prior to a SEVERANCE FROM EMPLOYMENT, and such alternate NORMAL RETIREMENT AGE must be between (i) the earliest age at which the PARTICIPANT has the right to retire and receive, under the basic defined benefit pension plan of the EMPLOYER, immediate retirement benefits without actuarial or similar reduction because of early retirement, or, if there is no such plan, age 65, and (ii) age 70 ½; provided, however, that the PARTICIPANT'S election to defer amounts in excess of the maximum deferral allowed by Section 2.04 but within the Special 457 Catch-Up permitted by Section 2.06 shall constitute a designation of an age pursuant to this section.
- (s) ORDER means judgment, decree or order entered or enforceable against a PARTICIPANT'S account pursuant to local domestic relations or community property law.
- (t) PARTICIPANT means any PUBLIC EMPLOYEE who is or has been eligible to defer COMPENSATION under the PLAN and who participates under the PLAN by signing the PARTICIPATION AGREEMENT or who has FRINGE amounts contributed to the PLAN on his or her behalf by the CITY and who retains rights to benefits under the PLAN.
- (u) PARTICIPATION AGREEMENT means the agreement executed by an EMPLOYEE with the ADMINISTRATOR for purposes of participating in the PLAN.

- (v) PLAN means the City of Phoenix Deferred Compensation Program as set forth in this document and as it may be amended from time to time.
- (w) PLAN YEAR means the calendar year.
- (x) SEVERANCE FROM EMPLOYMENT means the severance of a PARTICIPANT'S employment with the EMPLOYER, as defined by IRC 457(d)(1)(A), or on account of the PARTICIPANT'S death or retirement. An INDEPENDENT CONTRACTOR is considered to have a SEVERANCE FROM EMPLOYMENT with the EMPLOYER upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the EMPLOYER if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration does not constitute a good-faith and complete termination of the contractual relationship if the EMPLOYER anticipates a renewal of the contractual relationship or the INDEPENDENT CONTRACTOR becoming an employee. The EMPLOYER is considered to anticipate the renewal of the contractual relationship with an INDEPENDENT CONTRACTOR if the EMPLOYER intends to contract again for the services provided under the expired contract and neither the EMPLOYER nor the INDEPENDENT CONTRACTOR has eliminated the INDEPENDENT CONTRACTOR as a possible provider of services under any such new contract. The EMPLOYER is considered to intend to contract again for the services provided under an expired contract if the EMPLOYER'S doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.

With respect to amounts payable to a PARTICIPANT who is an INDEPENDENT CONTRACTOR:

(1) No amount will be paid to the PARTICIPANT before a date at least 12 months after the day on which the contract expires under which services are performed for the EMPLOYER (or, in the case of more than one contract, all such contracts expire); and

(2) No amount payable to the PARTICIPANT on that date will be paid to the PARTICIPANT if, after the expiration of the contract (or contracts) and before that date, the PARTICIPANT performs services for the EMPLOYER as an INDEPENDENT CONTRACTOR or an EMPLOYEE.

- (y) TRUSTEE means the EMPLOYER or such other individual or individuals duly appointed by the EMPLOYER to hold the PLAN'S assets in trust or a custodial account.
- (z) UNFORESEEABLE EMERGENCY means a severe, unforeseeable 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 Section 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 or extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the PARTICIPANT or BENEFICIARY.
- (aa) USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law No. 103-353, codified at Title 38, Chapter 43 of the United States Code.

