

CITY OF PHILADELPHIA MUNICIPAL EMPLOYEES  
DEFERRED COMPENSATION PLAN

Restated Effective January 1, 1998  
Except otherwise specifically provided herein

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CITY OF PHILADELPHIA MUNICIPAL EMPLOYEES  
DEFERRED COMPENSATION PLAN

The City of Philadelphia (hereinafter called "City"), hereby amends and restates the City of Philadelphia Municipal Employees Deferred Compensation Plan effective January 1, 1998.

ARTICLE I

DEFINITIONS

In addition to the definitions set forth in § 1-103(1) of the Code, the following definitions apply to this Plan unless the context plainly requires otherwise. Any variation of the following definitions shall have the meaning ascribed to the defined term.

Sec. 1.01 Account means the individual account, maintained by the Plan Administrator on behalf of each Participant to which are credited Deferred Compensation Amounts, transfers, Rollover Amounts, administrative expenses and investment expenses.

Sec. 1.02 Beneficiary means any person who is designated, pursuant to the Article V, to receive upon a Participant's death, the benefits payable from a Participant's Account under this Plan.

Sec. 1.03 Benefit Commencement Date means the date selected by the Participant or Beneficiary to commence receipt of: (a) a single sum distribution of the fair market value of his/her Account, or (b) the first in a series of scheduled payments made with respect to his/her Account.

Sec. 1.04 Benefit Payment Option means any one of the optional forms in which benefits may be paid to a Participant and/or Beneficiary under this Plan.

Sec. 1.05 Benefit Payment Option Form means the written agreement between a Participant and the City pursuant to which the Participant (or Beneficiary) selects the Benefit Payment Option in which benefits shall be paid under this Plan.

Sec. 1.06 Code means The Philadelphia Code, as amended.

Sec. 1.07 Compensation means all paid and deferred remuneration to a Participant by the City for services rendered as an Employee of the City.

Sec. 1.08 Deferred Compensation Amount means the amount of Compensation, as indicated in the Deferred Compensation Agreement, that the Participant has elected to have deferred under this Plan.

Sec. 1.09 Deferred Compensation Agreement means the written agreement between a Participant and the City pursuant to which the Participant agrees to accept a reduction in Compensation and pursuant to which the City agrees to credit the amount of such reduction as a contribution to the Participant's Account under this Plan.

Sec. 1.10 Delegate means a person appointed by the Plan Administrator or Trustee to perform any function within the authority of such Plan Administrator or Trustee as appropriate.

***The following Sec. 1.11 was revised by Plan Amendment No. 1, effective as of January 1, 2002:***

Sec. 1.11 Eligible Retirement Plan means any account, annuity, plan or trust as defined in IRC Section 402(c)(8)(B).

***The following Sec. 1.12 was revised by Plan Amendment No. 1, effective as of January 1, 2002:***

Sec. 1.12 Eligible Rollover Distribution means any distribution as defined in IRC Section 402(c)(4).

***The following Sec. 1.13 was revised in its entirety by Plan Amendment No. 5, effective as of January 1, 1998, and reflects the manner in which the Plan has operated since such date:***

Sec. 1.13 Employee means a person, whether appointed or elected, who is paid from the Treasury of the City, and

(a) renders services to the City on a regularly scheduled basis in excess of twenty hours per week; or

(b) is listed in the attached Exhibit A or otherwise identified by the Plan Administrator as an individual who should have been listed on Exhibit A.

***The following Sec. 1.14 was revised by Plan Amendment No. 1, effective as of January 1, 2002:***

Sec. 1.14 Includable Compensation means, for purposes of the limitations on deferrals stated in Article II, Compensation for services performed for the City as defined in Section 457(e)(5).

Sec. 1.15 IRC mean the Internal Revenue Code of 1986, as amended.

***The following Sec. 1.16 was revised by Plan Amendment No. 2, effective as of October 6, 2003:***

Sec. 1.16 Normal Retirement Age means the age at which a Participant becomes eligible to retire and receive a service retirement benefit under the Retirement System without actuarial or similar reduction because of retirement before some later specified age. The above notwithstanding, a Participant may designate his/her Normal Retirement Age provided that such designated Normal Retirement Age is (i) later than the age

described above and (ii) not later than the date upon which the Participant attains age 70½.

Sec. 1.17 Option Provider means any company authorized or seeking authorization to offer Option Choices under this Plan.

Sec. 1.18 Option Choices means the various investments available to Participants as may be approved from time to time by the Plan Administrator.

Sec. 1.19 Participant means any Employee who has been admitted to participate in this Plan pursuant to the provisions of Article II. An individual shall remain a Participant, regardless of whether such individual is an Employee, provided that there remains any amounts credited to the Account of such individual.

Sec. 1.20 Plan Administrator means the City of Philadelphia Board of Pensions and Retirement, as authorized pursuant to Bill No. 904 approved July 24, 1995, or the person who may be subsequently designated by City Council.

Sec. 1.21 Plan Year means the twelve (12) month period beginning on January 1, 1983 and January 1st of each calendar year thereafter.

Sec. 1.22 Qualified Domestic Relations Order or "QDRO" means any judgment, decree or order as defined in IRC Section 414(p).

Sec. 1.23 Required Beginning Date means April 1 of the calendar year following the later of: (a) the calendar year in which the Participant attains Age 70 1/2; or (b) the calendar year in which the Participant retires.

Sec. 1.24 Retirement means Severance from Employment on or after attainment of Normal Retirement Age.

Sec. 1.25 Retirement System means the City of Philadelphia Municipal Employees Retirement System, a defined benefit pension plan.

Sec. 1.26 Rollover Amount means that portion of an Eligible Rollover Distribution from this Plan that, by election of the prospective distributee, is transferred directly or indirectly to an Eligible Retirement Plan.

***The following Sec. 1.27 was revised by Plan Amendment No. 1, effective as of January 1, 2002. In addition, Plan Amendment No. 1 replaced the term "Separation from Service" wherever it appeared throughout the Plan with "Severance from Employment."***

Sec. 1.27 Severance from Employment means a voluntary or involuntary termination of employment with the City for any

reason including death or disability, or for no reason; provided, however, that an approved leave of absence shall not constitute a Severance from Employment.

Sec. 1.28 Trust means the funding vehicle established pursuant to Article X and Section 457(g) of the IRC which shall consist of all Deferred Compensation Amounts under the Plan plus income and gains thereon minus losses expenses and distributions to Participants and Beneficiaries.

Sec. 1.29 Trustee means the individual or entity designated as such pursuant to Article X of this Plan.

Sec. 1.30 Unforeseeable Emergency shall have the same meaning as set forth under Section 1.457-2(h)(4) of the Treasury Regulations and shall include the following:

(a) Sudden and unexpected illness or accident of the Participant, the Participant's spouse or dependents;

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

(c) Other similar extraordinary and unforeseeable circumstances arising as a result of acts beyond the control of the Participant.

The need to send a Participant's dependent to college or other post-secondary educational institution or the desire to purchase a residence shall not be considered an immediate, unforeseeable and heavy financial need of the Participant.

ARTICLE II

ELIGIBILITY AND PARTICIPATION

Sec. 2.01 Initial Eligibility. Any Employee may elect to participate in this Plan by completing a Deferred Compensation Agreement authorizing the City to reduce Compensation by a specific amount and to contribute such amount as a Deferred Compensation Amount to an Account established on behalf of such Employee. The Employee becomes a Participant as of the date of the first deduction of the Deferred Compensation Amount.

Sec. 2.02 Procedure for and Effect of Admission. Any Employee who elects to become a Participant shall complete a Deferred Compensation Agreement by written or other means as prescribed by the Plan Administrator. The Plan Administrator reserves the right to reject any Deferred Compensation Agreement which does not conform with uniform, non-discriminatory procedures it shall prescribe and advise the Employee of the appropriate method of correction. By becoming a Participant, such Employee shall for all purposes be deemed to have assented to the terms and provisions of this Plan and to all amendments thereto.

