

City and County of San Francisco Employees' Retirement System Office of the Executive Director

RETIREMENT BOARD CALENDAR SHEET Deferred Compensation Committee Meeting of June 22, 2016

To:

Deferred Compensation Committee

Through:

Jay Huish 🍂

Executive Director

From:

Diane Chui Justen

Deferred Compensation Plan Manager

Date:

June 22, 2016

Agenda Item

Approval of proposed revisions to the SFDCP Plan Document.

Background

The SFDCP Plan Document was updated on July 8, 2015 to include the Loan Provisions (5.08) under Article 5. Attached are proposed revisions to the Loan Provisions within the SFDCP Plan Document.

Recommendation

Approve proposed revisions to the SFDCP Plan Document.

Attachments

SFDCP Plan Document.

Eligible Governmental Employer

Deferred Compensation Plan

City and County of San Francisco

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History and Purposes of the Plan

- 1.01 The name of this Plan is the City and County of San Francisco Deferred Compensation Plan, referred to throughout this document as the "Plan." It has been established and adopted pursuant to San Francisco Administrative Code Chapter 16, Article XI-B, Section 16.301 *et seq.* enacted on January 23, 1976, as amended on June 27, 1980, October 27, 1995, and May 11, 2004.
- 1.02 Effective July 12, 2005 and as approved by the Retirement Board of the City and County of San Francisco on December 13, 2005, the Plan document has been amended (a) to permit deferrals of certain eligible post-termination payments otherwise payable on or after August 1, 2005 in accordance with proposed regulations under Code Section 415, (b) to eliminate involuntary cash outs from the Plan and (c) to modify the definition of Dependent in accordance with proposed regulations under Code Section 457.
- 1.03 Effective January 1, 2007, unless otherwise specified, and as approved by the Retirement Board of the City and County of San Francisco on February 13, 2007, the Plan document has been amended (a) to reflect certain Hurricane Katrina disaster relief for Unforeseeable Emergency withdrawals, (b) to extend rollover rights to non-spouse Beneficiaries as provided under the Pension Protection Act of 2006 ("PPA"), (c) to permit Unforeseeable Emergency withdrawals with respect to events involving Beneficiaries as provided under the PPA, and (d) to reflect the addition of investment advice service.
- 1.04 Effective December 31, 2008, unless otherwise specified, and as approved by the Retirement Board of the City and County of San Francisco on July 13, 2010, the Plan document has been amended (a) to include differential wage payments in the definition of Compensation in compliance with Code Section 414(u)(12)(A), (b) to modify the definition of Severance from Employment and (c) to include distribution requirements for those Employees who perform qualified military service while employed with the Employer as provided under the PPA and in accordance with Code Section 414(u). The revisions include amendment to the Beneficiary default provisions in Article 6.
- 1.05 Effective February 8, 2012, unless otherwise specified, and as approved by the Retirement Board of the City and County of San Francisco on February 8, 2012, the Plan document has been amended and restated to reflect (a) the use of a default investment alternative in circumstances in which a Participant or Beneficiary has not specified (or has otherwise not properly provided) an investment preference, (b) the use of mutual funds as well as other types of investments as Investment Options under the Plan; (c) the authority of the Plan to contract with an investment adviser to provide investment advice to the Plan; (d) effective as of a date or dates to be determined by the Retirement Board of the City and County of San Francisco, the addition of Roth 457 feature; and (e) to make other desired changes.
- 1.06 Effective July 8, 2015, unless otherwise specified, and as approved by the Retirement Board of the City and County of San Francisco on July 8, 2015, the Plan document has been amended and restated to reflect the availability of Participant loans and to make other desired changes.

- 1.07 Effective July 13, 2016, unless otherwise specified, and as approved by the Retirement Board of the City and County of San Francisco on July 13, 2016, the Plan document has been amended to reflect revisions to Participant loans.
- 1.07 1.08 The primary purpose of this Plan is to permit Eligible Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of their current Compensation until retirement, Severance from Employment, death, or other event, in accordance with the provisions of Code Section 457, with other applicable provisions of such Code, and in accordance with the General Statutes of the State of California.
- 1.081.09 It is intended that the Plan shall qualify as an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) sponsored by an Eligible Governmental Employer.
- 1.091.10 The Employer does not and cannot represent or guarantee that any particular federal or state income tax, payroll or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own attorney or other representative regarding all tax or other consequences of participation in this Plan.

Definitions

For purposes of this Plan, the following words and phrases shall have the meaning set forth below:

- 2.01 "Adjusted" means adjusted for the cost of living at the time and in the manner as prescribed under Code Section 415 or Code Section 457(e)(15).
- 2.02 "Alternate Payee" means any 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 part of the Participant's Participation Account pursuant to Article 10.
- 2.03 "Annuity Contracts" means an annuity contract (fixed and/or variable) issued by a Designated Institution.
- 2.04 "Beneficiary" means the person, persons or legal entity designated by the Participant pursuant to Section 6.01 to receive any undistributed amounts which become payable following the Participant's death.
- 2.05 "Board" means the Retirement Board of the City and County of San Francisco in its oversight of the Plan or, as applicable, its duly authorized designees.
- 2.06 "Code" means the Internal Revenue Code of 1986, as amended.
- 2.07 "Compensation" means the total of all wages or salaries that are paid by the Employer to, or for the benefit of, an Eligible Employee for services rendered, calculated without deduction for any portion thereof deferred under the provisions of this Plan or for any amounts contributed to any program established pursuant to Code Sections 132(f)(3), 403(b), 401(k), 408(k)(6), or 501(c)(18). Compensation shall include without limitation accumulated sick or vacation pay that is paid within 2 1/2 months following Severance from Employment and that would have been available for use if employment had not

- terminated. Compensation shall also include compensatory pay that is paid within 2 1/2 months following Severance from Employment and that would have been paid to the separated Employee if the Employee had not terminated. Effective for Plan Years after December 31, 2008, Compensation shall include differential wage payments made to an Eligible Employee performing active qualified military service for more than 30 days pursuant to Code Section 414(u)(12)(A).
- 2.08 "Deferred Compensation" means the aggregate Pre-Tax Deferrals and Roth Contributions made from a Participant's Compensation, which said Participant has elected to defer in accordance with the provisions of this Plan. When used in the context of deferrals of Compensation, "defer(s)," "deferral" or "deferred" means, individually or collectively, Pre-Tax Deferrals and Roth Contributions, as applicable.
- 2.09 "Deferred Retirement Date" means the date beyond the date of attainment of Normal Retirement Age specified in Section 2.26 designated by the Participant. Such date shall not exceed the earlier of (a) the Employer's mandatory retirement age, if any, or (b) the date on which the Participant incurs a Severance from Employment.
- 2.10 "Dependent" means any individual who qualifies as a dependent under Code Section 152 without regard to Code Sections 152(b)(1), (b)(2) and (d)(l)(8).
- 2.11 "Designated Institution" means each Institution whose Investment Product is used to fund Participant benefits pursuant to the Plan.
- 2.12 "Domestic Partner" shall mean a person who is a Participant's qualified domestic partner in accordance with California Family Code Sections 297 through 299.6. A Domestic Partner is not a Spouse under the Code or the Plan.
- 2.13 "Eligible Deferred Compensation Plan" has the meaning given it by Code Section 457(b) and the regulations thereunder.
- 2.14 "Eligible Deferred Compensation Plan Transfer" means a transfer to the Plan from an Eligible Deferred Compensation Plan in accordance with Section 9.01.
- 2.15 "Eligible Deferred Compensation Plan Transfer Subaccount" means the subaccount established within a Participant's Participation Account to which Eligible Deferred Compensation Plan Transfers are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon. Within this subaccount, Eligible Deferred Compensation Plan Transfers from Qualified Roth Contribution Programs shall be further recorded separately from Eligible Deferred Compensation Plan Transfers that are not from Qualified Roth Contribution Programs.
- 2.16 "Eligible Governmental Employer" means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.
- 2.17 "Eligible Retirement Plan" means any other governmental 457(b) plan, a 403(a) annuity plan, 403(b) program, a 401(a) qualified plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b).
- 2.18 "Eligible Employee" means any Employee defined as eligible to participate in the Plan by standards set forth in Exhibit A, which is attached hereto and incorporated as if fully set forth herein.

