



CITY OF ANAHEIM
DEFERRED COMPENSATION PLAN
FOR EMPLOYEES NOT COVERED BY CALPERS

ARTICLE I. NAME

1.01 The Employer hereby amends and restates the Employer's Deferred Compensation Plan and Trust. The name of this plan is the City of Anaheim Deferred Compensation Plan for Employees not Covered by CalPERS hereinafter referred to as the "Plan." The Plan consists of the provisions set forth in this document. This amendment and restatement of the Plan is effective July 1, 2009.

ARTICLE II. PURPOSE

2.01 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"). It is intended that Participants in this Plan be considered members of a retirement system, within the meaning of Section 3121(b)(7)(F) of the Internal Revenue Code of 1986, as amended.

2.02 This Plan shall be an agreement solely between the Employer and participating Employees.

2.03 Trust Fund: All amounts of Annual Deferrals, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan and the Trust Agreement. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of California. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

2.04 The Employer does not and cannot represent or guarantee that any particular federal and state income, payroll or other tax consequences will occur by reason of an Employee's participation in this Plan. The Participant should consult with his own attorney or other representative regarding all tax or other consequences of participation in this Plan.

ARTICLE III. DEFINITIONS

For the purposes of this Plan, certain words or phrases used herein will have the following meanings:

3.01 Account Balance: The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, any distribution made to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Section 414(p)(8) of the Code).

3.02 Annual Deferral: The amount of Compensation deferred in any year.

3.03 Automatic Distribution Date: On or 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 from Employment.

3.04 Beneficiary: The designated person (or, if none, the Participant's estate) who is entitled to receive benefits under the Plan after the death of a Participant. A designated person includes an individual, trust, corporation or firm, or the estate of the Participant, or any combination of the foregoing designated by a Participant to receive benefits under the Plan. Designation shall be made on a Provider Beneficiary Designation Form executed by the Participant to the Provider, unless otherwise provided. Beneficiary may be singular or plural, primary or contingent.

3.05 CalPERS: Shall mean the California Public Employees Retirement System.

3.06 Code: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to Sections of the Code are to such sections as they may from time to time be amended or renumbered.

3.07 Compensation: All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, overtime pay that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year.

3.08 Contract Administrator: An administrator employed under contract authorized by the City Council and under the direction of the Plan Administrator.

3.09 Contributions: Of a Participant shall mean his Participant Contributions and any Employer Contributions made on his behalf.

3.10 Deferred Compensation: The portion of Compensation which the Participant and the Employer mutually agree to defer in accordance with the provisions of this Plan; any amount credited to the Participant's Account.

3.11 Deferred Compensation Committee: Shall mean the Committee, consisting of the Plan Administrator, as Chairperson; the City Manager or his appointee; the Finance Director or his appointee; the City Treasurer or his appointee; two (2) Participating Employees and one (1) Rotating Department Employee Representative.

3.12 Disability: The substantial permanent inability of a Participant to engage in his usual occupation by reason of a medically determinable physical or mental impairment as determined by the Employer or by the Public Employees' Retirement System, on the basis of advice from a physician or physicians.

3.13 Eligible Employee: Shall mean any Employee who is not a Qualified CALPERS Participant. However, if an Employee's Compensation is determined pursuant to a collective bargaining agreement, he shall not be an Eligible Employee under this Plan unless he meets the preceding requirements of this Paragraph 3.14 and such bargaining agreement specifically provides that he may be an Eligible Employee hereunder; and further provided no employee shall be an Eligible employee if his service is described in clauses (1) through (v) of the IRC Section 3121(b)(7)(F).

3.14 Employee: Each natural person, whether appointed or elected, who is employed by the Employer, whether as an employee or officer of the Employer.

3.15 Employer: Shall mean the City of Anaheim.

3.16 Employer Contributions: Shall mean the contributions of the Employer that are made to the Plan in accordance with Article 5.02.

3.17 Includible Compensation: An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer.

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

3.19 Normal Retirement Age: Normal Retirement age is designated as 70-1/2 unless the Participant has elected an alternate Normal Retirement Age in writing (to be provided to the Plan Administrator before severance). Once a Participant elects to use the Special Section 457 Catch-up provision, the 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 California Public Employees Retirement System, 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, but has not previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age can not be later than the mandatory retirement age established by the Employer, or the age at which the

Participant actually leaves service if the employer has no mandatory retirement age, or as required by law.

