

**CITY OF WAUKESHA
ELIGIBLE DEFERRED COMPENSATION PLAN**

Effective April 9, 1982

Restated Effective January 1, 2015

Article 1

Establishment of Plan

- 1.1 Establishment. The City of Waukesha, Wisconsin (the “Employer”) established the City of Waukesha Deferred Compensation Plan (the “Plan”) on April 9, 1982. The Employer restated and renamed the Plan as the City of Waukesha Wisconsin Eligible Deferred Compensation Plan effective January 1, 1997. The Employer hereby renames and restates the Plan as the City of Waukesha Eligible Deferred Compensation Plan. This restatement of the Plan shall be effective January 1, 2015, unless otherwise stated.
- 1.2 Purpose. The Plan is intended to provide Participants with a convenient way to save for retirement by providing them with deferred compensation benefits.
- 1.3 Nonqualified Status of Plan. The Plan is a nonqualified plan of deferred compensation. The Plan is intended to be an eligible deferred compensation plan, as defined in subsections 457(b) and 457(g) of the Internal Revenue Code (the “Code”). It is intended that Participants and Beneficiaries will not be taxed on Plan benefits until those benefits are distributed to them. The Employer is an “eligible employer” described in Code section 457(e)(1)(A). The Plan is intended to be a funded plan to provide deferred compensation and a “governmental plan,” within the meaning of Code section 414(d) and section 3(32) of the Employee Retirement Income Security Act of 1974 (“ERISA”). Consequently, the Plan is intended to be exempt from the requirements of ERISA.
- 1.4 Exclusive Benefit. All amounts deferred under this Plan, all property and rights purchased with such amounts, and all income attributable thereto shall be held in trust for the exclusive benefit of Participants and their Beneficiaries. For these purposes, custodial accounts and contracts that are described in Code section 401(f) shall be treated as trusts as provided in Code section 401(f).

Article 2

Definitions

When used in the Plan, the following words and phrases shall have the meanings set forth below unless the context plainly requires a different meaning. When the defined meaning is intended, the term is capitalized.

- 2.1 “Account” means the account maintained for a Participant by the insurer of the annuity contract selected by the Participant under Section 4.1.
- 2.2 “Administrative Agent” means the authorized agent of an insurer of a group annuity contract made available under the Plan by the Board. The Administrative Agent need not be the same

organization for each Participant in the Plan. The Board may change the list of insurers eligible to offer annuity contracts under the Plan in the Board's discretion.

- 2.3 “Beneficiary” means the designated person (or, if none, the Participant's estate) (as designated by the Participant pursuant to Section 6.3) who is entitled to receive benefits under the Plan after the death of a Participant.
- 2.4 “Board” means the Deferred Compensation Board of the Employer.
- 2.5 “Code” means the Internal Revenue Code of 1986, as amended. References to a Code section shall be deemed to be to that section as it now exists and to any successor provision.
- 2.6 “Committee” means a committee of one or more persons appointed by the Board to administer this Plan and to make all determinations with the authority set forth in Article 8.
- 2.7 “Compensation” means cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Participant's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Participant's gross income for the calendar year but for a compensation reduction election under Code sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election to defer compensation under the Plan). For Plan Years after December 31, 2008, to the extent permitted by the applicable Code provisions and Department of Treasury regulations, Compensation shall include Differential Wage Payments received by a Participant from the Employer while performing Qualified Military Service.
- 2.8 “Compensation Deferral” means a contribution to the Plan on a Participant's behalf pursuant to a Compensation Reduction Agreement between the Employer and the Participant.
- 2.9 “Compensation Reduction Agreement” means a written agreement between the Employer and an employee under which the Employer reduces the Compensation available to the employee after the effective date of the agreement and agrees to make a contribution to the Plan on behalf of the employee equal to the amount of the reduction in Compensation. The foregoing notwithstanding, “Compensation Reduction Agreement” may include a telephonic or an electronic direction provided by a Participant to the Committee (or the Committee's designee) that, pursuant to procedures the Committee in its sole discretion may establish, is treated as a “Compensation Reduction Agreement” for purposes of this Plan.
- 2.10 “ “Differential Wage Payments” means any payment, including but not limited to a payment under Wisconsin Statutes Section 230.315, which meets all the following criteria:
- (a) The payment is made by the Employer to a Participant with respect to any period during which the Participant is performing service in the uniformed services, as defined in 38 USC 4303, while on active duty for a period of more than 30 days.
 - (b) The payment represents all or a portion of the earnings the Participant would have received from the Employer if the Participant were performing services for the Employer.