- 2.19 "Eligible Rollover Distribution" means any distribution of amounts other than in a distribution form of substantially equal periodic payments over life or life expectancy of the Participant (or joint life or joint life expectancies of the Participant and the designated Beneficiary) or a distribution over a period certain of ten years or more. Amounts required to be distributed under Code Section 401(a)(9), Unforeseeable Emergency withdrawals, and Plan loans are not eligible rollover distributions.
- 2.20 "Employee" shall mean an individual characterized by the Employer as an employee, and shall not include any individual characterized by the Employer as an independent contractor or a leased employee.
- 2.21 "Employer" means the City and County of San Francisco and, upon its adoption of this Plan in accordance with the provisions of Article 12, the Trial Court.
- 2.22 "Includible Compensation" means compensation from the Employer as determined under Code Section 415(c)(3) and shall include any amounts deferred by the Participant under the Plan.
- 2.23 "Investment Option" means one or more Investment Products or investments that are designated by the Board for investment of a Participant's Participation Account pursuant to the Plan.
- 2.24 "Investment Product" means any product that is issued by or obtained from a Designated Institution to fund Participant benefits for the Plan.
- 2.25 "Loan Subaccount" means the subaccount established within a Participant's Participation Account to which a Participant's loans shall be recorded, as applicable, and any interest or losses or the like thereon.
- 2.26 "Normal Retirement Age" means for purposes of the 457(b) Special Catch-Up Limitation of Section 3.08, age 70 1/2, unless prior to that time, the Participant elects another Normal Retirement Age on a form provided by the Plan. In selecting an alternate Normal Retirement Age, a Participant can choose any age which is (a) not earlier than the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits from the Employer's basic pension plan, and (b) not later than the date the Participant attains age 70 1/2.
 - Notwithstanding the above, a Participant who continues in the service of the Employer after age 70 1/2, and has not utilized the 457(b) Special Catch-Up Limitation, may elect a later Normal Retirement Age. Any such age elected, however, may not be later than the Participant's actual date of Separation from Service with the Employer.
- 2.27 "Participant" means (a) an Eligible Employee who elects to participate in this Plan, (b) a separated Employee who has unpaid benefits due under the Plan, or (c) a Beneficiary who upon the death of the Participant has unpaid benefits due under the Plan.
- 2.28 "Participation Account" means the account and subaccounts established and maintained for a Participant under the Plan to which there is recorded, as applicable, the Participant's Pre-Tax Deferrals, Roth Contributions, Deferred Compensation Eligible Deferred Compensation Plan Transfers, Rollover Contributions and Roth In-Plan Rollover Contributions, if any, and any interest, dividends, gains, losses, earnings or expenses or the like thereon. A Participant's Participation Account shall be divided into the following subaccounts, as applicable: the Pre-Tax Deferral Subaccount, the Roth Contribution

- Subaccount, the Eligible Deferred Compensation Plan Transfer Subaccount, the Rollover Subaccount, the Roth In-Plan Rollover Subaccount, and the Loan Subaccount.
- 2.29 "Participation Agreement" means an agreement filed by an Eligible Employee to elect or modify participation in the Plan on a form provided by the Plan.
- 2.30 "Plan" means the City and County of San Francisco Deferred Compensation Plan. The staff of the Plan or other authorized designees of the Plan may take actions on behalf of the Plan.
- 2.31 "Plan Year" means the calendar year during which the Plan becomes effective, and each succeeding calendar year during the existence of this Plan.
- 2.32 "Pre-Tax Deferral(s)" means deferrals made pursuant to the Participant's Participation Agreement that (a) the Participant irrevocably designates at the time of the deferral election as pre-tax deferrals that are being made from Compensation on a pre-tax basis and (b) the Employer excludes from the Participant's gross income in the year deferred.
- 2.33 Pre-Tax Deferral Subaccount" means the subaccount established within a Participant's Participation Account to which a Participant's Pre-Tax Deferrals are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.
- 2.34 "Qualified Roth Contribution Program" means a qualified Roth contribution program, as defined in Code Section 402A(b), of an "applicable retirement plan," as defined in Code Section 402A(e).
- 2.35 "Rollover Contributions" means contributions of Eligible Rollover Distributions from Eligible Retirement Plans other than Roth In-Plan Rollover Contributions.
- 2.36 "Rollover Subaccount" means the subaccount established within a Participant's Participation Account to which a Participant's Rollover Contributions are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon. Within this subaccount, Rollover Contributions from Qualified Roth Contribution Programs shall be further recorded separately from Rollover Contributions that are not from Qualified Roth Contribution Programs.
- 2.37 "Roth Contribution(s)" means contributions made pursuant to the Participant's Participation Agreement that (a) the Participant irrevocably designates at the time of the contribution election as post-tax Roth contributions that are being made from Compensation on an after-tax basis; and (b) the Employer treats as includible in the Participant's gross income in the year deferred.
- 2.38 "Roth Contribution Subaccount" means the subaccount established within a Participant's Participation Account to which a Participant's Roth Contributions are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.
- 2.39 "Roth In-Plan Rollover Contribution" means the portion of an Eligible Rollover Distribution from the Plan that a Participant elects to have allocated to the Roth In-Plan Rollover Subaccount within the Participant's Participation Account.
- 2.40 "Roth In-Plan Rollover Subaccount" means the subaccount established within a Participant's Participation Account to which a Participant's Roth In-Plan Rollover

- Contributions are recorded, as applicable, and any interest, dividends, gains, losses, earnings or expenses or the like thereon.
- 2.41 "Severance from Employment" means severance from employment within the meaning of Code Sections 414(u) 457(d)(1)(A)(ii), and 3401(h)(2) or on account of the Participant's death or retirement.
- 2.42 "Spouse" shall mean a person who is married to a Participant in a marriage that is valid and recognized under the laws of the State of California.
- 2.43 "System" means the San Francisco City and County Employees' Retirement System.
- 2.44 "Trial Court" means the Superior Court of California, County of San Francisco, a California Trial Court, a governmental entity of the State of California authorized to provide deferred compensation plan benefits to its Eligible Employees through this Plan.
- 2.45 "Unforeseeable Emergency" means a severe financial hardship of a Participant resulting from (a) an illness or accident of the Participant, the Spouse or Dependent of the Participant, or the primary Beneficiary of the Participant; (b) loss of the Participant's (or the Participant's primary Beneficiary's) property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or (c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

Operation of Plan

- 3.01 <u>Participation</u>. Any Eligible Employee may elect to become a Participant in the Plan and to defer payment of part of his or her Compensation not yet earned by executing a Participation Agreement and filing it with the Plan.
- 3.02 <u>Participation Agreement</u>. The Plan shall establish a form of Participation Agreement which shall contain, among other provisions, a provision whereby the Participant specifies:
 - a) that portion of his or her Compensation which is to be deferred, and whether such deferral is a Pre-Tax Deferral or a Roth Contribution or consists of both Pre-Tax Deferrals and Roth Contributions, in which case the Participant shall designate specific amounts for each, as applicable.
 - b) his or her investment preference until otherwise amended, revoked, or modified pursuant to the terms of the Plan; provided, however, in the case of investments through the self-directed brokerage window, the Plan reserves the right to disapprove the Participant's investment preference if the investment is not permitted to be held in the Plan pursuant to policies and procedures established by the Plan.
 - a Beneficiary or Beneficiaries, including one or more primary and secondary Beneficiaries, to receive any benefits which may be payable under this Plan or on the death of the Participant.

