

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Human Resources

AGENDA DATE: February 1, 2011

CONTACT PERSON(S) NAME(S)
AND PHONE NUMBER(S): Linda Ball Thomas, 541-4102, Irene Y. Morales, 541-4448

DISTRICT(S) AFFECTED: All

SUBJECT:

Approval of the restated 457 Deferred Compensation Plan for Public Employees and authorizing the City Manager to sign the restated documents.

BACKGROUND / DISCUSSION:

The 457 plan document establishes a deferred compensation plan for eligible employees as defined under Internal Revenue Service rules and regulations. The previous 457 plan document was restated in 2005.

The 457 plan document was updated to comply with current IRS regulations and administrative practices. Some specific updates include:

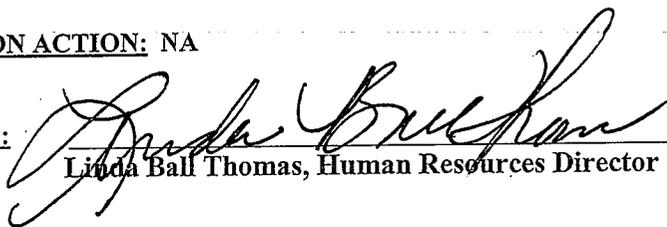
- Removal of the Trust Agreement to include this in a separate document outside of the Plan Document
- Changes to and additions to the definitions for compensation, includible compensation use for applying contribution limits, sponsor, trust, and trustee.
- Addition of provisions for the deferral of accumulated sick pay, vacation pay, and back pay
- Changes and corrections to the death benefit payment and beneficiary rollover provisions
- Updates to participant rollover provisions.
- Changes to loan provisions as agreed to in the administrative contract with the administrator.
- Addition of provision for the settlement of a dispute.

PRIOR COUNCIL ACTION: Council previously restated the 457 plan document in 2005.

AMOUNT AND SOURCE OF FUNDING: NA

BOARD / COMMISSION ACTION: NA

DEPARTMENT HEAD:


Linda Ball Thomas, Human Resources Director

CITY OF EL PASO
457(b) DEFERRED COMPENSATION PLAN
FOR PUBLIC EMPLOYEES
AMENDED AND RESTATEMENT

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CITY OF EL PASO

DEFERRED COMPENSATION PLAN
FOR PUBLIC EMPLOYEES

AMENDED AND RESTATED AS OF JANUARY 1, 2011

This is the Plan Document for the City of El Paso Deferred Compensation Plan for Public Employees Plan (herein referred to as the "Plan"), amended and restated as of January 1, 2011, covering the eligible employees of the City of El Paso.

ARTICLE I
GENERAL PROVISIONS

1.1 EFFECTIVE DATE

The effective date of this Plan is September 1, 2004. The effective date of this amendment and restatement of the Plan is January 1, 2011.

1.2 DEFINITIONS

The following words and phrases as used herein shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Administrator" shall mean the Employer or person designated by the procedure set forth in Section 5.2.

(2) "Age 50 Plus Catch-Up Contribution" means the catch-up contribution for workers who attain age 50 by the end of the calendar year, as permitted under Code Section 414(v) pursuant to Section 3.3.

(3) "Alternate Payee" is a spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the Participant's Participant Account under the Plan.

(4) "Beneficiary" means, subject to Article IV, the Participant's spouse or the person(s) designated by a Participant in a Participation Agreement or a beneficiary designation form, with, in the case of a married Participant, the Participant's spouse's consent, to receive the Participant Account in the event of the Participant's death. Subject to Article IV, the Participant may designate more than one Beneficiary or primary and secondary Beneficiaries or may change the designation of a Beneficiary. If two or more, or less than all, designated Beneficiaries survive the Participant, payments shall be made equally to all such Beneficiaries, unless otherwise provided in the form of designation made by the

Participant. Elections made by a Participant shall be binding on the Beneficiary and his Beneficiaries. If the Participant does not designate a Beneficiary, then the Participant's estate shall receive the Participant Account in accordance with Section 4.3.

(5) "Code" means the Internal Revenue Code of 1986, as amended.

(6) "Compensation" means wages, salaries, and fees for professional services (including contributions made to a plan under Code Section 125 to fund group health insurance coverage which the Employee does not have the option of receiving in cash because such Employee is unable to certify that he has other health coverage) and other amounts payable without regard to whether or not an amount is paid in cash for personal services actually rendered to the Employer to the extent that the amounts are includible in gross income. Includible Compensation shall include elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code Sections 125, 402(g)(3), 457(b) and 132(f)(4).

(7) "Domestic Relations Order" is a judgment, decree, or order (including approval of a property settlement agreement) that (a) 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 (b) is made pursuant to a state domestic relations law (including a community property law).