- 2.11 “Employer” means the City of Waukesha, Wisconsin. In addition to the Board, the Committee is authorized to act on behalf of the Employer for purposes of the Plan. Also, the Board from time to time may authorize one or more officers of the Employer to act on behalf of the Employer for purposes of the Plan.
- 2.12 “Normal Retirement Age” means age 65.
- 2.13 “Participant” means any employee of the Employer (other than a seasonal or limited term employee) who is scheduled to work at least 20 hours per week and who has a Compensation Reduction Agreement in effect with the Employer. Except as provided in Section 10.8, a Participant receiving Differential Wage Payments is considered an employee of the Employer, although not rendering services to the Employer.
- 2.14 “Plan Year” means the period beginning on January 1 and ending on the following December 31.
- 2.15 “Qualified Military Service” means service in the United States military described in Code section 414(u)(5).
- 2.16 “Termination of Employment” means the Participant’s ceasing to be employed by the Employer for any reason whatsoever, voluntary or involuntary, including by reason of death or disability. A Participant whose employment is interrupted by Qualified Military Service shall be deemed terminated until such time as he or she is reemployed following the term of duty. Effective for Plan Years after December 31, 2008, if a Participant called to Qualified Military Service receives a distribution from the Plan due to Termination of Employment, the Participant’s deferral to the Plan shall be suspended for six months following the date of the distribution.

Article 3

Participation

- 3.1 Commencement and Termination of Participation. Each employee of the Employer, (other than a seasonal or limited term employee) who is scheduled to work at least 20 hours per week shall be eligible to participate in this Plan as of the date such employee is hired by the Employer. To participate in and receive benefits under this Plan, the Participant agrees to observe all rules and regulations established by the Committee for administering the Plan and to abide by all decisions of the Committee in the construction and administration of the Plan. A Participant’s participation in the Plan shall cease as of the earliest of (a) the date he/she experiences a Termination of Employment, (b) the date he/she is no longer a Participant within the meaning of Section 2.13, (c) the date the Employer modifies the Plan to terminate the Participant’s participation, or (d) the date the Plan is terminated as described in Section 9.2.
- 3.2 Controlling Provisions. Unless otherwise specifically provided in the Plan (through the Employer’s reserved right to amend as set forth in Section 9.1), the rights of any Participant or former Participant (or of any person with respect to a Participant) to receive benefits, if any, under this Plan and the amount of and conditions under which such benefits shall be payable shall be determined in accordance with the provisions of this Plan, if any, as may

have been applicable to the Participant as in effect on the date the Participant's participation in the Plan ceased.

Article 4

Contributions and Annuity Contracts

- 4.1 Compensation Reduction Contributions. Subject to the limitations set forth in Article 5, for each payroll period during a Plan Year the Employer shall make a contribution to an annuity contract selected by the Participant from among the annuity contracts made available under the Plan by the Board on behalf of each Participant who has a Compensation Reduction Agreement in effect for that payroll period. The amount of the contribution shall be the amount specified by the Participant in his Compensation Reduction Agreement.

A Participant whose employment with the Employer is interrupted by Qualified Military Service or who is on a leave of absence for Qualified Military Service may elect to make additional deferrals to the Plan upon resumption of employment with the Employer equal to the maximum deferral limit that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of interruption or leave).

- 4.2 Crediting of Amounts to the Participant's Account. For each Plan Year that a Participant is participating in the Plan, the insurer of the annuity contract selected by the Participant under section 4.1 shall credit and charge to the Participant's Account such amounts as are appropriate pursuant to this Section 4.2. Subject to the limitations in Article 5, a Participant may elect to make Compensation Deferrals for each Plan Year in lieu of receiving an equal amount of Compensation as direct remuneration. The insurer of the annuity contract selected by the Participant shall credit the Participant's Compensation Deferrals to the Participant's Account, and into the appropriate investment subaccounts at the direction of the Participant and as described in this Section 4.2(a)-(b).

- (a) Enrollment. The Committee shall provide a Participant with a list of annuity contract insurers that participate in the Plan and the Administrative Agent for each insurer. The Administrative Agent selected by a Participant must deliver to the Employer's payroll department the Participant's Compensation Reduction Agreement (on a form and in a manner acceptable to the Committee). The Committee shall establish uniform procedures that a Participant must follow to make Compensation Deferrals. The election of a Participant who is not a new employee to make Compensation Deferrals shall be effective as of the first pay period of the first calendar month beginning after the date the Administrative Agent receives and processes the Participant's Compensation Reduction Agreement by delivery to the Employer's human resources department. A Participant who is a new employee may elect to make Compensation Deferrals with respect to Compensation payable in the calendar month during which the Participant first becomes an employee of the Employer if a Compensation Reduction Agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

Once submitted, a Participant's Compensation Reduction Agreement shall remain in effect until amended or discontinued pursuant to paragraph (b) below.

- (b) Change in Amount of Compensation Deferrals. A Participant may increase or decrease the amount of the Participant's Compensation Deferrals or entirely discontinue Compensation Deferrals. To do so, the Participant or the Administrative Agent for the annuity contract selected by the Participant must submit to the Employer's human resources department a revised, written Compensation Reduction Agreement (on a form and in a manner acceptable to the Committee) directing the Employer to increase, decrease, or discontinue the Participant's Compensation Deferrals. Such revised direction must be submitted pursuant to uniform procedures established by the Committee. A Participant's revised direction shall be effective as of the first pay period of the first calendar month beginning after the date the Employer's human resources department receives and processes the revised Compensation Reduction Agreement. A Participant who discontinues Compensation Deferrals may again elect to make Compensation Deferrals. The Participant's subsequent direction will be effective pursuant to the terms specified in paragraph (a) above.

