

CITY OF MADISON

DEFERRED COMPENSATION PLAN

As Amended and Restated Effective January 1, 2001

Article I. Purpose

The Employer hereby establishes the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article II. Definitions

2.01 Account: The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.02 Accounting Date: Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

2.03 Administrator: The person or persons named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 60 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 60 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.

2.04 Automatic Distribution Date: Prior to January 1, 2002, "Automatic Distribution Date" means the 60th day of the calendar year after the Plan Year of the Participant's Retirement or any other date permitted under the regulations promulgated under Code section 457. On and after January 1, 2002, "Automatic Distribution Date" means April 1 of the calendar year after the Plan Year the Participant attains age 70-1/2 or, if later, has a Severance Event.

2.05 Beneficiary: The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled

to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreements if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary.

2.06 Deferred Compensation: The amount of Normal Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09, a rollover under Section 6.10, or any other amount which the Employer agrees to credit to a Participant's Account.

2.07 Dollar Limitation: The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

2.08 Employee: Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

2.09 Employer: The City of Madison, which is a political subdivision, agency or instrumentality of the State of Wisconsin, within the meaning of Section 414(d) of the Code and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

2.10 457 Catch-Up Dollar Limitation: Prior to January 1, 2002, "457 Catch-Up Dollar Limitation" means \$15,000. On and after January 1, 2002, "457 Catch-Up Dollar Limitation" means twice the Dollar Limitation.

2.11 Includible Compensation: The amount of an Employee's compensation from the Employer for a taxable year that is attributable to services performed for the Employer and that is includible in the Employee's gross income for the taxable year for federal income tax purposes as defined in Section 457(e)(5) of the Code; such term does not include any amount excludable from gross income under this Plan or any other plan described in Section 457(b) of the Code or any other amount excludable from gross income for federal income tax purposes. Includible Compensation shall be determined without regard to any community property laws.

2.12 Joinder Agreement: An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

2.13 Normal Compensation: The amount of Compensation which would be payable to a Participant by the Employer for a taxable year if no Joinder Agreement were in effect to defer compensation under this Plan.

2.14 Normal Limitation: The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09 and 6.10).

2.15 Normal Retirement Age: Age 70-1/2, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under the Employer's basic retirement plan covering the Participant and may not be later than the date the Participant will attain age 70-1/2. If a Participant continues employment after attaining age 70-1/2, not having previously elected alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually has a Severance Event if the Employer has no mandatory retirement age. If the Participant will not become eligible to receive benefits under a basic retirement plan maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than age 55 and may not be later than age 70-1/2.

2.16 Participant: Any Employee who has joined the Plan pursuant to the requirements of Article IV.

2.17 Percentage Limitation: Prior to January 1, 2002, the Percentage Limitation means 33-1/3 percent of the participant's Includible Compensation for the taxable year, which will ordinarily be equivalent to the lesser of the Dollar Limitation in effect for the taxable year or 25 percent of the Participant's Normal Compensation. After December 31, 2001, the Percentage Limitation means 100 percent of the participant's Includible Compensation for the taxable year, which will ordinarily be equivalent to the lesser of the Dollar Limitation in effect for the taxable year or 50 percent of the Participant's Normal Compensation.

2.18 Plan Year: The calendar year.

2.19 Retirement: The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.

2.20 Severance Event: Prior to January 1, 2002, severance of the Participant's employment with the Employer that constitutes a "separation from service" within the meaning of Section 402(e)(4)(D)(iii) of the Code. After December 31, 2001, a Severance Event means a severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

2.21 Trust: The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

3.01 Duties of the Employer: The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

3.02 Duties of Administrator: The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

4.01 Initial Participation: An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code.

4.02 Amendment of Joinder Agreement: A Participant may amend an executed Joinder Agreement to change the amount of Normal Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

Article V. Limitations on Deferrals

5.01 Normal Limitation: Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations:

- (a) **Catch-up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code, or (2) the excess (if any) of (i) the Participant's compensation (as defined in Section 415(c)(3) of the Code) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a). An additional contribution made pursuant to this

Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which Section 5.02(b) applies. The provisions of this Section 5.02(a) of the Plan shall only apply on and after January 1, 2002.

- (b) **Last Three Years Catch-up Contribution:** For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) the 457 Catch-Up Dollar Limitation, or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year (or in any other eligible deferred compensation plan established under Section 457(b) of the Code which is properly taken into account pursuant to regulations under Section 457), and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

5.03 Other Plans: Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code. Prior to January 1, 2002, the limits under Section 457(b) of the Code described in the first sentence of this Section 5.03 shall be further reduced by any amount excluded from gross income under Sections 401(k), 402(e)(3), 402(h)(1)(B), and 403(b) of the Code, or any amount with respect to which a deduction is allowable by reason of a contribution to an organization described in Section 501(c)(18) of the Code.

Article VI. Trust and Investment of Accounts

6.01 Investment of Deferred Compensation: A Trust is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.

6.02 Investment Powers: The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses: All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits: The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds: In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 Valuation of Accounts: As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts: Participant Loan Accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 Crediting of Accounts: The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 Transfers:

- (a) **Incoming Transfers:** A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's Account under the Plan if (i) the Participant has had a Severance Event with that employer and become an Employee of the Employer, and (ii) the other employer's plan provides that such transfer will be made. The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

Any such transferred amount shall not be treated as a deferral subject to the limitations of Article V, except that, for purposes of applying the limitations of Sections 5.01 and 5.02, an amount deferred during any taxable year under the plan from which the transfer is accepted shall be treated as if it has been deferred under this Plan during such taxable year and compensation paid by the transferor employer shall be treated as if it had been paid by the Employer.

- (b) **Outgoing Transfers:** An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's Account under this Plan, if (i) the Participant has a Severance Event with the Employer and becomes an employee of the other employer, (ii) the other employer's plan provides that such transfer will be accepted, and (iii) the Participant and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer. The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Eligible Rollover Distributions:

- (a) **Effective Date:** This Section 6.10 is effective January 1, 2002.
- (b) **Incoming Rollovers:** An eligible rollover distribution may be accepted from an eligible retirement plan maintained by another employer and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Section 457(b) of the Code maintained by an eligible governmental employer described in Section 457(e)(1)(A) of Code.
- (c) **Outgoing Rollovers:** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee 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 distributee in a direct rollover.

(d) Definitions:

- (1) **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, 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 distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (2) **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
- (3) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

6.11 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit: All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (A) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (B) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.12 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.13 Deemed IRAs: Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Code section 408(q) and any regulations promulgated thereunder. Such accounts or annuities shall meet the applicable requirements of Code sections 408 or 408A and shall be treated as an individual retirement plan that is not part of the Plan.

6.14 Employer Liability: In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event:

- (a) **General Rule:** Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70-1/2, whichever is later. Prior to January 1, 2002, an election made pursuant to the preceding sentence shall not be valid unless such election is made not less than 30 days prior to the date that the distribution of a Participant's Account would otherwise commence.
- (b) **Additional Delay in Distribution:** Prior to January 1, 2002, the Participant may elect to defer the commencement of distribution of benefits to a fixed determinable date later than the date provided in Section 7.01(a), but not later than April 1 of the year following the year of the Participant's retirement or attainment of age 70 1/2, whichever is later, provided, however, that (a) such election is made after the 61st day following the Participant's Severance Event and before commencement of distributions, (b) the Participant may make only one (1) such election, and (c) such election is made not less than 30 days prior to the date the distribution of a Participant's Account would otherwise commence. On or after January 1, 2002, the Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.
- (c) **Loans:** Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's Loan Account in the event of a default of the Participant's loan.

7.02 Payment Options: As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03.

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant.
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary.
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer.
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.01.
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option made after December 31, 1995, under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

If, prior to January 1, 2002, a Participant made a timely election of a payment date but failed to specify a payment option or failed to make a timely election of both payment date and option, and as a result, either was defaulted to benefit commencement at age 65, or such other date as the Participant may have specified, benefits shall be paid annually in the amount of \$100 per year commencing at age 65 or the date specified by the Participant until the Participant reaches age 70-1/2. When the Participant reaches age 70-1/2, payments shall be made in accordance with Code section 401(a)(9) and the regulations thereunder.