(8) "Eligible Individual" means any Employee or Independent Contractor of the Employer. Individuals who do not perform services for the Employer may not defer Compensation under this Plan.

(9) "Employee" means any person who is employed by the Employer for which compensation is paid.

(10) "Employer" means the City of El Paso and any other employer that joins the Plan with the consent of the City of El Paso.

(11) "Includible Compensation" means wages, salaries, and fees for professional services (including contributions made to a plan under Code Section 125 to fund group health insurance coverage which the Employee does not have the option of receiving in cash because such Employee is unable to certify that he has other health coverage) and other amounts payable without regard to whether or not an amount is paid in cash for personal services actually rendered to the Employer to the extent that the amounts are includible in gross income. Includible Compensation shall include elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code Sections 125, 402(g)(3), 457(b) and 132(f)(4). Includible compensation

shall include (A) any post-severance regular compensation that would have been paid had the Participant not terminated employment (such as overtime, shift differential, commission, bonuses or other similar compensation) paid by the later of 2-1/2 months after severance from employment or the end of the Plan Year that includes the date of severance from employment, and (B) payments for bona fide sick, vacation, or other leave that the Employee would have been able to use if employment continued, and payments from a nonqualified deferred compensation plan that are includable in income and that would have been paid at the same time had employment continued, that are made by the later of 2-1/2 months after severance from employment or the end of the Plan Year that includes the date of severance from employment.

Includible Compensation shall not include Employee pick-up contributions described in Code Section 414(h)(2).

(12) "Independent Contractor" means any person to whom Compensation from the Employer is payable for services rendered pursuant to one or more written or oral contracts, if such person is not a common-law employee.

(13) "Investment Product" means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold assets of the plan.

(14) "Leased Employee" means any person described in Code Section 414(n).

(15) "Normal Retirement Age" that is used for the Special 457 Catch-up Contribution election under Section 3.2 is the age designated by a Participant within a range of ages beginning at the earliest retirement age at which the Participant could receive unreduced benefits under the Employer's defined benefit pension plan and ending at age 65 .

(16) "Participant" means any individual who has entered into a Participation Agreement and for whom a Participant Account is maintained under the Plan

(17) "Participant Account" means the total of the Participant Deferral Account, the Participant 457 Rollover Account, and the Participant Non-457 Rollover Account for each Participant under the Plan.

(18) "Participant Deferral Account" means that portion of the Participant Account established and maintained by the Administrator for each Participant

with respect to his deferral of Compensation to the Plan, including any amounts transferred in accordance with Section 3.6.

(19) "Participant 457 Rollover Account" means any portion of the Participant Account established and maintained by the Administrator for each Participant with respect to Rollover Contributions received from another employer's Code Section 457(b) plan in accordance with Section 3.7.

(20) "Participant Non-457 Rollover Account" means that portion of the Participant Account established and maintained by the Administrator for each Participant with respect to Rollover Contributions rolled over from all rollover eligible plans other than from another employer's Code Section 457(b) plan in accordance with Section 3.7.

(21) "Participation Agreement" means an agreement which meets the requirements of Section 2.4 entered into between an Eligible Individual and the Employer pursuant to which an Eligible Individual agrees to commence deferring amounts from Compensation to the Plan and thus become a Participant.

(22) "Plan Year" means the calendar year; provided that the first calendar year shall be the four month period beginning September 1, 2004 and ending December 31, 2004.

(23) "Provider" means any entity the Employer may approve.

(24) "Qualified Domestic Relations Order" shall mean a Domestic Relations Order which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under the Plan, does not alter the amount or form of benefits, and clearly specifies the following information: (a) the name and last known mailing address (if any) of the Participant and the name and mailing address of each Alternate Payee (the current mailing address of the Alternate Payee need not be specified if the Administrator has reason to know that address independently of the order) covered by the order, (b) the amount or percentage of the Participant's benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined, (c) the number of payments or the period to which the order applies, and (d) each plan to which the order relates.

(25) "Rollover Contribution" means a contribution made by a Participant pursuant to a rollover of an "eligible rollover distribution" in accordance with Code Section 402(c)(4).

(26) "Special Section 457 Catch-up Contributions" means the catch-up contribution for Participants in the three consecutive years prior to Normal Retirement Age, as permitted under Code Section 457(b)(3) and pursuant to Section 3.2.

(27) "Sponsor" means the City of El Paso.

(28) "Trust" means the legal entity created by the trust agreement between the employer and the Trustee, fixing the rights responsibilities, and liabilities with respect to controlling and managing the Trust Fund for purposes of the Plan.

(29) "Trustee" means the trustee or any successor trustee or trustees hereafter designated by the Employer and named in the trust agreement or any amendment thereto.