Sec. 2.03 Eligibility for Rollover Contribution. Notwithstanding any other provision of this Article II, an Employee may elect to participate in this Plan by authorizing rollover contributions as provided in Section 3.03. Upon acceptance of such rollover contributions by the Plan, the Employee shall become a Participant and shall be deemed to have assented to the terms and provisions of this Plan and to all amendments thereto.

ARTICLE III

DEFERRED COMPENSATION AMOUNTS AND PLAN TO PLAN TRANSFERS

Sec. 3.01 Deferred Compensation Agreement.

(a) General. Each Participant shall complete a Deferred Compensation Agreement which authorizes the City to reduce the Participant's Compensation by the Deferred Compensation Amount as set forth in Section 3.02. A Deferred Compensation Agreement shall not be binding upon the City unless and until accepted and approved by the Plan Administrator. Only the City and the Employee/Participant are parties to such Deferred Compensation Agreement. No other individual or entity shall be a party to, or have any rights arising from, such Deferred Compensation Agreement.

(b) Changes to Deferred Compensation Agreement.

(1) Factual Entries. A Participant may change factual information (such as name, address, date of birth, etc.) by filing an amended Deferred Compensation Agreement ("Revised Deferred Compensation Agreement") with the Plan Administrator at any time.

(2) Elective Entries. A Participant may change the designated Deferred Compensation Amount at least once each calendar quarter and at any other time prescribed by the Plan Administrator by entering into a Revised Deferred Compensation Agreement and filing the Revised Deferred Compensation Agreement with the Plan Administrator. The Plan Administrator shall prescribe uniform rules governing the time, frequency and effective dates of Revised Deferred Compensation Agreements; provided, however, that no Revised Deferred Compensation Agreement shall become effective with respect to any calendar month unless it is entered into by the Participant and accepted by the Plan Administrator prior to the first day of such calendar month.

(3) Incomplete Items; Expenses. Any item that is not completed in a Revised Deferred Compensation Agreement shall have no effect on that item as it was entered in the immediate prior Deferred Compensation Agreement filed with the Plan Administrator. Expenses of the Plan Administrator arising because of any change, shall be charged against the Participant's Account.

(c) Cancellation and Reinstatement of Deferred Compensation Agreements. A Deferred Compensation Agreement may be canceled or suspended by the Participant at any time by delivery by the Participant of written notice to the Plan Administrator. Such cancellation shall become effective no later than fifteen (15) days following the Plan Administrator's receipt of such written notice. A Participant who has canceled or suspended a Deferred Compensation Agreement may reinstate such Agreement by filing a Revised Deferred Compensation Agreement with the Plan Administrator, as provided in this article.

***The following Sec. 3.02 was revised in its entirety by Plan Amendment No. 1, effective as of January 1, 2002:***

Sec. 3.02 Deferred Compensation Amounts.

(a) In General. The tentative Deferred Compensation Amount shall be set forth in the Deferred Compensation Agreement as a whole dollar amount or any percentage of a Participant's Compensation with respect to each payroll period. Tentative Deferred Compensation Amounts shall become Deferred Compensation Amounts only after the Plan Administrator has made such adjustments thereto as it deems necessary to satisfy the requirements of Paragraphs (b), (c) and (d) of this section.

(b) General Limitation. In no event shall the Deferred Compensation Amounts under this Plan made with respect to any Participant during any Plan Year exceed the lesser of: (1) \$11,000 or (2) 100% of such Participant's Includible Compensation. The limit set forth in item (1) above shall be adjusted in accordance with Section 457(e)(15) of the IRC.

(c) Catch-up Limitation. Notwithstanding any provision in Subsection (b) of this section to the contrary, with respect to any one or more of the three (3) taxable years ending before the date of the Participant's Retirement, such Participant may elect to have Deferred Contribution Amounts contributed to the Plan in an amount not to exceed the lesser of (1) 200% of the dollar amount set forth in paragraph (b)(1) or (2) the amount of the "Underutilized Limitation" for the Plan Year. For purposes of this subsection, the Underutilized Limitation with respect to a Participant shall be equal to the sum of:

(1) the Participant's contribution limitation as set forth Section 3.02(b) for such taxable year, and

(2) the excess of (i) over (ii) where:

(i) equals the sum of the limitations set forth in IRC Section 457(b)(2) for all taxable years on or after December 31, 1978 in which the Participant was eligible to participate in this Plan or any other eligible deferred compensation plan, and

(ii) equals the sum of all Deferred Compensation Amounts made on behalf of such Participant for such taxable years plus his/her deferred compensation.

***The following subsection (d) of Sec. 3.02 was revised by Plan Amendment No. 4, effective as of January 1, 2005:***

(d) Election of Catch-up Limitation. A Participant may not elect to apply the catch-up limitation described in Subsection (c) above more than once, regardless of whether the full amount of the limitation is utilized or whether the limitation is utilized for all three years. A Participant must elect to apply the catch-up limitation described in Subsection (c) above prior to the first day of the first taxable year to which such election shall apply.

(e) Deferrals to Other Plans. Effective January 1, 2002, the limitations described in Subsections (b) and (c) shall not be reduced by the amounts excluded from the Participant's gross income for Federal income tax purposes for the taxable year under Sections 402(e)(3), 402(k), 402(h)(1)(B) and 403(b) of the IRC. The above notwithstanding, such amounts shall reduce the limitations of Subsections (b) and (c) for Plan Years beginning prior to January 1, 2002.

(f) Catch-Up Contributions for Individuals Age 50 and Older. Any Participant who has attained or is projected to attain age 50 before the end of a calendar year may elect to have additional Deferred Compensation Amounts contributed to the Plan in an amount not to exceed the applicable dollar amount as specified in IRC Section 414(v). The above notwithstanding, this subsection shall not apply to any catch-up eligible Participant for any taxable year for which the additional contributions permitted under IRC Section 457(b)(3) applies to such Participant.

***The following Sec. 3.03 was revised by Plan Amendment No. 1, effective as of January 1, 2002:***

Sec. 3.03 Rollover Contributions.

(a) Eligible Deferred Compensation Plans. The direct transfer and/or rollover contribution of an Eligible Rollover Distribution from another eligible deferred compensation plan (as defined in IRC Section 457(b)) shall be accepted and allocated to a Participant's Account under this Plan provided that such amounts are in cash or other property acceptable to the Plan Administrator and the Trustee. The Plan Administrator may request proof that the prior plan is an eligible deferred compensation plan under Section 457(b) of the IRC. Direct transfer and/or rollover contribution amounts shall not be subject to the limitations of the Section 3.02, provided, however, that the actual amount deferred during the calendar year under both the prior plan and the Plan shall be taken into account in calculating the deferral limitations for that year. For purposes of determining the limitations set forth in Section 3.02(c), years of eligibility to participate in the prior plan and deferrals under the prior plan shall be taken into account to the extent required by IRC Section 457.

(b) Other Eligible Retirement Plans. The direct transfer and/or rollover contribution of an Eligible Rollover Distribution from another Eligible Retirement Plan (other than an eligible deferred compensation plan) shall be accepted and allocated to a Participant's Account under this Plan provided that such amounts are in ~~cash or other~~ property acceptable to the Plan Administrator and the Trustee. The Plan Administrator may request verification that the prior plan is an Eligible Retirement Plan. Direct transfer and rollover contribution amounts shall not be subject to the limitations of the Section 3.02. In addition, in order for Eligible Rollover Distributions to be accepted by this Plan, the Plan Administrator may request verification that (1) the amounts to be transferred are not subject to a QDRO, and (2) spousal consent, if required to transfer such amounts from the prior plan, has been obtained.