- d) that his or her salary, wage or other Compensation is as set forth in any salary ordinance or otherwise without deductions for amounts deferred under the provisions of this Plan.
- e) that the Participant together with his or her heirs, successors, and assigns, holds harmless the Employer, the Board, the Plan, the System, the Plan staff and their authorized designees from any liability hereunder for all acts performed in good faith, including acts relating to the investment of deferred amounts and/or the Participant's investment preference hereunder.
- f) a payment option and method of payment (monthly, quarterly, semi-annually or annually) if applicable.
- 3.03 Agreement Effective Date. The Participation Agreement will take effect as of the first pay period starting on or after the first day of the month following receipt and approval of the Participation Agreement by the Plan. The Employer shall defer payment of Participant Compensation in the amount specified in the Participation Agreement. Thereafter, during each calendar year in which the Eligible Employee is a Participant in the Plan, that portion of his or her said Compensation which is specified by the Eligible Employee in the Participation Agreement shall be deferred and paid in accordance with the provisions of this Plan.
- Amendment of Participation Agreement. The Participant may on a prospective basis revoke his or her election to participate, change the amount of Compensation to be deferred, change the deferrals designated as Pre-Tax Deferrals or Roth Contributions, or change the investment preference under the Participation Agreement, by signing and filing with the Plan a revocation or amendment of the Participation Agreement, on a form and pursuant to procedures approved by the Plan. Any such revocation or amendment shall be effective prospectively only, beginning with the first pay period starting on or after the first day of the month following execution of the amended Participation Agreement and until otherwise amended, revoked, or modified pursuant to the terms of the Plan; provided, however, in the case of investments through the self-directed brokerage window, the Plan reserves the right to disapprove the Participant's investment preference if the investment is not permitted to be held in the Plan pursuant to policies and procedures established by the Plan.
- 3.05 Effective Date of Modification of Participation Agreement for Accumulated Sick or Vacation Pay. A new Participation Agreement or an amendment of a Participation Agreement made with respect to accumulated sick or vacation pay paid after a Participant's Severance from Employment shall be effective on the first day of the month following the receipt and approval of the Participation Agreement by the Plan and during which the accumulated sick or vacation pay would otherwise have been payable.

3.06 <u>Separate Accounting:</u>

a) Pre-Tax Deferrals. Contributions of Pre-Tax Deferrals shall be credited to the Participant's Pre-Tax Deferral Subaccount and distributions, withdrawals and transfers from the Pre-Tax Deferral Subaccount shall be debited therefrom, as applicable, and such credits and debits and all interest, dividends, gains, losses, earnings, expenses or the like shall be recorded therein. A Participant's Pre-Tax Deferral Subaccount shall be maintained until all amounts credited to such subaccount have been distributed or otherwise debited therefrom.

- b) Roth Contributions. Contributions of Roth Contributions shall be credited to the Participant's Roth Contribution Subaccount and distributions, withdrawals and transfers from the Roth Contribution Subaccount shall be debited therefrom, as applicable, and such credits and debits and all interest, dividends, gains, losses, earnings, expenses or the like shall be recorded therein. A Participant's Roth Contribution Subaccount shall be maintained until all amounts credited to such subaccount have been distributed or otherwise debited therefrom.
- c) Eligible Deferred Compensation Plan Transfers. Contributions of Eligible Deferred Compensation Plan Transfers shall be credited to the Participant's Eligible Deferred Compensation Plan Transfer Subaccount and distributions, withdrawals and transfers from the Eligible Deferred Compensation Plan Transfer Subaccount shall be debited therefrom, as applicable, and such credits and debits and all interest, dividends, gains, losses, earnings, expenses or the like shall be recorded therein. Eligible Deferred Compensation Plan Transfers from Qualified Roth Contribution Programs shall be recorded separately from Eligible Deferred Compensation Plan Transfer Subaccount shall be maintained until all amounts credited to such subaccount have been distributed or otherwise debited therefrom.
- d) Rollover Contributions. Contributions of Rollover Contributions shall be credited to the Participant's Rollover Subaccount and distributions, withdrawals and transfers from the Rollover Subaccount shall be debited therefrom, as applicable, and such credits and debits and all interest, dividends, gains, losses, earnings, expenses or the like shall be recorded therein. Rollover Contributions from Qualified Roth Contribution Programs shall be recorded separately from Rollover Contributions not from Qualified Roth Contribution Programs. A Participant's Rollover Subaccount shall be maintained until all amounts credited to such subaccount have been distributed or otherwise debited therefrom.
- e) Roth In-Plan Rollover Contributions. Contributions of Roth In-Plan Rollover Contributions shall be credited to the Participant's Roth In-Plan Rollover Subaccount and distributions, withdrawals and transfers from the Roth In-Plan Rollover Subaccount shall be debited therefrom, as applicable, and such credits and debits and all interest, dividends, gains, losses, earnings, expenses or the like shall be recorded therein. A Participant's Roth In-Plan Rollover Subaccount shall be maintained until all amounts credited to such subaccount have been distributed or otherwise debited therefrom.
- f) Any interest, dividends, gains, losses, earnings or expenses or the like must be separately recorded and accounted for on a reasonable and consistent basis to the applicable subaccounts within the Participation Accounts under the Plan.
- g) No contributions other than Roth Contributions, Roth In-Plan Rollovers, Eligible Deferred Compensation Plan Transfers from Qualified Roth Contribution Programs and Rollover Contributions from Qualified Roth Contribution Programs and interest, dividends, gains, losses, earnings or expenses or the like thereon will be recorded to the subaccounts within the Participation Account that hold such Roth Contributions, transfers or rollovers.

- 3.07 <u>Regular Contributions</u>. The regular contribution is the amount of Compensation which may be deferred by a Participant subject to the following limitations:
 - a) Normal Limitation. The maximum amount a Participant may defer during a calendar year (except as provided in Sections 3.08 and 3.09) shall not exceed the lesser of (1) the Code Section 457(b)(2) dollar limit of:

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$11,000 for 2002
$12,000 for 2003
$13,000 for 2004
$14,000 for 2005
$15,000 for 2006
$15,500 for 2007 and 2008
$16,500 for 2009, 2010 and 2011
$17,000 for 2012
$17,500 for 2013 and 2014
$18,000 for 2015
and as Adjusted for years thereafter, or
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- b) 100% of the Participant's Includible Compensation.
- c) The maximum aggregate amount of elective Pre-Tax Deferrals and Roth Contributions deferred under one or more Eligible Deferred Compensation Plans for any taxable year shall not exceed the Normal Limitation amount except as provided in Sections 3.08 and 3.09.
- d) Pay Period Minimum. The minimum amount a Participant may defer in Pre-Tax Deferrals is \$5.00 per pay period. The minimum amount a Participant may defer in Roth Contributions is \$5.00 per pay period.
- 3.08 <u>457(b) Special Catch-Up Limitation</u>. For each one of a Participant's last three calendar years ending prior to, but not including, the calendar year of his or her Normal Retirement Age, the limitation in Section 3.07 shall be replaced by the lesser of:
 - a) Twice the otherwise applicable dollar amount of the Section 3.07 Normal Limitation; or
 - b) the sum of the Normal Limitation in Section 3.07, plus so much of the Normal Limitation which has been underutilized in all prior taxable years since January 1, 1979.

For purposes of the 457(b) Special Catch-Up Limitation, a prior calendar year can be taken into account: (1) if the Participant was eligible to participate in the Plan or any similar prior plan of the same Employer during any portion of any prior taxable year since January 1, 1979; and (2) if the Compensation deferred, if any, under such plan or the Plan during such prior taxable years was subject to the maximum deferral limitations of Code Section 457.