ARTICLE II

Participation in the PLAN and Deferrals

- 2.01. An EMPLOYEE may become a PARTICIPANT in this PLAN by executing the PARTICIPATION AGREEMENT and consenting to a reduction of COMPENSATION by the amount specified in the PARTICIPATION AGREEMENT. The amount of the reduction (“deferred amount”) must equal at least \$5.00 per pay period. An EMPLOYEE also becomes a PARTICIPANT in this PLAN when the CITY contributes FRINGE amounts into the PLAN on behalf of the EMPLOYEE.
- 2.02. The EMPLOYER shall commence the reduction no earlier than the first pay date during the first month after the date on which the PARTICIPATION AGREEMENT is filed with the ADMINISTRATOR.
- 2.03. (a) The PARTICIPANT may revoke an election to participate or may amend the amount of COMPENSATION to be deferred by executing with the ADMINISTRATOR a revocation or amendment on a form or in the procedural manner approved by the ADMINISTRATOR. In addition, the PARTICIPANT may amend the PARTICIPANT’S investment specification in the procedural manner approved by the ADMINISTRATOR. Any amendment which increases the amount deferred for any pay date shall be effective only if an agreement providing for such additional deferred amount is entered into before the beginning of the month in which the pay date occurs, subject to the provisions of section 2.08. Any revocation or amendment of the amount deferred shall be effective prospectively only. Any change in the PARTICIPANT’S investment specification by the PARTICIPANT, whether it applies to amounts previously deferred or amounts to be deferred in the future shall be effective prospectively only and shall be effective on a date consistent with the rules and specifications of the investment provider and subject to any rules or procedures established pursuant to Section 10.02.
- (b) After the death of the PARTICIPANT, the BENEFICIARY thereof shall have the right to amend the PARTICIPANT’S or the BENEFICIARY’S own investment specification by executing with the ADMINISTRATOR an amendment on a form and in the procedural manner approved by the ADMINISTRATOR. Any change in an investment specification by a BENEFICIARY shall be effective on a date consistent with the rules and specifications of the investment carrier and subject to any rules or procedures established pursuant to Section 10.02.
- 2.04. Except as provided in Sections 2.05 and 2.06, the maximum deferred amount under the PLAN for the PARTICIPANT’S taxable year shall not exceed the lesser of (a) the maximum dollar amount under IRC Section 457(b)(2)(A) as adjusted for cost of living adjustments described in IRC Section 457(e)(15) or (b) 100% of the PARTICIPANT’S INCLUDIBLE COMPENSATION as provided in IRC Section 457(b)(2)(B).
- 2.05. Age 50+ Catch-Up. The maximum deferral amount described in Section 2.04 under the PLAN for the PARTICIPANT’S taxable year is increased for a PARTICIPANT who has attained age 50 or over by the end of the taxable year. This additional Age 50+ Catch-up amount permitted under this section is the lesser of (a) the applicable dollar amount set forth in IRC Section 414(v)(2)(B) or (b) the PARTICIPANT’S COMPENSATION for the taxable year reduced by any other elective deferrals of the PARTICIPANT for the taxable year. This Section shall not be applicable for any taxable year for which a higher limitation applies under the Special 457 Catch-Up amount described in Section 2.06.
- 2.06. Special 457 Catch-Up. For one or more of the PARTICIPANT’S last three taxable years ending before the attainment of NORMAL RETIREMENT AGE under the PLAN, the maximum deferral shall be the lesser of (a) twice the maximum deferral dollar amount in effect under IRC Section 457(b)(2)(A), or (b) the limitation established for the taxable year under Section 2.04 plus the

limitation established for purposes for Section 2.04 for each of the prior taxable years beginning after December 31, 1978, during which the PARTICIPANT was eligible to participate less the amount of COMPENSATION deferred under the PLAN or other eligible deferred compensation plans for each of such prior taxable years

Provided, however, that this Special 457 Catch-up shall not apply with respect to any PARTICIPANT who has previously utilized in whole or in part such Special 457 Catch-Up provision under this PLAN or under any other eligible deferred compensation plan (within the meaning of Section 457 of the IRC and the regulations thereunder). If a PARTICIPANT is eligible for the Age 50+ Catch-Up described in Section 2.05 for a year that is also one of the PARTICIPANT'S last three taxable years ending before the PARTICIPANT attains NORMAL RETIREMENT AGE, the PARTICIPANT is eligible for the larger of the Age 50+ Catch-up described in Section 2.05 or the Special 457 Catch-Up described in this Section.

- 2.07. Notwithstanding the preceding provisions of Article II, a PARTICIPANT who is entitled to reemployment pursuant to the terms of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) may defer an additional amount under the PLAN as provided in that act for the years of his or her service in the uniformed services (as defined in USERRA). Any such deferrals will not be subject to the limits set forth above in the year in which deferred, but will be subject to the limits for the year to which such deferrals relate.
- 2.08. Sick, Vacation and Back Pay – An eligible PARTICIPANT may elect to defer accumulated sick pay, accumulated vacation pay or back pay to the PLAN provided that the agreement providing for the deferral of such amounts is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the PARTICIPANT is an EMPLOYEE in that month. For PARTICIPANTS who are retiring or severing employment, the agreement to defer such accumulated amounts may be entered into in the same month that these accumulated amounts are paid or made available provided that (1) the agreement is entered into before the amount is currently available (as defined in regulations under Section 401(k) of the Code); and (2) these accumulated amounts would otherwise be payable or made available prior to the actual date of PARTICIPANT'S severance from employment. Such a special deferral may not be made in any amount that would cause the PARTICIPANT to exceed the limits on annual deferrals expressed in section 457 and this Article.
- 2.09. Excess Deferrals. It shall be the responsibility of the PARTICIPANT to ensure that he or she does not exceed PLAN deferral limits and individual deferral limits. If the PLAN receives deferrals that are determined to be in excess of PLAN deferral limits, the ADMINISTRATOR shall distribute any amounts in excess of the PLAN limits plus allocable net earnings to the PARTICIPANT as soon as administratively practicable.

ARTICLE III

EMPLOYER Contributions

The EMPLOYER may contribute FRINGE amounts to the PLAN for PARTICIPANTS. Such FRINGE contributions shall vest at the time such contributions are made. For purposes of administering Sections 2.04, 2.05, 2.06, and 2.08, FRINGE contributions shall apply toward the maximum deferral limits in the PLAN YEAR that such contributions are made.

