

THE CITY OF TACOMA
DEFERRED COMPENSATION PLAN

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**THE CITY OF TACOMA
DEFERRED COMPENSATION PLAN**

**ARTICLE I
INTRODUCTION AND PURPOSE OF PLAN**

1.1 Establishment of Plan

This Plan constitutes an amendment and restatement of the City of Tacoma's Deferred Compensation Plan (the "Plan") a municipal 457(b) plan, authorized by RCW 41.50,770 (2), effective November 29, 2012.

Effective January 1, 2007, the Employer also adopted the Nationwide Retirement Solutions 457 Plan (the "Firefighters Plan"), which is incorporated by reference. Employer shall establish and maintain the Firefighters Plan solely for the benefit of Eligible Firefighters who elect to participate in it. An Eligible Firefighter may elect to participate in this Plan, the Firefighters Plan, or neither, or both.

1.2 Purpose of the Plan

The purpose of this Plan is to allow eligible employees of participating employers to designate a portion of their compensation to be withheld each month and invested at the direction of the participant in one or more investments permitted by the Administrative Committee. Participation in this Plan shall not be construed to establish or create an employment contract between the eligible employee and his or her employer. As a result of position or the terms of collective bargaining agreements, certain employees will be entitled to receive matching or other contributions from their employer.

**ARTICLE II
DEFINITIONS**

2.1 Definitions

Whenever used in the Plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided, and when the defined meaning is intended, the term is capitalized:

A. "Account Balance" means the bookkeeping account maintained with respect to each Participant which reflects the greater than \$0.00 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, and any distribution made to the Participant or the Participant's Beneficiary. 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 established for rollover contributions and plan-to-plan transfers made 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).

B. "Administrator", means the City of Tacoma.

C. "Beneficiary" means the person, persons, or legal entity, as designated by the Participant or provided for in accordance with Section 6.3 of the Plan, that is entitled to receive a Participant's undistributed benefits under the Plan in the event of his or her death.

D. "Code" means the Internal Revenue Code of 1986 as amended.

E. "Committee" or "Administrative Committee" means an administrative committee composed of the Human Resources Director; Chief Deputy City Attorney; City Treasurer, Manager designated by the Director of Public Utilities; Human Resources Benefits Manager; a Joint Labor Committee Representative, or their respective designees, which is acting on behalf of the Administrator, City of Tacoma.

F. "Compensation" means salaries, wages and other forms of remuneration for a calendar year that is attributable to services performed by the Participant for the Employer.

G. "Deferred Compensation" means that portion of the Participant's Compensation which the Participant elects to defer under the Plan (including both Roth elective deferrals and pre-tax deferrals) and any Employer Contributions.

H. "Employee" or "Eligible Employee" means any Employee of a Participating Employer. **"Eligible Firefighter"** means only City of Tacoma firefighter Employees who are represented by and members of Tacoma Firefighters Union Local # 31, per the terms of the 2004-2005 Collective Bargaining Agreement approved by the Tacoma City Council by Resolution No. 36494, adopted June 28, 2005.

I. "Employer" or "Participating Employer" means the City of Tacoma.

J. "Firefighters Plan" means the investment options administered by Nationwide Retirement Solutions 457 Plan. The Firefighter's Plan is offered by Employer to Eligible Firefighters who elect to participate in it as an option under the City of Tacoma's Deferred Compensation Plan.

K. "Includable Compensation" means the Participant's compensation as defined by Code Section 415(c)(3), that is, Compensation before any deferral under Code Section 125 (relating to benefits provided under a cafeteria plan), Section 132(f) (relating to qualified transportation fringe benefits), Section 457(a) (relating to amounts deferred under this Plan), Section 403(b) (relating to contributions for annuity contracts), Section 105(d) (relating to certain disability payments), Section 414(h) (relating to employee contributions to a government plan), or Section 911 (relating to foreign earned income). Compensation is taken into account at its fair market value if paid on other than money, and it is determined without regard to community property laws.