A Participant may elect to utilize the 457(b) Special Catch-Up Limitation once in this Plan or any other similar plan, notwithstanding the fact that the Participant utilizes the 457(b) Special Catch-Up Limitation in less than all of the three eligible years.

3.09 <u>Age 50+ Catch-Up</u>. In addition to the Normal Limitation amount provided in Section 3.07, any Participant who would be at least age 50 by the close of a Plan Year may defer an additional amount equal to:

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$1,000 in 2002
$2,000 in 2003
$3,000 in 2004
$4,000 in 2005
$5,000 in 2006, 2007 and 2008
$5,500 in 2009, 2010, 2011, 2012, 2013 and 2014
$6,000 in 2015
and as Adjusted for years thereafter
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Age 50+ Catch-Up contributions may not be made by a Participant in any year in which 457(b) Special Catch-Up contributions have been elected under Section 3.08.

- 3.10 <u>Employer Contributions</u>. Nothing in this Plan prohibits the Employer from making deposits to a Participant's Participation Account, as additional compensation for services rendered, subject to the Participant's contribution limits as set forth in Sections 3.07 through 3.09.
- 3.11 <u>Distribution of Excess Deferrals</u>. In the event that a deferral in excess of the limitations of Sections 3.07 through 3.09 is made for a calendar year, the amount of the excess and income thereon shall be distributed to the Participant as soon as administratively practicable after the Plan determines that the amount is an excess deferral.

ARTICLE 4

Investment Responsibilities

- 4.01 <u>Investment of the Participation Account</u>. The Plan will invest Participants' Deferred Compensation within a reasonable time subsequent to the reduction in the Participant's Compensation as authorized and as specified in the Participant's Participation Agreement until otherwise amended, revoked or modified pursuant to the terms of the Plan.
- 4.02 <u>Investment Rights</u>. Amounts equal to the Deferred Compensation, Eligible Deferred Compensation Plan Transfers, and any Rollover Contributions or Roth In-Plan Rollover Contributions with respect to a Participant shall be credited to a Participation Account in accordance with the Participant's elections in the Participation Agreement. All amounts of Compensation deferred under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust (or custodial account or Annuity Contract described in Code Section 401(f)) for the exclusive benefit of Participants. All such amounts shall not be subject to the claims of the Employer's general creditors.
- 4.03 <u>Default Investments</u>. The Board may designate one or more Investment Options as default investments, which shall hold amounts for which no investment preference is specified (or is otherwise not properly provided) by Participants and as otherwise specified by the Board.
- 4.04 <u>Amendment of Investment Preference</u>. The Participant may amend his or her statement of investment preference by filing with the Plan a signed amendment on a form and pursuant to procedures approved by the Plan. Such amendment will, unless specifically

stated otherwise, apply only to future amounts contributed to the Plan until otherwise amended, revoked or modified pursuant to the terms of the Plan; provided, however, in the case of investments through the self-directed brokerage window, the Plan reserves the right to disapprove the Participant's investment preference if the investment is not permitted to be held in the Plan pursuant to policies and procedures established by the Plan.

- 4.05 Investment Disclaimer. Any action by the Employer, the Board, the Plan, the System, Plan staff or authorized Plan designees in selecting Investment Options, investing funds, or approving any such investment of funds, shall not be considered to be either an endorsement or a guarantee of any investment; nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided under the distribution guidelines given below. The value of any benefit shall be determined by the actual value of the Investment Options held in the Participant's Participation Account at the time of benefit payment, unaffected by an independent or arbitrary standard of calculation with respect to an Investment Option. None of the Employer, the Board, the Plan, the System or the Plan staff shall be responsible for the investment or performance of such Investment Option or for the investment advice rendered to Plan Participants by an investment adviser with whom the Plan has contracted to provide investment advice to Plan Participants or have any duty to monitor the specific advice given by the investment adviser. Nor shall the Employer, the Board, the Plan, the System or the Plan staff be responsible for the investment or performance of the default Investment Option described in Section 4.03.
- 4.06 <u>Investment Policy Statement</u>. The Investment Options offered under the Plan shall be governed by the City and County of San Francisco 457 Deferred Compensation Plan Investment Policy Statement, as amended from time to time.
- 4.07 <u>Loan Subaccount</u>. A Loan Subaccount shall be deemed invested in the promissory note received by the Plan from the Participant as consideration for a loan permitted by Section 5.08, or in cash.

ARTICLE 5

Distributions

- 5.01 Eligibility for Distribution.
 - a) Distribution of Deferred Compensation and the earnings attributable thereto may be taken under any of the following circumstances:
 - 1) Severance from Employment (whether before or after retirement);
 - 2) Death;
 - 3) Approval of request for an Unforeseeable Emergency withdrawal, pursuant to Section 5.07;
 - 4) Attainment of age 70 1/2;
 - 5) If the value of the Participation Account does not exceed \$5,000 (as adjusted), pursuant to Section 5.04.

- b) Distribution of a Participant's Rollover Contributions and interest, dividends, gains, losses, earnings, expenses or the like thereon may be taken at any time, upon the Participant's election to receive such a distribution pursuant to procedures approved by the Plan, to the extent permitted by law.
- 5.02 <u>Distribution and Deferral</u>. Distribution must follow the minimum distribution requirements of Code Sections 401(a)(9) and 457(d) and the regulations thereunder as they may be amended from time to time. There is a substantial penalty (federal excise tax) for not satisfying the minimum distribution requirements.

Upon becoming eligible in accordance with Section 5.01 hereof, distribution is subject to the following:

- a) A Participant may elect to commence distribution in accordance with the distribution schedules set forth at Section 5.03 hereof. If a Participant fails to make any election, distribution shall commence on April 1 of the calendar year following the calendar year the Participant attains age 70 1/2 or the year of Severance from Employment, if later.
- b) Benefit payments to a Participant shall commence at the time and shall be made according to the manner and method of payment as elected in the Participation Agreement, which election may be changed by a Participant as appropriate and as allowed by the Plan.
- c) If eligibility for distribution is on account of the Participant's death, distribution shall commence in accordance with Section 5.06 hereof.
- d) Benefits under the Plan must either (1) be distributed by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2 or experiences Severance from Employment whichever occurs later, or (2) commence no later than April 1 of the calendar year described in (1) and be made over the life of the Participant (or the lives of the Participant and the Participant's Beneficiary) or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and his or her Beneficiary).
- e) An individual receiving differential pay for an active duty period of more than 30 days who takes a distribution cannot make Pre-Tax Deferrals or Roth Contributions to the Plan during the 6-month period beginning on the date of distribution. For purposes of this provision, life expectancy shall be determined in accordance with the regulations under Code Section 401(a)(9) that were proposed in January 2001 for calendar years 2001 and 2002, and thence in accordance with the final regulations.
- f) A Participant electing to commence distribution shall have the opportunity to designate the extent to which the distribution should be taken in whole or in part from the subaccounts within the Participant's Participation Account. In the absence of such designation, the distribution shall be taken pro rata from the subaccounts within the Participant's Participation Account with the exception of the Loan Subaccount.
- g) Notwithstanding the provisions of this Article 5, in the event of a default of the Participant's loan, the Participant's Loan Subaccount shall be deemed distributed.