Amounts shall be identified as to source and nature (such as non-deductible employee contributions, elective deferral amounts and deemed elective deferral amounts subject to the provisions of IRC Section 401(k), employer contributions, etc.) Any amounts accepted for contribution under this Section 3.03(b) shall be allocated to one or more subaccounts within the Participant's Account. The subaccount(s) will share in the investment gains and losses

experienced by the Account as a whole, however, it will be separately accounted for taxation and distribution purposes as required by IRC Section 457.

Sec. 3.04 Timing of Direct Transfers and/or Rollover Contributions. A Participant may authorize a direct transfer and/or rollover contribution within thirty (30) days of his/her commencement of employment with the City. Direct Transfers and/or rollover contribution shall also be accepted by the Plan during other permissible periods as determined by the Plan Administrator.

***The following Sec. 3.05 was added by Plan Amendment No. 2, effective as of October 6, 2003:***

Sec. 3.05 Correction of Excess Deferrals. If the Deferred Compensation Amounts on behalf of a Participant for any calendar year exceeds the limitations described above, or the Deferred Compensation Amounts on behalf of a Participant for any calendar year 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 IRC for which the Participant provides information that is accepted by the Administrator, then the Deferred Compensation Amounts, 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.

## ARTICLE IV

### RETIREMENT AND SEPARATION BENEFITS

Sec. 4.01 Eligibility To Receive Benefits. The Participant (or Beneficiary, if applicable) shall be entitled to receive the benefits as defined in this Article IV of the Plan, only upon or after (i) Retirement, (ii) Severance from Employment with the City, or (iii) attainment of age 70½. Upon the death of a Participant, a Beneficiary shall be entitled to receive benefits in accordance with Article V of this Plan document.

Sec. 4.02 Retirement Benefits. Upon Retirement, a Participant shall receive a benefit from this Plan equal to the fair market value or cash value, as the case may be, of the Participant's Account as of the valuation date immediately preceding the Benefit Commencement Date and shall include investment gains or losses and expense charges thereafter. Such payment shall be made in accordance with the Benefit Payment Option elected under a Benefit Payment Option Form which has been accepted by the Plan Administrator.

Sec. 4.03 Separation Benefits. Upon Severance from Employment with the City prior to Retirement, other than by reason of disability or death, a Participant shall receive a benefit from this Plan equal to the fair market value or cash value, as the case may be, of the Participant's Account as of the valuation date immediately preceding the Benefit Commencement Date and shall include investment gains or losses and expense charges thereafter. Such payment shall be made in accordance with the Benefit Payment Option elected under a Benefit Payment Option Form which has been accepted by the Plan Administrator.

Sec. 4.04 Attainment of Age 70½. Upon attainment of Age 70½, a Participant that has not Severed from Employment may elect to receive a benefit from this Plan equal to the fair market value or cash value, as the case may be, of the Participant's Account as of the valuation date immediately preceding the Benefit Commencement Date and shall include investment gains or losses and expenses charges thereafter. Such payment shall be made provided that the Participant elects to commence payment and completes a Benefit Payment Option which is accepted by the Plan Administrator.

Sec. 4.05 Benefit Payment Options.

(a) General. Subject to the provisions of Section any benefit payable under this article shall be payable in

accordance with Option 1 below unless the Participant elects an alternative Benefit Payment Option. The Plan Administrator is not required to make available all of the Benefit Payment Options (with the exception of Option 1) set forth below and may in its sole discretion make the other Benefit Payment Options available to Participants. Any benefit payments payable over a period of more than one year must be made in substantially non-increasing amounts and must be paid not less frequently than annually.

(1) Option 1 - Single Sum.

Benefits shall be paid in one lump sum.

(2) Option 2 - Payout Over A Fixed Term Of Years.

Benefits shall be payable over the term of years as specified in the Participant's Benefit Payment Option Form. The Participant may select any term of years ("n") which does not exceed the remaining years of life expectancy of the Participant, (or if the Beneficiary makes the election pursuant to Section 5.01, the life expectancy of the Beneficiary) provided that the number of years selected may not be less than one (1) nor more than five (5). A fraction,  $1/n$  (one, divided by "n"), of the value of the Participant's account as of the date benefits are to commence shall be payable over the first twelve (12) months. A fraction,  $1/(n-1)$  (one, divided by "n" minus one), of the then remaining value of the Participant's Account shall be payable over the next twelve (12) months. A fraction,  $1/(n-2)$  (one, divided by "n" minus two) of the then remaining value of the Participant's Account shall be payable over the next twelve (12) months. The described calculation and payment shall be applied through the last year of the term, at which point all of the value of the Participant's Account shall have been paid out.

(3) Option 3 - Term Certain Annuity.

Each benefit payment shall be substantially the same amount and shall be payable until the Participant's Account is exhausted. The amount of each benefit payment shall be determined at the time benefits commence and shall equal the amount that would pay the benefits over the anticipated term of years (5, 10, 15, or 20) indicated in the Benefit Payment Option Form. Any term of years may be designated which does not exceed the life expectancy

of the Participant (or if the Beneficiary makes the election pursuant to Section 5.01, the life expectancy of the Beneficiary).

(4) Option 4 - Life Annuity.

Benefits shall be payable during the lifetime of the Participant (or if the Beneficiary makes the election pursuant to Section 5.01, the life expectancy of the Beneficiary).

(5) Option 5 - Life Annuity Term Certain.

Benefits shall be payable during the lifetime of the Participant. Benefits shall also be guaranteed for the first 5, 10, 15 or 20 years, or any other term of years indicated in the Benefit Payment Option Form which does not exceed the then remaining life expectancy of the Participant (or if the Beneficiary makes the election pursuant to Section 5.01, the life expectancy of the Beneficiary).

(6) Option 6 - Joint And Survivor Annuity.

Benefits shall be payable during the lifetime of the Participant and thereafter during the lifetime of the Participant's Beneficiary. If the Beneficiary predeceases the Participant, election of this option shall be null and void, and if no other Benefit Payment Option has been indicated, benefits shall be paid as if no Benefit Payment Option has been specified.

Sec. 4.06 Time for Election of Benefit Payment Options.

A Participant shall elect a Benefit Payment Option by completing the Benefit Payment Option Form to be filed with the Plan Administrator within sixty (60) days of Retirement or Severance from Employment. A Participant who remains in the employ of the City after attainment of age 70½ may elect a Benefit Payment Option at any time after attainment of Age 70½.

***The following Sec. 4.07 was revised in its entirety by Plan Amendment No. 1, effective as of January 1, 2002:***

Sec. 4.07 Election to Change Commencement of Benefit Payments. At any time prior to a Participant's Benefit Commencement Date, the Participant may elect to defer or accelerate the commencement of benefit payments to a fixed determinable date ("Revised Benefit Commencement Date"). At any time prior to the Revised Benefit Commencement Date, the Participant may elect to change the commencement of benefit payments and that date shall become the Revised Benefit

Commencement Date. The above notwithstanding, no Revised Benefit Commencement Date shall be later than the Participant's Required Beginning Date. A Participant electing a Revised Benefit Commencement Date shall also be permitted to reselect his/her Benefit Payment Option in the manner provided in Section 4.05.

Sec. 4.08 Provisions Relating to Eligible Rollover Distributions.

(a) Election Procedure. If all or any portion of a prospective distribution is an Eligible Rollover Distribution, the prospective distributee shall have the right to elect to have all or any portion of the Eligible Rollover Distribution treated as a Rollover Amount. Subject to satisfaction of the requirements of IRC Section 457(e)(17) and this Section, Rollover Amounts shall be delivered directly by this Plan to an Eligible Retirement Plan as designated by the distributee.

(1) Election to be Made in Writing. Any such election shall be made in writing on forms acceptable to the Plan Administrator and shall include such information and certifications as may reasonably be required by the Plan Administrator.