L. “Normal Retirement Age” means that age described in (a) below, subject to the alternative provisions of (b) as elected in writing by the Participant.

i. Age 65; or

ii. As elected by the Participant prior to Severance from Employment or prior to the use of the Catch-up Limitation provision described in Section 3.3.C by written instrument or pursuant to the execution of a revised Participation Agreement, any age within the range of ages ending no later than age 70½ and beginning no earlier than the earlier of age 65 or the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits from the Employer’s basic pension plan.

M. “Participant” means any individual or Beneficiary with an Account Balance.

N. “Pay Period” means a regular accounting period established by the City of Tacoma for measuring and paying Compensation earned by employees.

O. “Plan” means the City of Tacoma’s Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

P. “Plan Service Provider” or “Plan Recordkeeper” or “Provider” refers to the firm or firms that are under contract to provide administration, record-keeping, education, communication and investment related services to the Plan.

Q. “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 Committee.

2.2 Gender and Number

Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice versa, and the definition of any terms herein in the singular may also include the plural.

ARTICLE III PARTICIPATION IN THE PLAN

3.1 Eligibility

Any employee is eligible to participate in this Plan on date of hire. Participation in the Firefighters Plan shall be governed by the terms of that Plan.

3.2 Enrollment

An eligible employee as defined in Section 3.1 may become a Participant by agreeing in writing, in a form to be provided by the Committee, to a deferment of his or her Compensation, in

accordance with Section 3.3. Compensation will be deferred for any calendar month only if a properly completed enrollment form has been entered into before the beginning of such month. The deferral will commence with a Pay Period not more than 60 days following the receipt by the Employer of a properly completed enrollment form which is accepted by the Committee. An Eligible Individual may become a Participant and agree to defer accumulated sick pay and accumulated vacation by entering into a Participation Agreement prior to the first day of the calendar month in which the amount deferred would otherwise be paid or made available if the Participant is an employee in that month. If accumulated sick pay or accumulated vacation is payable prior to severance from employment, the amount may be deferred by entering into a Participation Agreement prior to the amount deferred becoming currently available.

3.3 Maximum Deferment

A. The maximum amount of the Deferred Compensation under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code, which is \$17,000 for 2012.

The dollar limitation shall be adjusted for cost of living in accordance with Code Section 415(d).

B. Age 50 Catch-up Annual Deferral Contributions. A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of deferrals, up to the maximum age 50 catch-up for the year. The maximum dollar amount of the age 50 catch-up deferrals for a year is \$5,500 for 2012, adjusted for cost of living after 2012 to the extent provided under the Code.

C. Special Section 457 Catch-up Limitation. If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this paragraph C. exceeds the amount computed under paragraphs A. and B., then the Annual Deferral limit under this Section 3.3 shall be the lesser of:

- i.** An amount equal to 2 times the Applicable Dollar Amount in A. for such year; or
- ii.** The sum of:
 - (a)** An amount equal to the aggregate limit in A. for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (b)** An amount equal to the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to

paragraphs 3.3 A. and B.), minus the aggregate contributions to Pre-2002 Coordination Plans for such years.

D. Roth Deferrals. The Employer has affirmatively elected to permit Roth Elective Deferrals effective January 1, 2013, as follows.

i. Definitions

- (a) Designated Roth Account. A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account
- (b) In-Plan Roth Conversion. A distribution from a Participant's pre-tax account that is rolled over to the Participants Designated Roth Account under the Plan, pursuant to Code section 402A(c)(4). Notwithstanding anything herein to the contrary, an amount is not eligible for an In-Plan Roth Conversion unless it is distributable under the terms of the Plan and such distribution is an eligible rollover distribution within the meaning of Code section 402(c)(4).
- (c) Pre-Tax Account. A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.
- (d) Qualified Roth Contribution Program. A program described in paragraph (1) of Code section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.
- (e) Roth Elective Deferral. Deferred Compensation contributed pursuant to Section 3.3.D by a Participant, which amounts are:
 - (1) designated irrevocably by the Participant at the time of the deferral as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax elective deferrals (including catch-up contributions) the Participant is otherwise eligible to make under the Plan; and
 - (2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Includible Compensation.