ARTICLE IV

PLAN Transfers and ELIGIBLE ROLLOVER DISTRIBUTIONS

- 4.01. A PARTICIPANT or BENEFICIARY may transfer his account balance from the PLAN to another eligible governmental plan (as defined in IRC Section 457) on the following conditions:
- a) The receiving plan provides for the receipt of such transfers;
 - b) The PARTICIPANT or BENEFICIARY whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that PARTICIPANT or BENEFICIARY immediately before the transfer; and
 - c) In the case of a transfer for a PARTICIPANT, the PARTICIPANT has had a SEVERANCE FROM EMPLOYMENT with the EMPLOYER and is performing services for the entity maintaining the receiving plan.
- 4.02. The PLAN may receive an ELIGIBLE ROLLOVER DISTRIBUTION on behalf of a PARTICIPANT from an ELIGIBLE RETIREMENT PLAN provided (a) the ELIGIBLE ROLLOVER DISTRIBUTION is made entirely in the form of U. S. dollars, and (b) the PARTICIPANT demonstrates to the ADMINISTRATOR'S satisfaction that the amount is a qualifying ELIGIBLE ROLLOVER DISTRIBUTION under IRC Section 402(c)(4), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16). Upon receipt of an ELIGIBLE ROLLOVER DISTRIBUTION, the ADMINISTRATOR shall establish an ELIGIBLE ROLLOVER ACCOUNT in the name of the PARTICIPANT to hold such amounts. The ADMINISTRATOR shall establish, if applicable, one separate ELIGIBLE ROLLOVER ACCOUNT to hold rollovers that originated from IRAs, qualified plans and section 403(b) contracts and one separate ELIGIBLE ROLLOVER ACCOUNT to hold rollovers from other eligible governmental 457 plans. The separate ELIGIBLE ROLLOVER ACCOUNT for rollovers from other eligible governmental 457 plans shall exclude those amounts that originated from IRAs, qualified plans and section 403(b) contracts.
- 4.03. Subject to Section 9.01, a PARTICIPANT 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, provided the PARTICIPANT presents to the satisfaction of the ADMINISTRATOR a letter of acceptance or other written acknowledgment from the accepting PLAN that is an ELIGIBLE RETIREMENT PLAN qualified to accept the ELIGIBLE ROLLOVER DISTRIBUTION.
- 4.04. A PARTICIPANT may use all or a portion of an account balance as a direct trustee-to-trustee transfer to a Retirement System to purchase permissive service credit or for the repayment of service credits, provided that (a) the Retirement System permits such a transfer, and (b) the PARTICIPANT demonstrates to the ADMINISTRATOR'S satisfaction that the transfer is a defined benefit governmental plan (as defined in IRC Section 414(d)) and the transfer is permissible for the purchase of service credit (as defined in Code Section 415(n)(3)(A)) for the repayment of service credits permissible by IRC Section 415(k)(3).

ARTICLE V

Designation of BENEFICIARY

The PARTICIPANT shall have the right to file, with the ADMINISTRATOR, a written BENEFICIARY or change of BENEFICIARY form designating the person, persons, or entity who shall receive the benefits payable under this PLAN in the event of the PARTICIPANT'S death. The form for this purpose shall be

provided by the ADMINISTRATOR and will have no effect until it is signed, filed with the ADMINISTRATOR by the PARTICIPANT, and accepted by the ADMINISTRATOR prior to the PARTICIPANT'S death. If the PARTICIPANT dies without having a BENEFICIARY form on file, the benefits will be paid to the PARTICIPANT'S estate. The PARTICIPANT accepts and acknowledges that he has the burden for executing and filing with the ADMINISTRATOR a proper BENEFICIARY designation form.

ARTICLE VI

Accounts and Reports

- 6.01. For convenience and to facilitate an orderly administration of the PLAN, the ADMINISTRATOR shall maintain a DEFERRED COMPENSATION ACCOUNT with respect to each PARTICIPANT. A written report of the status of the PARTICIPANT'S account shall be mailed to the PARTICIPANT within fifteen (15) calendar days following the end of each calendar year quarterly period.
- 6.02. Within thirty (30) calendar days following the end of each calendar year quarterly period, the ADMINISTRATOR shall file with the BOARD a written report of the assets of the PLAN, a schedule of all receipts and disbursements, and a report of all material transactions of the PLAN during the preceding quarter.
- 6.03. The ADMINISTRATOR'S records shall be open to inspection during normal business hours by the BOARD or any PARTICIPANT, or their designated representative.
- 6.04. All reports to the PARTICIPANT shall be based on fair market value as of the reporting date.