(30) "Trust Fund" as of a particular date shall mean the total fair market value of the funds and property held by the Trustee under this Plan after all adjustments for income and expenses, profit or loss, and benefits paid or due to be paid.

(31) "Unforeseeable Emergency" means a severe financial hardship to a Participant or Beneficiary resulting from a:

(a) sudden and unexpected illness or accident of the Participant, Beneficiary, Participant's or Beneficiary's spouse or dependent (as defined in Code Section 152 without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B);

(b) loss of the Participant's or Beneficiary's property due to casualty; or

(c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary

ARTICLE II ELIGIBILITY

2.1 CONDITIONS OF ELIGIBILITY

All Eligible Individuals shall be permitted to participate under this Plan.

2.2 DETERMINATION OF ELIGIBILITY AND EFFECTIVE DATE OF PARTICIPATION

(a) The Administrator shall determine the eligibility of each Employee and, if applicable, Independent Contractor, for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons.

(b) An Eligible Individual shall elect to participate and become a Participant by signing a Participation Agreement pursuant to Section 2.4 with the Employer and filing such agreement with the Administrator.

(c) The Participant shall provide investment direction for contributions made to the Investment Product on such forms as required by the Provider.

2.3 TERMINATION OF ELIGIBILITY

In the event a Participant shall cease to be an Eligible Individual, the Participant Account of such Participant shall continue to be allocated any attributable earnings based on the investment direction supplied by the Participant.

2.4 PARTICIPATION AGREEMENT

(a) In order to participate in the Plan, a Participant must complete and file a Participation Agreement in the manner and method prescribed by the Administrator. The Participation Agreement shall specify:

(i) the amount (expressed either as a dollar amount or as a percentage of the Participant's Compensation) which the Employer and the Participant agree to defer, subject to the limitations of Article III; and

(ii) the date as of which reduction and deferral of Compensation pursuant to the Participation Agreement shall begin.

An Eligible Individual may defer Compensation payable in the calendar month during which the individual first becomes an Eligible Individual if the Participation Agreement providing for such deferral is entered into on or before the first day on which he first becomes an Eligible Individual.

- (b) A Participant may, by amendment of a Participation Agreement or by any manner the Administrator may prescribe, do any of the following:
 - (i) change the specification of the investment of any contributions under the Investment Product; or
 - (ii) change prospectively the amount of Compensation to be deferred.
- (c) Changes can be made at any time and will be effective as soon as administratively practicable subject to the other requirements of this Section 2.4.

ARTICLE III CONTRIBUTIONS TO THE PLAN

3.1 DEFERRALS

- (a) Except as provided in Section 3.2 and 3.3, the maximum amount which may be deferred by a Participant in any taxable year shall not exceed the lesser of (i) the dollar amount provided under Code Section 457(b)(2)(as may be indexed annually) or (ii) 100% of the Participant's Includible Compensation.
- (b) A Participant may elect to defer accumulated sick pay, accumulated vacation pay and back pay that the Participant is eligible to receive at termination of employment, provided the Participant enters into a Participation Agreement to defer such pay before the beginning of the calendar month in which the amounts would otherwise be paid or made available, if (i) the Participant is an Employee on the date the amounts would otherwise be paid or made available, or (ii) the pay is described in Section 1.2(11)(B).

Pay described in Section 1.2(11)(B) means payments for bona fide sick, vacation, or other leave that the Employee would have been able to use if employment continued, and payments from a nonqualified deferred compensation plan that are includable in income and that would have been paid at the same time had employment continued, that are made by the later of 2-1/2 months after severance from employment or the end of the Plan Year that includes the date of severance from employment.

3.2 SPECIAL 457 CATCH-UP CONTRIBUTIONS

- (a) A Participant may, in any one or more of his last three tax years ending before the year in which he attains Normal Retirement Age, elect to defer an amount not exceeding the lesser of (i) twice the dollar amount permitted as a general deferral under Section 3.1 or (ii) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Code Section 457(b)(2) in prior years before the current tax year that had not previously been used ("underutilized amount"). A prior year shall be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election with respect to one any Code Section 457(b) deferred compensation plan of the Employer.
- (b) In determining a Participant's underutilized amount, the Plan shall take into consideration:
- (i) prior to 2002, if a Participant made deferrals to the Plan and deferrals to any other Code Section 457(b) plan, salary reduction contributions made to Code Section 401(k) plans, Code Section 403(b) plans, Code Section 402(h)(1) simplified employee pension (SARSEP) plans, Code Section 408(p) simple retirement accounts, and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Section 457(b)(2). In addition, Includible Compensation shall be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then applicable dollar amount in Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.
 - (ii) to the extent that the Employer did not maintain a Code Section 457(b) plan, no underutilized limitation is available to a Participant for that prior year.
 - (iii) after 2001, only deferrals to Code Section 457(b) plans will be taken into account for purposes of determine the underutilized amount.
 - (iv) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

3.3 AGE 50 PLUS CATCH-UP CONTRIBUTIONS

A Participant who has attained age 50 before the close of the taxable year may elect the catch-up provision under Code Section 414(v) and commence making Age 50 Plus Catch-Up Contributions.