- ii.** Permitted Roth Elective Deferrals
 - (a)** A Participant shall be permitted to make Roth Elective Deferrals from his or her Includible Compensation in such amount or percentage as may be specified in the election. A Participant's Roth Elective Deferrals will be allocated to a Designated Roth Account maintained for such deferrals.
 - (b)** Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Compensation for all purposes under the Plan.
- iii.** Separate Accounting
 - (a)** Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions and rollovers from a designated Roth account under an eligible retirement plan will be credited and debited to a Participant's Designated Roth Account.
 - (b)** The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan in each Participant's Designated Roth Account.
 - (c)** Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and the Pre-Tax Account under the Plan.
 - (d)** No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan and properly attributable income gains and losses thereon will be credited to a Participants Designated Roth Account.
- iv.** Direct Rollovers
 - (a)** Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an eligible retirement plan or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
 - (b)** Notwithstanding anything to the contrary in the Plan, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an eligible retirement plan, or if the rollover is an In-Plan Roth Conversion defined in section 3.3.D(i)(B) of this document.
 - (c)** Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account under the Plan exceeds \$1,000 for purposes of

mandatory distributions from the Plan.

- v. Availability of Loans from Designated Roth Accounts
 - (a) Designated Roth Accounts will not be available as a source for loans under the Plan.

3.4 Special Rules

For purposes of this Article III, the following rules shall apply:

- A. Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, including but not limited to the Firefighters Plan, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of Section 3.3. .
- B. Pre-Participation Years. In applying Section 3.3 C., a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.3 A. or any other plan ceiling required by section 457(b) of the Code.
- C. Pre-2002 Coordination Years. For purposes of Section 3.3 C., “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 5.2(c) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.
- D. Disregard Excess Deferral. For purposes of Section 3.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 3.5. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

3.5 Correction of Excess Deferrals

If the Deferred Compensation on behalf of a Participant for any calendar year exceed the limitations described above, or exceeds the limitations described above when combined with

other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto) shall be distributed to the Participant; provided, that distributions of excess deferrals shall be made first from the Firefighters Plan where the Participant is a Participant of said Plan.

3.6 Modifications to Amount Deferred

The Employer shall adjust the Participant's Compensation, on a Pay Period basis, by the Deferred Compensation amount indicated on the Participant's election to defer or on any subsequent modifications of deferral amount as may be elected by Participant. The change shall take effect only prior to the time any such amounts become payable and as of a Pay Period not more than 60 calendar days following receipt and approval of Participant's election to defer.

3.7 Revocation of Deferral

Any Participant may revoke his or her election to have Compensation deferred by so notifying the Committee in writing. The Participant's full Compensation will then be restored as soon as possible but not later than the Pay Period occurring 60 days after the receipt of the notice, and any other required forms, by the Committee; however, the Participant's benefits under the Plan shall be paid only as provided in Section 6.2 herein.

3.8 Duration of Election to Defer Compensation

Once an election to have Compensation deferred has been made by the Participant, the election shall continue in effect until the Participant's Severance from Employment, unless the Participant modifies the amount in accordance with Section 3.6, or revokes the election in accordance with Section 3.7. The deferral will automatically cease when a Participant's Compensation during a Pay Period is less than the amount to be deferred.

3.9 Employer Contributions

Where provided by a collective bargaining agreement or by the duly adopted compensation plan of the Employer, the Employer shall make contributions on behalf of contributing Participants at such rate and to such maximum amount as shall be established by the collective bargaining agreement or compensation plan. In no event shall the sum of the Employer contributions and the Deferrals provided elsewhere in this Article III exceed the maximum deferral amounts permitted by Section 3.3.

3.10 Protection of Persons Who Serve in a Uniformed Service

An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional deferrals upon resumption of employment with the Employer equal to the maximum deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation)

without the interruption or leave, reduced by the deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Such a participant will also receive the Employer Contribution under Article 6 that he would have received if employment had continued.