7.03 Limitation on Options: No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G).

7.04 Post-Retirement Death Benefits:

- (a) Should the Participant die after he/she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) If the Beneficiary has not attained age 80 at the time payments commence, he or she may elect to receive payments in a single lump-sum payment or in equal or approximately equal monthly, quarterly, semi-annual or annual payments continuing over a period not to exceed ten years from the first payment. The Beneficiary also may elect to receive a partial lump-sum payment followed by monthly, quarterly, semi-annual or annual installments, provided that all payments are made within a period of ten years from the initial payment. In the event that the Beneficiary is age 80 or over, the remaining balance in the Participant's account will be paid to the Beneficiary in a single lump sum.
- (c) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.05 Pre-Retirement Death Benefits:

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) If the Beneficiary has not attained age 80 at the time payments commence, he or she may elect to receive payments in a single lump-sum payment or in equal or approximately equal monthly, quarterly, semi-annual or annual payments continuing over a period not to exceed ten years from the first payment. The Beneficiary also may elect to receive a partial lump-sum payment followed by monthly, quarterly, semi-annual or annual installments, provided that all payments are made within a period of ten years from the initial payment. In the event that the Beneficiary is age 80 or over, the remaining balance in the Participant's account will be paid to the Beneficiary in a single lump sum.
- (c) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Unforeseeable Emergencies:

- (a) In the event an unforeseeable emergency occurs, a Participant may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant shall be

paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from a sudden unexpected illness, accident, or disability of the Participant or of a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

7.07 De Minimis Accounts: Notwithstanding the foregoing provisions of this Article, prior to January 1, 2002, if the value of a Participant's Account does not exceed the dollar limit under Section 411(a)(11)(A) of the Code as described in Section 457(e)(9)(A) of the Code and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07, the Participant may elect to receive or the Employer may involuntarily distribute the Participant's entire Account without the consent of the Participant. Such distribution shall be made in a lump sum.

On or after January 1, 2002, if the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07. If the value of the Participant's Account is at least \$1000 but not more than the dollar limit under Code Section 411(a)(11)(A) and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07, the Participant may elect to receive his or her entire Account. Such distribution shall be made in a lump sum.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants:

- (a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants:

Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) **Availability.** Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) **Interest Rate.** Loans must be adequately secured and bear a reasonable interest rate.
- (c) **Loan Limit.** No Participant loan shall exceed the present value of the Participant's Account.
- (d) **Foreclosure.** In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) **Reduction of Account.** Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.
- (f) **Amount of Loan.** At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:
 - (1) \$50,000, reduced by the excess (if any) of
 - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (b) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.
- (g) **Application for Loan.** The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) **Length of Loan.** Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is

made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

- (i) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) Promissory Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) Security. The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) Assignment or Pledge. For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant.

The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

8.03 Participant Loan Accounts:

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next

Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.

- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

Article IX. Non-Assignability

9.01 In General: Except as provided in Article VIII and Section 9.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and nontransferable.

9.02 Domestic Relations Orders:

- (a) Allowance of Transfers: To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights and (ii) is made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant. Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant; any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the order directs a different time or form of payment. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) Release from Liability to Participant: The Employer'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 paragraph (a) of the Section. No such transfer shall be effectuated unless the Employer or Administrator has been provided with satisfactory evidence that the Employer and the Administrator are released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the Employer and the Administrator from any claim with respect to such amounts, in any case in which (i) the Employer or Administrator has been served with legal process or otherwise joined in a proceeding relating to such transfer, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process in such action or by mail from the Employer or Administrator to the Participant's last known mailing address, and (iii) the Participant fails to obtain an order of the court in the proceeding relieving the Employer or Administrator from the obligation to comply with the judgment, decree, or order.
- (c) Participation in Legal Proceedings: The Employer and Administrator shall not be obligated to defend against or set aside any judgement, decree, or order described in paragraph (a) or any

legal order relating to the garnishment of a Participant's benefits, 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 Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, dependent, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

Article X. Relationship to other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XI. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment. The Employer may at any time terminate this Plan.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Code Section 414(u).

Article XIII. Gender and Number

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

Pursuant to Resolution Number 61084 adopted on December 2, 2003, this Deferred Compensation Plan is executed this _____ day of December, 2003:

By: _____
David Cieslewicz, Mayor

Attest:
By: _____
Ray Fisher