(2) Election Period. The election described in this Section shall be made not more than ninety (90), and not less than thirty (30) days prior to the Benefit Commencement Date of the distribution. The prospective distributee may waive the thirty-day minimum period if such waiver is in writing and in a form acceptable to the Plan Administrator.

(b) Effect of Delivery of Rollover Amounts. Each prospective distributee, by electing to have any portion of his/her Eligible Rollover Distribution treated as a Rollover Amount, agrees that, upon transmittal as instructed of the funds to which such election applies, the Plan Administrator, the Trustee, the City, the Board of Pensions and Retirements, and all other persons and entities associated with the operation and maintenance of this Plan shall be released from all duties, obligations, responsibilities and liabilities in connection with the amount so transmitted. None of the persons or entities so released shall be responsible to see to the crediting or application of the funds so transferred.

Sec. 4.09 Lump Sum Payout. Notwithstanding anything in this Plan to the contrary, if the amount credited to the Participant's Account is \$5,000.00 or less and the Participant

separates from service with the City, the Plan Administrator may authorize a single sum payment of the Participant's Account.

**The following Sec. 4.10 was added by Plan Amendment No. 1, effective as of January 1, 2002, except as specifically stated herein:**

Sec. 4.10 Transfers to Certain Plans for the Purchase of Service Credit.

(a) Limitation on Transferred Amounts. Any Participant who is a member in the Plan may have a direct trustee-to-trustee transfer made from this Plan to the Retirement System if the transferred assets are used for the purchase of service credit (as defined in IRC 415(n)(3)(A) and Philadelphia Code sections 22-801 through 22-808). An election to transfer assets pursuant to this Section 4.10 shall be subject to the approval of the Board in its absolute discretion. Effective January 1, 2003, transfers under this Section 4.10 shall be subject to the following limitations:

(1) The Participant's Account balance following the transfer cannot be less than \$2,500;

(2) If the transfer is for the purpose of purchasing credited service following the Participant's election to participate in the DROP pursuant to Section 22-310 of the Code, the Participant's Account balance following the transfer cannot be less than \$500; and

(3) The Participant may elect only one transfer per Plan Year.

(b) Source of Transferred Amounts. Amounts transferred to purchase service pursuant to this Section 4.10 shall be limited to amounts deferred under this Plan, amounts transferred from other eligible deferred compensation plans, and earnings on such amounts. Amounts transferred from other Eligible Retirement Plans pursuant to Section 3.03(b) shall be permitted to purchase service only if permitted by the IRC and approved by the Board.

Sec. 4.11 Beneficiary Designation. For purposes of this Article IV, the designation and/or identification of a Beneficiary shall be governed by the provisions of Section 5.02.

**The following Sec. 4.12 was added by Plan Amendment No.2, effective as of October 6, 2003:**

Sec. 4.12 Loans to Participants ("Participant Loans").

(a) Permissibility. Effective October 6, 2003, loans to Participants who are active full-time Employees shall be allowed if the Plan Administrator determines that such loans are to be made generally. The determination as to whether or not Participant Loans are to be allowed shall be completely within the discretion of the Plan Administrator. The Plan Administrator shall have the right to require any applicant for a Participant Loan to secure the written consent of any party for whose benefit there exists a Domestic Relations Order (as described in Section 13.13 of this Plan), or to establish an Alternate Payee account, in respect to the Participant's interest under this Plan.

**The following subsection (b) of Sec. 4.12 was later revised in its entirety by Plan Amendment No. 3, effective as of \_\_\_\_\_, the adoption date of Plan Amendment No. 3:**

(b) Access to Loans. Subject to such uniform and nondiscriminatory rules as may from time to time be adopted by the Plan Administrator, the Trustee, upon application by a Participant on forms approved by the Plan Administrator, may make a loan or loans to such Participant. The above notwithstanding, a Participant shall not be permitted to maintain more than one (1) loan outstanding at any time. **A Participant shall be permitted to refinance a loan provided: (a) the maturity date of the replacement loan is not later than the maturity date of the replaced loan; (b) the amount of the replacement loan is no less than the outstanding balance of the replaced loan at the time of refinancing; and (c) the amount of the replacement loan satisfies the amount limitations in section (c) below;**

(c) Limitation on Amount. No Participant shall, under any circumstance, be entitled to a loan in an amount of less than one thousand dollars (\$1,000) or more than the lesser of:

(1) \$50,000, reduced by the excess (if any) of  
(i) the highest outstanding balance of loans to such individual from this Plan during the 1-year period ending on the day before the date on which such loan was made, over (ii) the outstanding balance of loans from this Plan on the date on which such loan was made  
or

(2) one-half (1/2) of the value of his/her interest in his/her Account (as described below).

For this purpose, the value of a borrower's interest in his/her Account shall be the value of such interest as of the Valuation Date coincident with or immediately preceding the date on which the loan is made reduced by any amounts withdrawn from such Account since the Valuation Date of reference. Except for a withdrawal pursuant to Section 7.01 of this Plan, any amount withdrawn by a borrower from his/her Account while a loan is outstanding, and any amount distributed to, or on account of, a borrower while a loan is outstanding against the Account from which such distribution is to be made, shall be immediately applied to reduce the amount of the loan and accrued interest.

***The following Sec. 4.13 was added by Plan Amendment No. 2, effective as of October 6, 2003:***

Sec. 4.13 Participant Loans Conditions. The following conditions shall prevail with respect to each such loan:

(a) Pledge. Each loan to a Participant made by the Trustee shall be secured by the pledge of no more than fifty percent (50%) of the borrower's vested interest in the Trust Fund.

(b) Interest Rate. Interest shall be charged at a commercially reasonable rate designed to provide this Plan with a return commensurate with interest rates charged by persons in the business of lending money under similar circumstances.

***The following subsection (c) of Sec. 4.13 was later revised in its entirety by Plan Amendment No. 3, effective as of \_\_\_\_\_, the adoption date of Plan Amendment No. 3:***

Loan Term. A General Purpose loan shall be for a term of one (1) to five (5) years, except that a loan taken for the purpose of acquiring any dwelling unit which is to be used as a principal residence of the Participant ("**Principal Residence Loan**") may be for a period of one (1) to fifteen (15) years. **No Principal Residence Loan shall be granted for an amount less than \$5,000.** To the extent that a Participant or Beneficiary becomes entitled to payments of benefits or withdraws all or a portion of the borrower's Account, the payment or withdrawals, as the case may be, shall be immediately applied against the balance outstanding, including interest on the loan, and such

amount shall then be deemed immediately due and payable. A loan shall be non-renewable and non-extendable.

(c) Amortization. A loan shall provide for substantially level amortization of principal and interest and payments no less frequently than quarterly.

(d) Defaults and Remedies. If not paid as and when due, any such outstanding loan or loans may be deducted from any benefit which is or becomes payable to the borrower or his/her Beneficiary.

(e) Post Default Interest. If an outstanding loan in default becomes taxable as current income, the full amount recognizable for federal income tax purposes shall remain due and payable to this Plan, but shall cease to accrue interest from the date of recognition.

***The following subsection (g) of Section 4.13 was later revised by Plan Amendment No. 4 by the addition of a sentence at the end, effective with bankruptcy filings on or after October 17, 2005.***

(f) Temporary Suspension of Repayment Obligation. In the event that a Participant is on a bona fide leave of absence without pay, the outstanding loan obligation will continue to accrue interest, but the obligation to make periodic payments will be suspended until the earliest to occur of: (1) the date on which the loan would have matured under its original terms; (2) the date on which the leave of absence expires; or (3) the date on which the Participant is restored to the City of Philadelphia's payroll. If the suspension period expires at the date specified in either clause (2) or clause (3) hereof, the periodic payments of principal and interest shall be recalculated for the balance of the period to the original maturity date so as to be as nearly equal as practicable. In the event that a Participant is on leave for service in the armed forces of the United States, the accrual of interest under the loan and the obligation to make periodic payments of principal and interests shall be suspended in accordance with applicable federal law to the extent permissible under IRC Section 414(u). For bankruptcy filings on or after October 17, 2005, loan repayments shall not be suspended in the event of a Participant's personal bankruptcy.