ARTICLE IV HARDSHIP WITHDRAWALS AND LOANS

4.1 Hardship Withdrawal

A distribution of all or a portion of the Participant's Deferred Compensation plus earnings (if any) shall be permitted in the event the Participant experiences severe financial hardship. Severe financial hardship involves an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in Code section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code section 152(a)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 4.1, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. Whether circumstances constitute an unforeseeable emergency depends on the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved.

Any Participant desiring a distribution by reason of hardship must apply pursuant to procedures approved by the Committee and demonstrate that the circumstances being experienced were not under the Participant's control and constitute a real emergency which is likely to cause the Participant great financial hardship. The procedures shall require such medical or other evidence as may be needed to determine the necessity for the Participant's withdrawal request. Distributions will not be made to the extent that such hardship may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, a loan pursuant to Section 4.2, or by cessation of deferrals under the Plan.

If an application is approved, the distribution shall be limited to an amount sufficient only to meet the unforeseeable emergency.

4.2 Loans

A Participant may obtain a loan from his or her account under the Plan in accordance with the terms of the written Participant Loan Program established by the Committee, the terms and conditions of which are incorporated herein by reference. No All loan shall be made which does

not meet the following requirements:

A. The Participant shall apply for a loan in writing on a form providing such information as the Committee shall require.

B. The total amount of the loan, together with the outstanding balance of all other Plan loans to the Participant, shall not exceed the lesser of (1) \$50,000 reduced by the excess, if any, of the highest outstanding balance of loans during the one-year period ending on the day before the loan is made over the outstanding balance of loans from the Plan on the date on which such loan was made, or (2) one-half (1/2) of the fair market value of the Participant's account under the Plan.

C. The interest rates for a Plan loan shall be commensurate with interest rates being charged by entities in the business of lending money under similar circumstances. Generally, the rate assumed will be Prime Rate + 1.00%. The Prime Rate shall be the prime rate published by the Wall Street Journal two weeks prior to the end of the most recent calendar-year quarter. The Committee may adjust the loan interest rate for participants entering active duty in the military services as may be required by law.

D. Each loan shall have a definite maturity date and shall be repayable in level installment payments not less frequently than quarterly. The term for repayment shall not exceed five (5) years.

E. Interest paid on the loan shall accrue to the account of the Participant. The loan shall be secured by the Participant's account. The Participant's loan payments shall be allocated to investment options selected by the Participant for the investment of contributions.

F. A loan shall be available to all Participants on a reasonably equivalent basis. A loan will not be available to a Participant who is not an active Employee.

G. At Severance from Employment, the outstanding balance of a loan will be repayable in full. A default in repayment will result in the outstanding balance of a loan being treated as a taxable distribution. If a Participant takes a distribution from the Plan (other than an in-service distribution), the unpaid balance of the principal and interest of any outstanding loan shall be deducted from the amount of the distribution.

H. A loan will be available only from that portion of the Participant's account which is invested pursuant to an arrangement under which loans are permitted. The limitations of Paragraph B shall apply as if that portion of the Participant's account is the Participant's sole balance under the Plan. The minimum loan will be \$1,000. Only one loan may be outstanding at any time. All loan payments will be made by payroll reduction. No loan will be available if a loan is in default.

I. The entire amount of the loan will be defaulted and treated as a deemed distribution as of the 30th day following the original due date of the initial missed loan payment if both the missed payment and the next payment are not paid by that date. A deemed distribution is treated as distribution from the Plan for federal income tax purposes; therefore amounts treated

as deemed distribution will be subject to federal income taxes. The Plan Service Providers may impose additional rules related to repayment of loans in default.

J. Upon a loan being deemed to be in default as set forth above, a Participant will be ineligible to defer compensation under this Plan for a period of six (6) months after the effective date of the default.