3.20 Participant: An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

3.21 Participating Employee: An appointed member to the Deferred Compensation Committee. The Participating Employee must submit an Application for Appointment to the Committee. The Committee will select the Participating Employee. The Participating Employee must be a full-time employee with the City of Anaheim and must be a Participant of the Plan. This member shall serve a two (2) year term.

3.22 Participating Employee (Rotating Department Employee Representative): The Rotating Department Representative will be selected from Departments in the order of staff size. Any Department may choose to pass or not participate. The respective Department Head shall select the Department Representative. The Department Representative must be a full-time employee with the City of Anaheim and must be a Participant of the Plan. This member shall serve a two (2) year term.

3.23 Participation Agreement: An agreement entered into between an Employee and the Employer, including any amendments or modifications, thereof. Such agreement shall: (a) fix the amount of Deferred Compensation; (b) incorporate the terms, conditions, and provisions of the Plan by reference.

3.24 Plan: City of Anaheim Deferred Compensation Plan.

3.25 Plan Administrator: The Human Resources Director shall serve as Plan Administrator unless another person or entity is designated by the City Council.

3.26 Plan Year: The calendar year.

3.27 Provider: An institution providing investments or deposit vehicles.

3.28 Qualified CALPERS Participant: Shall mean any Employee who:

(a) is or ever has been a member of CALPERS, and

(b) either:

(1) based upon his current compensation, is making Employee contributions to CALPERS and having Employer contributions made to CALPERS,

(2) previously retired from the service of the Employer and has attained normal retirement age under the CALPERS, or

(3) previously retired from the service of the Employer and is currently receiving retirement benefits under the CALPERS.

3.29 Required Beginning Date: April 1 of the calendar year following the calendar year, in which the Participant attains age 70-1/2 or a Severance from Employment, whichever is later.

3.30 Retirement: The first date upon which both of the following shall have occurred with respect to a Participant: Severance from Employment and attainment of age 50.

3.31 Severance from Employment: The term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Plan Administrator (and taking into account guidance issued under the Code).

3.32 Spouse: refers only to a person of the opposite sex who is a husband or a wife. However, registered domestic partners shall have the same rights and responsibilities as are granted to and imposed upon spouses under this Plan pursuant to California Family Code Section 297.5(a) effective January 1, 2005, except as required by federal law.

3.33 Sub-Committee: A subdivision of the Committee and shall be less than a quorum of the Committee.

3.34 Trust Agreement: The written agreement (or declaration) made by and between the Employer and the Trustees under which the Trust Fund is maintained under Article VIII.

3.35 Trust Fund: The trust fund created under and subject to the Trust Agreement under Article VII.

3.36 Trustee(s): The Trustee(s) duly appointed and currently serving under the Trust Agreement, which are the Deferred Compensation Committee members.

3.37 Valuation Date: Each business day.

ARTICLE IV. ADMINISTRATION

4.01 The Plan shall be administered by the Plan Administrator but may be administered through a Contract Administrator under the direction of the Plan Administrator. Participants receiving services from said Plan Administrator and/or Contract Administrator may be charged a fee for said services.

The Trustees shall determine said fees in a manner deemed fair and equitable. The Trustees may have withheld or collect, such fee, in such manner as it deems equitable, from the compensation deferred pursuant to the Plan, or the income produced from the compensation deferred pursuant to the Plan.

4.02 Duties of the Plan Administrator: The Plan Administrator 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 Plan Administrator's decisions shall be afforded the maximum deference permitted by applicable law.

4.03 Duties of the Provider: The Provider shall act for the exclusive benefit of the Participants and their Beneficiaries. The Provider, as agent for the Trust, shall perform nondiscretionary administrative functions in connection with the Plan, including but not limited to; 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 Trust in accordance with the provisions of this Plan.

ARTICLE V. PARTICIPATION IN THE PLAN

5.01 Eligibility: Each Eligible Employee shall have up to 7.5% of his Compensation earned as an Eligible Employee withheld by the Employer as a Participant Contribution under this Plan. Notwithstanding the preceding, the Employer and the Eligible Employee mutually acknowledge that unless indicated otherwise in the salary resolution or personnel ordinance or policies of the Employer, the salary or wage of the Eligible Employee includes the Participant Contributions made under this Plan. As soon as practicable after the deduction from the Compensation of the Eligible Employee, the Employer shall pay all Participant Contributions to the fund or funds established under the Plan.