3.4 MAXIMUM ANNUAL CONTRIBUTIONS

- (a) In the event that the limit on deferral contributions is exceeded, the Administrator shall direct the Provider as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions.
- (b) Any catch-up contributions made by a Participant pursuant to Section 3.2 or 3.3 may not exceed the greater of (i) the amount that the Participant is eligible to defer under Section 3.2 or (ii) the amount that the Participant is eligible to defer under Section 3.3.
- (c) A Participant who participates in this Plan and another 457(b) plan of another employer shall be responsible for complying with the deferral limits of this Article III. In the event of an excess amount, the Participant shall notify the Administrator so that the excess may be distributed as soon as practicable.

3.5 INVESTMENTS

Amounts deferred under this Plan shall be invested in an Investment Product. Participants will direct the investment of their Participant Accounts among the investment options available under the Investment Product. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan shall control.

3.6 TRANSFERS FROM OTHER CODE SECTION 457(b) PLANS

This Plan shall accept transfers of amounts previously deferred under another Code Section 457(b) plan maintained by another employer that satisfies the definition of Code Section 457(e)(1)(a).

3.7 ROLLOVERS TO THE PLAN

- (a) Amounts that are considered "eligible rollover distributions" in accordance with Code Section 402(c)(4) may be rolled over by an Eligible Individual, whether or not a Participant at the time, from an "eligible retirement plan." The amounts rolled over from an eligible retirement plan other than a

Code Section 457 (b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(a) shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another Code Section 457(b) plan maintained by an employer that satisfies the definition of Code Section 457(e)(1)(a) shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account shall be accounted for separately from the amounts in the Participant 457 Rollover Account.

(b) For purposes of this Section, the term "eligible retirement plan" shall mean any other Code Section 457(b) plan maintained by an employer that satisfies the definition of Code Section 457(e)(1)(a), a Code Section 403 (b) program, a Code Section 401(a) plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b). For purposes of this Section the term "amounts rolled over from an eligible retirement plan" shall mean:

(i) amounts rolled to the Plan directly from another eligible retirement plan;

(ii) distributions received by an Eligible Individual from another eligible retirement plan that are eligible for tax deferred rollover to a Code Section 457(b) plan maintained by the Employer that satisfies the definition of Code Section 457 (e)(1)(a) and that are rolled over by the Eligible Individual to the Plan within 60 days following his receipt thereof; and

(iii) amounts rolled over to the Plan under (i) and (ii) by an Eligible Individual who is also a surviving spouse in accordance with Code Section 401(a)(9) or a spouse or former spouse who is the alternate payee as defined in Code Section 414(p).

ARTICLE IV

DETERMINATION, DISTRIBUTION AND TRANSFER OF BENEFITS

4.1 DISTRIBUTIONS UNDER THE PLAN

(a) A Participant Deferral Account may be paid to a Participant or Beneficiary only:

- (i) upon the Participant's severance from employment with the Employer ;
- (ii) in the event of the Participant's death;
- (iii) upon the occurrence of an Unforeseeable Emergency; or

- (iv) upon the election of a small balance distribution within the meaning of and subject to Section 4.8.
- (b) A Participant 457 Rollover Account and a Participant Non-457 Rollover Account will be distributed in accordance with Section 4.1(a).
- (c) An Independent Contractor shall be considered to have a severance from employment upon the expiration of all of the contracts under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration of such contractual relationship shall not be considered to be a good faith and complete termination if the Employer anticipates a renewal of such contractual relationship or the Independent Contractor becomes an Employee.

4.2 DETERMINATION OF BENEFITS PAYABLE TO THE PARTICIPANT

- (a) Upon the occurrence of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with Code Section 401(a)(9), as set forth in subsection (d) a Participant may elect a benefit distribution option permitted in Section 4.6 pursuant to which benefits will be paid. In the event that a Participant does not make an election of benefit distribution, any benefits payable to the Participant will be paid in the form of a lump sum distribution.
- (b) Such an election will be effective only if made prior to the date of benefit commencement on forms provided by the Administrator and received in the office of the Administrator in accordance with such procedures as the Administrator may establish.
- (c) Subject to subsection (d), a Participant, former Participant or Beneficiary who made an election as to the timing and form of benefit payment prior to the time such benefits first become payable or otherwise made available may change his benefit election once in accordance with procedures established by the Employer, to the extent permitted under the Investment Product and applicable law.
- (d) Minimum distribution payments under Code Section 401(a)(9) must begin by April 1 of the year following the later of:
 - (i) the year in which the Participant attains age 70 ½; or
 - (ii) the year in which the Participant has a severance from employment with the Employer.