ARTICLE V INVESTMENT OF DEFERRED COMPENSATION

5.1 Individual Accounts

The Employer shall cause an individual account to be maintained with respect to each Participant that reflects the Participant's Deferred Compensation and the value of the respective investment or investments selected by the Participant. Each Participant shall receive periodic reports showing the then-current value of his or her individual account. Each Participant's account shall be charged with its ratable share of administrative, investment, or other expenses, in such amounts and at such times as deemed necessary by the Employer for the maintenance of the Plan.

The benefits due to a Participant or Beneficiary under the Plan shall be equal to the Participant's or Beneficiary's individual Account Balance. The Employer shall not be liable for losses arising from any reason under the Plan.

5.2 Investment and Ownership of Investments

The Committee shall select a number of investment media which shall be made available under the Plan. The Committee is not responsible for selection of investment media under the Firefighters Plan. In making the selections which the Committee is empowered to make, the Committee may rely upon the advice of such investment advisors or City employees as it shall in its sole discretion determine. Each Participant shall be entitled to select one or more of the investment media for investment and reinvestment of Deferred Compensation credited to his or her individual account. Additional investment options may be made available through a brokerage window. Liquidation of investments and transfers among investment media shall be made in accordance with such rules and procedures as the Committee shall in its sole discretion adopt which shall be communicated to Participants.

All amounts of Deferred Compensation, 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 pursuant to the terms of an Agreement and Declaration of Trust which shall be established or adopted by the Committee, and under which members of the Committee shall serve as Trustees.

5.3 No Rights Until Distribution

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 exempt from execution, or transfer by operation of law in the event of bankruptcy or insolvency, except to the extent otherwise required by law.

5.4 Qualified Domestic Relations Order

Notwithstanding any provision of this Plan or Code Section 457(d), the Plan may distribute all or any portion of a Participant's Account Balance pursuant to a qualified domestic relations order (QDRO). A qualified domestic relations order is a domestic relations order which creates or recognizes the existence of an alternate payee's right to or assigns to the alternate payee the right to receive all or a portion of the benefits payable with respect to a Participant under this Plan. A domestic relations order means any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant and is made pursuant to a state domestic relations law. Unless the order otherwise provides, the amount awarded the alternate payee shall be paid out in a lump sum as soon as administratively feasible following the Plan's receipt of the order and the determination that it is a qualified domestic relations order. The Committee shall approve procedures for reviewing domestic relations orders including the time frame within which review will normally be completed, which procedures shall be binding upon the Participants. Where necessary to carry out the terms of the order, a separate account shall be established for the alternate payee who shall be entitled to direct the investment thereof in the same manner as the Participant until payment pursuant to the terms of the order.

ARTICLE VI DISTRIBUTION OF BENEFITS

6.1 Distribution Events

Benefits under the Plan will be distributed in accordance with Section 6.2 within 60 days following the end of the calendar year in which Severance From Employment occurs, but not before such date except as hereinafter specifically provided, or pursuant to Section 4.1 in the case of financial hardship. Notwithstanding the foregoing, a Participant may elect to defer the commencement of distribution to any determinable future date later than the foregoing date, but no later than April 1 of the year following the year of the Participant's retirement or attainment of age 70½, whichever is later.

6.2 Election of Method of Distribution

A Participant may elect one or more of the following methods by which his or her benefits shall be distributed:

- A.** A lump sum cash payment of all or a portion of the balance.

B. A series of payments on an annuity basis as if an annuity contract was purchased which is based upon the life expectancy of the Participant, or, if married, the life expectancy of the Participant and his or her spouse.

C. A series of payments over a fixed period which shall not be longer than the life expectancy of the Participant or, if married, the joint life expectancy of the Participant and his or her spouse.

D. Any combination of the foregoing.

E. Any other payment option elected by Participant that is permissible under law and agreed to by Employer and Provider.

- i.** Where more than one option is elected, the Participant may specify the investment or investments to be allocated to the option or options.
- ii.** Annual installment payments through the year of the Participant's death shall not be less than 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 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. The Account Balance for this calculation (other than the final installment payment) is the Account Balance at the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under Section 6.1. 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.
- iii.** In no event shall any distribution under this Article 6 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 the initial distribution commences 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 the previous paragraph and an amount equal to the annual installment payment for the year after Severance from Employment determined under the previous paragraph must also be paid before the end of the calendar year of commencement.
- iv.** Any distribution under this Plan shall comply with the minimum distribution requirements of the Internal Revenue Service.