5.02 On behalf of each Eligible Employee that has Participant Contributions deducted from his Compensation pursuant to Article 5.01, the Employer shall pay to the fund or funds established under the Plan, any Employer Contribution required under the terms of any collective bargaining agreement or City Council Resolution. Payment of Employer Contributions shall be made concurrently with the payment of the Participant Contributions.

5.03 The Employer may change percentages of Compensation to be contributed as Participant Contributions or Employer Contributions to greater or lesser percentages by amending this Plan in accordance with Article XV. In addition, such percentages may be changed to comply with the terms of any collective bargaining agreement pursuant to which Employees participate in this Plan. Any percentage changes in the amount of Participant Contributions hereunder shall be effective only with respect to Compensation earned after the adoption date of the Plan amendment relating thereto or, if applicable and later, the ratification date of the collective bargaining agreement relating thereto. In no event shall the combined Participant Contributions and Employer Contributions total less than 7.5% of an Eligible Employee's Compensation earned or exceed the maximum deferral allowed by the Internal Revenue Code.

5.05 Information Provided by the Participant: Each Employee enrolling in the Plan should provide to the Plan Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Plan Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b). The participation election shall also include designation of a Beneficiary. Any such election shall remain in effect until a new election is filed.

5.06 Contributions Made Promptly: Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

ARTICLE VI. NON-RESPONSIBILITY CLAUSE

6.01 The Employer may, but is not required to, invest funds held pursuant to agreements between Participants and the Employer in accordance with the preference or preferences indicated by each Participant at the time of enrollment or change in enrollment, prospectively only. The Employer shall retain the right to approve or disapprove such investment request or requests, for transfer of investment among different modes of investment available under the Plan. Any such action by the Employer in investing funds, or approving of any investment of funds, shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations.

In no event shall the Employer's obligation to pay benefits to a Participant exceed the value of the amounts credited to the Participant's account; the Employer shall not be liable for losses arising from depreciation or shrinkage, in the value of any investments acquired under this Plan.

6.02 Safe Harbor: No person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control. This relieves the Trustees and the Employer of responsibility for participant-directed investments under the terms of the plan and Trust. The fiduciaries of the plan are relieved of liability for any losses resulting from investment instructions given by the participant or beneficiary.

ARTICLE VII. TRUST AND INVESTMENT OF ACCOUNTS

7.01 Investment Funds: In accordance with uniform and nondiscriminatory rules established by the Employer and the Provider, the Participant may direct his 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 Provider, 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. Participants must notify the Plan Administrator or Provider of errors in the Participants account statement within 60 days after the end of the quarter in which the error occurred.

7.02 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. Each Participant shall receive periodic reports

from the Providers, not less frequently than annually, showing the then current value of his Account. Investment and market valuation of mutual funds can be made only when the New York Stock Exchange is open for trading.

7.03 Trust: Notwithstanding any contrary provision of the Plan, in accordance with Section 457(g) of the Internal Revenue Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the Plan. Any Trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of California.

All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. Incorporated herein by reference is the City of Anaheim Section 457 Deferred Compensation Plan Trust.

ARTICLE VIII. ELIGIBLE ROLLOVERS

8.01 Eligible Rollover Distributions:

- (a) At the direction of the Employer, the Plan Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Section 457(b) of the Code and Section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Article 8.01(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Article 8.01(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Article 8.01, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Plan Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Article 8.01 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Article 8.01, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations.

8.02 Rollover Distributions:

- (a) A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Plan Administrator, to have all

or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

- (b) For purposes of this Article 8.02, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include any installment payment under Article 9.05 for a period of 10 years or more. or
- (c) For any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) shall not be eligible for rollover treatment. In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a Roth IRA described in Section 408A of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution, provided, however, that the Participant shall be responsible to determine eligibility to rollover to a Roth IRA based upon modified adjusted gross income and other applicable factors.

ARTICLE IX. DISTRIBUTION OF BENEFITS

9.01 Benefit Distributions At Retirement or Other Severance from Employment: Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his Account Balance under any form of distribution permitted under Article 9.05 commencing at the date elected under Article 9.03. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in monthly installments of the minimum annual payments described in paragraph (b) of Article 9.05.