ARTICLE VII

Trust Provisions

- 7.01. Trust. A Trust is hereby created to hold all the assets of the PLAN for the exclusive benefit of PARTICIPANTS and BENEFICIARIES.
- 7.02. Trust Provisions:
 - a. Trustee. The Trustee shall be the EMPLOYER or such other individual or individuals duly appointed and authorized by the EMPLOYER.
 - b. Adoption of Investment Options. The TRUSTEE or the EMPLOYER shall work with the ADMINISTRATOR to adopt various investment options for the investment of PLAN assets. Additionally, the TRUSTEE or the EMPLOYER shall monitor and evaluate the appropriateness of those offerings by the PLAN. The TRUSTEE or the EMPLOYER may de-select options that are determined to be no longer appropriate for offering. In the event options are de-selected, the TRUSTEE or EMPLOYER may move, or require PARTICIPANTS to move, account balances to an alternative investment option offered by the PLAN. By exercising such right to select investment options or by failing to respond to notice to transfer from a de-selected option, PARTICIPANTS and their BENEFICIARIES agree that no PLAN fiduciaries will be liable for any investment losses or lost investment opportunity under the PLAN.
 - c. Designation of Fiduciaries. The EMPLOYER, TRUSTEE, and their designees are fiduciaries under the PLAN. Each fiduciary has only those duties or responsibilities

specifically assigned to him under the PLAN or delegated to him in writing by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction or information. Except as provided by law, no fiduciary will be responsible for the malfeasance, misfeasance or nonfeasance of any other fiduciary.

- d. Fiduciary Standards.
 - 1. The TRUSTEE and all other fiduciaries shall discharge their duties with respect to this PLAN solely in the interest of the PARTICIPANTS and BENEFICIARIES of the PLAN. Such duties shall be discharged for the exclusive purpose of providing benefits to the PARTICIPANTS AND BENEFICIARIES and defraying expenses of the PLAN.
 - 2. All fiduciaries shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and as defined by applicable state law.
- e. Trustee's Powers and Duties. The TRUSTEE'S powers and duties shall be those defined under applicable state law.
- f. Exempt Status. This PLAN and Trust is intended to be exempt from taxation under Section 501(a) of the IRC and is intended to comply with Section 457(g) of the Code. The TRUSTEE shall be empowered to submit or designate appropriate agents to submit this PLAN and Trust to the Internal Revenue Service for a determination of the eligibility of the PLAN under Section 457, and the exempt status of the Trust under Section 501(a).

ARTICLE VIII

Investment of Deferred Amount

- 8.01. The deferred amounts shall be delivered by the EMPLOYER to the ADMINISTRATOR or its designated agent for investment as designated by the BOARD as soon as administratively practicable.
- 8.02. The BOARD will, in its sole discretion, select certain investment options to be used in determining income to be accrued on deferrals. These investment options may include: (a) a fixed rate of interest, (b) specified mutual fund shares, (c) specified deposits with a credit union, savings and loan association or bank, (d) specifically equity or debt securities (for example, specified stocks and bonds), (e) specified annuity contracts, or (f) other such investment options as designated by the BOARD. Each PARTICIPANT will designate on the PARTICIPATION AGREEMENT the investment option(s) that will be used to determine the income to be accrued on amounts deferred by the PARTICIPANT. If the PARTICIPANT fails to designate an investment option for amounts deferred, including FRINGE amounts, these amounts will be deferred into the default investment option as determined by the BOARD.
- 8.03. The BOARD shall invest the deferred amounts pursuant to the PARTICIPANT'S or BENEFICIARY'S investment option specifications and in accordance with the rules and procedures established by the BOARD.

- 8.04. All interests, dividends, charges for premiums and administrative expenses, and changes in value due to market fluctuations applicable to each PARTICIPANT'S DEFERRED COMPENSATION ACCOUNT shall be credited or debited to the account as they occur.
- 8.05. The BOARD may from time to time change the investment options under the PLAN. If the BOARD eliminates a certain investment option, all PARTICIPANTS who had chosen that investment may select another option; the PARTICIPANTS will have no right to require the BOARD to select another option; the PARTICIPANTS will have no right to require the BOARD to select or retain any investment option. A PARTICIPANT may from time to time (whether before or after payments have commenced under the PLAN) change PARTICIPANT'S choice of investment options. Any change with respect to investment options made by either the BOARD or a PARTICIPANT, however, may affect only income to be accrued after that change

ARTICLE IX

Benefits

- 9.01. Commencement of Distributions. Except for UNFORESEEABLE EMERGENCY withdrawals under Section 9.04, Distributions of Smaller Accounts under Section 9.05 and Distributions of ELIGIBLE ROLLOVER ACCOUNTS under Section 9.06 distributions from the PLAN shall be made to a PARTICIPANT on (a) the calendar year in which the PARTICIPANT attains age 70 ½; or (b) when there is a SEVERANCE FROM EMPLOYMENT by the PARTICIPANT, whichever is later. All irrevocable elections of a Benefit Commencement Date made by PARTICIPANTS or BENEFICIARIES prior to January 1, 2002 and defaulted distributions (other than a defaulted distribution to an annuity option) may be voided at the election of the PARTICIPANT or BENEFICIARY.