6.3 Beneficiary Designation

Each Participant may, by following procedures established by the Committee, select a Beneficiary to receive his or her interest under the Plan in the event of his or her death. The Participant may revoke a Beneficiary designation and name a new Beneficiary by written election made in accordance with procedures established by the Committee. The following rules shall govern the payment of death benefits under the Plan:

A. In the absence of a Beneficiary designation by the Participant, the amount due the Participant under the Plan shall be paid to the following in the order named:

- i.** The surviving spouse or surviving state registered domestic partner of the Participant;
- ii.** surviving children of the Participant in equal shares;
- iii.** surviving parent or parents of the Participant in equal shares;
- iv.** the estate of the Participant.

B. If more than one Beneficiary is named in any category, benefits will be paid according to the following rules:

- i.** Beneficiaries may be designated to share equally or to receive specific percentages.
- ii.** If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of death of the Participant. If more than two (2) Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.

C. A person, trust, estate, or other legal entity may be designated as a Beneficiary.

D. A spousal or state registered domestic partner beneficiary designation will be invalidated by divorce or an official termination of a state registered domestic partnership.

E. Upon the death of the Participant, any Beneficiary entitled under the provisions of this section to the deceased Participant's benefits shall become a "Vested Beneficiary" and have all the rights of the Participant with the exception of making any deferrals.

F. 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. 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 annual installments (calculated in a manner that is similar to installments under Section 6.2) 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.

G. In the event of a conflict between the provisions of this section and the terms of an annuity distribution which has commenced under Section 6.2(B), the latter shall prevail.

6.4 Plan to Plan Transfers

A. Transfers to the Plan: At the direction of the Employer, a Participant who is a participant in another eligible governmental plan under section 457 (b) of the Code may be permitted to transfer assets to the plan as provided in this section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Committee may require, in its sole discretion that the transfer be in cash or other property acceptable to the Committee or its appointed Administrator. The Committee may require such documentation from the other plan as it seems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article III.

B. Transfers from the Plan: At the direction of the Employer, the 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 Section 6.4.B 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 Section 6.4.B 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. However, Eligible Firefighters participating in the Firefighter Plan may elect to have all or any portion of their Account Balance transferred to, from and between the Firefighter Plan and any other investment options available under City of Tacoma Deferred Compensation Plan whether or not they have had a Severance from Employment. An Eligible Firefighter may elect to participate in the Firefighters Plan investment options, or in other investment options available under the City of Tacoma Deferred Compensation Plan, in neither, or in both.

C. Upon the transfer of assets under this Section 6.4, 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 Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.4 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph A. of this Section 6.4, 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.

6.5 Acceptance of Eligible Rollover Contributions to the Plan

A. A Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Committee or its appointed Administrator 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 plan within the meaning of section 402(c)(8)(B) of the Code.

B. For purposes of Section 6.5A, an eligible rollover distribution means any distribution of all or any portion of a participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include:

- i.** any installment payment for a period of 10 years or more;
- ii.** any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee; or
- iii.** for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code.

In addition, an eligible retirement plan means an individual retirement account described in section 408(a) 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 rollover governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

C. The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that *is not* an eligible governmental plan under section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that *is* an eligible governmental plan under section 457(b) of the Code. A Participant's separate rollover account shall be available for distribution in a full or partial lump sum upon request, even if the Participant is still employed. In all other respects a Participant's rollover account shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as the rest of the Participant's Account Balance.

6.6 Eligible Rollover Distributions

Notwithstanding any provision of the Plan to the contrary, a Participant who has incurred a Severance from Employment may elect, at the time and in the manner prescribed by the Committee, to have all or any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

A. 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:

- i.** Any distribution that is one of a series of substantial 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 (10) years or more;
- ii.** Any distribution to the extent such distribution is required under Code Section 401(a)(9) or Code Section 457(d)(2); and any distribution made as a result of an unforeseeable emergency of the Employee.

