

**MASTER AGREEMENT**  
**for**  
**PLAN OF DEFERRED COMPENSATION**  
**(as amended and restated)**  
**Effective**  
**November 18, 2004**

WHEREAS, The City of Milwaukee, a municipal corporation, organized and existing under and by virtue of the laws of the State of Wisconsin and the Constitution of said State, has executed a Master Agreement for a Deferred Compensation Plan; and

WHEREAS, Under the terms of such agreement, the City has reserved the right to amend any of the provisions of the agreement at any time to the extent it may be deemed advisable without the consent of the Participants or any Beneficiaries, provided that no right of a Participant is impaired; and

WHEREAS, The City is now desirous of amending and restating the Master Agreement; now, therefore,

IT IS AGREED, as follows:

**1. Parties**

The parties to this Agreement shall be the City of Milwaukee, hereinafter referred to as "City", and eligible employees who have elected to participate, hereinafter referred to as "Participants".

**2. Definitions**

(a) "**Compensation**" shall mean all cash compensation for services to the City, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includable in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the City including the Employee'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 this Plan.

(b) "**Deferred Compensation**" shall mean the amount of Compensation which the Participant elects to defer under the Joinder Agreement and which the Participant and City mutually agree shall be deferred in accordance with the Plan.

(c) "**Includible Compensation**" shall mean an Employee's actual wages in box 1 of Form W-2 for a year for services to the City, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code Section 401(a)(17) and increased (up to the dollar maximum) by any compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer Compensation under this Plan. Includible Compensation shall be determined without regard to any community property laws.

(d) "**Participant**" shall mean an individual who is currently deferring Compensation, or who has previously deferred compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the City as an Employee may defer Compensation under the Plan.

(e) "**City**" shall mean the City of Milwaukee, Wisconsin.

(f) "**Beneficiary**" shall mean the person or persons designated by the Participant who are to receive any distributions payable after the death of the Participant, and the term shall also include any person or persons designated by a Beneficiary after the death of the Participant who are to receive any remaining payments after the death of the Beneficiary.

(g) "**Normal Retirement Age**" shall mean the taxable year in which the Participant attains age 70, unless the Participant shall have designated an alternate Normal Retirement Age prior to Termination of Service. A Participant's alternative Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced benefits under the Employees' Retirement System, the Policemen's Annuity and Benefit Fund or the Fireman's Annuity and Benefit Fund whichever is applicable to the Participant and may not be later than age 70 ½ or, if the Participant remains in the service of the Employer after age 70 ½, the date of the Participant's expected Termination of Service. If a Participant utilizes the catch-up limitation of paragraph 5 (d), he will automatically be deemed to have selected as his Normal Retirement Age the third calendar year following the first calendar year in which the catch-up limitation is utilized or such earlier year as is necessary to comply with the limitations set forth above. Once a Participant has utilized the catch-up limitation to any extent, his Normal Retirement Age may not thereafter be changed.

(h) "**Severance of Employment**" shall mean the date that the Employee dies, retires, or otherwise has a severance from employment with the City and taking into account guidance issued under the Code.

(i) "**Joinder Agreement**" shall mean the agreement entered into by a Participant which specifies (1) the amount of Deferred Compensation, (2) the Participant's investment selection, and (3) the Participant's Beneficiary.

(j) "**Board**" shall mean the deferred compensation board established under Section 5.50 of the Milwaukee City Charter, 1971 compilation, as amended.

(k) "**Employee**" shall mean any employee of the City who receives Compensation.

(l) "**Plan**" shall mean the Deferred Compensation Plan of the City of Milwaukee as established under Section 5.50 of the Milwaukee City Charter, 1971 compilation, as amended, as implemented by this Agreement and any rules promulgated by the Board. This Plan is intended to qualify as an Eligible State Deferred Compensation Plan within the meaning of Section 457 of the Code.

(m) "**Administrator**" shall mean the independent administrator retained by Board to administer the Plan.