- 9.02. Benefits payable to PARTICIPANT will be the equivalent to the total benefits that would have been created had the deferred amounts been invested by PARTICIPANT in the investment options specified by PARTICIPANT.

Mode of Payment. Benefits shall be paid in accordance with the payment option elected by the PARTICIPANT. Payment, method of payment, and settlement options are available as provided by each of the available investment specifications. The PARTICIPANT shall elect the mode of payment based upon the options then available. A PARTICIPANT or BENEFICIARY who has chosen a payment option, other than an annuity option, shall have the ability to change his payment option. Administrative charges or restrictions may be applicable as determined by the EMPLOYER and the ADMINISTRATOR. Distributions to a PARTICIPANT must comply with IRC Section 401(a)(9) required minimum distribution rules and must begin no later than April 1 of the year following the calendar year in which the PARTICIPANT attains age 70 ½ or severs employment, whichever is later. If the PARTICIPANT fails to elect a payment option that meets the required minimum distribution rules of IRC Section 401(a)(9), then the ADMINISTRATOR will initiate such a distribution.

- 9.03. Minimum Distribution Requirements. Distributions to a PARTICIPANT or a beneficiary must comply with IRC Section 401(a)(9).

- (a) Definitions. For purposes of this Section, the following terms shall have the following meanings:

- (1) Designated beneficiary. The individual who is designated as the beneficiary under Article V of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury

regulations.

- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 9.03(b)(4). The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
 - (3) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
 - (4) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
 - (5) Required beginning date. Required beginning date is April 1 of the calendar year following the later of the calendar year in which the PARTICIPANT attains age 70 ½ or the calendar year in which the PARTICIPANT retires.
- (b) If the PARTICIPANT dies while employed with the EMPLOYER, or if the PARTICIPANT dies before the benefits to which he is entitled under this PLAN have been exhausted, then the benefit payable under this PLAN shall be paid to his designated beneficiary. The beneficiary shall have the right to elect the time and mode of payment of such benefits, subject to the limitations set forth in this PLAN.
- (1) Effective Date. The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
 - (2) Requirements of Treasury Regulations Incorporated. All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.
 - (3) Required Beginning Date. The PARTICIPANT'S entire interest will be distributed, or begin to be distributed, to the PARTICIPANT no later than the PARTICIPANT'S required beginning date.
 - (4) Death of PARTICIPANT Before Distributions Begin. If the PARTICIPANT dies before distributions begin, the PARTICIPANT'S entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) If the PARTICIPANT'S surviving spouse is the PARTICIPANT'S sole designated beneficiary, distributions to the surviving spouse will begin

by December 31 of the calendar year immediately following the calendar year in which the PARTICIPANT died, or by December 31 of the calendar year in which the PARTICIPANT would have attained age 70 ½, if later.

- (ii) If the PARTICIPANT'S surviving spouse is not the PARTICIPANT'S sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the PARTICIPANT died.
 - (iii) If there is no designated beneficiary as of September 30 of the year following the year of the PARTICIPANT'S death, the PARTICIPANT'S entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the PARTICIPANT'S death.
 - (iv) If the PARTICIPANT'S surviving spouse is the PARTICIPANT'S sole designated beneficiary and the surviving spouse dies after the PARTICIPANT but before distributions to the surviving spouse begin, this Section will apply as if the surviving spouse were the PARTICIPANT.
- (5) Required Minimum Distributions During PARTICIPANT'S Lifetime. During the PARTICIPANT'S lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (i) the quotient obtained by dividing the PARTICIPANT'S account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the PARTICIPANT'S age as of the PARTICIPANT'S birthday in the distribution calendar year; or
 - (ii) If the PARTICIPANT'S sole designated beneficiary for the distribution calendar year is the PARTICIPANT'S spouse, the quotient obtained by dividing the PARTICIPANT'S account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the PARTICIPANT'S and spouse's attained ages as of the PARTICIPANT'S and spouse's birthdays in the distribution calendar year.
- (6) Death On or After Date Distributions Begin and PARTICIPANT Survived by Designated Beneficiary.
- (i) If the PARTICIPANT dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the PARTICIPANT'S death is the quotient obtained by dividing the PARTICIPANT'S account balance by the longer of the remaining life expectancy of the PARTICIPANT or the remaining life expectancy of the PARTICIPANT'S designated beneficiary, determined as follows: The PARTICIPANT'S remaining life expectancy is calculated using the age of the PARTICIPANT in the year of death, reduced by one for each subsequent year.
 - (ii) If the PARTICIPANT'S surviving spouse is the PARTICIPANT'S sole designated beneficiary, the remaining life expectancy of the surviving

spouse is calculated for each distribution calendar year after the year of the PARTICIPANT'S death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (iii) If the PARTICIPANT'S surviving spouse is not the PARTICIPANT'S sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the PARTICIPANT'S death, reduced by one for each subsequent year.
- (iv) No Designated Beneficiary. If the PARTICIPANT dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the PARTICIPANT'S death, the minimum amount that will be distributed for each distribution calendar year after the year of the PARTICIPANT'S death is the quotient obtained by dividing the PARTICIPANT'S account balance by the participant's remaining life expectancy calculated using the age of the PARTICIPANT in the year of death, reduced by one for each subsequent year.