(g) Processing Fees. The Plan Administrator may, at its discretion, allow for the assessment of processing fees

against the Account of a Participant with respect to the initiation and maintenance of a loan.

***The following paragraph was later added to Sec. 4.13 by Plan Amendment No. 5 effective October 27, 2005 unless otherwise noted:***

Effective October 27, 2005, a Participant Loan cannot be initiated by any Participant who is an Employee as defined in Section 1.13(b). The above notwithstanding, this Section 4.13 shall remain in effect with respect to any such Participant Loan which was initiated prior to October 27, 2005.

***The following Sec. 4.14 was added by Plan Amendment No. 4, effective with Mandatory Distributions made on or after March 28, 2005:***

Sec. 4.14 Mandatory Distributions Made On or After March 28, 2005. In the event of a mandatory distribution greater than \$1,000, but less than \$5,000 in accordance with the provisions of Section 4.09, and if the participant does not elect:

- (a) to receive the distribution directly in accordance with Section 4.06;
- (b) to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover pursuant to Section 4.08; or
- (c) to transfer the amount to a defined benefit governmental plan in accordance with Section 4.10;

then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

ARTICLE V  
DEATH BENEFITS

Sec. 5.01 Form and Amount of Death Benefits. Upon the death of a Participant, death benefits shall be payable as follows:

(a) Death Prior to Benefit Commencement Date. If a Participant's death occurs before his/her Benefit Commencement Date, his/her Beneficiary shall elect a Benefit Commencement Date that is no later than the December 31st of the calendar year in which the fifth (5th) anniversary of the date of the Participant's death occurs and a Benefit Payment Option that requires a complete distribution of the Participant's Account by such date. If the Beneficiary is the Participant's surviving spouse, such spouse may elect that distributions commence at any time on or before the later of: (1) December 31st of the calendar year immediately following the calendar year of the Participant's death; or (2) December 31st of the calendar year in which the Participant would have attained Age 70-1/2, in a payment option that provides payments no longer than over the life of such spouse (or over a period not extending beyond his/her life expectancy). If the surviving spouse dies before completion of such payments, the remaining balance of the Account shall be paid to his/her estate.

(b) Death After Benefit Commencement Date. If a Participant's death occurs after he/she has begun to receive benefits under a Benefit Payment Option, the remaining payments, if any, shall be payable to the Participant's Beneficiary commencing within the thirty (30) day period commencing with the sixty-first (61st) day following the Participant's death. If the Beneficiary is any person other than the Participant's surviving spouse, such payments must be completed on or before the 15<sup>th</sup> anniversary of the Participant's death. In no event shall the Sponsor or Plan Administrator be liable to the Beneficiary for the amount of any payment made in the name of the Participant before the Plan Administrator receives proof of death of the Participant. If the Beneficiary dies before completion of such payments, the remaining balance of the Account shall be paid to his/her estate.

(c) Section 401(a)(9) Compliance. Notwithstanding any other provisions of this Article, all distributions shall commence not later than the latest permissible Benefit Commencement Date under Section 401(a)(9) of the

IRC and regulations thereunder, and each benefit will be distributed at a rate not less than the minimum distribution rate prescribed for such benefit under Section 401(a)(9) and the regulations thereunder.

Sec. 5.02 Beneficiary Designation.

***The following subsection (a) of Sec. 5.02 was revised by Plan Amendment No. 4, effective as of January 1, 2005:***

(a) In General. The Participant shall file with the Plan Administrator a written designation of primary Beneficiary or change of primary Beneficiary which shall indicate the person, persons or trust who shall receive benefits payable under this Plan upon the Participant's death. The Participant shall also file with the Plan Administrator a written designation of a contingent Beneficiary or Beneficiaries who shall receive benefits if the Participant dies without a completed designation of Beneficiary on file or if the designated Beneficiary has predeceased the Participant. The designation of Beneficiary and contingent Beneficiary must meet all requirements, if any, of the Investment Provider, be signed by the Participant and be filed with the Plan Administrator. The Participant accepts and acknowledges the burden for executing and filing a proper Beneficiary Designation with the Plan Administrator.

(b) Change in Marital Status. Any designation of a Beneficiary by a Participant who is not married at the time of the designation shall become null and void upon the marriage of the Participant. If a Participant's spouse is designated as Beneficiary, the designation of such spouse shall become null and void upon the divorce of the Participant. The nullification of Beneficiary designation as described in this paragraph shall become effective as of the effective date of the divorce decree.

(c) Change in Beneficiary Designation. Changes in Beneficiary designations shall become effective only upon receipt of the form by the Plan Administrator, but upon such receipt, the change shall relate back to and take effect as of the date the Participant signed the request (which shall be presumed to be the date appearing on such form, or, if there be none, then the date of the Participant's death) whether or not the Participant is living at the time of such receipt. The Plan Administrator shall not be liable by reason for any payment of the Participant's death benefit made before the receipt of any acceptable form designating or changing the designation of

the Beneficiary. Any change of Beneficiary designation filed in proper form with the Plan Administrator shall revoke all prior Beneficiary designations.

(d) Adequacy of Beneficiary Designation. The Plan Administrator shall determine the acceptability of a Beneficiary designation or change of Beneficiary designation. The Plan Administrator shall notify the Participant if the Beneficiary designation is not acceptable and inform the Participant of the method of correction. A corrected Beneficiary designation shall be effective as of the date the on which the Participant first attempts to designate such individual.

(e) Death Without Beneficiary Designation. If the Participant dies without having a Beneficiary designation on file or if every designated beneficiary has predeceased the Participant, the benefit payment under this Plan shall be made to the properly appointed fiduciary of the Participant's estate provided, that if a fiduciary has not been appointed and qualified within 120 days after the death, the payment shall be made in accordance with Pennsylvania Statutes applicable to intestate succession.

ARTICLE VI

DISABILITY BENEFITS

Sec. 6.01 Disability. If the Board of Pensions and Retirements determines that a Participant is qualified for the receipt of any form of disability benefits as provided under the Retirement System, and the Participant Severs from Employment as a direct result of such disability, the Plan Administrator shall, upon written request from the Participant, authorize benefits to be payable in accordance with the Benefit Payment Option as selected by the Participant.

ARTICLE VII

WITHDRAWAL OF DEFERRAL CONTRIBUTION AMOUNTS

Sec. 7.01 Unforeseeable Emergency.

(a) General. Notwithstanding any other provision in the Plan to the contrary, benefits may be payable to a Participant in the event of an Unforeseeable Emergency. Determination as to the existence of an unforeseeable emergency and the manner of distribution of benefits shall be made by the Plan Administrator in accordance with and as prescribed by regulations of the Internal Revenue Service.

(b) Exhaustion of Resources. A distribution shall not be deemed to be necessary to meet an immediate, unforeseeable and heavy financial need of the Participant if the need is or may be relieved (1) through reimbursement or compensation by insurance or otherwise; (2) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or (3) by cessation of Deferred Compensation Amounts under the Plan.

(c) Payment. Distribution made pursuant to this article shall commence within sixty (60) days after the date on which the Plan Administrator approves the Participant's request for withdrawal.

(d) Suspension of Deferral Privileges. Notwithstanding any other provision in this Plan to the contrary, a Participant electing a distribution under this Section 7.01 may not authorize any deferrals for the period beginning on the payroll date immediately following such distribution and ending on the first payroll date period twelve months thereafter.