B. An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a) or 403(b), a qualified trust described in Code Section 401(a), or an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible governmental employer. For distributions made after December 31, 2007, an eligible retirement plan shall also include an individual retirement account described in Code Section 408A(b).

C. 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 an alternate payee under a qualified domestic relations order as defined in Code Section 414(p) is a distributee. Effective January 1, 2010, a nonspouse "designated beneficiary" within the meaning of Code Section 401(a)(9)(E) may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution made in a direct rollover to an individual retirement account described in Section 408(a) of the Code or to an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract).

D. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

6.7 De Minimis Accounts

A. In service Distributions of De Minimis Accounts

- i. Voluntary In-Service Distribution of De Minimis Accounts:** A Participant who is an active Employee may elect to receive a distribution

of the total amount payable to the Participant under the Plan if the following requirements are met:

- (a) the portion of the total amount payable to the Participant under the Plan does not exceed \$5,000;
- (b) the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan; and
- (c) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

ii. **Involuntary In-Service Distribution of De Minimis Accounts:** The total amount payable under the Plan to a Participant who is an active Employee shall be distributed to the Employee if the following requirements are met:

- (a) the portion of the total amount payable to the Participant under the Plan does not exceed f \$1,000;
- (b) the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan; and

no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

B. De Minimis Mandatory Distribution Upon Separation of Service: If a participant has separated from service and the participant has an account balance of \$1,000 or less and if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the distribution will be paid in a lump sum to the Participant at the Participant's last known mailing address.

6.8 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 Code Section 414(d)) if such transfer is:

- A. for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under such plan, or
- B. a payment 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.

ARTICLE VII MISCELLANEOUS

7.1 Payments to Minors and Incapacitated Persons

If the Committee shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor, or, as adjudicated by a Court of Law, is incapacitated by reason of mental illness, developmental disability, or other mental incapacity, and unable to receive such benefit and to give a valid release therefore and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian of the person or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Committee may authorize payment of such benefit to such other person or institution, including a custodian under any State Gifts to Minors Act (who shall be an adult, a guardian of the minor or a trust company), or to a Court of Law for distribution pursuant to that Court's order, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefits.

7.2 Missing Persons

If the Committee is unable, after any benefit becomes due under the Plan to any person, to authorize payment because the identity or whereabouts of such person cannot be ascertained, and after notice by certified mail has been sent to the last known address of such person, the Committee may direct that such benefit and all other benefits with respect to such person be paid to a Court of Law for distribution pursuant to that Court's order.

7.3 Headings and Subheadings

The headings and subheadings in the Plan are inserted for the convenience of reference only and are to be ignored in any construction of the provision hereof.

7.4 Severability

If any provision of the Plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby.

7.5 Days and Dates

Whenever a time limit is expressed in terms of a number of days, they shall be consecutive calendar days, including weekends and holidays, provided however, that if the last day of the period of days would occur on a weekend or a holiday recognized by the State of Washington, the last day of the period shall be the next business day following.

7.6 Amendment of Plan

The Committee shall have the right to amend this Plan, at any time and from time to time, in whole or in part; provided that the amounts credited to the individual account of each Participant or Beneficiary shall not be reduced by the amendment.

7.7 Termination of Plan

Although each Employer has established this Plan with a bona fide intention and expectation that it will maintain the Plan indefinitely, nevertheless, each Employer is not and shall not be under any obligation or liability whatsoever to maintain the Plan. Each Employer may terminate or

discontinue the Plan with respect to its Employees in whole or in part at any time without any liability whatsoever for such termination or discontinuance. Deferred Compensation for Employees of that Employer shall thereupon cease. After Plan termination, the individual account of each Participant or Beneficiary shall be distributed in accordance with the provisions in Article VI above.

7.8 Applicable Law

This Plan shall be construed, administered and governed in all respects under and by the laws of the State of Washington and the Code.