9.02 Latest Distribution Date: In no event shall any distribution under this Article IX begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70-1/2 or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70-1/2 or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Article 9.05 and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph (b) of Article 9.05 must also be paid before the end of the calendar year of commencement.

9.03 Election of Benefit Commencement Date: A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed at least 30 days before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Article 9.02.

- (a) Amount of Account Balance: Except as provided in Article 9.05, the amount of any payment under this Article IX shall be based on the amount of the Account Balance on the preceding Valuation Date.
- (b) Revocation of Prior Election: Any election made under this Article IX may be revoked at any time.

9.04 Payment Options: As provided in Articles 9.01, 9.02, and 9.07, a Participant or Beneficiary may elect to have the 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 Article 9.06.

9.05 Forms of Distribution: In an election to commence benefits under Article 9.03, a Participant entitled to a distribution of benefits under this Article IX may elect to receive payment in any of the following forms of distribution:

- (a) A lump sum payment of the total Account Balance or
- (b) Annual installment payments through the year of the Participant's death, the amount payable each year equal to a fraction of the Account Balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at Section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the Participant's age on the Participant's birthday for that year. If the Participant's age is less than age 70, the distribution period is 27.4 plus the number of years that the Participant's age is less than age 70. At the Participant's election, this annual payment can be made in monthly or quarterly installments. The Account Balance for this calculation (other than the final installment payment) is the Account Balance as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under Article 9.03. For any year, the Participant can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.
- (c) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his Account is exhausted;
- (d) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a certain period chosen by the Participant.
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Provider.
- (f) Any payment option elected by the Participant and agreed to by the Employer and Provider and as provided for by the Internal Revenue Service.

A Participant's or Beneficiary's selection of a payment option 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.

9.06 Limitation on Options: No payment option, other than a lump sum payment, may be selected by a Participant unless the amount is not less than \$100 per year. No payment option may be selected by a Participant under Articles 9.05 or 9.07 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).

9.07 Death Benefit Distributions: Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account Balance shall be paid to the Beneficiary in a lump sum.

Alternatively, if the Beneficiary with respect to the Participant's Account Balance is a natural person, at the Beneficiary's election, distribution can be made in installments (calculated in a manner that is similar to installments under Article 9.05) with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in Section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in Section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

- (a) If the designated Beneficiary does not continue to live for the remaining period of payments under the payment option, then the commuted value of any remaining payments under the payment option shall be paid in a lump sum to the Beneficiary(ies) of the Beneficiary. In the event that the Beneficiary has no named Beneficiary(ies) on file, payment shall be made in a lump sum to the estate of the Beneficiary.
- (b) If the beneficiary is a spouse, the Beneficiary may rollover distributions to an IRA, Roth IRA, a 401, 403(b) or governmental 457 plan in which the spouse participates.
- (c) If the beneficiary is not the Participant's surviving spouse the beneficiary may rollover distributions to an IRA or a Roth IRA.
- (d) In the event that the Participant's estate is the Beneficiary, the commuted value of any remaining payments under the payment option shall be paid to the Participant's estate in a lump sum.

9.08 Designation of a Trust as a Beneficiary: A Participant may name a trust as a Beneficiary with respect to the Participant's account in accordance with the requirements of Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4. In order for a trust to be validly named as Beneficiary under the Plan, certification of the trust

establishing the existence and terms of the trust executed by the trustee shall be provided to the Provider, which certification shall include the following:

- (a) The existence of the trust and date of execution of the trust.
- (b) The identity of the settlor(s) and the currently acting trustee(s) of the trust.
- (c) The powers of the trustee.
- (d) The revocability or irrevocability of the trust, or a confirmation that the trust shall become irrevocable upon the death of the Participant.
- (e) The signature authority of the trustees indicating whether all of the currently acting trustees are required to sign in order to exercise their powers.
- (f) The trust identification number (taxpayer identification number)
- (g) The manner in which title to trust assets should be taken.
- (h) A statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations to be incorrect.
- (i) A statement that the certification is being signed by all of the currently acting trustees of the trust.
- (j) The certification shall be in the form of an acknowledged declaration signed by all currently acting trustees of the trust under penalty of perjury.
- (k) Copies of excerpts from the trust documents which designate the trustee.
- (l) Copies of excerpts from the trust documents which confer upon the trustee the power to act in the pending transaction.