(7) Death Before Date Distributions Begin and PARTICIPANT Survived by Designated Beneficiary. If the PARTICIPANT dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the PARTICIPANT'S death is the quotient obtained by dividing the PARTICIPANT'S account balance by the remaining life expectancy of the PARTICIPANT'S designated beneficiary.

- (i) Designated Beneficiary. If the PARTICIPANT dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the PARTICIPANT'S death, distribution of the PARTICIPANT 'S entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the PARTICIPANT 's death.

(8) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the PARTICIPANT dies before the date distributions begin, the PARTICIPANT 'S surviving spouse is the PARTICIPANT 'S sole designated beneficiary, and the surviving spouse dies before distributions are required to begin, this Section will apply as if the surviving spouse were the PARTICIPANT.

9.04. UNFORESEEABLE EMERGENCY. Notwithstanding any other provisions herein, in the event of an UNFORESEEABLE EMERGENCY, as defined in the PLAN, a PARTICIPANT may request that benefits be paid immediately; provided, however, that payment of any such benefits after the elected or mandatory commencement date as provided in Sections 9.01 and 9.03 of the PLAN shall be subject to any limitations specified by an investment provider. Such request shall be filed in accordance with procedures established pursuant to this PLAN. If the application for payment is approved by the BOARD, or if authorized, by the ADMINISTRATOR, payments shall be effected within three (3) days of such approval. Benefits to be paid shall be limited strictly to the amount necessary to meet the UNFORESEEABLE EMERGENCY to the extent such UNFORESEEABLE EMERGENCY is not relieved:

- (a) through reimbursement or compensation by insurance or otherwise;

- (b) by liquidation of the PARTICIPANT'S assets, to the extent the liquidation of such assets would not itself cause financial hardship; or
- (c) by cessation of deferrals under the PLAN.

The imminent foreclosure of or eviction from the PARTICIPANT'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 section 152(a) of the Code) may also constitute an UNFORESEEABLE EMERGENCY. The purchase of a home and the payment of college tuition do not typically constitute an UNFORESEEABLE EMERGENCY.

The decision of the BOARD, or if authorized, of the ADMINISTRATOR concerning the payment of benefits under this Section shall be final.

9.05. Distribution of Smaller Accounts. If the total amount payable to a PARTICIPANT under the PLAN does not exceed the dollar limit under IRC Section 411(a)(11)(A), the PARTICIPANT may elect to receive such amount before separation of service (or the PLAN may distribute such amount without the PARTICIPANT'S consent) if –

- (a) no amount has been deferred under the PLAN with respect to such PARTICIPANT during the two year period ending on the date of distribution, and
- (b) there has been no prior distribution under the PLAN to such PARTICIPANT to which this Section applied.

9.06. Distribution of ELIGIBLE ROLLOVER ACCOUNT. Upon request, a PARTICIPANT who has not severed his or her employment with the EMPLOYER may withdraw from his or her ELIGIBLE ROLLOVER ACCOUNT(s) established pursuant to Section 4.02 hereof any amount not in excess of the value of the ELIGIBLE ROLLOVER ACCOUNT(s) upon a form approved and acceptable by the BOARD and the ADMINISTRATOR. Upon receipt of such request in good order, the ADMINISTRATOR shall withdraw such distribution from the PARTICIPANT'S ELIGIBLE ROLLOVER ACCOUNT(s) as directed by the PARTICIPANT.

ARTICLE X

Administration of PLAN

10.01. This PLAN shall be administered by the BOARD and/or its ADMINISTRATOR and it shall represent the EMPLOYER in all matters concerning the administration of this PLAN. The EMPLOYER, or if authorized, the ADMINISTRATOR shall have the exclusive right to construe or interpret any provision set forth herein, including ambiguous provisions.

10.02. The BOARD may at any time amend, modify or terminate this PLAN without the consent of the PARTICIPANTS (or any BENEFICIARIES thereof). All amendments shall become effective on the first day of the month following the giving of not less than forty-five (45) days notice prior to the amendment. Notice shall be deemed given when the amendment is posted in the Phoenix office of the ADMINISTRATOR. To the extent it is possible to do so, the ADMINISTRATOR shall mail an explanation of all amendments that become effective during the year to the PARTICIPANTS with the annual report. No amendments shall deprive the PARTICIPANTS of

any of the benefits to which they are entitled under this PLAN with respect to PARTICIPANTS' account values prior to the effective dates of the amendment.

If the PLAN is curtailed, terminated or the acceptance of additional deferred amounts suspended permanently, the ADMINISTRATOR shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred prior to the amendment, modification or termination in accordance with Article VIII hereof.