- 4.3 Investment of Contributions. The value of each Participant's Account shall be adjusted for the investment return of the Account, as determined by the terms of the annuity contract. The Committee shall offer what the Committee determines to be a reasonable range of investment options to Participants. A Participant shall select from among the investment options offered by the Committee by submitting a written investment election to the Administrative Agent for the annuity contract selected by the Participant. The Committee shall establish uniform procedures that a Participant must follow to submit written investment elections to the Administrative Agent.

The investment return of a Participant's Account shall be the Participant's share of gains and losses (including, without limitation, interest, dividends, and market appreciation or depreciation) of the investments selected by the Participant. The investment return attributable to a Participant's Account shall be allocated to each applicable investment subaccount within the Participant's Account.

- (a) Change in Investment Elections. A Participant's written investment election with respect to an annuity contract shall be effective as soon as administratively feasible after receipt and acknowledgment by the Administrative Agent for the annuity contract selected by the Participant and shall control the crediting of gains or losses until a new investment election is implemented. A Participant may direct that his or her Account under one annuity contract offered under the Plan be transferred to another annuity contract offered under the Plan or that his or her Account under the Plan be transferred to another eligible governmental plan, as defined in section 1.457-2(f) of the Treasury regulation, adopted by the Employer for its employees, e.g., the State of Wisconsin Public Employees Deferred Compensation Plan.
- (b) Available Investment Options. The Committee may allow an Administrative Agent to change the investment options offered to Participants at any time upon 30 days advance written notice to the Participants. Upon such a change, each affected Participant shall be

given the opportunity to select new investments from among those made available by the Administrative Agent.

- (c) Investment Charges. Any purchase or sale of securities under this Section 4.3 may be subject to any fees (which shall be deducted from the Participant's Account) as may apply to such purchase or sale.
- (d) Electronic or Telephonic Investment Election Changes. In lieu of written investment elections, the Committee, in its sole and absolute discretion, may establish uniform electronic and/or telephonic procedures for Participants to communicate (and the Administrative Agent to process) investment elections and changes to investment elections.

4.4 Distributions. Any benefit paid to a Participant or the Beneficiary of a Participant pursuant to Article 6 or Article 9 and any excess distributed pursuant to Section 5.5 shall be paid from the Participant's Account. Any benefit payment pursuant to Article 6 or Article 9 shall reduce the value of the Participant's investment subaccounts proportionately based upon the relative amounts credited to such investment subaccounts as of the date of payment. Any excess distributed pursuant to Section 5.5 shall be applied to reduce the value of the Participant's investment subaccount(s) to which the Participant made the excess contribution.

Article 5

Limitations

The total Compensation Deferrals credited to a Participant's Account for a Plan Year shall not exceed the limits set forth in this Article 5.

- 5.1 General Rule. Except as provided in this Article 5, the sum of the Compensation Deferrals made on a Participant's behalf for a Plan Year shall not exceed the lesser of:
 - (a) The "applicable dollar amount"; or
 - (b) 100% of the Participant's Compensation.

The "applicable dollar amount" for the Plan Year that begins on January 1, 2015 shall be \$18,000. For Plan Years beginning after December 31, 2015, the "applicable dollar amount" shall be increased to reflect increases in the cost-of-living or as otherwise modified pursuant to Code section 457(e)(15). Amounts credited to a Participant's Account by reason of a transfer described in Section 9.3 shall be disregarded for purposes of this Section 5.1.

- 5.2 Catch-Up Contributions After Attaining Age 50. All Participants who are eligible to make elective deferrals under this Plan and who have attained (or will attain) age 50 before the close of the Plan Year shall be eligible to make "age 50 catch-up contributions" in accordance with Code Section 414(v) and the regulations thereunder. Such an eligible Participant may make these catch-up contributions only if no other elective deferrals may be made to the Plan for the Plan Year with respect to the Participant by reason of any applicable limitation imposed by the Plan or by Code sections 402(g) and 457. The "age 50 catch-up contribution amount" for the Plan Year that begins on January 1, 2015 shall be \$6,000. For Plan Years beginning after

December 31, 2015, the “age 50 catch-up contribution amount” shall be increased to reflect increases in the cost-of-living or as otherwise modified pursuant to Code section 414(v). However, in no event shall the age 50 catch-up contributions exceed the Participant’s total compensation (as defined in Code section 415(c)(3)), reduced by any other elective deferrals made by the Participant without regard to this paragraph under any plan sponsored by the Employer. Such age 50 catch-up contributions shall not be taken into account for purposes of the limitations of Section 5.1 above.

5.3 Limited Catch-Up. For each of the last three Plan Years immediately preceding the Plan Year in which the Participant attains Normal Retirement Age, the limit set forth in and imposed by Section 5.1 shall be the lesser of:

- (a) Twice the “applicable dollar amount” for that Plan Year under Section 5.1; or
- (b) The sum of:
 - (i) The limit established in Section 5.1 for the Plan Year (determined without regard to this Section 5.3), plus
 - (ii) So much of the limit established in Section 5.1 for prior years as has not previously been used under Section 5.1 or this Section 5.3.

However, in no event shall the catch-up contributions exceed the Participant’s total compensation (as defined in Code section 415(c)(3)), reduced by any other elective deferrals made by the Participant without regard to this paragraph under any plan sponsored by the Employer. Amounts credited to a Participant’s Account by reason of a transfer described in Section 9.3 shall not be disregarded for purposes of this Section 5.3. In taxable years in which the provisions of both Section 5.2 and Section 5.3 apply with respect to a Participant, the maximum deferral permitted in such taxable year shall be the greater of (i) the maximum annual deferral under Section 5.1 plus the age 50 catch-up contribution under Section 5.2; or (ii) the maximum deferral under this Section 5.3 determined without regard to this sentence.

5.4 Special Rules. For purposes of applying this Article 5, the following rules shall apply:

- (a) Participant Covered by More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article 5. For this purpose, the Administrative Agent shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrative Agent receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) Pre-Participation Years. In applying Section 5.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the basic limitations described in Section 5.1 or any other plan ceiling required by Code section 457(b).

- (c) Pre-2002 Coordination Years. For purposes of applying Section 5.3(b)(ii) to years prior to 2002, any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services shall be taken into account as if such contribution were a contribution to the Plan. However, the contributions for any calendar year are only taken into account for purposes of Section 5.3(b)(ii) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code section 457(b)(2) for that year.
- (d) Disregard Excess Deferrals. For purposes of Sections 5.1 through 5.3, a Participant is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 5.5. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

5.5 Distribution of Excess Deferrals.

- (a) Excess Deferrals to the Plan. If the sum of the Compensation Deferrals credited to a Participant's Account for a Plan Year exceeds the limit specified in this Article 5 for that Plan Year, the insurer of the annuity contract selected by the Participant shall distribute the amount in excess of the limit (plus the investment return allocable to such excess) to the Participant. The insurer shall make this distribution as soon as administratively practicable after the Administrative Agent for the annuity contract determines that the amount is an excess deferral. Any excess so distributed shall be applied to reduce the value of the Participant's Account. This Section 5.5(a) is intended to comply, and shall be interpreted in accordance, with Treasury Regulation section 1.457-4(e)(2).
- (b) Deferrals Exceeding Individual Limitations. If, in any calendar year, more than the amounts described in Sections 5.1 through 5.3 above is deferred on a Participant's behalf to this Plan and one or more plans intended to satisfy Code section 457(b) maintained by one or more other employers, such excess shall be taxable to the Participant in the taxable year in which the excess deferral occurs. A Participant may request that the insurer that issued the annuity contract to distribute any such excess deferral, plus allocable net earnings, to the Participant. The insurer shall distribute such excess deferral to the Participant as soon as administratively practicable after the insurer determines that the amount is an excess deferral. If an excess deferral is not distributed in accordance with this section 5.5(b), a Participant must include excess amounts in income as provided in section 1.457-4(e) of the Treasury Regulations. This Section 5.5(b) is intended to comply, and shall be interpreted in accordance, with Treasury Regulation section 1.457-4(e)(4).

Article 6

Payment of Benefits

- 6.1 Exclusive Conditions for Payment of Benefits. Except as described in Section 9.3, no benefit shall be payable under this Plan except as specifically set forth in this Article 6.
- 6.2 Termination of Employment for Reasons Other than Death. This Section 6.2 shall govern the payment of benefits with respect to a Participant who experiences a Termination of Employment for a reason other than the death of the Participant.
- (a) Termination of Employment. If a Participant experiences a Termination of Employment, the insurer that issued the annuity contract selected by the Participant shall pay a benefit to the Participant equal to the value, if any, of the Participant's Account in the form and at the time described in subsection (b) below.
- (b) Time and Form of Benefit Payment. Benefits payable under this Section 6.2 shall be distributed as follows.
- (i) General Rule—Form Specified by Annuity Contract. The insurer that issued the annuity contract selected by the Participant shall pay any benefit payable pursuant to this Section 6.2 as soon as administratively practicable after the Participant elects to have payments commence. Such benefit shall be paid in the form offered under the annuity contract selected by the Participant. If the Participant's annuity contract does not specify optional forms of payment, the Participant shall elect a form of benefit from the list in the following paragraph (ii).
- (ii) Alternative Forms of Payment. If the annuity contract selected by a Participant does not specify optional forms of payment, the Participant may elect to receive the Participant's benefit pursuant to this Section 6.2(b)(ii) in one of the following forms:
- [a] A lump-sum payment in cash;
 - [b] A payment (or a series of payments) in cash in the amount(s) specified by the Participant;
 - [c] A payment in cash of the amount obtained by redeeming the number of fund shares specified by the Participant (if applicable);
 - [d] Substantially equal monthly, quarterly, semi-annual, or annual installment payments in cash, over a period not to exceed the lives or the joint life expectancies (determined pursuant to Section 6.8) of the Participant and his/her Beneficiary;
 - [e] The application of the Participant's Account to the purchase of an individual non-transferable immediate or deferred annuity contract;
 - [f] A lump-sum distribution in kind of an annuity contract; or

[g] A lump-sum distribution in kind of a life insurance contract.

If the Participant dies while receiving installment payments pursuant to one of the foregoing benefit forms specified in this paragraph, the insurer that issued the annuity contract shall pay a single cash lump sum benefit equal to the remaining balance, if any, of the Participant's Account to the Beneficiary as soon as administratively practicable (as determined by the Committee). In no event shall any such payment be made later than the date that is 60 days after the close of the Plan Year in which the Participant's death occurred.

- (iii) Death after Termination of Employment and Prior to Commencement of Payments. If the Participant dies after the Participant's Termination of Employment but before the date benefit payments to the Participant have commenced under this Section 6.2, the insurer that issued the annuity contract selected by the Participant shall pay any benefit otherwise payable to the Participant pursuant to this Section 6.2 to the Beneficiary. Such benefit shall be paid to the Beneficiary as provided under the terms of the annuity contract or, if no form of payment is specified by the contract, in a single cash lump sum as soon as administratively practicable, but in no event later than the date required under Code section 401(a)(9).

- 6.3 Termination of Employment Due to Death. If the Participant experiences a Termination of Employment as a result of the Participant's death, the insurer that issued the annuity contract selected by the Participant shall pay a benefit to the Beneficiary equal to the value of the Participant's Account. The insurer shall pay this benefit in any form available to the Beneficiary under the annuity contract after the Participant's death as soon as administrative practicable after the Beneficiary files an application for the benefit, but in no event later than the date required under Code section 401(a)(9).

The Participant shall designate a Beneficiary, or Beneficiaries, who, upon the Participant's death, shall receive the benefit described in Section 6.2(b)(iii) and this Section 6.3. The Beneficiary designation shall be in writing on a form acceptable to the insurer that issued the annuity contract selected by the Participant and shall be effective only when delivered to, and accepted by, the Administrative Agent for the insurer during the lifetime of the Participant.

If a Participant fails to designate a Beneficiary, if the Beneficiary designation is for any reason illegal or ineffective, or if no Beneficiary designated by the Participant survives the Participant, the Beneficiary shall be deemed to be:

- (a) If the Participant has a surviving spouse, the Participant's surviving spouse.
- (b) If the Participant has no surviving spouse, the Participant's surviving children (natural and adopted) in equal shares.
- (c) If the Participant has no surviving spouse and the Participant has no surviving children, the Participant's estate.

- 6.4 Death of Participant Performing Qualified Military Service. The Beneficiary(ies) of a Participant who died while performing Qualified Military Service shall be entitled to any

additional benefits (if any) that would be provided under the Plan had the Participant resumed and then terminated employment on account of death. This provision applies only to the extent that there is any difference between the benefits provided under the Plan in the event of the death of a Participant who was employed at the time of death and a Participant who died after his or her Termination from Employment.

6.5 In-Service Withdrawals—Unforeseeable Emergency. A Participant may receive a distribution of amounts credited to the Participant's Account if the Participant experiences an unforeseeable emergency. The term "unforeseeable emergency" means a severe financial hardship to the Participant or his or her Beneficiary resulting from:

- (a) An illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Code section 152, without regard to Code sections 152(b)(1), (b)(2), and (d)(1)(B));;
- (b) A loss of the Participant's or 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 or the Beneficiary, including, but not limited to:
 - (i) the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence;
 - (ii) the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication; or
 - (iii) the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code section 152 without regard to section 152(b)(1), (b)(2), and (d)(1)(B)) of a Participant or Beneficiary.

The purchase of a home and the payment of college tuition are not "unforeseeable emergencies." The foregoing notwithstanding, no distribution may be made under this Section 6.5 to the extent that the hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, liquidation of the Participant's assets (to the extent liquidation of such assets would not itself cause severe financial hardship), or cessation of Compensation Deferrals. Distributions under this Section 6.5 shall be permitted only in an amount reasonably needed to satisfy the emergency need (which may include amounts necessary to pay income taxes or penalties reasonably anticipated to result from the distribution).

To receive a distribution under this Section 6.5, the Participant must submit a written application for distribution to Committee (on a form and in a manner acceptable to the Committee). The determination of whether a Participant may receive a distribution under this Section 6.5 shall be made by the Board in its sole and absolute discretion. The Participant shall provide the Board with such information as the Board may request to make a

determination with respect to the Participant's application for distribution. Any amounts distributed under this Section 6.5 shall be paid from the Participant's Account.

- 6.6 Facility of Payment. If a benefit is payable under this Plan to a minor, a person declared incompetent, or a person incapable of handling the disposition of his/her property, the insurer of the annuity contract selected by the Participant may pay such benefit to the guardian, legal representative, or person having the care or custody of such person. The insurer may require such proof of incompetence, minority, or guardianship, as it may deem appropriate prior to distribution of the benefit. Payment of a benefit pursuant to this Section 6.6 shall be made from the Participant's Account and payment of such benefit shall fully satisfy the Employer's obligations under this Plan.
- 6.7 Payment by Trust. A trust established by the Employer may pay any amount owed by the Employer pursuant to this Plan. To the extent a trust makes any such payment, the Employer shall be relieved of the obligation under this Plan to make such payment. Neither this Section 6.7 nor any other provision of this Plan shall be construed to impose any obligation upon any trust.
- 6.8 Latest Commencement Date and Minimum Distribution Rules. In no event shall payment of benefits due under this Plan commence later than 60 days after the Plan Year in which the later of the following occurs:
- (a) The Participant attains, or would have attained, age 70 ½; or
 - (b) The Participant experiences a Termination of Employment.

Notwithstanding any provision of this Plan to the contrary, benefits under this Plan shall be paid out as rapidly as necessary to satisfy the minimum distribution rules of Code section 401(a)(9), as amended, and Treasury Regulation sections 1.401(a)(9)-1 through 1.401(a)(9)-9, as amended. This Section 6.8 shall supersede any distribution option in the Plan that is inconsistent with Code section 401(a)(9), or the regulations thereunder, but shall have no effect on distribution options that are consistent with Code section 401(a)(9).

With respect to distributions to the Participant, Code section 401(a)(9) generally provides that benefit distributions must commence on or before the Participant's "required beginning date" and be paid over a period that does not extend beyond the lives or the joint life expectancies of the Participant and his/her Beneficiary. During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of:

- The quotient obtained by dividing the Participant's then Account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's age as of the Participant's birthday in the distribution calendar year; or
- If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's then Account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's

attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Section 6.8 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death

"Distribution calendar year" means a calendar year for which a minimum distribution is required. The first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's "required beginning date." The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's "required beginning date." The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year. "Required beginning date" means the April 1 following the later of (i) the calendar year in which the Participant turns age 70-1/2, or (ii) the calendar year in which the Participant experiences a Termination of Employment.

If the Participant dies before the Participant's required beginning date, the requirements of Code section 401(a)(9) will be satisfied if the Participant's remaining Plan benefit is distributed by December 31 of the calendar that contains the fifth anniversary of the Participant's death. If the Participant dies after the Participant's required beginning date, the requirements of Code section 401(a)(9) will be satisfied if the Participant's remaining Plan benefit is distributed by the end of the calendar year that contains the first anniversary of the Participant's death.

Notwithstanding any other provisions of the Plan, a Participant or Beneficiary who would have been required to receive a required minimum distribution for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (a) equal to the 2009 RMDs; or (b) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. If the Participant or Beneficiary has elected not to receive a 2009 RMD or Extended 2009 RMD, then the Participant or Beneficiary will not receive a 2009 or Extended 2009 RMD unless the Participant subsequently elects to receive the distributions.

6.9 Mandatory Distributions for Certain Account Balances of \$5,000 or Less. At the direction of the Administrative Agent if allowed under the annuity contract selected by the Participant, a Participant's total Account balance shall be paid in a lump sum as soon as practical following the Administrative Agent's direction if (a) the total Account balance does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater), (b) the Participant has not previously received a distribution of the total amount payable to the Participant under this

Section 6.9, and (c) no Compensation Deferrals have been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

- 6.10 Mistaken Contributions. If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrative Agent, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrative Agent, to the Employer.
- 6.11 Procedure When Participant or Beneficiary Cannot be Located. The Administrative Agent shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt is one in which the Administrative Agent has (a) sent a mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrative Agent's records, (b) notified the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six months of the date that the last of the notices sent pursuant to subsections (a) and (b). If the Administrative Agent is unable to locate such person entitled to benefits, or if there has been no claim made for such benefits, the annuity contract or trust fund created pursuant to this Plan shall continue to hold the benefits due such person.
- 6.12 Rollover Distributions.
- (a) A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrative Agent, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.
- (b) For purposes of this Section 6.12, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account balance, except that an eligible rollover distribution does not include (a) any installment payment under Section 6.2 for a period of 10 years or more (b) any distribution made under Section 6.5 as a result of an unforeseeable emergency, or (c) the portion, if any, of any other distribution that is a required minimum distribution under section 401(a)(9). An eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Solely for purposes of applying this rollover provision of the Plan, 2009 RMDs and extended 2009 RMDs, both as defined in Section 6.8, will be treated as eligible rollover distributions.
- 6.13 In-Service Distributions from Rollover Account. If a Participant has a separate account attributable to rollover contributions to the Plan from an eligible retirement plan of an

employer other than the Employer, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

Article 7

Claims and Review Procedures

- 7.1 Claims Procedure. The Committee shall notify the Participant or any Beneficiary (“claimant”) in writing, within 90 days of his/her written application for benefits, of the claimant’s eligibility or ineligibility for benefits under the Plan. If the Committee determines that a claimant is not eligible for benefits or full benefits, the notice shall set forth (a) the specific reasons for such denial, (b) a specific reference to the provisions of the Plan on which the denial is based, (c) a description of any additional information or material necessary for the claimant to perfect his/her claim, and a description of why it is needed, and (d) an explanation of the Plan’s claims review procedure and other appropriate information as to the steps to be taken if the claimant wishes to have the claim reviewed. If the Committee determines that there are special circumstances requiring additional time to make a decision, the Committee shall notify the claimant of the special circumstances and of the date by which a decision is expected to be made, and may extend the time for up to an additional 90-day period.
- 7.2 Review Procedure. If a claimant is determined by the Committee to be ineligible for benefits, or if the claimant believes that he/she is entitled to greater or different benefits, the claimant shall have the opportunity to have the claim reviewed by the Board by filing a petition for review with the Committee within 60 days after receipt of the notice issued by the Committee. The petition shall state the specific reasons why the claimant believes that he/she is entitled to benefits, greater benefits, or different benefits. The Board shall afford the claimant (and counsel, if any) an opportunity to present his/her position to the Board orally or in writing, and the claimant (or counsel) shall have the right to review the pertinent documents. Within 60 days after receipt of the petition, the Board shall notify the claimant of its decision in writing. The Board’s written notice to the claimant shall set forth the basis of the Board’s decision and the specific provisions of the Plan on which the decision is based and shall be written in a manner calculated to be understood by the claimant. If, because of the need for a hearing, the 60-day period is not sufficient, the decision may be deferred for up to another 60-day period at the election of the Board, but notice of this deferral shall be given to the claimant. In the event of the death of a claimant, the same procedure shall be applicable to the claimant’s Beneficiaries.

Article 8

Administration and Finances

- 8.1 Administration. The Committee shall administer the day to day operations of the Plan. The Employer shall bear all costs of administering the Plan.
- 8.2 Power of the Committee. The Committee shall have all powers necessary to administer the Plan and, without limitation, shall have the sole and absolute authority:
- (a) To interpret the provisions of the Plan;

- (b) To determine the eligibility of any employee to participate in the Plan;
 - (c) To determine the eligibility of the Participant or of any Beneficiary of the Participant for benefits under the Plan;
 - (d) To determine the value of the Participant's Account for purposes of determining the amount of any benefit which may be payable under the terms of the Plan, to establish and revise the method of accounting for the Plan, and to maintain the accounts; and
 - (e) To establish rules for the administration of the Plan and to prescribe any forms required to administer the Plan and to do all other things needed for the orderly administration of the Plan.
- 8.3 Actions of the Committee. All determinations, interpretations, rules, and decisions of the Committee shall be subject to the approval of the Board. All determinations, interpretations, rules, and decisions of the Board shall be conclusive and binding upon all persons having, or claiming to have, any interest or right under the Plan.
- 8.4 Delegation. The Board shall have the power to appoint the members of the Committee and to delegate specific duties and responsibilities to officers or other employees of the Employer or other individuals or entities. Any delegation by the Board may allow for further delegations by the individual or entity to which the delegation is made. The Board may rescind any delegation made previously by the Board at any time. Each person or entity to whom or to which a duty or responsibility has been delegated shall be responsible for the exercise of such duty or responsibility and shall not be responsible for any action or failure to act of any other person or entity.
- 8.5 Reports and Records. The Board and the Committee and those to whom the Board has delegated duties under the Plan shall keep records of all their proceedings and actions and shall maintain books of account, records, and other data as shall be necessary for the proper administration of the Plan and for compliance with applicable law.
- 8.6 Indemnification. The Employer shall indemnify the members of the Committee, the Board, and employees of the Employer to whom the Board or Committee has delegated duties under the Plan for any liability arising out of any action taken, or decision made, in good faith relating to the Plan.
- 8.7 Periodic Review. As part of the ongoing administration of the Plan, the Committee shall periodically review provisions of the Plan to ensure that the Plan continues to achieve all of the objectives established by the Employer. The existence of this periodic review shall in no way limit the authority of the Employer to amend, modify, or cancel the Plan at any time.

Article 9

Amendments, Termination, Transfers and Rollovers

- 9.1 Amendment. The Board may amend the Plan in any respect at any time and from time to time. No amendment, however, shall have the effect of reducing the value of a Participant's Account as of the date of the amendment.

9.2 Termination. The Board, in its sole discretion, may terminate the Plan at any time. Upon termination of the Plan, Participants' Accounts shall be distributed in a manner determined by the Committee that complies with the requirements of Code section 457(b), as amended, and the Treasury Regulations thereunder.

9.3 Transfers. The Employer may enter into a transfer agreement with another government employer under which this Plan may accept a transfer of a Participant's benefit in the other government employer's plan described under Code section 457(b) ("457(b) Plan"), or transfer a Participant's Account in this Plan to the other government employer's 457(b) Plan. The Administrative Agent will credit any transfer accepted under this Section 9.3 to the Participant's Account, but will not treat such transfer as a deferral subject to the limitations of Article 5; provided however, the Administrative Agent will take the transfer into account for purposes of computing the catch-up limitation under Section 5.3. A transfer to or from this Plan shall be permitted if the following conditions are met:

- (a) the transferor plan provides for transfers;
- (b) the receiving plan provides for the receipt of transfers;
- (c) the Participant whose amounts are being transferred will have an amount immediately after the transfer at least equal to the amount with respect to that Participant immediately before the transfer; and
- (d) the Participant has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan.

If the Plan executes the transfer pursuant to this Section 9.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrative Agent may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10) and section 1.457-10(b) of the Treasury Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Treasury Regulations.

9.4 Eligible Rollover Contributions to the Plan

- (a) A Participant who is an employee of the Employer and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan and invested in an annuity contract selected by the Participant that is offered under the Plan. The Administrative Agent for the annuity contract selected by the Participant may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.
- (b) For purposes of subsection 9.4(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include: (1) any installment payment for a period of 10 years or more, (2) any distribution made as a

result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) the portion, if any, of any other distribution that is a required minimum distribution under section 401(a)(9) of the Code. An eligible retirement plan means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a) or 403(b), or another eligible governmental plan described in Code section 457(b).

- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from an eligible retirement plan.

Article 10

Miscellaneous

- 10.1 No Guarantee of Employment. The adoption and maintenance of the Plan shall not be deemed a contract of employment between the Employer and a Participant. Nothing in the Plan shall give a Participant the right to be retained in the employ of the Employer or to interfere with the right of the Employer to discharge a Participant at any time. Nothing in the Plan shall give the Employer the right to require the Participant to remain in its employ or to interfere with the Participant's right to terminate employment at any time.
- 10.2 Trust Fund, Custodial Accounts and Insurance Contracts. All amounts deferred under this Plan, all property and rights purchased with such amounts, and all income attributable thereto shall be held in trust for the exclusive benefit of Participants and their Beneficiaries (determined pursuant to Section 6.8). The trust fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of Wisconsin. The trustee shall ensure that all investments, amounts, property, and rights held under the trust fund are held for the exclusive benefit of Participants and their Beneficiaries. The trust fund shall be held in trust pursuant to the trust agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the trust fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries. For these purposes, custodial accounts and contracts that are described in Code section 401(f) shall be treated as trusts as provided in Code section 401(f).
- 10.3 Non-Alienation. No benefit payable at any time under this Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind. Any attempt to anticipate, alienate, sell, assign, transfer, pledge, attach, encumber, assign, or charge a benefit under the Plan shall be void. No right or benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, or torts of a Participant or the person entitled to such benefit. If a Participant or any Beneficiary becomes bankrupt or attempts to anticipate, alienate, sell, assign, transfer, pledge, attach, encumber, or charge any right or benefit under the Plan, then such right or benefit shall, in the discretion of the Board, be forfeited. In such event, the Board, in its discretion, may hold or apply the benefit or any part of the benefit for the benefit of the Participant, the Beneficiary, the

Participant's spouse, or the Participant's children or other dependents, or any of them, in such manner and in such proportion as the Board may deem proper. Notwithstanding the foregoing, the Plan shall comply with the terms of any qualified domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to the Participant under the Plan. For these purposes, "qualified domestic relations order" shall mean any domestic relations order that meets the requirement of Code section 414(p)(1)(A).

- 10.4 Marital Property Interest. State laws may confer upon the spouse of a Participant certain marital property rights or interests in any benefits or payments received or acquired under the Plan. Such rights may include the ability of the spouse of a Participant to dispose of any marital property interest in any benefit or payment by will or by the laws of descent and distribution. The Committee, the Board, the Employer, and anyone acting on behalf of the Employer shall be relieved from liability, and shall not be liable, for actions taken or payments made in accordance with the Plan and the Committee's records that are inconsistent with any marital property interest of the spouse of the Participant under any state law.
- 10.5 Tax Withholding. The Employer or Administrative Agent may withhold, or require the withholding of, any federal, state, or local taxes required to be withheld with respect to any benefit payment. Upon discharge or settlement of such tax liability, the Employer or Administrative Agent shall distribute the balance of such withheld sum, if any, to the Participant or Beneficiary from whose payment it was withheld.
- 10.6 Separation From Other Plans. No benefit under the Plan shall be taken into account in determining any benefit under any pension, retirement, thrift, profit sharing, group insurance, or other benefit plan maintained or established by the Employer, except as required by law or as expressly provided under the terms of such plan.
- 10.7 FICA Taxation. Benefits under the Plan shall be subject to FICA taxation as required pursuant to Code section 3121(v).
- 10.8 Uniformed Services Employment and Reemployment Rights Act of 1994. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to Qualified Military Service will be provided to the extent required by Code section 414(u). In addition to the death benefit provision of Section 6.4, the following provisions apply to a Participant serving or having served in the uniformed services.
- (a) Option to Be Treated as Terminated from Employment. A Participant receiving Differential Wage Payments shall be treated as having terminated employment during any period the Participant is performing service in the uniformed services, as defined in 38 U.S.C. 4303, on active duty for a period of more than 30 days, if the Participant elects to take a distribution from the Plan based upon Termination of Employment.
- (b) Restriction on Future Elective Deferrals. Any Participant who elects to receive a distribution under subsection 10.8(a) may not make a Compensation Deferral into the Plan during the six-month period following the distribution.

(c) Additional Compensation Deferrals. If a Participant becomes entitled to the benefits of chapter 43 of title 38 of the United States Code, then makeup Compensation Deferrals to the Plan are permitted in the manner and amounts, and within the time limits described in Code section 414(u)(2).

10.9 Successors and Assigns. The Plan shall be binding upon the Employer, and its successors and assigns, as well as the Participant and the Participant's Beneficiaries, heirs, executors, administrators, legal representatives, successors and assigns.

10.10 Applicable Law. The Plan and all rights hereunder shall be governed by and construed according to the laws of Wisconsin, except to the extent the laws of the United States of America preempt such laws.

Dated this ____ day of April, 2015.

THE CITY OF WAUKESHA, WISCONSIN

By: _____
Chairperson of the Deferred Compensation Board