To the extent any of the foregoing does not comply with the requirements of Code Section 401(a)(9) and the Treasury Department Regulations thereunder, the Plan shall be administered in accordance with such provisions of the Code and Treasury Regulations.

9.09 Unforeseeable Emergency Distribution: This Plan does not permit Unforeseeable Emergency Withdrawals.

9.10 Mandatory Distributions for Certain Account Balances of \$1,000 or Less: At the direction of the Plan Administrator, a Participant's total Account Balance shall be paid in a lump sum as soon as practical following the direction if

- (a) The total Account Balance does not exceed \$1,000 (or the dollar limit under Section 411(a)(11) of the Code, if greater),
- (b) The Participant has not previously received a distribution of the total amount payable to the Participant under this Article 9.10 and
- (c) No Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

9.11 Account Balances of \$5,000 or Less: Notwithstanding Articles 9.03, 9.05 and 9.07, if the amount of a Participant's Account Balance is not in excess of \$5,000 (or the dollar limit under Section 411(a)(11) of the Code, if greater) on the date that payments commence under Article 9.05 or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

9.12 Procedure When Distributee Cannot Be Located: The Plan Administrator is authorized to declare a forfeiture to the Plan of all Plan distributions and any income or other increment thereon if the owner, participant or beneficiary cannot be found and has not, within three (3) years after it becomes payable or distributable, accepted the distribution, corresponded in writing concerning the distribution, or otherwise indicated an interest as evidenced by a memorandum or other written record on file with the Plan Administrator. For this purpose the Plan Administrator or Provider will mail a notice to the last known address shown on the City or Providers records. All forfeitures shall be used to offset future Plan expenses.

ARTICLE X. NON-ASSIGNABILITY / MISCELLANEOUS

10.01 Non-Assignability: Except as provided in Article 10.02, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders:

Notwithstanding Article 10.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Plan Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

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 at the earliest date that benefits may be paid to the Participant, unless the order directs a different time or form of payment. To the extent provided in Article VIII, the alternate payee may elect to transfer all or part of a distribution to an eligible retirement plan. In addition, in accordance with Code Section 414(p)(10), this Plan shall consider an order a qualified domestic relations order even if such order requires a distribution to an alternate payee prior to the time that a Participant has a Severance from Employment. Any Payment made to a person other than the Participant pursuant to this Article X shall be reduced by any required income tax withholding and shall be taxable to the alternate payee.

(a) 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

Article. No such transfer shall be effectuated unless the Employer has been provided with satisfactory evidence that the Employer is released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the Employer from any claim with respect to such amounts, in any case in which;

- (i) the Employer 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 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 from the obligation to comply with the judgment, decree, or order.

(b) Participation in Legal Proceedings: The Employer shall not be obligated to defend against or set aside any judgment, 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 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 shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

10.03 Mistaken Contributions: If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.

ARTICLE XI. RELATIONSHIP TO OTHER PLANS AND EMPLOYMENT AGREEMENTS

11.01 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. 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 XII. APPLICABLE LAW

12.01 This Plan and Trust shall be construed under the laws of the State of California and is established with the intent that it meets the requirements of an “eligible deferred compensation plan” under Section 457 of the Code, as amended. The provisions of this Plan and Trust shall be interpreted and applied so as to conform with the requirements of Section 457 of the Code.

ARTICLE XIII. GENDER AND NUMBER

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

ARTICLE XIV. MISCELLANEOUS

14.01 The Deferred Compensation Committee, as defined in Article 3.11 is empowered to review, evaluate, and make recommendations for product providers to the City Council. Additionally, the Deferred Compensation Committee will serve as an advisor to the Plan Administrator in decisions such as unforeseeable emergency limitations, etc. Specific duties and responsibilities for overall deferred compensation plan administration are noted below:

A. CITY COUNCIL

1. Authorize, by Resolution, the Anaheim Deferred Compensation Plan Document, in compliance with Section 457 of the Code.
2. Approves additions or removal of Providers, as well as approve major amendments to the Plan.
3. Authorize the administration of the Plan.

B. PLAN ADMINISTRATOR

1. Day to day administration, including approval of Plan Participation Agreements and preliminary evaluation of unforeseeable emergencies.
2. Authority to sign all legal agreements with approved Providers, including minor Plan amendments.
3. Communicating the Deferred Compensation Program to employees.
4. Maintain Deferred Compensation Procedures Manual and related Plan documents.