The BOARD may approve any provider of investment options to serve as investment media under this PLAN. The BOARD may also approve any investment service providers to offer investment services to the PLAN and its PARTICIPANTS.

The BOARD may adopt rules and procedures to govern PARTICIPANT elections and directions concerning a PARTICIPANT'S or a BENEFICIARY'S investment specifications and may impose limitations on transfers and exchanges from one investment option within the PLAN to another. These rules and procedures shall be in addition to any established by investment providers to the PLAN. The BOARD and the ADMINISTRATOR may decline to implement any investment instructions for a PARTICIPANT or BENEFICIARY where it deems appropriate.

For convenience and to facilitate an orderly administration of the PLAN, the BOARD or its ADMINISTRATOR shall maintain a DEFERRED COMPENSATION ACCOUNT with respect to each PARTICIPANT, but the maintenance of the DEFERRED COMPENSATION ACCOUNT shall not be deemed to create any present property rights in the PARTICIPANT except as otherwise provided in the PLAN.

- 10.03. The BOARD, or if authorized, the ADMINISTRATOR, shall have the power to appoint agents to act for and in the administration of this PLAN and to select the depositories for the assets of this PLAN.
- 10.04. Notwithstanding the provisions of Article XII of this PLAN, the rights of the PARTICIPANTS under this PLAN shall not be subject to the rights of creditors of the PARTICIPANTS or any BENEFICIARIES, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or ORDER for the benefit of creditors or other third persons.
- 10.05. It is agreed that neither the PARTICIPANT nor the PARTICIPANT'S BENEFICIARY, nor any other designee shall have any right to commute, sell, assign, pledge, encumber, transfer, or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be non-assignable and non-transferable.
- 10.06. Whenever used in this PLAN the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the PLAN specifically require a different construction.
- 10.07. The titles and headings of the Articles and Sections in this PLAN are intended for convenience of reference and shall not be considered as having any bearing or limitation on their interpretation.
- 10.08. This PLAN, and any properly adopted amendments, shall constitute the total agreement or contract between the BOARD and the PARTICIPANT regarding the PLAN. No oral statement regarding the PLAN may be relied upon by the PARTICIPANT.
- 10.09. This PLAN, and any properly adopted amendments, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees, and on all beneficiaries.

ARTICLE XI

Limitations of Liability and of Actions

- 11.01. The BOARD, or its authorized agent, the ADMINISTRATOR, shall have the sole authority to resolve any questions of fact necessary to decide the PARTICIPANT'S rights under this PLAN and such decision may be binding on the PARTICIPANT and any BENEFICIARY.
- 11.02. The BOARD, or its authorized agent, the ADMINISTRATOR, shall have the sole authority to construe the PLAN and to resolve any ambiguity in the PLAN, and said construction or resolution shall be final.
- 11.03. The PARTICIPANT specifically agrees not to seek recovery against the BOARD, the EMPLOYER, the ADMINISTRATOR or any EMPLOYEE, contractee, or agent of the BOARD, the EMPLOYER, or ADMINISTRATOR, or any endorser, for any loss sustained by the PARTICIPANT or BENEFICIARY, for the non-performance of their duties, negligence, or any other misconduct of the above-named parties; except that this paragraph shall not excuse fraud or wrongful taking by any party.
- 11.04. Participation in this PLAN by a PUBLIC EMPLOYEE shall not be construed to give a contract of employment to the PARTICIPANT or to alter or amend an existing employment contract of the PARTICIPANT, nor shall participation in this PLAN be construed as affording to the PARTICIPANT any representation or guarantee regarding continued employment.
- 11.05. The BOARD, the EMPLOYER, and the ADMINISTRATOR do not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequences will occur because of the PARTICIPANT'S participation in this PLAN. The PARTICIPANT should consult with the PARTICIPANT'S own representative regarding all questions of Federal or State income, payroll, personal property, or other tax consequences that will arise from the PARTICIPANT'S participation in this PLAN.
- 11.06. Any companies that may issue any policies, contracts, or other forms of investment media used by the BOARD or specified by the PARTICIPANT are not parties to this PLAN and such companies shall have no responsibility or accountability with regard to the operations of this PLAN.
- 11.07. Every action taken by the BOARD shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The BOARD shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The BOARD shall not be liable for amounts of COMPENSATION deferred by PARTICIPANTS or for other amounts payable under the PLAN.
- 11.08. The BOARD, or its agents including the ADMINISTRATOR, if in doubt concerning the correctness of an action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the party to receive the payment or allow the filing in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the parties to receive them. The BOARD shall comply with the final orders of the court in any such suit and the PARTICIPANT, for PARTICIPANT and for any BENEFICIARY thereby, consents to be bound thereby insofar as it affects the benefits payable under this PLAN or the method or manner of payment.
- 11.09. The BOARD, the EMPLOYER, and their agents including the ADMINISTRATOR, are hereby held harmless from all court costs and all claims for the attorneys fees arising from any action brought by the PARTICIPANT or any BENEFICIARY under this PLAN or to enforce PARTICIPANT'S rights under this PLAN, including any amendments hereof.