***The following subsection (e) of Sec. 7.01 was added by Plan Amendment No. 2, effective as of October 6, 2003:***

(e) Denial of Unforeseeable Emergency Application. The Plan Administrator shall deny any application for an Unforeseeable Emergency withdrawal if, upon consideration of additional information available to the Plan Administration, it has reason to believe that (1) the basis for the withdrawal was not an Unforeseeable Emergency, or (2) the Participant had sufficient opportunity and resources to address the Unforeseeable Emergency through a plan loan under Section 4.12 and elected not to do so. The

Plan Administrator shall reject the Unforseeable Emergency application if the circumstances which give rise to the Unforseeable Emergency occurred prior to an application for a plan loan under Section 4.12. The above notwithstanding, the Plan Administrator may approve the Unforseeable Emergency application if the Participant establishes that the available loan amount was insufficient to satisfy the Unforseeable Emergency or otherwise used to satisfy an obligation that would be deemed an Unforseeable Emergency.

Sec. 7.02 In-Service Withdrawals. Participant may elect to withdraw the entire balance held in the Participant's Account under the Plan, provided that:

(a) the total amount held in the Participant's Account does not exceed \$5,000 (exclusive of transfers and rollover contributions);

(b) the Participant has not authorized Deferred Compensation Amounts under the Plan during the two (2) calendar year periods ending on the date of the distribution;

(c) the Participant has not previously applied for a distribution under this section, and

(d) Upon receipt of such voluntary withdrawal, the individual shall cease to be a Participant under this Plan.

ARTICLE VIII

ESTABLISHMENT AND MAINTENANCE OF ACCOUNTS

Sec. 8.01 Establishment of Accounts. An Account shall be established in the name of each Participant and maintained by the Plan Administrator as a recording of the aggregate Deferred Compensation Amounts, Option Choice allocation, and any other information deemed necessary and reasonable to administer such Account. Such Account shall become the basis for determining benefits under the Plan. Additionally, one or more subaccounts shall be established as part of the Participant's Account in order to record any transfer and/or rollover contribution made to this Plan pursuant to Section 3.03(b), earning thereon and expenses attributable thereto.

Sec. 8.02 Allocation to Option Choices. The Deferred Compensation Account of a Participant shall be credited at the conclusion of each pay period, or within a reasonable period thereafter as determined by the Plan Administrator, with the amount deferred for that pay period, less any applicable administrative expense charge. The credited amount shall be allocated in accordance with the Investment Option election by the Participant. A written report of the status of the Deferred Compensation Account of the Participant shall be furnished by the Plan Administrator to the Participant reflecting the Account balance as of each March 31, June 30, September 30 and December 31.

Sec. 8.03 Accounting Basis. All reports to the Participant shall give a cash basis accounting of each Account and shall show the fair market value or cash value, as the case may be, as of the reporting date.

Sec. 8.04 City's Liability. In no event shall the City's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account.

ARTICLE IX

ALLOCATION OF DEFERRED COMPENSATION AMOUNTS

Sec. 9.01 General. The Plan Administrator shall, after deducting any applicable administrative expense charges, allocate the Deferred Compensation Amount elected by the Participant among the Option Choice(s) elected in the Participant's Deferred Compensation Agreement, as it may be revised or amended. The market value or cash value of the Participant's Deferred Compensation Account shall be dependent upon the investment return experience of the Participant's elected Option Choice(s).

Sec. 9.02 Selection of Option Providers - Options. The selection and retention of any Option Provider(s) and/or Option Choice(s) shall be made in accordance with the criteria for investment of State funds as set forth in 71 P.S. §5931(a), as amended and the written investment policy adopted by the Plan Administrator pursuant to Section 11.10 of the Plan.

Sec. 9.03 Allocation Direction by Participants.

(a) Rights of Participants. A Participant may direct the Plan Administrator as to the Option Choices which shall be the standard by which value of the Participant's Deferred Compensation Account shall be measured.

(b) Changes in Option Choices Election. An allocation change is defined as reallocating the proportional percentage of ongoing deferrals among various Option Choices in the Plan. Changes in Option Choices election may be made for both prior and future Deferred Compensation Amounts but shall be effective prospectively and shall be effective on a date consistent with the rules and specifications of the Plan Administrator and Option Provider.

(c) Available Option Choices. The Plan Administrator may offer such Option Choices as it determines in the exercise of its sole and absolute discretion from time to time; pursuant to criteria set forth herein. The Plan Administrator, in its sole discretion, may offer to all Participants additional Option Choices and may at any time cease to offer such Option Choices.

(d) Failure to Elect Option Choice or Complete Deferred Compensation Agreement. In the absence of any designation of Option Choice(s), or if a Participant's Deferred Compensation Agreement is deficient or defective

in any manner as determined in the reasonable sole discretion of the Plan Administrator or if the Plan Administrator refuses to follow a Participant's election because such election does not comply with the terms of this Plan Document or the written investment policy adopted by the Plan Administrator, the Plan Administrator shall allocate all funds received on account of such Participant to the Stable Value Fund or the available option choice with the most conservative portfolio characteristics. If a subsequent election is made by a Participant, such subsequent election shall be effective with respect to funds previously allocated to the Stable Value Fund or the available option choice with the most conservative portfolio characteristics pursuant to this Section. Such election shall also apply with respect to future Deferred Compensation Amounts.

(e) Liquidation and Reinvestment. A Participant may instruct the Plan Administrator to reallocate the entire value credited to the Participant's Account in any Option Choices and to reinvest the such amount, in any other Option Choice(s) in such manner and at such reasonable times in accordance with uniform rules prescribed by the Plan Administrator.

(f) Allocation to Option Choice(s). The Plan Administrator shall allocate the Deferred Compensation Amounts as directed by the Participant within thirty (30) days of the date on which such amounts are withheld from the Participant's wages.

Sec. 9.04 Losses Under The Plan. The Plan Administrator, City, and any employee thereof shall not be accountable or liable for any investment losses to a Participant's Account incurred by virtue of implementing the directions of the Participant with respect to the investment of the Account or due to any reasonable administrative delay in implementing such directions.

ARTICLE X

TRUST PROVISIONS

Sec. 10.01 Establishment of Trust. A Trust is hereby established in accordance with Section 457(g) of the Tax Code and 72 P.S. § 4521.2(h) to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 10.03. The trustee shall be the City of Philadelphia Board of Pensions and Retirement or such other person(s), who upon appointment by the City Council, consents to act in that capacity hereunder (hereinafter referred to as "Trustee").

Sec. 10.02 Investment Powers. The trustee shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Article IX.

- (a) To invest and reinvest the Trust assets; and
- (b) To do any and all other acts that may be deemed necessary or desirable to carry out any of the functions set forth herein.

***The following Sec. 10.03 was revised by Plan Amendment No. 4, with the addition of the second paragraph, effective as of January 1, 2005:***

Sec. 10.03 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or Delegate. The Plan Administrator, custodian or Delegate may not be liable with respect to any distribution of Trust assets made at the direction of the City.

In the event that any form of payment is to be made pursuant to this Plan, such payment shall be deemed to commence with payments from the Participant's Deferred Compensation Account. Only after all such amounts have been exhausted from the Participant's Deferred Compensation Account shall payments be made from the Participant's Rollover Account.

Sec. 10.04 Valuation of Investments. As of such dates established by the Plan Administration ("Accounting Dates"), the Plan assets held in each Investment Option offered shall be valued at fair market value (or cash value if appropriate) and the investment income and gains or losses for each Investment Option shall be determined. Such investment income and gains or

losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of the Accounting Date.