- 5.03 <u>Distribution Schedule</u>. Except in the event of the Participant's death, the full amount credited to the Participant's Participation Account (including earnings and net gains or losses), less any federal and, state income tax required to be withheld, shall be distributed as instructed by the Participant, following one of the following distribution schedules or such other schedule as may be permitted by law and offered by the Plan:
 - a) Life annuity (Option 1). An annuity payable during the lifetime of the Participant;
 - b) Life annuity with period certain guaranteed (Option 2). An annuity payable during the lifetime of the Participant, or his or her Beneficiary, with the guarantee that if the Participant's death payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary;
 - c) Refund life annuity (Option 3). An annuity payable during the lifetime of the Participant with a guarantee for payment in a lump sum, or monthly, to the Beneficiary if the total amount paid to the Participant is less than the amount annualized. The payment to the Beneficiary will equal the amount annualized less any amounts paid;
 - d) Joint and survivor annuity (Option 4). An annuity payment during the lifetime of the Participant and a designated survivor of the Participant;
 - e) Payments for a specified period (Option 5). Amounts payable in installments over a period of five (5) to thirty (30) years, but not in excess of the Participant's allowable life expectancy;
 - f) Lump sum payment. A lump sum; or
 - g) Systematic Withdrawal Option. A payment option of monthly, quarterly, semiannual, or annual payments of a stated dollar amount or a specified period for a given number of years subject to a minimum starting account balance and a final lump sum payment where there is a remainder after selecting a given number of years.
- Participation Accounts Not Exceeding \$5,000. Notwithstanding any provision of the Plan to the contrary, if the total amount of a Participant's Participation Account, less the value of the Participant's Rollover Subaccount, if any, under the Plan does not exceed \$5,000 (or such other dollar limit under Code Section 411(a)(11)(A)), the Participant may elect before a Severance from Employment to receive the total amount in a lump sum payable within 60 days of such election; provided, however, such amount may be distributed pursuant to this Section 5.04 only if: (a) no amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and (b) there has been no prior distribution under the Plan to such Participant to which this Section 5.04 applied.
- 5.05 <u>Method of Payment Options</u>. If the Participant elects an installment payment option, installments may be made monthly, quarterly, semi-annually or annually at the election of the Participant.
- 5.06 <u>Distribution Schedule In the Event of the Participant's Death</u>. In the event of the Participant's death, the full amount credited to the Participant's Participation Account (including earnings and net gains or losses), at the time of death, if any, less any federal, state or, as applicable, local income tax required to be withheld, shall be distributed according to the following requirements:

- a) If distribution has commenced prior to the death of the Participant, the balance of a Participant's Participation Account shall be paid to the Beneficiary in accordance with the payment option already selected by the Participant so that the remaining distribution, if any, will be effected at least as rapidly as under the method of payment used before the Participant's death.
- b) Should the Participant die at any time before the Participant's required beginning date (within the meaning assigned to such term by Code Section 401(a)(9) and the regulations promulgated thereunder), the Plan shall commence benefit payments to the Beneficiary according to the manner and method provided in the Participation Agreement or as selected by the Beneficiary pursuant to a revised Participation Agreement submitted pursuant to procedures established by the Plan. Benefit payments to a Beneficiary shall be paid over a period not to exceed the life expectancy of the Beneficiary. The Beneficiary may elect to change the time, manner and method of benefit payments as allowed under the Plan.

Distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except if an election is made to receive distribution in accordance with (1) or (2) below:

- 1) if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made over the life of the Beneficiary or a period not exceeding the life expectancy of the Beneficiary beginning no later than December 31 of the calendar year following the calendar year in which the Participant died;
- 2) if the designated Beneficiary is the Participant's Spouse, the date distributions are required to begin in accordance with (1) above is not earlier than the later of (a) December 31 of the calendar year following the calendar year in which the Participant died, or (b) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

A Beneficiary may take distribution in a lump sum payment, Systematic Withdrawal Option or Options 1, 2, 3, or 5 in Section 5.03 for a period not exceeding his or her own life expectancy.

- c) Effective January 1, 2007, the Beneficiary of a Participant who dies while performing qualified military service, in accordance with the Participant's reemployment rights under Code Section 414(u), shall be entitled to any additional benefits (other than benefit accruals, if any, relating to the period of qualified military service) that would be provided under the Plan had the Participant resumed employment and then terminated employment.
- d) In the case where a Participant has multiple Beneficiaries, Payments shall be made equally to the surviving primary Beneficiaries, and in the event the primary Beneficiaries are not surviving, the secondary Beneficiaries, unless an alternative allocation was provided on the proper Beneficiary designation form by the Participant.
- e) The Plan shall process distribution requests as soon as administratively practicable upon receipt of all required forms pursuant to procedures established by the Plan.

- 5.07 <u>Unforeseeable Emergency Withdrawal</u>. Notwithstanding any other provisions of this Plan, a Participant may apply for a withdrawal from this Plan in the event of an Unforeseeable Emergency in accordance with the City and County of San Francisco 457(b) Deferred Compensation Plan Unforeseeable Emergency Withdrawal Policy, as amended, and applicable laws and regulations.
 - a) The Participant must satisfy the Plan that one of the following conditions are met before an Unforeseeable Emergency withdrawal may be authorized:
 - 1) Major unexpected and unreimburseable expenses exist that were not foreseeable and are beyond the Participant's control;
 - 2) The Unforeseeable Emergency event involves the Participant or primary Beneficiary, his or her Spouse, any Dependent, or his or her lineal ascendants or descendant with respect to an Unforeseeable Emergency withdrawal made on or after August 29, 2005 and no later than March 31, 2006, on account of Hurricane Katrina as permitted by IRS Announcement 2005-70.
 - The Unforeseeable Emergency involves the Participant's primary Beneficiary, as permitted by IRS Notice 2007-7 and the PPA.

If the Participant qualifies for Unforeseeable Emergency withdrawal as outlined in Subsection 5.07(a)(1) or (a)(3), the Participant must then meet all of the conditions of Subsection 5.07(b), (c), (d), (e), and (f) before an Unforeseeable Emergency withdrawal will be granted from the Plan:

- b) The financial burden created must be the legal obligation of the Participant;
- c) All other financial sources, such as insurance payments and attempts to obtain loans, including loans available from this Plan, have been exhausted;
- d) All assets must be liquidated except where liquidation would itself cause severe financial hardship;
- e) The amount of the requested withdrawal is limited to the amount necessary to meet the financial emergency; and
- f) Severe financial hardship will occur if the withdrawal is not permitted.
- g) Examples of hardship circumstances include
 - 1) Imminent foreclosure of, or eviction from primary residence;
 - 2) Non-refundable deductibles under a health plan;
 - 3) Prescription medicine not covered by a health plan;
 - 4) Funeral expenses for a family member (defined as a Spouse or Dependent); or
 - 5) The need to rebuild a home following damage to a home not covered by homeowners' insurance.

Withdrawals are not authorized for foreseeable expenses such as automobile or college costs, a home down payment, or expenses relative to divorce proceedings.

Any remaining benefits shall be paid upon retirement, Severance of Employment, or death in accordance with this Article 5. The decision under the City and County of San Francisco 457(b) Deferred Compensation Plan Unforeseeable Emergency Withdrawal Policy shall be final as to all Participants.

- 5.08 <u>Loans</u>. Any loan by the Plan to a Participant under this Section 5.08 shall satisfy the following requirements and any other requirements established by the Board and reflected in the Plan's Loan Policy.
 - a) Availability. A Participant who is an Eligible Employee, who is not on a leave of absence from the Employer, and who has not incurred a Severance from Employment may apply for a loan from his or her Participation Account. A separated Employee, Beneficiary or Alternate Payee is not eligible to apply for a loan. A Participant who has defaulted on a prior loan under the Plan is not eligible to apply for a loan. Loans shall be made available to all eligible Participant on a reasonably equivalent basis.
 - b) *Interest Rate*. Loans must be adequately secured and bear an interest rate of 1% plus the prime rate published in the Wall Street Journal on the business day immediately preceding the Participant's loan application.
 - c) *Default*. In the event of default on the loan, the outstanding balance of the loan shall be deemed distributed from the Participant's Loan Subaccount.
 - d) Amount of Loan. At the time the loan is made, the principal amount of the loan shall not exceed the lesser of:
 - 1) \$50,000, reduced by the greater (if any) of:
 - (i) The highest outstanding balance of loans from the Plan during the one year period ending on the day before the date on which the loan is made; or
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - 2) One-half of the value of the Participant's interest in his or her Participation Account under the Plan.