5. Coordinate Provider/City employee meeting schedule.
6. The Plan Administrator shall have the right to delegate any of the above duties to staff.

C. DEFERRED COMPENSATION COMMITTEE

1. Conduct reviews of the Deferred Compensation Program and make recommendations as necessary.
2. Conduct reviews of the Retirement Health Savings Program and make recommendations as necessary.
3. Review Provider performance and provide recommendations on adding, deleting Providers to the City Council.
4. Review and make determinations on adding, deleting or amending Investment Options.
5. Assist the Plan Administrator on unforeseeable emergency determinations, as necessary.
6. The Committee shall have the power to appoint subcommittees.
7. The seven (7) Deferred Compensation Committee Members shall serve as Trustees of the Trust.
8. The Committee will select the two (2) Participating Employee members of the Committee.

D. SUBCOMMITTEE

1. Performs task within the scope of the Committee's responsibility
2. The Subcommittee makes reports and recommendations for consideration to the Committee.

14.02 No Participant or other person shall have any legal or equitable right against the Employer except as provided in the Plan, and in no event shall the terms of employment of any Employee or Participant be modified or in any way affected thereby.

14.03 Each Participant herein expressly agrees for himself, his successors, assignees and his beneficiaries that he shall look solely to the general assets of the Trust for the payment of any such benefit to which he may become entitled under the Plan.

14.04 The Plan has been adopted in the State of California and shall be construed and governed and administered in compliance with all applicable State law.

14.05 The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries, and their heirs, and legal representatives.

14.06 Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Employer shall be sent to the Employer or Contract Administrator at its principal office, as applicable; and, if directed to a Participant or a Beneficiary, shall be sent to such Participant or Beneficiary at his last-known address as it appears on the Employer's and Provider's records, or delivered to a participant (stapling to a paycheck), emailed or faxed. Such notice shall be deemed given when mailed, delivered to a Participant (stapling to a paycheck), emailed or faxed.

14.07 Deductions for Participant's contributions to the Public Employees' Retirement System, Social Security, Retirement Health Savings Program, and other retirement plan or associations shall be made regardless of amounts deferred pursuant to the Plan.

14.08 A permitted leave of absence without pay shall be considered to be a temporary suspension of contribution to the Plan. Contribution shall be automatically reinstated in accordance with the Participation Agreement as of the first day of the next payperiod subsequent to the termination of such leave of absence status. In the event of a non-permitted leave of absence without pay, the Employer at its discretion may deem such absence a revocation of the Participation Agreement.

ARTICLE XV. AMENDMENT OR TERMINATION OF PLAN

15.01 The Employer has the sole and exclusive right to terminate this Plan for all Participants at any time. Upon such termination, each Participant in the Plan will be deemed to have revoked his Participation Agreement as of the date of such termination. Such termination shall have no effect on the rights of the Participant with respect to amounts already deferred under the Plan or transferred pursuant to Article VIII.

The Employer may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the rights of the Participants or their Beneficiaries to the receipt of payment of benefits, to the extent of any Compensation deferred at the time of the amendment as adjusted for income or losses attributable to such Deferred Compensation prior to and subsequent to the amendment.

To the extent that there are legislative changes affecting Section 457 of the Internal Revenue Service Code, this plan shall be interpreted to allow implementation of mandatory changes.

This Plan is intended to qualify as an eligible deferred compensation plan under Section 457 of the Code and shall be interpreted and administered in a manner consistent with such qualifications. The Employer reserves the right to amend the Plan to the extent that may be necessary to conform the Plan to the requirements of Section 457 of the Code and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the Plan. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Section 457 of the Code, the Employer shall correct such inconsistency within the period provided in

Section 457 of the Code, or terminate the Plan. The Employer reserves the right to take such action and do such things as are required to make the Plan, as administered, consistent with Section 457 of the Code.

ARTICLE XVI. TOTAL AGREEMENT

16.01 This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

The Employer hereby establishes this Deferred Compensation Plan on the terms and conditions set forth herein.

DATE: _____

CURT PRINGLE
MAYOR

KRISTINE RIDGE
PLAN ADMINISTRATOR

ATTEST:

LINDA ANDAL, CITY CLERK

APPROVED AS TO FORM
CRISTINA L. TALLEY, CITY ATTORNEY

MOSES W. JOHNSON, IV.
ASSISTANT CITY ATTORNEY