Sec. 10.05 Crediting of Option Choices. The Participant's Account shall reflect the amount and value of the Option Choices or other property obtained by the Trustee through the investment of the Participant's Deferred Compensation Amounts pursuant to this Article X. It is anticipated that the Option Choices with respect to a Participant will conform to the Option Choices election specified in the Participant's Deferral Compensation Agreement, however, the Trustee shall have the right to reject any Option Choice election which does not comply with the terms of this Plan or the written investment policy adopted by the Plan Administrator. Each Participant shall receive periodic reports, not less frequently than quarterly, showing the Account's then current value.

Sec. 10.06 Transfers and Rollovers. The Trustee may approve the transfer of the balance credited to a Participant's Account to an Eligible Retirement Plan, if (1) the Participant has Severed from Employment with the City and become an employee of the other employer, and (2) the Participant and the employer execute such agreements as are necessary to assure that the City's liability to pay benefits to the Participant has been discharged and assumed by the other employer. The Trustee may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an Eligible Retirement Plan. Such transfers shall be made only under such circumstances as are permitted under the IRC, Pennsylvania or local law and the regulations thereunder.

ARTICLE XI

PLAN ADMINISTRATION

Sec. 11.01 Appointment and Tenure. The Plan Administrator shall be the City of Philadelphia Board of Pensions and Retirements ("Board") or any successor individual or entity as designated by the City Council pursuant to 72 P.S. §4521.2 and local law. The Plan Administrator shall represent the City in all matters concerning the administration of the Plan.

Sec. 11.02 Meetings; Majority Rule. The Board may act by vote taken in a meeting at which five (5) members shall constitute a quorum. Any and all acts of the Plan Administrator taken at such meeting shall be by a majority of those members of the Plan Administration in attendance provided that the number of members in attendance constitutes a quorum.

Sec. 11.03 Delegation. The Plan Administrator may delegate to each or any one of its number, or to the Executive Director or Chief Investment Officer authority to sign any documents on its behalf, or to perform any act(s) within its authority as set forth in Section 11.04 below.

Sec. 11.04 Authority Plan Administrator. The Plan Administrator shall have the authority to perform the duties assigned to it by City Council under Bill No. 904 (approved July 24, 1995) and perform any act(s) necessary to carry out such duties including, but not limited to, the following:

- (a) To maintain and preserve records relating to Participants, former Participants, and Beneficiaries;
- (b) To prepare and furnish to Participants all information required under applicable law or the provisions of this Plan;
- (c) To prepare sufficient employee data and the amount of funds so that the separate Accounts may be maintained for Participants and make required payments of benefits;
- (d) To prepare and file or publish with all appropriate government officials all reports and other information required under law to be so filed or published;
- (e) To engage Option Providers;
- (f) To appoint Delegates;

(g) To engage consultants, including legal, investment and actuarial advisors, and rely on recommendations therefrom;

(h) To provide procedures for determination of claims for benefits; and

(i) To retain records on elections and waivers by Participants and their Beneficiaries, as further set forth herein.

Sec. 11.05 Construction of the Plan. The Plan Administrator shall resolve all questions arising in the administration, interpretation and application of the Plan. The Plan Administrator shall correct any defect, reconcile any inconsistency, or supply any omission with respect to this Plan. All such corrections, reconciliations, interpretations and completions of Plan provisions shall be final and binding upon the parties. Every action taken by the Plan Administrator shall be presumed to be fair and a reasonable exercise of the authority vested in or the duties imposed upon it.

Sec. 11.06 Appointment of Delegates. The Plan Administrator shall have the right to retain any individual or entity as a Delegate, as it, in its sole discretion, deems necessary or advisable.

Sec. 11.07 Plan Expenses. The expenses incurred by the Plan Administrator in connection with the operation of the Plan, including: elections to participate, elections of Deferral Compensation Amounts and Option Choice(s) and remittance of Deferred Compensation Amounts to the Option Provider shall be expenses of the City. All other expenses including those incurred by reason of the engagement of consultants or Delegates, shall be expenses of the Plan and shall be proper charges to the Plan and, upon the direction of the Plan Administrator, paid therefrom. The City shall have the option, but not the obligation, to pay any such Plan expenses, in whole or in part, and by so doing, to relieve the Plan from the obligation of bearing such expenses. Payment of any such expenses by the City on any occasion shall not bind the City to thereafter pay any similar expenses.

Sec. 11.08 Reporting and Disclosure.

(a) Records. The Plan Administrator shall keep all individual and group records relating to Participants and Beneficiaries and all other records necessary for the proper operation of the Plan and Administration of Participant Accounts, including but not limited to, cash

flow analysis, investment reports, audits and quarterly reports.

(b) Disclosure Obligation.

(1) Providing Records Upon Request. The Plan Administrator shall make all records, reports or other information relating to the Plan available to any Participant upon request; provided, however, a Participant or Beneficiary may examine only such records as pertain exclusively to the examining Participant or Beneficiary and those records and documents relating to all Participants generally. All records regarding participation, Deferral Contribution Amounts, account balances, withdrawals and any other information regarding a Participant's Account shall be held confidential by the Plan Administrator Investment Provider, consultant and/or Delegate to the extent permitted by state and local law. The above notwithstanding, the Plan Administrator shall not be obligated to develop or disclose any customized report not otherwise utilized in the normal course of operation.

(2) Quarterly Report. The Plan Administrator shall make available at least quarterly a report to each Participant which shall indicate the balance credited to the Participant's Account. Such report shall indicate for each Participant the balance of the Participant's Account as of the immediately preceding Accounting Date, the Deferred Compensation Amount and any expense charged to the Participant's Account.

Sec. 11.09 Right To Suspend Benefits And Correct Errors. The Plan Administrator shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Plan Administrator, if in doubt concerning the correctness of any action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the person to receive the payment or to allow filing in any court of competent jurisdiction of a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The Plan Administrator specifically reserves the right to correct errors of every sort, and the Participant hereby agrees as Participant or on behalf of any Beneficiary or Beneficiaries to any method of error correction as the Plan Administrator shall specify.

The objective of any such method of error correction shall be, to the extent reasonably possible, to adjust the Account of the Participant by reversing transactions or taking other actions to approach the situation that would have existed if the error had not been made. The Participant and the City agree that either diminution or enhancement of the Participant's Accounts can occur because of correction of errors. The Plan Administrator shall also be authorized to recover any payment made in error including the right to make deductions from future benefits.

Sec. 11.10 Investment Policy. The Plan Administrator shall establish, and memorialize, an investment policy which shall set forth the criteria for selection and retention of Option Choices and/or Option Providers. The investment policy shall be consistent with criteria for investment of state funds as set forth in 71 P.S. § 5931(a). The investment policy shall also set forth policies and procedures regarding participant direction of allocation of Deferred Compensation Amounts.

Sec. 11.11 Interest Earned Pending Investment. any interest earned on Deferred Compensation Amounts pending execution of Participant allocation instructions shall be used to defray expenses.

ARTICLE XII

AMENDMENT, TERMINATION AND SUSPENSION

Sec. 12.01 Amendment or Suspension. The Plan Administrator may amend this Plan or temporarily suspend the acceptance of additional Deferred Compensation Amounts as necessary to facilitate the appropriate administration or to comply with any federal, state or local law. Any such amendment or suspension shall become effective following written notice to the Participants and Beneficiaries of such change. Written notice of such change may accompany the distribution of payroll checks or verifications, to the extent it is possible to do so. No such amendment or suspension shall deprive a Participant or Beneficiary of any benefits to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such amendment or suspension.

Sec. 12.02 Termination. The City may, by appropriate action of the City Council, terminate this Plan. Any such termination shall become effective following written notice of such termination. Written notice of such termination may accompany the distribution of payroll checks or verifications, to the extent it is possible to do so. No such termination shall deprive a Participant or Beneficiary of any benefits to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such termination.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Sec. 13.01 Nonalienation of Benefits - Attachment. Except as set forth in Section 13.13 with regard to Qualified Domestic Relations Orders, no Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments under this Plan, except the right to designate a Beneficiary or Beneficiaries as hereinabove provided. Amounts allocated to the Account of a Participant shall not be subject to the claims of creditors of the Participant in the event of the Participant's bankruptcy or otherwise. Additionally, such amounts shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of any creditors or other third persons having claims against the Participant.

Sec. 13.02 No Contract of Employment. Neither the establishment of the Plan, nor any modification thereof, nor participation in the Plan, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving any Participant or Employee, or any person whomsoever, the right to be retained in the service of the City, and all Participants and other Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.

Sec. 13.03 Severability of Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

Sec. 13.04 Heirs, Assigns and Personal Representatives. This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Participant and Beneficiary, present and future (except that no successor to the City shall be considered a Plan sponsor unless that successor adopts this Plan).

Sec. 13.05 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

Sec. 13.06 Controlling Law. This Plan shall be construed and enforced according to the Philadelphia Home Rule Charter, other local laws, 72 P.S. § 4521.2 and other laws of the Commonwealth of Pennsylvania and shall be interpreted in a

manner consistent with the maintenance of its status as an "eligible deferred compensation plan" as defined in Section 457(b) of the IRC. Reference to any section of the IRC shall be deemed to incorporate any required amendment of such section as necessary to maintain the status of this Plan as an eligible deferred compensation plan.

Sec. 13.07 Payments to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefor shall be deemed paid when paid to such person's guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Plan Administrator, the City and all other parties with respect thereto.

Sec. 13.08 Lost Payees. A benefit shall be deemed forfeited if the Plan Administrator is unable to locate a Participant or Beneficiary to whom payment is due. Such benefit shall not be deemed forfeited for a period of at least five (5) years following the date on which the benefit payments would otherwise commence. Such forfeitures may be used to defray administrative expenses of the Plan.

Sec. 13.09 Reliance on Data and Consents. The City, the Plan Administrator, any Option Provider, consultant, Delegate and all other persons or entities associated with the operation of the Plan, the administration or management of its assets, and the provision of benefits thereunder, may reasonably rely on the truth, accuracy and completeness of all data provided by a Participant, and/or Beneficiary, including, without limitation, data with respect to age, health and marital status. Furthermore, the City, the Plan Administrator, any Option Provider, consultant, Delegate and all persons identified above may reasonably rely on all consents, elections and designations filed with the Plan or those associated with the operation of the Plan by any Participant or Beneficiary, or the representatives of such persons without duty to inquire into the genuineness of any such consent, election or designation. None of the aforementioned persons or entities associated with the operation of the Plan, its assets and the benefits provided under the Plan shall have any duty to inquire into any such data, and all may rely on such data being current to the date of reference. It shall be the duty of the Participant or Beneficiary to advise the appropriate parties of any change in such data. The Plan Administrator shall not be liable for the consequence of such change in data.

Sec. 13.10 Tax Consequences. The City and the Administrator do not represent or guarantee that any particular

Federal or State income, estate, payroll, personal property or other tax consequences will occur because of the Participant's or Beneficiary's participation in this Plan. The Participant shall be responsible to obtain appropriate advice regarding all questions to Federal, State or local income, estate, payroll, personal property or other tax consequences arising from participation in this Plan.

Sec. 13.11 Coordination of Deferred Compensation Amounts with Other Payroll Deductions. For each pay period, the Deferred Compensation Amount shall not be treated as remuneration for services rendered to the City subject to Federal income tax withholding, but shall be treated as remuneration for services rendered to the City and subject to withholding as wages under Pennsylvania and local law, Social Security, insurance and other fringe benefits, except to the extent that applicable law may provide otherwise from time to time.

Sec. 13.12 Entire Agreement. This Plan, the Deferred Compensation Agreement and the Benefit Payment Option Form as revised from time to time, and any properly adopted amendment, shall constitute the entire Agreement between the City and the Participant. No oral statement of any sort shall modify the Agreement or any way or be relief upon the parties to this Agreement.

Sec. 13.13 Qualified Domestic Relations Orders.

(a) Determination of QDRO Status. Upon receipt of notification of 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 of a spouse, former spouse, child, or other dependent of a Participant and which is made pursuant to a state domestic relations law (including a community property law) (hereinafter referred to as a "domestic relations order"), the Plan Administrator shall (1) notify the Participant and any prospective Alternate Payee named in the order of the receipt of such and of the Plan's procedures for determining the status of the domestic relations order as a QDRO, and (2) within a reasonable period after receipt of such order, determine whether it constitutes a QDRO.

(b) Determination Period. During any period in which the issue of whether a domestic relations order is a DRO is being determined (by the Plan Administrator, by a court of competent jurisdiction, or otherwise), the Plan Administrator shall segregate in a separate account in the

Plan or in an escrow account held by a Trustee the amounts which would have been payable to the Alternate Payee during such period if the order had been determined to constitute a QDRO. If a domestic relations order is determined to be a QDRO; the Plan Administrator shall cause to be paid to the persons entitled thereto the amounts, if any, held in the separate or escrow account referred to above. If a domestic relations order is determined not to be a QDRO or if the status of the domestic relations order as a QDRO is not finally resolved within such eighteen month period, the Plan Administrator shall cause the separate account or escrow account balance to be paid, with interest thereon, to the person or persons to whom such amount would have been paid if there had been no such domestic relations order. Any subsequent determination that such domestic relations order is a DRO shall be retrospective in effect only.

(c) Provisions Relating to Alternate Payees.

(1) Except as otherwise specifically provided in the QDRO, all benefits payable to an Alternate Payee shall commence no later than 60 days following the close of the Plan Year in which the Plan Administrator determines that a domestic relations order is a QDRO, and shall be paid in the form of a single-sum distribution. If the QDRO specifies an alternate method of distribution, all benefits payable to the Alternate Payee shall commence no earlier than the later of the Participant's Normal Retirement Date, or 60 days following the close of the Plan Year in which the Plan Administrator determines the domestic relations order to be a QDRO.

(2) None of the payments, benefits or rights of any Alternate Payee shall be subject to any claim of any creditor, and, in particular, to the fullest extent permitted by law, all such payments, benefits and rights shall be free from attachment, garnishment, trustee's process, or any other legal or equitable process available to any creditor of such Alternate Payee. No Alternate Payee shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which he/she may expect to receive, contingently or otherwise, under the Plan.

(3) Alternate Payees shall not have any right to  
(i) exercise any Participant investment direction

rights or privileges under the Plan, (ii) exercise any other election, privilege, option or direction rights of the Participant under the Plan except as specifically provided in the QDRO, or (iii) receive communications with respect to the Plan except as specifically provided by law, regulation or the QDRO.

(4) Each Alternate Payee shall advise the Plan Administrator in writing of each change of name, address or marital status, and of each change in the provisions of the DRO or of any circumstance set forth therein which may be material to the Alternate Payee's entitlement to benefits thereunder or the amount thereof. Until such written notice has been provided to the Plan Administrator, the Plan Administrator shall be (i) fully protected in not complying with, and in conducting the affairs of the Plan in a manner inconsistent with, the information set forth in notice, and (ii) required to act with respect to such notice prospectively only, and then only to the extent provided for in the DRO. The Plan Administrator shall not be required to modify or reverse any payment, transaction or application of funds occurring before the receipt of any notice that would have affected such payment, transaction or application of funds, nor shall the Plan Administrator or any other party be liable for any such payment, transaction or application of funds.

(5) Except as specifically provided for in the QDRO, an Alternate Payee shall have no right to interfere with the exercise by the Participant or by any Beneficiary of their respective rights, privileges and obligations under the Plan.

(6) Segregation of Account Payment. The Plan Administration may segregate in a separate account in the Plan, the amounts which would be payable to the Alternate Payee pursuant to a QDRO.

(d) QDRO Expenses. Any expenses related to the administration of a QDRO shall be assessed against the Participant's Account.