The minimum loan amount shall be \$1,000.

e) Length of Loan. Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest each pay period, over a period that does not exceed five years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time the loan is made) after the loan is made as the principal residence of the Participant, the five year limit shall not apply. In this event, the period of repayment shall not exceed 15 years from the date of the loan. Principal installments and interest payment otherwise due may be suspended for up to 12 months during an authorized leave of absence from the Employer without

Compensation, if the promissory note so provides, but not beyond the original term permitted under this Subsection 5.08(e) unless otherwise provided in this Plan, with a revised payment schedule (within such term) instituted at the end of such period of suspension.

- f) Repayment. Repayment of principal and payment of interest shall be made by payroll deduction, or in the event a Participant's paycheck has insufficient funds to permit deduction, then by other payment methods as determined by the Board or other designated party. Loan repayments and shall be invested in accordance with the Participant's current allocation for contributions to the Plan as of the next day after payment thereof to the Plan. The amount so invested shall be deducted from the Participant's Loan Subaccount.
- g) *Prepayment*. The Participant shall be permitted to repay the loan in whole at any time prior to maturity, without penalty.
- h) *Promissory Note*. The loan shall be evidenced by a promissory note delivered to the Plan, and the Participant's acceptance of the terms of the Promissory Note shall be evidenced by the endorsement of the loan check.
- i) Security. The loan shall be secured by an assignment to the Plan of the Participant's right, title and interest in and to his or her Participation Account.
- j) Loan Limits. A Participant shall not have more than two loans outstanding at any given time.
- k) Fees and Expenses. Any fees and expenses incurred by the Plan related to loan shall be deducted from the Participant's Participation Account.
- 5.09 <u>Income Tax Reporting</u>. The Plan shall reduce from any payment due to any Participant federal, state, and local taxes required to be withheld and shall report such withholdings in accordance with applicable law.

ARTICLE 6

Beneficiaries

- 6.01 <u>Designation</u>. Each Participant has the right to designate one or more Beneficiaries to receive any benefits payable under this Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant may designate such Beneficiaries primary or secondary. The Participant accepts and acknowledges that he or she has the responsibility to execute and file a proper Beneficiary designation form. The Plan shall provide the form for this purpose. A Beneficiary designation is not binding on the Plan until it is signed, filed with the Plan by the Participant, and accepted by the Plan. Elections made by a Participant on the proper Beneficiary designation form shall be binding on any such Beneficiary or Beneficiaries.
- 6.02 <u>Absence of Beneficiary Designation</u>. If no Beneficiary is designated as provided in Section 6.01 or if the Beneficiary or Beneficiaries so designated pre-decease the Participant, the Participant's Beneficiary shall be deemed to be:
 - a) the surviving Spouse/Domestic Partner, or, if none;

- b) the deceased Participant's estate.
- 6.03 <u>Distribution Upon Death of Beneficiary</u>. If following the death of a Participant the designated Beneficiary dies with an interest remaining in the Plan or unpaid payments remaining, then the Plan shall pay to the estate of such Beneficiary a single lump sum amount equal to the current value of such remaining payments to such Beneficiary.

Leave of Absence and Qualified Military Service

- 7.01 <u>Leave of Absence</u>. A Participant on an approved leave of absence with or without Compensation may continue to participate in the Plan subject to all the terms and conditions of the Plan; provided further, Compensation may be deferred for such Participant if such Compensation continues while the Participant is on an approved leave of absence. For any Plan loans in effect on the date a Participant's approved leave of absence from the Employer without Compensation begins, a Participant may suspend loan repayments for up to 12 months. Upon return from such absence, the remaining loan balance shall be re-amortized so that the outstanding amount including interest accrued during the suspension is repaid in full within the original loan term.
- 7.02 Qualified Military Service. This Plan will be administered in accordance with Code Section 414(u) for Eligible Employees who return to work after absences from employment due to qualified military service. This includes make-up contributions that were not made during the Eligible Employee's period of qualified military service. Contributions made up will be subject to the annual contribution limitations for the year(s) to which they relate, rather than the year they are made. For any Plan loans in effect on the date a Participant's absence from employment due to qualified military service begins, the maximum interest rate shall be 6% during the qualified military service and loan repayments may be suspended while the Participant is performing military service. Upon return from such absence, the remaining loan balance shall be reamortized so that the outstanding amount including interest accrued during the suspension is repaid in full within the original loan term plus the length of the military service.

ARTICLE 8

Non-Assignability

- 8.01 Except as expressly provided in Article 10 and Section 5.08(i), neither the Participant nor the Participant's Beneficiary, nor any other designee, shall have any right to commute, sell, assign, pledge, hypothecate, transfer, or otherwise convey the right to receive any interest in a Participation Account hereunder, which rights thereto are expressly declared to be nonassignable and nontransferable.
- 8.02 Except to the extent otherwise provided by law, no Participation Account shall be subject to attachment, garnishment or execution, or be transferable in the event of bankruptcy or insolvency.

Rollovers and Transfers

- 9.01 <u>Transfers from Other Eligible Deferred Compensation Plans</u>. The value of Participant's account from another Eligible Deferred Compensation Plan maintained by another Eligible Governmental Employer may be accepted and credited to the Participant's Eligible Deferred Compensation Plan Transfer Subaccount under this Plan with such amounts to be further credited based on whether the Eligible Deferred Compensation Plan Transfer was from a Qualified Roth Contribution Program, if the following conditions are met and otherwise pursuant to procedures established by the Plan:
 - a) The Participant has experienced a Severance from Employment with that employer and establishes a Participation Account;
 - b) The other employer's plan provides that such transfer can be made.

As it deems necessary, this Plan may require such documentation from the predecessor plan to affect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457 sponsored by an Eligible Governmental Employer and to assure that transfers are provided for under such plan.

The Plan may refuse to accept a transfer in the form of assets other than cash, unless the Plan agrees to hold such other assets under the Plan.

Any amounts transferred that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.

The Participant shall, in the time and manner prescribed by the Plan, specify the amount to be transferred from such other Eligible Deferred Compensation Plan.

9.02 Rollovers from Other Eligible Retirement Plans.

- a) The Plan, to the extent permitted by the Code and otherwise pursuant to procedures established by the Plan, will accept Rollover Contributions with such amounts to be credited to the Participant's Rollover Subaccount, and then further credited based on whether the Rollover Contributions were from Qualified Roth Contribution Programs, as applicable. The Participant shall, in the time and manner prescribed by the Plan, specify the amount to be rolled over to the Plan.
- b) As it deems necessary, the Plan may require such documentation from the predecessor plan to affect the rollover, to confirm that such plan is an Eligible Retirement Plan.
- c) The Plan may refuse to accept a rollover in the form of assets other than cash, unless the Plan agrees to hold such other assets under the Plan.
- d) Any amounts rolled over will not be subject to current calendar year deferral limitations.
- 9.03 <u>Roth In-Plan Rollover Contributions</u>. The Plan, to the extent permitted by the Code and otherwise pursuant to procedures established by the Plan, will accept Roth In-Plan Rollover Contributions with such amounts to be credited to the Participant's Roth In-Plan

Rollover Subaccount. The Participant shall, in the time and manner prescribed by the Plan, specify the amount to be rolled over as a Roth In-Plan Rollover Contribution.

9.04 <u>Transfers to Other Eligible Deferred Compensation Plans</u>.