4.3 DETERMINATION OF BENEFITS UPON DEATH

- (a) Death benefits shall be paid to a Beneficiary in a lump sum or an immediate or deferred annuity (including a survivor annuity, life annuity or an installment payment annuity) or a permitted systematic distribution option, in accordance with the Participant's or Beneficiary's election. If benefits have commenced during the Participant's lifetime in a joint and survivor annuity, or any other permitted form that provides for a stream of payments to continue after the Participant's death, death benefits shall be paid to the Beneficiary in the form elected. In the event that the Participant dies before benefits have commenced and neither the Participant or Beneficiary has made an election as to the form of death benefit payments, such Beneficiary's death benefit will be paid in a lump sum distribution made no later than December 31 of the year that contains the fifth anniversary of the Participant's death.
- (b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit rules.
- (c) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must,, in accordance with the Participant's or designated Beneficiary's election or, if an election has not been made, in accordance with Section 5.3(a):
 - (i) begin to be distributed to the designated Beneficiary no later than December 31 of the calendar year immediately following the calendar year of the Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
 - (ii) be distributed no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) If the designated Beneficiary is the Participant's surviving spouse and minimum payments under Code Section 401(a)(9) have not begun upon the death of the Participant, minimum payments to the surviving spouse must begin by the later of:
 - (i) December 31 of the calendar year immediately following the calendar year in which the Participant dies; or

- (ii) December 31 of the calendar year in which the Participant would have attained age 70 ½.

The payments to the surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. However, a surviving spouse may elect to receive the death benefit payments no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (e) If the Participant has no designated Beneficiary as of September 30 of the calendar year following the calendar year of the Participant's death, the Participant's death benefit must be paid in a lump sum no later than December 31 of the year that contains the fifth anniversary of the Participant's death.
- (f) If minimum payments under Code Section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant Account must be distributed to the Beneficiary as least as rapidly as under the method of distribution in effect prior to the death of the Participant.

4.4 PAYMENT TO MINORS AND INCOMPETENTS

Whenever any person entitled to payments under this Plan shall be a minor or under other legal disability or in the sole judgment of the Administrator shall otherwise be unable to apply such payments to his own best interest and advantage (as in the case of illness, whether mental or physical, or where the person not under legal disability is unable to preserve his estate for his own best interest), the Administrator may in the exercise of his or its discretion direct all or any portion of such payments to be made to or for the benefit of such person in any way the Administrator shall deem advisable, or to any third person who, in the judgment of the Administrator, will apply such payments for the benefit of the person entitled thereto. The decision of the Administrator will, in each case, be final and binding upon all persons and, except in the case of direct expenditures made by the Trustee, the Trustee shall not be obligated to see to the proper allocation or expenditure of any payments so made. Any payment made pursuant to the power herein conferred upon the Administrator shall operate as a complete discharge of the obligations of the Trustee.

If the Administrator deems it advisable, he or it may withhold approval of payment of all or any part of the amounts due such disabled person until a representative of such person competent to receive payment in his behalf shall have been appointed pursuant to applicable law.

4.5 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or his Beneficiary hereunder shall, at the expiration of five years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a forfeiture pursuant to the Plan and maintained in a forfeiture account, with investment direction provided by the Administrator. In the event a Participant or Beneficiary is located subsequent to his benefit being held in such account, such benefit and any earnings thereon shall be restored and paid to the Participant or Beneficiary in accordance with this Article IV.

4.6 FORM OF DISTRIBUTION OF BENEFITS

- (a) A Participant or Beneficiary may choose any of the following benefit distribution options:
 - (i) joint and survivor annuity
 - (ii) immediate or deferred annuity (including a life annuity or installment payment annuity)
 - (iii) systematic distribution option permitted under any Investment Product
 - (iv) lump sum
- (b) Notwithstanding any provision in the Plan to the contrary, the distribution of benefits, whether under the Plan or through the purchase of an annuity contract, shall be made in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder, including any applicable minimum distribution incidental benefit requirements.

4.7 UNFORESEEABLE EMERGENCY WITHDRAWALS

- (a) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal subject to the following requirements:
 - (i) the request must be submitted in writing to the Administrator.
 - (ii) the request for an Unforeseeable Emergency may be made only to the extent that such emergency may not be relieved through:
 - reimbursement or compensation from insurance or otherwise;

-liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
-cessation of the Participant's deferrals under the Plan.