- 11.10. The ADMINISTRATOR shall not be required to participate in any litigation concerning the PLAN except upon written demand from the BOARD. The ADMINISTRATOR may compromise, adjust or effect settlement of litigation when specifically instructed to do so by the BOARD.
- 11.11. The laws of the State of Arizona and the IRC shall apply in determining the construction and validity of this PLAN, and venue of any dispute shall be in Maricopa County.

ARTICLE XII

Domestic Relations Distribution Orders

- 12.01. Should the PLAN receive a judgment, decree or order entered or enforceable pursuant to local domestic relations law and relating to the provision of property rights of a PARTICIPANT'S present or former spouse, then:
- (a) The ADMINISTRATOR shall promptly notify the PARTICIPANT and any ALTERNATE PAYEE of the receipt of such ORDER;
 - (b) The ADMINISTRATOR shall take steps necessary to ensure that amounts that may be payable to the ALTERNATE PAYEE pursuant to the ORDER are not distributed to the PARTICIPANT or any other person. These steps may include the placing of an administrative hold or other account restriction upon the PARTICIPANT'S account(s).
 - (c) Within a reasonable time, the ADMINISTRATOR will follow the procedures adopted by the BOARD to determine the validity of the ORDER.
- 12.02. The BOARD or its designee shall determine whether such ORDER constitutes a domestic relations ORDER. The domestic relations ORDER must be a judgment, decree, order, or approval of a property settlement which 1) relates to the property rights of an ALTERNATE PAYEE; and 2) is pursuant to state domestic relations law. In addition, the ORDER must:
- (a) Create or recognize the existence of, or assign to any ALTERNATE PAYEE a claim for all or any portion of the benefits that actually become payable with respect to a PARTICIPANT under the PLAN;
 - (b) Clearly specify the following facts:
 - (i) The name and last known mailing address of each PARTICIPANT and Alternate Payment covered by the ORDER;
 - (ii) The amount or percentage, or the manner of determining same, of the PARTICIPANT'S benefits to be paid by the PLAN to the ALTERNATE PAYEE;
 - (iii) The number of payments or periods to which the ORDER applies; and
 - (iv) The applicability of the ORDER to the PLAN;
 - (v) The ALTERNATE PAYEE is responsible for taxes on any amounts distributed to the ALTERNATE PAYEE under the PLAN.

- (c) Not require the PLAN to provide any type or form of benefit not otherwise provided by its terms, or provide an accelerated or increased benefit, or create any right greater than the rights of the PARTICIPANT under the PLAN, or be in conflict with the payment provisions of any domestic relations ORDER previously determined to be applicable.
- 12.03. If the BOARD or its designee makes the determination that the ORDER constitutes a domestic relations order, the BOARD or its designee shall direct the ADMINISTRATOR to comply with the ORDER and specify the value or benefit of the PARTICIPANT'S account to which the ALTERNATE PAYEE is entitled. Once the ADMINISTRATOR has received all pertinent information regarding the domestic relations order, including the information set forth in Section 12.02, the ADMINISTRATOR shall establish a separate account for the ALTERNATE PAYEE and place the value or benefit of the PARTICIPANT'S account in the ALTERNATE PAYEE'S account.
- 12.04. Rights of an Alternate Payee. The ALTERNATE PAYEE is to receive distributions immediately upon the establishment of his or her account under Section 12.03, and commencement of distributions must begin no later than April 1st following the year in which the PARTICIPANT attains age 70 ½, in accordance with the terms of Section 9.03. Distributions made to an ALTERNATE PAYEE are reported as taxable income to the ALTERNATE PAYEE. State taxes, if applicable, and Federal taxes will be withheld from any distribution on the ALTERNATE PAYEE'S account based upon the tax withholding elections of the ALTERNATE PAYEE. The ALTERNATE PAYEE may not make any contributions to an account established under Section 12.03. The ALTERNATE PAYEE is permitted to name beneficiaries to his or her account and exercise exchanges among the funding options as permitted by the PLAN and the investment providers under the PLAN.
- 12.05. No Liability for Previous Distributed Amounts. The ADMINISTRATOR shall only process an ORDER to the extent possible based upon the remaining value or benefit in the PARTICIPANT'S Account.
- 12.06. Notwithstanding any other provision hereunder, the payments of benefits to an ALTERNATE PAYEE in accordance with a domestic relations order under this PLAN shall at all times be in compliance with the minimum distribution provisions of IRC Section 401(a)(9)(G) and 457(d)(2) and the regulations thereunder.

The Foregoing CITY OF PHOENIX DEFERRED COMPENSATION PROGRAM PLAN DOCUMENT AND TRUST was approved on the 2nd day of September 2004, by vote of the City of Phoenix Deferred Compensation Management Board.