- a) The full value of a Participation Account may be transferred to another Eligible Deferred Compensation Plan maintained by another Eligible Governmental Employer, if the following conditions are met and otherwise pursuant to procedures established by the Plan:
 - 1) The Participant has experienced a Severance from Employment with the Employer and become an employee of the other employer;
 - 2) The other employer's plan provides that such transfer will be accepted;
 - The Participant shall, in the time and manner prescribed by the Plan, specify the amount to be transferred and the Eligible Deferred Compensation Plan to receive the transfer; and
 - 4) The Participant and the Plan have signed such agreements as are necessary to assure that the Plan's liability to pay benefits to the Participant has been discharged and assumed by the other employer.
- b) As it deems necessary, the Plan may require such documentation from the other plan to affect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457 sponsored by an Eligible Governmental Employer and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457 and the applicable regulations.

9.05 Transfers to Purchase Service Credits.

- a) To the maximum extent allowed under Code Section 457(e)(17) and otherwise pursuant to procedures established by the Plan, all or any portion of the value of a Participation Account may be transferred to a Code Section 414(d) defined benefit governmental plan for the purchase of permissive service credits or to repay contributions and earnings with respect to a previous forfeiture of service credits under such plan. The Participant shall, in the time and manner prescribed by the Plan, specify the amount to be transferred and the Code Section 414(d) defined benefit governmental plan to receive the transfer.
- b) As it deems necessary, the Plan may require such documentation from the other plan to affect the transfer, to confirm that such plan is a Code Section 414(d) defined benefit governmental plan and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457(e)(17) and the applicable regulations.

9.06 Rollovers to Other Eligible Retirement Plans.

a) Notwithstanding any provision of the Plan to the contrary and otherwise pursuant to procedures established by the Plan, 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 Plan, specify the amount to be rolled over and the Eligible

- Retirement Plan to receive the rollover. Any portion of a distribution that is not rolled over shall be distributed to the Participant.
- b) The election described in Subsection 9.06(a) also applies to the surviving Spouse after the Participant's death or an Alternate Payee under a Plan-approved domestic relations order.
- c) A non-Spouse Beneficiary shall be permitted to elect to have a distribution to which he or she is entitled to receive upon the death of a Participant, or any portion thereof, rolled over to an individual retirement arrangement (IRA) which is treated as an inherited IRA of the non-Spouse Beneficiary. Any portion of a distribution that is not rolled over shall be distributed to the non-Spouse Beneficiary.
- d) As it deems necessary, the Plan may require such documentation from the other plan to affect the rollover, to confirm that such plan is an Eligible Retirement Plan and to assure that rollovers are provided for under such plan. Such rollovers shall be made only under such circumstances as are permitted under Code Section 72 and the applicable regulations.

Domestic Relations Orders

For purposes of this Article 10 only, the term "Alternate Payee" includes a Domestic Partner.

- 10.01 Recognition of Approved Domestic Relations Orders. The Plan recognizes and gives effect to domestic relations orders within the meaning of Code Section 414(p)(1)(B) (each, a "DRO") that have been approved in accordance with Plan procedures and, pursuant to state law, create or recognize the existence of the right of an Alternate Payee to receive all or a portion of any Participation Account in accordance with the criteria set forth below.
- 10.02 <u>DRO Information</u>. A DRO shall not be allowed unless approved in accordance with the following Plan procedures.
 - a) A DRO must be in substantially the form provided by the Plan for such purposes.
 - b) A DRO must be a court order. A certified copy shall be supplied upon request by the Plan.
 - c) A DRO must specifically identify the Plan by name.
 - d) A DRO must specify the name, mailing address, and date of birth of the Participant and the Alternate Payee, and must provide that the social security number of the Alternate Payee shall be provided in writing to the Plan.
 - e) A DRO must not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan. A DRO shall not be treated as failing to meet the requirements of this Subsection 10.02(e) solely because such order requires that payment of benefits be made to an Alternate Payee:

- in the case of any payment before a Participant has separated from service, on or after the date on which the Participant attains (or would have attained) the earliest retirement age, as defined in Code Section 414(p)(4)(B),
- as if the Participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any Employer subsidy for early retirement), and
- in any form in which such benefits may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to the Alternate Payee and his or her subsequent Spouse/Domestic Partner).
- f) At the time the Alternate Payee is entitled to a distribution under the Plan, he or she may select, in accordance with the provisions of Article 5, from any of the permitted payment methods available to the Participant.
- g) The DRO must include the amount or percentage of the Participation Account to be paid to the Alternate Payee's account. The calculation of this amount should be very clear and not subject to interpretation.
- h) If the DRO is received after the Participant's commencement of distributions, the order may not modify the payment method selected, but must divide the payments as they are to be received; provided, however, that a DRO may modify the payment method selected if the terms of the Plan permit the Participant to change his or her selection.
- i) A DRO may not require any distribution to an Alternate Payee that any court order requires to be paid to another person.
- j) A DRO may not provide for more than one Alternate Payee.
- k) A DRO may not include any provision that does not relate to the Plan.
- 10.03 <u>Distributions to Alternate Payees</u>. Amounts segregated for the account of an Alternate Payee shall be available for immediate distribution to the Alternate Payee upon the earliest retirement age of the Participant, as defined in Code Section 414(p)(4)(B). The Alternate Payee shall be subject to the same rules and provisions of law as if he or she were a Participant.

Administration and Accounting

11.01 <u>Plan Administration</u>. The Plan shall be administered by the Board, which shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The Board and the Plan may engage investment counsel to provide advice concerning categories of investment, investment guidelines and investment policy; provided, however, that the advice or recommendations of any such investment counsel shall not be binding on the Board or the Plan, as applicable, which shall make the final determination concerning investment categories, investment guidelines and policies. The

Board or the Plan may contract with an investment adviser to provide investment advice to the Plan or in respect of an Investment Option. The Board or the Plan may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Board or the Plan, as applicable. The Board shall have the right to designate a third-party administrator or other party of its choice to perform such services under an agreement as may be mutually agreed to between the Plan and such service provider. The Board or the Plan may also contract with an investment adviser to provide investment advice to Plan Participants as permitted by law. Notwithstanding any other provisions to the contrary, the Board agrees that it shall be solely responsible to the Employer for any and all services performed by a subcontractor, assignee, or designee under this agreement.

- 11.02 <u>Board Power and Authority</u>. The Board shall have the power to construe and interpret the Plan in its sole discretion, and to correct any defect, supply any omission, or reconcile any inconsistency in the Plan in such manner and to such extent as the Board shall deem expedient to carry the same into effect, and the Board shall be the sole and final judge of when such action shall be appropriate.
- 11.03 Administrative Costs. The Plan shall determine, in a manner deemed fair and equitable, the administrative costs, including the salary, benefit costs and expenses of Plan staff, associated with the withholding of Deferred Compensation amounts pursuant to this Plan or in making investments or otherwise administering or implementing the Plan. The Plan may withhold or collect, or have withheld or collected, such costs, in such manner as it deems equitable either (1) from the Deferred Compensation, the income produced from the Deferred Compensation, the income produced from any investment, whether or not augmented, or (2) from the organization receiving such investment where required by law to collect therefrom or, if not so required, where mutually satisfactory to such organization and the Plan. The Plan may also direct the remission of appropriate amounts so withheld or collected to the Employer. Expenses unique to a Participant may be charged specifically to the Participation Account of said Participant.