(iii) distributions must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

- (b) The Administrator will review and approve or deny the request based on the relevant facts and circumstances. If a request is approved, the Employer shall direct the Provider to distribute that portion of the Participant Account as the Administrator has determined is necessary to meet the Unforeseeable Emergency.

4.8 SMALL BALANCE DISTRIBUTION

A Participant may, upon written request to the Administrator, elect to receive a small balance distribution, payable in a lump sum, if the Participant Deferral Account value is \$5,000.00 or less, and the Participant has not deferred into the Plan for a period of two years prior to the distribution. A Participant may take a small balance distribution only once while a Participant under the Plan.

4.9 ROLLOVERS FROM THE PLAN

- (a) Notwithstanding any provision of the Plan to the contrary, a Participant shall be permitted to elect to have any "eligible rollover distribution" rolled directly to an "eligible retirement plan" specified by the Participant. The Participant shall, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the "eligible retirement plan" to receive the rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.
- (b) For purposes of this Section 4.9, the term "eligible rollover distribution" means any distribution other than a distribution of substantially equal periodic payments over the life or life expectancy of the Participant (or joint life or joint life expectancies of the Participant and the designated Beneficiary), a distribution over a period certain of ten years or more, amounts required to be distributed under Code Section 401(a)(9), or a withdrawal on account of an Unforeseeable Emergency.
- (c) For purposes of this Section 4.9, the term "eligible retirement plan" shall

mean any other Code Section 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(a), a Code Section 403(b) program, a Code Section 401(a) plan, an individual retirement account as described in Code Section 408(a), an individual retirement annuity as described in Code Section 408(b), or effective for distributions after 2007, a Roth IRA described in Section 408A of the Code.

- (d) The election described in subsection (a) also applies to the surviving spouse or a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p). Effective for distributions made on or after January 1, 2010, the election also applies to a non-spouse Beneficiary, provided the rollover is made by a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity and such direct rollover is made in accordance with section 402(c)(11)(A) of the Code, applicable regulations, and other guidance issued by the Internal Revenue Service.

4.10 PURCHASING SERVICE CREDITS UNDER A STATE OR LOCAL RETIREMENT SYSTEM

A Participant may direct the Administrator to transfer amounts under his Participant Account in accordance with Code Section 457(e)(17) to the fiduciary of a state or local retirement system in order to enable the Participant to purchase years of service credits under the system, or repay amounts previously cashed out under the system even if the Participant is not eligible for a distribution under Section 5.1. The Administrator shall take such reasonable measures as are required to ensure that the intended recipient plan will accept such transferred amounts.

4.11 TRANSFERS TO OTHER CODE SECTION 457(b) PLANS UPON SEVERANCE FROM EMPLOYMENT

If a Participant separates from service to accept employment with or perform services for another employer that satisfies the definition of Code Section 457(e)(1)(a) and that maintains a Code Section 457(b) plan, the amounts deferred under this Plan shall, at the Participant's election, be transferred to such other Code Section 457(b) plan, provided:

- (a) The Code Section 457(b) plan to which the Participant's benefit is being transferred provides for the acceptance of such amounts; and
- (b) The Participant has a benefit immediately after the transfer which is at least equal to the amount under the Plan immediately before the transfer.

4.12 LOANS TO PARTICIPANTS

Upon application of a Participant who is a party in interest to the Plan, the Administrator may, in accordance with uniform, nondiscriminatory policies, direct the Trustee to make a loan to the Participant. In no event shall the outstanding balance of loans to the Participant under this Plan and any other plans of the Employer exceed the lesser of (i) \$50,000, reduced by the highest outstanding loan balance during the one-year period immediately preceding the date the loan is made; or (ii) one-half of the Participant's Participant Account under the Plan. One-half of the Participant's interest in the Trust shall be held as collateral for the outstanding loan(s) until fully paid. All such loans shall comply with the following terms and conditions:

- (1) Each application for a loan must be in writing to the Trustee and must be filed at least 15 days in advance of the time funds are required.
- (2) A Participant is only allowed one outstanding loan taken for a reason other than the purchase of a principal residence and one outstanding loan taken for the purchase of a principal residence at any one point in time.
- (3) The loan amount shall be taken from the participant's account on a pro-rata basis across all investments and all contribution sources.
- (4) Any fees associated with the election to take a loan will be paid by the participant requesting the loan.
- (5) Loan repayments will be made with each payroll deduction period and will be invested in accordance with the participant's current investment elections.
- (6) All loans shall bear a rate of interest as determined in the loan policy agreed to by the Sponsor and implemented by the Plan Administrator. The rate of interest shall be commensurate with commercial rates for loans of similar types.
- (7) The specific period for repayment shall be determined by mutual agreement between the Trustee and the borrower, but in no event shall the period exceed five years, except for loans made in connection with the purchase of a principal residence of a Participant. The loan must be amortized in equal payments made not less frequently than quarterly over the term of the loan.
- (8) Each loan shall be evidenced by the borrower's promissory note for the amount of the loan payable to the order of the Trust and secured by collateral as described above and any other collateral the Trustee may require.

(9) No distribution shall be made to any Participant or former Participant or Beneficiary unless and until all unpaid loans to the Participant have been paid in full. If a Participant fails to repay the loan in full, the Participant's Account will be charged with the principal and interest outstanding when distribution is made from the Participant's Participant Account upon severance of employment, death, disability or retirement.

ARTICLE V ADMINISTRATION

5.1 POWERS AND RESPONSIBILITIES OF THE SPONSOR

- (a) The Sponsor shall have full power to interpret and construe the Plan in a manner consistent with its terms and provisions and with Code Section 457, including regulations thereunder and to establish practices and procedures conforming to those provisions. In all such cases the Sponsor's determination shall be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Sponsor shall have the right to resolve all such questions. Notwithstanding the foregoing, the Sponsor's power and responsibility under the Plan shall not extend to, nor have any control over, those responsibilities and duties of the Provider, Administrator or Trustee.
- (b) The Sponsor shall be empowered to appoint and remove the Administrator from time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.
- (c) The Sponsor shall periodically review the performance of any person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Sponsor or by a qualified person specifically designated by the Sponsor, through day-to-day conduct and evaluation, or through other appropriate ways.

5.2 APPOINTMENT OF ADMINISTRATOR

The Sponsor may appoint an individual or a committee to serve as the Administrator and to discharge the Administrator's responsibilities under the Plan. The Sponsor may remove the individual or any committee member for any reason by giving such person 10 days written notice and may thereafter fill any vacancy thus created. If

the Sponsor does not appoint an individual or Committee to administer the Plan, the Sponsor shall be the Administrator.

5.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If a committee is appointed as Administrator, the responsibilities of each committee member may be specified by the Sponsor. In the event that the Sponsor makes no such delegation, the members may allocate the responsibilities among themselves, in which event the committee shall notify the Sponsor in writing of such action and specify the responsibilities of each member.

5.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the benefit of Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied, shall be consistent with the intent that the Plan shall continue to be an eligible plan under Code Section 457, and shall comply with the terms of all regulations issued thereunder. The Administrator shall have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to the following:

- (a) to determine all questions relating to the eligibility of Employees and Independent Contractors to participate or remain Participants hereunder and to receive benefits under the Plan;
- (b) to determine the amounts to be contributed to each Participant Account;
- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant or Beneficiary is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;

- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;
- (f) to determine the size and type of any Investment Product to be purchased from the Provider; and
- (g) to assist any Participant or Beneficiary regarding his rights, benefits, or elections available under the Plan.

5.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for the proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and other persons as required by law.

5.6 APPOINTMENT OF ADVISORS

The Administrator may appoint and/or employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

5.7 INFORMATION FROM SPONSOR

In order to enable the Administrator to perform his functions, the Sponsor shall supply the necessary information to the Administrator on a timely basis regarding the Participants under the Plan, including but not limited to Compensation, date of hire, date of death, disability, or termination of employment, and such other pertinent facts as the Administrator may require. The Administrator may rely upon such information as is supplied by the Sponsor and shall have no duty or responsibility to verify the accuracy of such information.

5.8 PAYMENT OF EXPENSES

All expenses of administration will be paid by the Participants in the Plan, unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, other specialists and their agents, and other costs of administering the Plan.

5.9 SETTLEMENT OF DISPUTES

In the event a dispute arises regarding the rights of an Employee, Participant or Beneficiary under the terms of this Plan, the decision of the Administrator shall be final and binding subject to review as provided below. The Administrator shall provide a notice in writing to any person whose claim for benefits under this Plan has been denied, setting forth the specific reasons for such denial, specific references to the Plan provisions on which the denial was based and an explanation of the procedure for review of the denial. Such person, or his duly authorized representative, may appeal to the Administrator for a review of the denial by sending to the Administrator a written request for review within 60 days after receiving notice of the denial. The request for review shall set forth all grounds on which it is based, together with supporting facts and evidence which the claimant deems pertinent, and the Administrator shall give the claimant the opportunity to review pertinent documents in preparing the request. The Administrator may require the claimant to submit such additional facts, documents or other material as he or it deems necessary or advisable in making the review. Within 60 days after the receipt of the request for review, the Administrator shall communicate to the claimant in writing his or its decision, and if the Administrator confirms the denial, in whole or in part, the communication shall set forth the reasons for the decision and specific references to the Plan provisions on which the decision is based. In the event any dispute arises as to persons to whom payments of the funds or other property should be made under the Plan, the Administrator may withhold any such payment or delivery until such dispute has been determined by a court of competent jurisdiction or shall have been settled by the parties concerned.

ARTICLE VI AMENDMENT AND TERMINATION

6.1 AMENDMENT

(a) The Sponsor shall have the right at any time to amend this Plan subject to the limitations of this Section 5.1. Any such amendment shall become effective as provided therein upon its execution.

(b) No amendment to the Plan shall be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of Participants or Beneficiaries or their estates, causes any reduction in the amount credited to the account of any Participant, or causes or permits any portion of the Investment Product to revert to or become property of the Sponsor or an Employer.

6.2 TERMINATION

(a) The Sponsor shall have the right at any time to terminate the Plan. In such event the Sponsor shall deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon termination of the Plan, the Sponsor shall direct the distribution of the assets to Participants in a manner which is consistent with and satisfies the provisions of Section 4.6 as soon as administratively practicable.

(c) Each Employer shall have the right at any time to terminate the Plan as to its Employees. If the Sponsor as not terminated the Plan in accordance with subsection (a), all assets shall remain in the Plan until distributed in accordance with Article IV.

ARTICLE VII MISCELLANEOUS

7.1 ASSETS FOR EXCLUSIVE BENEFIT OF PARTICIPANTS AND BENEFICIARIES

All amounts deferred and/or contributed under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property and rights shall be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. Such amounts shall not be subject to the claims of the Sponsor's or any Employer's general creditors.

7.2 BANKRUPTCY AND DIVORCE

Any interest or right of a Participant or Beneficiary under this Plan shall not be subject to being reached or applied by any trustee in bankruptcy, receiver, assignee for the benefit of creditors, spouse or divorced spouse of any such Participant or Beneficiary, nor by or under any agreement or decree of separation or divorce, voluntarily or involuntarily, of any Participant or Beneficiary.

Notwithstanding the foregoing, if the Administrator receives a Domestic Relations Order from a court of competent jurisdiction, the Administrator shall promptly notify the affected Participant and Alternate Payee of the receipt of such order and of the Administrator's procedure, which shall be in writing, for determining whether or not the order is a Qualified Domestic Relations Order and within a reasonable period after receipt of the order, determine whether the order is qualified and notify the Participant and Alternate Payee of the determination. The notice of the Administrator's determination will be sent by certified mail, return receipt requested, to the addresses specified in the order or, if the order fails to specify an address, to the last address of the Participant and the Alternate Payee known to the Administrator, or if the Alternate

Payee has designated in writing a representative to receive copies of notices with respect to a Domestic Relations Order, to the representative.

Upon receipt of the order, the Administrator shall segregate in a separate Account in the Trust the amounts that would have to be payable to the Alternate Payee until the issue of whether the order is qualified is determined. Segregation is not required for amounts that would not otherwise be paid during the determination period.

If the order (or modification thereof) is determined to be a Qualified Domestic Relations Order within 18 months after the date which the first payment is payable under the order, the Administrator shall direct the Trustee to pay the segregated amounts to the persons entitled to receive them. If the Administrator determines that the order is not qualified or, after the 18-month period has expired, has not resolved the issue of whether the order is qualified, the segregated amounts shall be returned to the Participant's Account under the Plan and shall be paid to the persons who would have received the amounts if the order had not been issued.

Any determination that an order is qualified after the expiration of the 18-month period is to be applied prospectively. Thus, if the Administrator determines that the order is qualified after the 18-month period, the Plan is not liable for payments to the Alternate Payee for the period before the order is determined to be qualified.

Notwithstanding anything contained herein to the contrary, if the Administrator determines that the order is a Qualified Domestic Relations Order, the Administrator may, but shall not be required to, make a distribution to the Alternate Payee prior to the earliest retirement age as defined in Code Section 414(p).

7.3 PARTICIPANT RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant, Employee, or Independent Contractor. Nothing contained in this Plan shall be deemed to give any Participant, Employee, or Independent Contractor the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant, Employee or Independent Contractor at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

7.4 ALIENATION

Subject to applicable state law (and Code Section 401(g) if the Investment Product consists of an annuity contract) and except as provided in Section 7.2, no benefit which shall be payable to any person (including a Participant or his Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge and any attempt to anticipate, alienate, sell, transfer,

assign, pledge, encumber or charge, the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall such benefit be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

7.5 CONSTRUCTION OF PLAN

This Plan shall be construed and enforced according to the state and local laws of the State of Texas.

7.6 GENDER AND NUMBER

Whenever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

7.7 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to a Participant, his legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Employer, Trustee, Administrator and Provider.

7.8 MILITARY SERVICE

Notwithstanding any provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

City of El Paso

By: _____

SPONSOR