(n) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(o) "**Eligible Rollover Distribution**" means an eligible rollover distribution as defined in Code Section 402(c)(4), including eligible rollover distributions to a surviving spouse under Code Section 402(c)(9).

(p) "**Eligible Rollover Account**" means the separate bookkeeping account maintained by the Plan Administrator for each Participant for amounts of Eligible Rollover Distributions as defined in subparagraph (o).

(q) "**Deferred Compensation Account**" means the separate bookkeeping account maintained by the Plan Administrator for each Participant for amounts of Deferred Compensation as defined as defined in subparagraph (b).

(r) “**Eligible Retirement Plan**” means an eligible retirement plan as defined in Code Section 402(c)(8)(B).

**3. Eligibility**

Any employee of the City shall be eligible to participate in the Plan.

**4. Enrollment**

(a) **Initial Enrollment.** An Employee may enroll in the Plan and become a Participant by executing a Joinder Agreement to become effective not earlier than the first pay period beginning in the calendar month following the date such Joinder Agreement is signed.

(b) **Continuation of Joinder Agreement.** The Participant's Joinder Agreement shall remain in effect and Compensation shall continue to be deferred thereunder until the Participant's Termination of Service, however, the Participant may modify or terminate the deferral percentage as permitted under this Plan.

(c) **Effect of Participation on Other Benefits.** The Participant's election to defer Compensation under this Plan shall not have any effect in determining the Participant's Compensation or average Compensation for purposes of any other retirement plan or employee benefit plan maintained by the City and such Compensation or average Compensation shall be determined in the same manner as if the Participant had not elected to defer Compensation under this Plan.

**5. Deferred Compensation Contributions and Limitations**

(a) **Deferred Compensation Contributions.** The Employee shall specify in his Joinder Agreement the amount of Compensation to be deferred under the Plan for each payroll period, subject to the limitations set forth in subparagraphs (b), (c), (d) and (e), below. The Employee may increase or decrease the amount of Deferred Compensation with respect to future payroll periods at any time in a manner approved by the Plan. An Employee's election to defer Compensation or to modify the amount of Compensation deferred will be effective for the pay period following the election. The Employee may terminate his Joinder Agreement and be restored to full Compensation as of the beginning of the payroll period, which commences after notice of such termination is received by the Administrator. An election to defer Compensation under this Plan, or any modification of such election, shall be applicable only to Compensation to be earned on or after the first of the month subsequent to such election or modification of election. An Employee may elect to defer accumulated sick pay, terminal leave pay, vacation pay and back pay amounts into the Plan, provided that a Joinder Agreement is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee of the City in that month. In the case of accumulated sick pay, terminal leave pay, vacation pay, or back pay that is payable before the Participant has a Severance from Employment, the requirements of the preceding sentence are deemed satisfied if the Joinder Agreement is entered into before the amount is currently available (as defined in regulations under Code Section 401(k)).

(b) **Maximum Deferral -- General Limitation.** Except as otherwise provided in this paragraph, the maximum amount of Deferred Compensation for any Employee for any taxable year shall not exceed the lesser of the applicable dollar amount under Section 457 (b)(2)(A) of the Code as adjusted for cost of living adjustments described in Section 457(e) of the Code, or 100 percent of the Participant's Includible Compensation for the taxable year.

(c) **Maximum Deferral—Participants Age 50 or Over.** The maximum deferral amount described in subparagraph (b) is increased for Employees who have attained age 50 or over by the end of the taxable year. The additional amount permitted under this subparagraph is the lesser of (1) the applicable dollar amount set forth in Section 414(v)(2)(B) or (2) the Employee’s Compensation for the taxable year reduced by any other elective deferrals by the Employee to the Plan for the taxable year. This subparagraph shall not be applicable for any taxable year in which subparagraph (d) applies.

(d) **Maximum Deferral -- Catch-up Limitation.** . If the applicable year is one of a Participant’s last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount deferred under this Section exceeds the amount computed under Sections 5(b) and (c), then the maximum deferral under this Section shall be the lesser of:

(1) An amount equal to 2 times the maximum deferral amount described in Section 2.04 for such year; or

(2) The sum of:

(A) An amount equal to (i) the aggregate of maximum deferral amount for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years; plus

(B) An amount equal to (i) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to this Section and Section 5(c)), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans.

However, in no event can the deferred amount be more than the Participant’s Compensation for the year. If the Participant is or has been a participant in one or more 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. For this purpose, the Administrator shall take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. In applying the foregoing limitations, 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 maximum annual limit described in Section 5(b) or any other plan ceiling required by Code Section 457(b). The term “contributions to Pre-2002 Coordination Plans” means an employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under an Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP or SIMPLE IRA), 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 City or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 5(d)(2)(B)(ii) to the extent that the total of such contributions does not exceed the aggregate limited referred to in Code Section 457(b)(2) for that year.

(e) **Further Limitation on Deferral -- Board Rules.** The Board may from time to time prescribe rules which further limit the dollar amount or percentage of Compensation that may be deferred by Employees, provided that any such rules shall not permit deferrals in excess of the limitations set forth under subparagraphs (b), (c) and (d).

(f) **Qualified Military Service.** An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional deferrals upon resumption of employment with the City equal to the maximum deferral limit that the Employee could have elected during that period if the Employee's employment with the City had continued (at the same level of Compensation) without the interruption or leave, reduced by the deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of interruption or leave).

(g) **Excess Deferrals.** If the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described in this Plan, or the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described in this Plan when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any allocable thereto), shall be distributed to the Participant.

**6. Eligible Rollover Distributions** Eligible Rollover Distributions may be made to this Plan by a Participant provided (i) the Eligible Rollover Distribution is made entirely in the form of U.S. dollars, and (ii) the Participant demonstrates to the Plan Administrator's satisfaction that the amount is a qualifying Eligible Rollover Distribution under Code Sections 402(c)(4), 403(a)(4) or 408(d)(3).

## **7. Accounts and Investments**

(a) **Participant's Deferred Compensation Account.** A separate bookkeeping account shall be maintained for the Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any investment income, gains, or losses. Each Participant shall be entitled to a report as of the end of each calendar quarter reflecting the amounts credited to his accounts, earnings or losses on investments, and distributions, if any. Such report shall be made within 60 days after the close of the preceding calendar quarter. When a Participant has commenced receiving distributions under a payment option described in Paragraph 9 (d), and the City has provided for such payments by applying the Participant's account balances under a contract issued by a life insurance company, no further reports of account balances shall be made.

(b) **Participant's Eligible Rollover Account.** A separate bookkeeping account shall be maintained for the Participant reflecting the cumulative amount of the Participant's Eligible Rollover Distributions accepted by the Plan for a Participant, including any investment income, gains, or losses. The amounts credited to a Participant's Eligible Rollover Account, income, gains, losses, and distributions, if any, shall be included in the report provided to the Participant under subparagraph (a).

(c) **Investment Options.** A Participant may elect to have funds in his accounts invested and credited to his accounts under one or more investment categories authorized by

the Board. Any change in the Participant's or Beneficiary's investment specification, whether it applies to amounts previously deferred or amounts to be deferred in the future, shall be effective prospectively only, subject to the underlying restrictions and limitations of the Plan, the investment option to which, or from which, a change is made, or as may be otherwise required by law.

(d) **Board Discretion.** Subject to subparagraph (e), the Board shall have complete discretion to approve, change or eliminate the specified insurance companies, financial institutions, or other carriers with whom a Participant's accounts shall be invested within each investment category, to limit or expand the investment categories, and to prescribe rules limiting the percentage or amount of said accounts that may be allocated among investment categories.

(e) **Reinvestment of Deferred Compensation and Eligible Rollover Distributions.** With respect to Compensation deferred before January 1, 1981, the Board shall have complete discretion to invest such amounts in one or more of the investment categories or in any other lawful investments that the Board deems appropriate. When an investment category is eliminated, the Board shall have the authority to eliminate an investment category and the discretion to reallocate the balance of Participants who do not select a substitute category. Except as herein before provided, the Board shall not cause any Deferred Compensation or Eligible Rollover Distributions invested in accordance with a Participant's selection under subparagraph (c) to be liquidated and reinvested under a different investment category, except with the Participant's consent in accordance with regulations or rulings promulgated under the Code.

(f) **Ownership of Investments** All amounts of Deferred Compensation and Eligible Rollover Distributions within the Plan, including all property, rights and investments purchased with such amounts and all income attributable thereto, shall be held in trust, custodial accounts, or contracts in accordance with the qualified trust provisions and Section 457(g) of the Code for the exclusive benefit of Participants and Beneficiaries. Except for contributions made by mistake of fact that are returned to the City within one year, and expenses referred to in Section 10(c), no part of the assets held in trust, custodial accounts, or contracts shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

#### **8. Designation of Beneficiary**

The Participant's Joinder Agreement shall designate the Beneficiary or Beneficiaries who are to receive distributions under paragraph 9 (c) in the event of the Participant's death. In the event that the Participant has not properly designated a Beneficiary or Beneficiaries, or if for any reason such designation shall be legally ineffective, or if said Beneficiary or Beneficiaries shall predecease the Participant, then the Participant's estate shall be treated as the Beneficiary. A Participant may change his Beneficiary designation at any time by amending his Joinder Agreement, or by submitting a Beneficiary Change form. Unless a payout already has been made to a Beneficiary, the Beneficiary shall have until the last day of the calendar year following the Participant's death to disclaim benefits to the Participant's Account. The Beneficiary Change form shall be provided by the Administrator and shall have no effect until it is signed, filed with the Administrator by the Participant, and accepted by the Administrator.

#### **9. Distribution of Benefits**

(a) **Permissible Distribution.** Effective January 1, 1989, amounts payable under

the Plan will be made available to Participants or other Beneficiaries no earlier than:

- (1) Upon the Participant's severance of employment with the City;
- (2) The calendar year in which the Participant attains age 70 ½;
- (3) When the Participant is faced with an unforeseeable emergency;
- (4) The Participant's death prior to commencement of distributions; or
- (5) If the Participant has an Eligible Rollover Account, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the Eligible Rollover Account subject to any procedures established by the Administrator and approved by the Board.

(b) **Distributions Other Than for Death or Unforeseeable Emergency.** The Participant shall specify in writing to the Plan Administrator one or more payment options described in subparagraph (e) under which the value of his account will be distributed upon Severance of Employment with the City or attainment of age 70 ½. Payment shall be made to the Participant as soon as practicable after the Plan Administrator receives notification of the Participant's payment option. All irrevocable elections made by a Participant or Beneficiary prior to January 1, 2002 shall become revocable as of January 1, 2002. Commencing in 2002, a Participant who has chosen one or more payment options, other than an annuity option, shall have the ability to change each payment option once during each calendar year at no cost. Any additional changes during a calendar year shall be authorized by the Board and shall be subject to an administrative charge in an amount determined by the Board.

(c) **Distributions Upon Death.** If the Participant dies before payments to the Participant have commenced or before all payments to the Participant have been completed, payments shall be made to the Participant's Beneficiary in accordance with the following rules:

1. If the Participant dies before his or her entire interest has been distributed, the Beneficiary shall specify in writing to the Plan Administrator a payment option under subparagraph (e) under which the value of the Participant's remaining interest will be distributed.

2. Where two or more Beneficiaries survive the Participant, then unless the Participant has specified a different share, each Beneficiary shall be entitled to an equal share of the payments, if any, to be made after the death of the Participant, and each shall be entitled to exercise all rights of a Beneficiary respecting his or her share. In the event of the death of a Beneficiary before the death of the Participant, payments shall be made to any surviving Beneficiary or contingent Beneficiary, if no surviving primary Beneficiary, designated by the Participant or, if none, to the estate of the Participant. In the event of the death of the Beneficiary after the death of the Participant and before all payments to the Beneficiary have been completed (whether or not such payments have commenced), the remaining distributions or the value of the Beneficiary's remaining interest shall be paid to any successor Beneficiary designated by the deceased Beneficiary or, if none, to the deceased Beneficiary's estate.

(d) **De minimis Distributions.** In the event the value of a Participant's account does not exceed the dollar limit under Section 411(a)(11)(A) of the Code, there has been no prior distribution under this paragraph, and no amounts were deferred to the account during the two year period ending on the date of distribution, the Participant may elect to receive a lump sum distribution of the balance payable as soon as practicable after the Plan

Administrator receives the Participant's request.

(e) **Payment Options.** As elected under subparagraphs (b), (c) or (d), and subject to subparagraph (f), the value of the Participant's accounts may be distributed under any one of the following payment options:

- (1) As a lump sum;
- (2) As a partial lump sum and periodic payments;
- (3) As period payments of a fixed dollar amount;
- (4) As period payments of a fixed period of time;
- (5) As an expected lifetime or joint life expectancy recalculation payment;
- (6) As a life annuity;
- (7) As a life annuity with installment refund;
- (8) As a life annuity with a guaranteed period of 5, 10, 15, or 20 years; or
- (9) Any other combination of lump sum and/or periodic payment or annuity arrangements as shall be authorized by the Board from time to time.
- (10) If no other payment option is selected, the Participant's account shall be distributed in accordance with payment option (1) above.

(f) **Limitations on Payment Options.** No payment option may be selected by a Participant or Beneficiary unless it satisfies the requirements of Code Section 401(a)(9) and any regulations or rulings thereunder. A payment from an Eligible Rollover Account may be subject to a 10% early withdrawal tax. The Board reserves the right in its sole discretion to cause distributions to be made in a manner other than under the payment options selected by the Participant or Beneficiary where the selected payment options would result in installment payments of a de minimus amount, where the selected payment options would contravene the requirements of Code Section 401(a)(9). The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The term "designated beneficiary" as used in this Section shall have the meaning set forth in Treasury Regulation Section 1.401(a)(9)-4.

(1) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

(2) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(3) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.



(c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section will apply as if the surviving spouse were the Participant.

(4) Required Minimum Distributions During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the Participant's 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

(b) 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 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.

(5) Death On or After Date Distributions Begin and Participant Survived by Designated Beneficiary.

(a) If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows: The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(c) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year

following the year of the Participant's death, reduced by one for each subsequent year.

(d) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(6) **Death Before Date Distributions Begin and Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary.

(a) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(7) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin, this Section will apply as if the surviving spouse were the Participant.

(g) **Distributions for Unforeseeable Emergencies.** A distribution of Deferred Compensation credited to a Participant's account shall be permitted in the event the Participant experiences an unforeseeable emergency creating severe financial hardship as a result of sudden and unexpected illness or accident of the Participant or Beneficiary, the spouse of the Participant or Beneficiary, of a dependent (as defined in Code Section 152(a)) of the Participant or Beneficiary, loss of the Participant's or Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Payment may not be made to the extent that such hardship is or may be relieved (1) through reimbursement or compensation by insurance or otherwise, (2) by liquidation of the Participant's assets to the extent the liquidation of those assets would not itself cause severe financial hardship, or (3) by cessation of deferrals under the Plan. The need to send a child to college or the desire to purchase a new home shall not be considered unforeseeable emergencies. All distributions under this subparagraph shall be permitted only to the extent reasonably needed to satisfy the emergency need, taking into account the amount of any income tax withholding or other income tax liability resulting from the distribution. Application for distributions under this subparagraph must be approved by the Board.

(h) **Service Credit Purchase.** A Participant may use all or a portion of his Deferred Compensation account as a direct trustee-to-trustee transfer to the City of Milwaukee

Employees' Retirement System ("MERS") for the repayment of contributions and earnings with respect to any amount previously refunded upon a forfeiture of service credit, provided that MERS permits such a transfer.

(i) **Rollovers to Eligible Retirement Plans.** Subject to subparagraph (b), a Participant may elect at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant, provided that the Participant presents to the satisfaction of the Plan Administrator a letter of acceptance or other written acknowledgment from the accepting plan that it is Eligible Retirement Plan qualified to accept Eligible Rollover Distributions.

## **10. Administration**

(a) **Administrator.** The Board shall enter into a contract with an independent administrator which shall represent the City in all matters concerning the administration of the Plan, including but not limited to the enrollment of Employees as Participants, the maintenance of individual accounts and other records, and the distribution of benefits of Participants. Neither the Administrator nor its employees shall be eligible to participate in the Plan.

(b) **Board.** The Board shall have the ultimate supervisory authority and shall be responsible for all discretionary decisions in the administration of the Plan. The Board shall serve as a fiduciary under § 881.01(1), Stats., with respect to assets of the Plan. The Board shall have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, amend and revoke such rules and regulations, provided that such rules and regulations that are adopted are not inconsistent with the provisions of the Plan. Notwithstanding the "exclusive benefit" requirement of Section 7(f), the Board shall have authority to distribute expenses referred to in Section 10(c) against Participant accounts in a manner specified by the Board. In addition, the Board shall have authority to approve transfers and to determine whether a Participant can receive distributions because of an unforeseeable emergency. Members of the Board shall not participate in any determination with respect to any interest that they may have under the Plan as Participants. Members of the Board shall not be compensated beyond their regular compensation as employees of the City.

(c) **Administrative Costs.** It is the intent of this Plan that the City shall not incur any expense in the operation and administration of this Plan, other than incidental expenses and other than for its obligation to pay the Deferred Compensation as provided hereunder. In the event that material expenses are incurred, the Board reserves the right, upon notice to the Participants, to reduce the amount of Deferred Compensation credited to Participant's accounts on a uniform basis in order to cover such administrative expenses.

## **11. Amendment or Termination**

(a) **Amendment of Plan.** The City reserves the right to amend or modify any provisions of the Plan excepting only paragraph 7(f) at any time to the extent that it may deem advisable without the consent of the Participants or any Beneficiary, provided that no amendment or modification shall impair the rights of Participants or Beneficiaries with respect to Compensation deferred prior to such amendment or modification. An amendment of the Plan shall not be effective to the extent the amendment has the effect of causing any Plan assets to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

(b) **Termination of Plan.** The City reserves the right to terminate the Plan at any time and such termination shall act as a termination as to all Participants. Upon termination of the Plan, the City reserves the right to make distributions to Participants at such time and in such manner as the City may deem advisable.

**12. Non-Assignability**

No benefits under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance. Any attempt to do so shall be void. Such benefits shall not be subject to or liable for the debts, contracts liabilities, engagements or torts of the Participant or his Beneficiaries.

**13. Waiver**

Notwithstanding any other provision of the Plan, the City shall not be liable to the Participant or any Beneficiary for any mistake in judgment in the making or retaining of any investments, nor for any loss from investing the funds so long as the City performs its obligations hereunder in good faith.

**14. Applicable Law**

The Plan shall be construed under the laws of the State of Wisconsin.

**15. Transfers Between Plans**

Effective January 1, 1987, transfers shall be permitted to and from other deferred compensation Plans eligible under Section 457 of the Internal Revenue Code of 1986, as amended.

In Witness Whereof, The City of Milwaukee, a municipal corporation, has caused this Amended and Restated Master Agreement to be executed by its duly authorized officers this \_\_\_\_ day of \_\_\_\_\_.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

\_\_\_\_\_

\_\_\_\_\_

MAYOR

\_\_\_\_\_

\_\_\_\_\_

CITY CLERK

COUNTERSIGNED:

\_\_\_\_\_

\_\_\_\_\_

COMPTROLLER

Ref: mastagree-10-04