ARTICLE 12

Trial Court Participation

- 12.01 Adoption by Trial Court. With the consent of the City and County of San Francisco, the Trial Court may adopt this Plan as its exclusive deferred compensation plan by appropriate resolution or other legal action. Upon adoption of the Plan, the Trial Court shall become an Employer under the Plan.
- 12.02 <u>Appointment of Board</u>. By the act of adopting the Plan, the Trial Court shall have appointed the Board as its exclusive agent to exercise on its behalf all of the powers and authorities conferred to an Employer hereunder.
- 12.03 <u>Plan Amendment Binding on Trial Court</u>. Any amendment of the Plan is effective and binding on the Trial Court, without requiring the consent of the Trial Court.
- 12.04 <u>Withdrawal</u>. The Trial Court may terminate its adoption of the Plan upon not less than ninety (90) days prior written notice to the Plan. A copy of the resolution or other legal action authorizing withdrawal shall be effective no sooner than ninety (90) days after the Plan receives written notice from the Trial Court.

12.05 Effect of Withdrawal. Upon the Trial Court's withdrawal from the Plan, the Trial Court shall not permit any further deferrals of Compensation into the Plan. As long as the Participation Accounts of the Trial Court's employees remain with the Plan, the rights of such Participants shall be unaffected by the Trial Court's withdrawal from the Plan. Any mass distribution, transfer or other disposition of such Participation Accounts shall constitute a complete discharge of all liabilities under the Plan with respect to former Participants whose accounts were distributed, transferred or disposed of.

ARTICLE 13

Amendments

- 13.01 <u>Right to Amend, Modify and Terminate</u>. The Board may at any time modify or terminate the Plan by notifying Participants of such action. The Board shall not have the right to reduce or affect the value of any Participant's account or any rights accrued under the Plan prior to modification or termination.
- 13.02 <u>Conformation</u>. The Board shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code Section 457, the Board shall correct such inconsistency within the period provided in Code Section 457(b).
- 13.03 <u>Plan Termination</u>. In the event of the termination of the Plan, distribution of benefits shall be made to Participants and Beneficiaries pursuant to the distribution guidelines in Article 5 or the rollover and transfer provisions of Article 9.

ARTICLE 14

Exclusive Benefit

14.01 All amounts of Compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust or under one or more custodial accounts or Annuity Contracts described in Code Section 401(f) for the exclusive benefit of Plan Participants and their Beneficiaries. Except as may otherwise be permitted or required by law, no assets or income of the Plan shall be used for, or diverted to, for purposes other than providing benefits for Participants or defraying reasonable expenses of administration of the Plan.

ARTICLE 15

Claims Procedure

15.01 <u>Initial Claim</u>. If any person believes he or she is being denied any rights or benefits under the Plan, such person (or the person's duly authorized representative) may file a claim with the Plan. If any such claim is wholly or partially denied, the Plan will notify the claimant of its decision in writing. The notification will set forth: (a) the specific reason or reasons for the adverse determination, (b) reference to the specific Plan provisions on which the determination is based, (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why

such material or information is necessary, and (d) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action. Such notification will be given within 90 days after the claim is received by the Plan, or within 180 days, if the Plan determines that special circumstances require an extension of time for processing the claim. If the Plan determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the expiration of the initial 90-day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render a determination.

- 15.02 Review of a Denied Claim. Within 60 days after the date of notification of an adverse determination, a claimant (or the claimant's duly authorized representative) may file a written request with the Plan for a review of the claimant's adverse determination and submit written comments, documents, records, and other information relating to the claim for benefits. A request for review shall be deemed filed as of the date of receipt of such written request by the Plan. If a claimant fails to request a review within 60 days, it shall be conclusively determined for all purposes that the denial of the claim is correct. A claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim. The Plan will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The Plan will notify the claimant of its decision on review in writing. Such notification will contain the following: (a) the specific reason or reasons for the adverse determination, (b) reference to the specific Plan provisions on which the benefit determination is based, (c) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and (d) a statement of the claimant's right to bring a civil action. The decision on review will be made within 60 days after the request for review is received by the Plan, or longer if the Plan determines that special circumstances require an extension of time for processing the claim. If the Plan determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review. The Plan's decision on review shall be final and binding on the claimant.
- 15.03 Exhaustion of Remedies. A claimant must utilize the claims and review procedures described in this Article 15 and exhaust his or her remedies under the Plan's claims procedures before the claimant can bring a legal action alleging the denial of eligibility, miscalculation or denial of Plan benefits, or any other right under the terms of the Plan. Any legal action must be filed within six (6) months of receiving final notice of a denied claim. The Plan may develop additional written claims procedures consistent with the requirements of applicable law and regulations. To the extent those procedures conflict with this Article 15, the procedures will govern.
- 15.04 <u>Limitations Period</u>. A claimant must make any claim or request for Plan benefits within one year of the date the claim for eligibility, Plan benefits or other right under the Plan arose or, if later, within one year of the date the claimant first knew or should have known that the Participant's eligibility, Plan benefits or any other rights under the Plan were in question, so that the Plan can address it on a timely basis.
- 15.05 <u>Plan Discretionary Authority</u>. In making an initial claim decision or a review of denied claim decision, the Plan has sole, absolute and discretionary authority to interpret the

meaning of the Plan provisions and determine all questions arising under the Plan, including, but not limited to, eligibility for benefits. The Plan's decision will be final and binding on Participants and all other parties to the maximum extent allowed by law.

ARTICLE 16

Miscellaneous

- 16.01 <u>Retirement System Integration</u>. Benefits payable by and deductions for Employee contributions to, any retirement system of the Employer shall be computed without reference to amounts deferred pursuant to this Plan.
- 16.02 Employment. Neither the establishment of the Plan, any provision of the Plan, nor any action of the Plan, the Plan staff, the Board, the Employer, the System or their designees with respect to the Plan, nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant, Eligible Employee, Employee or other person any right to continue in the employ of the Employer or any legal or equitable right against the Employer except as herein provided; and, in no event, shall the terms of employment of any Employee be modified or in any way be affected hereby.
- 16.03 <u>Successors and Assigns</u>. The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and their heirs and legal representatives.
- 16.04 <u>Notice</u>. Any notice or other communication required or permitted under the Plan shall be in a form prescribed by the Plan, and if directed to the Employer shall be sent to the designated office of the Employer, and, if directed to a Participant, shall be sent to such Participant at his or her last known address as it appears on the Plan's record.
- 16.05 <u>Total Agreement</u>. This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.
- 16.06 Gender and Numbering; Captions or Headings. Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.
- 16.07 Controlling Law. This Plan is created and shall be construed, administered and interpreted in accordance with Code Section 457 and the regulations thereunder and under the laws of the State of California as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected. All legal actions or proceedings relating to the Plan shall be brought exclusively in courts within the City and County of San Francisco, California.
- 16.08 No Third Party Rights. Except as expressly provided in Article 10, nothing in the Plan or any trust established in connection herewith shall be construed to create any rights hereunder in favor of the Beneficiary of any Participant prior to the Participant's death or

- in favor of any other person (other than the Employer and any Participant) or to limit the Employer's right to amend or terminate the Plan in any manner as provided in Article 13.
- 16.09 <u>Severability</u>. If any term or condition of the Plan shall be invalid or unenforceable to any extent or in any application, then the remainder of the Plan, with the exception of such invalid or unenforceable provision, shall not be affected thereby, and shall continue in effect and application to its fullest extent.
- 16.10 <u>409A</u>. In accordance with Treas. Reg. § 1.409A-1(a)(2), the Plan is completely exempt from the provisions of Code Section 409A.

IN WITNESS WHEREOF, the Board has executed this Amended and Restated Plan document this 8th day of July, 2015.

Retirement Board of the City and County of San Francisco
by
(Name - please print)
(Signature)
by Executive Director
(Title)

"EXHIBIT A"

The following Employees of the City and County of San Francisco and of the Superior Court of California, County of San Francisco, a California trial Court ("Trial Court") identified by a checked box below have been designated as eligible to participate in the Plan:

✓ Full Time Employees
Permanent Part Time Employees
Part Time Employees
☐ Independent Contractors
Employment after Retirement
Other: