

**REPORT TO COUNCIL MAYOR AND COUNCIL****TO HONORABLE MAYOR AND COUNCIL:**

DATE: May 25, 2010

SUBJECT: ADOPT RESOLUTION NO. 10-46 APPROVING THE ADOPTION OF AN AMENDED AND RESTATED SUPPLEMENTARY RETIREMENT PROGRAM THROUGH THE PUBLIC AGENCY RETIREMENT SYSTEM (PARS) AND ADDING AN ADDITIONAL TIER FOR PARTICIPATION IN THE PROGRAM

Report in Brief:

In June 2009, Council adopted a supplementary retirement plan in order to realize long-term savings associated with eliminating a large portion of the employment positions whose occupants elected to retire early. At the time, the plan trustee, the Public Agency Retirement System (PARS) had yet to obtain an IRS advisory opinion as to whether or not the plan selected by the City was tax-qualified. PARS has now received the IRS's advisory opinion, but in order for the City to enjoy the safe harbor offered by the opinion, minor modifications must be made to the plan adopted by Council. Staff thus recommends that Council review and adopt Resolution No. 10-46, which will amend and restate the plan to effect these changes.

In addition, as one of the measures taken to address the City's budget deficit in FY 2010-11, the position of Director of Community Development is being eliminated. In lieu of exercising the termination options set forth in the Director's employment contract, Council is asked to permit him to participate in the supplementary retirement plan. As the window for enrolling in the plan closed last year, reopening it will require the creation of a separate tier for this new enrollee. Adopting Resolution No. 10-46 would accomplish that, as well.

Background:

Last year, as part of the means of addressing the budget deficit, Council adopted a supplementary retirement plan that was offered to employees who were (a) employed by the City as of June 1, 2009, (b) at least 50 years old as of the date of the offer to participate, (c) credited with at least five years of City of Concord service credit, (d) eligible to retire under PERS as of September 1, 2009, and (e) not expressly disqualified from participating. The current Director of Community Development, James Forsberg, met these criteria and was thus eligible to participate in the plan at the time, but elected not to do so.

At the time Council was asked to vote on whether or not to participate in the plan, the City had been advised that PARS, the plan trustee, was in the process of seeking an IRS advisory opinion on the tax-qualified status of their standard supplementary retirement plan. The City had reason to believe that the plan suggested for adoption was tax-qualified, but there was no guarantee. Moreover, the program offered by the City to eligible employees differed slightly from that which PARS had submitted to the IRS for its consideration, but the changes were minimal.

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On March 31, 2010, the IRS issued its advisory opinion on PARS's standard plan, specifically finding the form of the plan to be acceptable under section 401(a) of the Internal Revenue Code. The effect of this opinion is that PARS plans that are substantially identical to the plan approved through the March 31st letter are recognized by the IRS as being tax-qualified, lessening the participants' exposure to adverse tax consequences under either federal or state laws.

Once PARS had received the advisory opinion, it notified the City and invited it to amend its existing plan to come into conformance with the plan approved by the IRS. As it happened, the City was interested in perhaps amending the plan anyway, to allow for the inclusion of a new participant tier for the current occupant of the Director of Community Development position, provided Council approved of such a step. Now these two issues can be addressed together, accomplishing both amendments with one Council action.

Discussion:

Amendment to Conform to IRS Approved Plan. There is no identifiable downside to amending and restating the existing supplementary retirement plan currently in use by the City to incorporate the changes necessary to bring it into conformance with PARS's IRS approved plan. The necessary modifications are negligible and do not affect participants' rights or benefits. Outside counsel, whose practice is public entity retirement systems, has reviewed the proposed changes and recommends the City adopt the amended and restated plan so that the City may enjoy the protection afforded by the advisory opinion.

Participation of Community Development Director. Council is likewise being asked to consider opening participation in the plan to one further individual, James Forsberg, current Director of Community Development. As noted above, Mr. Forsberg was eligible to participate in the plan when it was offered last year, but chose not to do so. Given that his position is being eliminated as part of the effort to address the budget shortfall, his separation from the City would typically be governed by the terms of his employment contract. However, Mr. Forsberg has indicated that he is amenable to accepting participation in the supplementary retirement program in lieu of exercising his rights under his contract. If approved, Mr. Forsberg's participation would be on the same terms as accepted by the other plan participants. However, because he would join the plan after the initial deadline established by the adoption of Resolution No. 09-50, he would have to join as a separate tier in the plan.

As a means of comparison, exercising the terms of Mr. Forsberg's employment contract would result in a severance payment equal to six months' salary, plus benefits, for a total cost of about \$90,000. Allowing Mr. Forsberg to participate in the supplementary retirement plan, on the other hand, will cost the City roughly \$180,000. The difference in the value of the two options is approximately \$90,000. Staff recommends that Mr. Forsberg be allowed to participate in the supplementary retirement plan, in light of his tenure with and contributions to the City, the fact that he was eligible to participate when it was first offered, and the fact that his position is being eliminated. Over time, the City will realize substantial savings due to elimination of this management position.

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Financial Impact:

Amending the existing supplementary retirement plan to conform to the IRS approved PARS plan will have no financial impact on either the City or plan participants. As discussed above, allowing the current Director of Community Development to participate in the plan will have a cost of roughly \$180,000, but this figure is offset by the value of the severance payment pledged to Mr. Forsberg by the terms of his employment contract. It also bears repeating that this separation is coming as a result of the elimination of this position, so these are one-time costs, which will be recognized over time by future salary and benefit savings.

Public Contact:

Posting of the agenda.

Alternative Courses of Action:

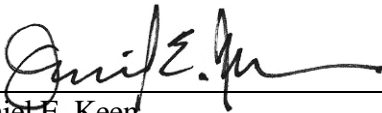
1. Adopt Resolution No. 10-46, approving the adoption of the amended and restated supplementary version of the retirement plan offered by PARS, and including a new participant tier for Mr. Forsberg.
2. Direct staff to draft a resolution only adopting the amended and restated version of the supplementary retirement plan offered by PARS, but not including a new tier in the plan for participation by Mr. Forsberg.
3. Decline to approve either the adoption of the amended and restated version of the supplementary retirement plan or the Community Development Director's participation in the plan.

Recommendation for Action:

Staff recommendation is for the City Council to adopt Resolution No. 10-46 attached hereto, thus allowing for the adoption of the IRS approved supplementary retirement program and offering participation in the program to outgoing Director of Community Development James Forsberg.

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Attachment 1 – Resolution No. 10-46

Attachment 2 – Redline of original supplementary retirement plan and proposed amended and restated plan

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Approving the Adoption of an Amended
and Restated Supplementary Retirement Program
Through the Public Agency Retirement System
(PARS) and Adding an Additional Tier for
Participation in the Plan**

Resolution No. 10-46

WHEREAS, the City of Concord is a member of the Public Agency Retirement System (PARS) Trust for the purpose of providing tax-qualified retirement benefits; and

WHEREAS, on June 1, 2009, the City Council adopted the PARS Supplementary Retirement Plan (SRP) in order to offer participation in the same to eligible employees who wished to voluntarily exercise their option to separate from City service; and

WHEREAS, the SRP adopted by the City Council contained slight deviations from the form supplementary retirement plan offered by PARS; and

WHEREAS, on March 31, 2010, PARS received an IRS advisory opinion letter finding that their standard supplementary retirement plan was a tax-qualified plan under section 401(a) of the Internal Revenue Code; and

WHEREAS, the City of Concord desires to enjoy the protections offered by participating in the supplementary retirement plan that the IRS has determined to be tax-qualified (the "Approved Plan"); and

WHEREAS, in order to bring the SRP into conformance with the Approved Plan so that the City may enjoy such protection, Council must adopt an amended and restated SRP to effect these changes; and

WHEREAS, adopting an amended and restated SRP will have no detrimental effect on the rights or benefits of the SRP participants or the City, other than to offer the advantage of bringing the City within the ambit of the protections afforded by participating in the Approved Plan.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:**

Section 1. The City Council, pursuant to its right and authority, does hereby adopt the

1 amended and restated Supplementary Retirement Plan, as described in Exhibit A to this Resolution,
2 effective May 25, 2010; and

3 **Section 2.** The PARS SRP Administrator, whose authority was established in Resolution No.
4 09-50, is further authorized to execute any and all legal and administrative service documents that
5 may be required as a result of the adoption of the amended and restated Supplementary Retirement
6 Plan.

7 **Section 3.** This resolution shall become effective immediately upon its passage and adoption.

8 **PASSED AND ADOPTED** by the City Council of the City of Concord on May 25, 2010, by
9 the following vote:

10 **AYES:** Councilmembers -

11 **NOES:** Councilmembers -

12 **ABSTAIN:** Councilmembers -

13 **ABSENT:** Councilmembers -

14 **I HEREBY CERTIFY** that the foregoing Resolution No. 10-46 was duly and regularly
15 adopted at a regular joint meeting of the City Council on May 25, 2010.

16
17
18 _____
Mary Rae Lehman
City Clerk

19 **APPROVED AS TO FORM:**

20
21 _____
22 Craig Labadie
City Attorney

23 Exhibit 'A' – Amended and Restated Supplementary Retirement Plan
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The City of Concord PARS Supplementary Retirement Plan

Amended and Restated

Effective September 1, 2009

Defined Benefit Plan

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INTRODUCTION

The City of Concord (“Employer”) has adopted this tax qualified governmental defined benefit plan for the benefit of its eligible employees to provide supplemental retirement benefits to eligible employees of the Employer in addition to the benefits employees will receive from the California Public Employees’ Retirement System (“CalPERS”). CalPERS is designated as the Employer’s primary plan for any Member of this plan. This document is a full and complete amendment and restatement of the City of Concord PARS Supplementary Retirement Plan adopted effective September 1, 2009.

It is intended that this plan and the trust established to hold the assets of the plan shall be qualified under Section 401(a) and tax-exempt under Section 501(a) of the Internal Revenue Code of 1986, together with any amendments thereto (the “Code”). It is further intended that this plan and the trust established hereunder shall meet the requirements of a pension trust under California Government Code sections 53215 – 53224, or their successor sections (the “Act”). Furthermore, this plan is a “governmental plan,” as defined in Code Section 414(d). At any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries under the trust created pursuant to this plan, the trust assets shall not be used for, or diverted to, purposes other than the exclusive benefit of members or their beneficiaries, as prescribed in Section 401(a)(2) of the Code.

It is intended that the plan satisfy the requirement of the applicable provisions of the Economic Growth and Tax Relief Reconciliation Act (commonly known as "EGTRRA") and the Pension Protection Act of 2006 (commonly known as the "PPA"), and that the provisions of this plan reflecting the EGTRRA and PPA amendments are hereby made effective as of the dates required by the legislation referred to in this sentence.

ARTICLE I
PARTICIPATION

1.1 Eligibility for Benefits.

An Employee shall be eligible to receive Retirement Benefits under this Plan if he or she meets the requirements under one of the following tiers:

Tier I

(a) is classified as a Miscellaneous or Safety Employee of the Employer as of June 1, 2009 (excluding the City Manager, City Attorney, and Department Heads as determined by the City Manager);

(b) has attained at least fifty (50) years of age as of September 1, 2009;

(c) has completed at least five (5) years of employment with the Employer as of September 1, 2009;

(d) has terminated employment with the Employer on or before August 31, 2009;

(e) has applied for benefits under this Plan; and

(f) has concurrently retired under CalPERS on or before September 1, 2009, and remains in retired status under CalPERS.

Tier II

(a) is classified as the Community Development Director of the Employer as of June 1, 2009;

(b) has attained at least fifty (50) years of age as of September 1, 2009;

(c) has completed at least five (5) years of employment with the Employer as of September 1, 2009;

(d) has terminated employment with the Employer on or before June 30, 2010;

(e) has applied for benefits under this Plan; and

(f) has concurrently retired under CalPERS on or before July 1, 2010, and remains in retired status under CalPERS.

1.2 Commencement of Benefits.

Benefits shall commence the later of October 1, 2009, or the first day of the month after an Employee meets the eligibility requirements of Section 1.1, and may be made retroactive to such date.

1.3 Participation.

An Employee will be credited with one Year of Participation for any year during which the Employee meets the requirements of Section 1.1(a).

ARTICLE II

BENEFITS

2.1 Retirement Benefits.

The monthly benefit commencing pursuant to Section 1.2 shall be paid in the Normal Form of Benefit and in an amount equal to one-twelfth (1/12) of seven percent (7%) of the Member's Final Pay.

2.2 Designation of Beneficiary.

(a) Each Member shall have the right to designate a Beneficiary to receive the death benefits, if any, that are payable to a Beneficiary from this Plan. Such designation does not permit the Member to change a person identified under another provision of the Plan as being eligible to receive a benefit. Such designation must be evidenced by a written instrument filed with the Employer, on a form prescribed by the Employer, and signed by the Member.

(b) The Beneficiary for a married Member shall be the Member's spouse at the date of death, unless the written consent of such spouse is provided upon a form acceptable to the Employer. Each such designation for death benefits must be evidenced by a written instrument filed with the Employer, on a form prescribed by the Employer, and signed by the Member. If no such designation is on file with the Employer at the time of the death of the Member, or if for any reason at the sole discretion of the Employer, such designation is defective, then the spouse of such Member shall be conclusively deemed to be the Beneficiary designated to receive such benefit.

(c) The signature of the Member's spouse shall be required on a designation of beneficiary form or an application for a benefit under the Plan if the spouse is not the beneficiary, unless the Member declares in writing that one of the following conditions exists:

- (1) The Member is not married;
- (2) The Member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse;
- (3) The spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition;
- (4) The Member and spouse have executed a marriage settlement agreement that makes the community property laws inapplicable to the marriage; or
- (5) The current spouse has no identifiable community property interest in the benefits.

Effective as of January 1, 2005, for purposes of this Section 2.2 only, all references in this Section 2.2 to the term "marriage" shall also include the term "registered domestic partnership". All references to the term "married" shall also include "registered domestic partnership" and all references in this Section 2.2 to the term "spouse" shall also include the term "registered domestic partner." The inclusion of "registered domestic partner" in the definition of "spouse" shall not apply for the purposes of Sections 4.2(d), 4.4 and 6.2 of this Plan.

ARTICLE III

VESTING

3.1 Vesting.

A Member will be fully vested in his Retirement Benefit upon meeting the requirements of Section 1.1.

3.2 Full or Partial Termination.

Notwithstanding the vesting schedule, upon the complete discontinuance of Employer contributions to the Plan or upon any full or partial termination of the Plan, the Member's Retirement Benefit shall become one hundred percent (100%) Vested.

3.3 Attainment of Normal Retirement Age.

A Member shall be fully vested in his Retirement Benefit upon attainment of Normal Retirement Age.

3.4 Affect of Vesting.

Vesting shall entitle a Member to payment during his lifetime of the Retirement Benefit at the times and upon the conditions specified herein, and shall entitle the Member's survivor or Beneficiary to any death benefits provided herein. Any unpaid Retirement Benefits are forfeited upon the Member's death.

ARTICLE IV
DISTRIBUTIONS

4.1 Normal Form of Benefit.

Unless the Member elects another form of benefit as described under Section 4.2, payments to a Member of a Retirement Benefit shall be made in the form of monthly payments commencing pursuant to Section 1.2 and ending on the first day of the month in which the Member's death occurs, in the amount specified in Section 2.1. This form of payment shall be the "Normal Form of Benefit."

The Retirement Benefit shall cease for any Member who returns to active CalPERS status and shall recommence s of the first day of the month after the Member returns to retired status under CalPERS at the same benefit amount and option immediately prior to the suspension of benefits.

4.2 Other Forms of Benefit.

In lieu of the Normal Form of Benefit, a Member may elect a form of benefit payment of Actuarial Equivalent value to the Normal Form of Benefit in one of the following forms:

(a) **Optional Form of Payout.** Under this form of payment:

(1) The Member receives a reduced monthly benefit, and if the Member predeceases the Beneficiary, the Beneficiary will receive a monthly payment for the life of the Beneficiary equal to 100% of such reduced monthly benefit; provided, however, that if the Beneficiary is not the spouse of the Participant, this form of payment shall be available only to the extent permitted pursuant to Section 4.2(d)(2)(D)(I).

(2) If the Beneficiary predeceases the Member, the Member's reduced monthly payment will not increase.

(3) The Member's designation of a Beneficiary shall become irrevocable upon a date selected by the Employer prior to commencement of benefits if electing this form of payment.

(b) **Fixed-Term Payout.** Under this form of payment:

(1) The Member receives a benefit paid over a designated period of time (not to exceed the Member's life expectancy) that is actuarially equivalent to the Normal Form of Benefit. The Plan Administrator shall determine the term of the payment.

(2) Any remaining payments in the fixed-term payout schedule shall continue to the Beneficiary or subsequent Beneficiaries in the event of the Member's death.

(c) **Other Forms of Payout.** Under this form of payment:

(1) At the option of the Member, and with the agreement of the Plan Administrator, and upon completion of a form provided by the Plan Administrator, the benefit shall be paid in the following form that is actuarially equivalent to the Normal Form of Benefit: a benefit is paid in equal fixed monthly payments over the life of the Member.

(2) In the event the Member dies prior to receiving a total of one hundred and twenty (120) payments, the remaining unpaid monthly payments shall be paid to a designated Beneficiary.

(d) **Limitations.**

(1) In the case of a Member who attains age 70-1/2, distribution of such Member's entire interest must commence not later than the first day of April following the later of the calendar year in which such Member attains age 70-1/2 or the calendar year in which the Member retires (the "Required Beginning Date"). In all cases,

distributions shall be made in at least the amounts determined in accordance with Code Section 401(a)(9) and the regulations thereunder, as described in Section 4.2(d)(2) below.

(2) With respect to required minimum distributions under this Section 4.2(d) for calendar years beginning after December 31, 2002, the following rules shall apply:

(A) All distributions required under this Section 4.2(d) shall be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code, including, without limitation, the minimum distribution incidental benefit requirements. The requirements of this Section 4.2(d) will take precedence over any inconsistent provisions of the Plan, provided that this Section 4.2(d) shall not be considered to allow a Member or Beneficiary to delay a distribution or elect an optional form of benefit not otherwise provided in the Plan.

(B) Time and Manner of Distribution

(I) The Member's entire interest will begin to be distributed to the Member no later than the Member's Required Beginning Date as defined in Section 4.2(d)(1).

(II) If the Member dies before distributions begin, then the Member's entire interest will begin to be distributed no later than as follows:

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

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

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

(d) If the Member's surviving spouse is the Member's sole designated Beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Section 4.2(d)(2)(B)(II), other than Section 4.2(d)(2)(B)(II)(a), will apply as if the surviving spouse were the Member.

For purposes of this Section 4.2(d)(2)(B)(II) and Section 4.2(d)(2)(E), distributions are considered to begin on the Member's Required Beginning Date (or, if Section 4.2(d)(2)(B)(II)(d) applies, the date distributions are required to begin to the surviving spouse under Section 4.2(d)(2)(B)(II)(a)). If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 4.2(d)(2)(B)(II)(a)), the date distributions are considered to begin is the date distributions actually commence.

(III) Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.2(d)(2)(C), (D) and (E). If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

(C) Determination of Amount to be Distributed Each Year

(I) If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Sections 4.2(d)(2)(D) or (E);

(c) once payments have begun under a fixed-term payout under Section 4.2(b), the fixed-term payout period will not be changed even if the period certain is shorter than the maximum permitted;

(d) payments will either be non-increasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is

based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 4.2(d)(2)(D) dies or is no longer the Member's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code; or

(iii) to pay increased benefits that result from a Plan amendment.

(II) The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under Sections 4.2(d)(2)(B)(II)(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date.

(3) Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(D) Requirements For Annuity Distributions That Commence During Member's Lifetime

(I) If the Member's interest is being distributed in the form of a benefit described in Section 4.2(a) for the joint lives of the Member and a nonspouse Beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated Beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2(c)(2) of Section 1.401(a)(9)-6 of the Treasury Regulations in the manner described in Q&A-2(c)(1) of the Treasury Regulations. If the form of distribution combines a benefit described in Section 4.2(a) for the joint lives of the Member and a nonspouse Beneficiary and a fixed-term payout annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the fixed-term payout period.

(II) Unless the Member's spouse is the sole designated Beneficiary and the form of distribution is a fixed-term payout annuity, the fixed-term payout period for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Treasury

Regulations for the calendar year that contains the annuity starting date. If the benefit commencement date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Treasury Regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the benefit commencement date. If the Member's spouse is the Member's sole designated Beneficiary and the form of distribution is a fixed-term payout annuity, the fixed-term payout period may not exceed the longer of the Member's applicable distribution period, as determined under this Section 4.2(d)(2)(D), or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3 of the Treasury Regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the benefit commencement date.

(E) Requirements For Minimum Distributions Where Member Dies Before Date Distributions Begin

(I) If the Member dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Sections 4.2(d)(2)(B)(II)(a) or (b), over the life of the designated Beneficiary or over a fixed-term payout period not exceeding:

(a) unless the benefit commencement date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(b) if the benefit commencement date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the benefit commencement date.

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

(III) If the Member dies before the date distribution of his or her interest begins, the Member's surviving spouse is the Member's sole designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 4.2(d)(2)(E) will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to Section 4.2(d)(2)(B)(II)(a).

(F) Definitions

(I) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 2.2 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury Regulations.

(II) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 4.2(d)(2)(B)(II).

(III) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1 of the Treasury Regulations.

(IV) Required Beginning Date. The date set forth in Section 4.2(d)(1).

4.3 Actuarial Equivalence

For the purpose of establishing Actuarial Equivalence for any form of benefit the mortality assumption shall be the 1983 Group Annuity Mortality (GAM) and the interest assumption shall be 6% per annum.

4.4 Direct Rollovers

(a) (1) This section applies to all distributions made on or after January 1, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Plan, a distributee 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 distributee in a direct rollover. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(2) A Beneficiary who is not the spouse of the Participant may elect a direct trustee to trustee transfer that qualifies as an eligible rollover distribution under this Section 4.4. Such transfer shall be made to an individual retirement account described in Section 408(a) or an individual retirement annuity described in Section 408(b) that is established for the purpose of receiving the distribution on behalf of such Beneficiary. Such individual retirement account shall be deemed an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Code. In the case of a nonspouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Section 408(a) or Section 408(b) ("IRA") that is established on behalf of the designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(b) **Definitions.**

(1) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that

an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code, any hardship distribution, and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and any other distribution(s) that is reasonably expected to total less than \$200 during a year. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Section 408(a) or (b) of the Code; (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible Retirement Plan. An eligible retirement plan is 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 defined contribution plan described in Section 401(a) of the Code that accepts the distributee's eligible rollover distribution, an annuity contract described in Section 403(b) of the Code, an annuity plan described in Section 403(a) of the Code, and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

(3) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE V

ADMINISTRATION AND AMENDMENT OF PLAN

5.1 Member's Rights Not Subject To Execution.

The right of a Member to a benefit under this Plan is not assignable and is not subject to execution or any other process whatsoever, except to the extent permitted by the Code of Civil Procedure and the Family Code of the State of California. Any payment hereunder required under the California Family Code to a person other than the Member must not alter the form or amount of benefits hereunder, except that to the extent provided in a valid court order, an Actuarially Equivalent payment may be made to the spouse or child of a Beneficiary pursuant to a qualified domestic relations order (as defined in Code Section 414(p)) prior to the Member's retirement.

5.2 Rules and Regulations.

The Employer has full discretionary authority to supervise and control the operation of this Plan in accordance with its terms and may make rules and regulations for the administration of this Plan that are not inconsistent with the terms and provisions hereof. The Employer shall determine any questions arising in connection with the interpretation, application or administration of the Plan (including any question of fact relating to age, employment, compensation or eligibility of Employees) and its decisions or actions in respect thereof shall be conclusive and binding upon any and all persons and parties.

The Employer shall have all powers necessary to accomplish its purposes, including, but not by way of limitation, the following:

- (a) To determine all questions relating to the eligibility of Employees to participate;
- (b) To construe and interpret the terms and provisions of the Plan;

(c) To compute, certify to, and direct the Trustee with regard to the amount and kind of benefits payable to the Members and their Beneficiaries;

(d) To authorize all disbursements by the Trustee from the Trust;

(e) To maintain all records that may be necessary for the administration of the Plan other than those maintained by the Trustee; and

(f) To appoint a plan administrator or, any other agent, and to delegate to them or to the Trustee such powers and duties in connection with the administration of the Plan as it may from time to time prescribe, and to designate each such administrator or agent as a fiduciary with regard to matters delegated to him.

With respect to management and control of investments, the Employer shall have the power to direct the Trustee in writing with respect to the investment of the Trust assets or any part thereof. Where investment authority, management and control of Trust assets have been delegated to the Trustee by the Employer, the Trustee shall be a fiduciary with respect to the investment, management and control of the Trust assets contributed by the Employer and Members with full discretion in the exercise of such investment, management and control. Where investment authority, management and control of Trust assets is not specifically delegated to the Trustee, the Trustee shall be subject to the direction of the Employer.

Expenses and fees in connection with the administration of the Plan and the Trust shall be paid from the Trust assets to the fullest extent permitted by law, unless the Employer determines otherwise.

5.3 Amendment and Termination.

The Employer shall have the right to amend, modify or terminate this Plan at any time. In the event of the complete discontinuance of this Plan, the entire interest of each Member

affected thereby shall immediately become 100% vested. The Employer shall not be liable for the payment of any benefits under this Plan and all benefits hereunder shall be payable solely from the assets of the Trust. Pursuant to Treasury Regulation Section 1.401-2(b), after all liabilities of this Plan to Members and their Beneficiaries have been satisfied following the termination of this Plan, any residual assets of this Plan shall be used for such purposes as determined by the Employer, including a distribution of the assets to the general funds of the Employer. Furthermore, a contribution made by the Employer may be returned if: (1) the contribution is made by reason of a mistake of fact (Section 403(c)(2)(A)); (2) the contribution is conditioned on qualification of the plan under the Code and the plan does not so qualify; or (3) the contribution is conditioned on its deductibility under Section 404 of the Code. The return to the Employer of the amount involved must be made within one year of the mistaken payment of the contribution, the date of denial of qualification, or disallowance of the deduction.

5.4 Military Service.

Effective December 12, 1994 and notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

ARTICLE VI

ANNUAL BENEFIT LIMITATIONS

6.1 Definitions and Application.

As used in this Article VI, the following terms shall have the meanings specified below. Unless otherwise stated below, the provisions of this Article VI shall apply to Limitation Years beginning on or after January 1, 2002.

“Affiliated Company” means a company required to be aggregated with the Employer for Purposes of Code Sections 414(b) and (c), provided, however, the determination under Section 414(b) and (c) of the Code shall be made as if the phrase “more than 50 percent” were substituted for the phrase “at least 80 percent” each place it is incorporated into Section 414(b) and (c) of the Code.

“Annual Benefit” means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which Employees do not contribute and under which no rollover contributions are made, or to which assets have been transferred from a qualified plan that was not maintained by the Employer. If the benefit is payable in a form other than a straight life annuity, such form must be adjusted actuarially to be the equivalent of a straight life annuity before applying the limitations of Section 6.2(a). The actuarial adjustment to the equivalent of a straight life annuity will apply to all Plan benefits. The actuarial adjustment shall be equal to the greater of (x) or (y), where (x) is an adjustment based on 5% (5.5% for benefits subject to Section 417(e)(3) of the Code commencing in 2004 and 2005) and the mortality table specified in Section 415(b)(2)(E) of the Code (which, for distributions commencing on or after December 31, 2002, shall be the table prescribed by Rev. Rul. 2001-62), and (y) is an adjustment based on the factors specified in the Plan to adjust the applicable form of benefits. No actuarial

adjustment is required for the following: qualified joint and survivor annuity benefits, pre-retirement disability benefits, preretirement death benefits, post-retirement medical benefits, and the value of post-retirement cost-of-living increases made in accordance with applicable Treasury Regulations.

“Employer” means the Employer and any Affiliated Company that adopts this Plan.

“Limitation Year” means a twelve-consecutive month period ending on the Anniversary Date. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

“Related Plan” means any other defined benefit plan (as defined in Section 415(k) of the Code) maintained by the Employer.

“Year of Participation” means the employee shall be credited with a Year of Participation for each year in which the employee has met the requirements of Section 1.1(a). An employee who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for an employee to receive a Year of Participation for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any 12-month period.

6.2 Annual Limitation on Benefits.

Notwithstanding any other provision of the Plan:

(a) the Annual Benefit payable with respect to a Member under the Plan for any Limitation Year shall not exceed an amount equal to \$160,000, or such other dollar limitation

determined for the Limitation Year by automatically adjusting the \$160,000 limitation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code in such manner as the Secretary shall prescribe. The new dollar limitation shall apply to Limitation Years ending within the calendar year of the date of the adjustment.

(b) If the Member has less than ten Years of Participation with the Employer, the limitation in Section 6.2(a) shall be reduced by multiplying it by a fraction, the numerator of which is the Member's full and partial Years of Participation, and the denominator of which is ten. To the extent provided in Treasury Regulations or in other guidance issued by the Internal Revenue Service, the preceding sentence shall be applied separately with respect to each change in the benefit structure of the Plan. The reduction provided in this paragraph does not apply to payments made to the Member if his payments commence after he has become disabled (within the meaning of Code Section 415(b)(2)(I)), and do not apply to payments made on account of the Member's death.

(c) If the Annual Benefit of a Member begins prior to age 62, the limitation under Section 6.2(a) applicable to the Member at such earlier age is an Annual Benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the limitation applicable to the Member at age 62 (adjusted under subsection (b) above, if required). The limitation applicable at an age prior to age 62 is determined as the lesser of (x) the actuarial equivalent (at such age) of the limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for early retirement calculations and (y) the actuarial equivalent (at such age) of the limitation computed using a five percent interest rate and the applicable mortality table specified in Section 415(b)(2)(E) of the Code (which, for distributions commencing on or after December 31, 2002, shall be the table prescribed by Rev. Rul. 2001-62).

A decrease in the limitation determined in accordance with the statutory factors set forth in clause (y) of this subsection (c) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account. The reduction in this Section 6.2(c) shall not apply for a Member who is a “qualified participant,” as defined in Code Section 415(b)(2)(H).

(d) If the Annual Benefit of a Member begins after age 65, the limitation under Section 6.2(a) applicable to the Member at such later age is an Annual Benefit payable in the form of a straight life annuity beginning at the later age that is the actuarial equivalent of the limitation applicable to the Member at age 65 (adjusted under subsection (b) above, if required). The limitation applicable at an age after age 65 is determined as the lesser of (x) the actuarial equivalent (at such age) of the limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for early retirement calculations and (y) the actuarial equivalent (at such age) of the limitation computed using a five percent interest rate and the applicable mortality table specified in Section 415(b)(2)(E) of the Code (which, for distributions commencing on or after December 31, 2002, shall be the table prescribed by Rev. Rul. 2001-62). For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(e) If the benefit the Member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the limitation under Section 6.2(a), the rate of accrual will be reduced so that the Annual Benefit will equal the limitation under Section 6.2(a).

(f) The limitation in Section 6.2(a) is deemed satisfied if the Annual Benefit payable to a Member is not more than \$1,000 multiplied by the Member’s number of years of service or parts

thereof (not to exceed ten) with the Employer, and the Employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which such Member participated.

If the Employer maintains one or more defined benefit plans, in addition to this Plan, covering an Employee who is also a Member in this Plan, the sum of the Annual Benefits of all the plans will be treated as a single benefit for the purposes of applying the limitations of Section 6.2(a). For purposes of the preceding sentence, Annual Benefits under a “qualified governmental excess benefit arrangement,” as described in Section 415(m)(3) of the Code, shall be disregarded. If the Annual Benefits exceed, in the aggregate, the limitations of Section 6.2(a), the Normal Retirement Benefits under this Plan will be reduced (but not below zero) until the sum of the benefits of the Related Plan(s) satisfy the limitations. In the case of an individual who was a Member in one or more defined benefit plans of the Employer as of the first day of the first Limitation Year beginning after December 31, 1986, the application of the limitations of this Section 6.2 shall not cause the limitation under Section 6.2(a) for such individual under all such defined benefit plans to be less than the individual’s Current Accrued Benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Section 415 of the Code, for all Limitation Years beginning before May 6, 1986. For purposes of this Section 6.2(f), an individual’s Current Accrued Benefit means a Member’s Accrued Benefit under the Plan, determined as if the Member had separated from service as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of Section 415(b)(2) of the Code. In determining the amount of a Member’s Current Accrued Benefit, the following shall be disregarded: (i) any change in the terms and conditions of the Plan after May 5, 1986; and (ii) any cost of living adjustments occurring after May 5, 1986.

ARTICLE VII
DEFINITIONS

7.1 Definitions.

Whenever the following terms are used in the Plan, with the first letter capitalized, they shall have the meanings specified below.

“**Act**” means the California Government Code.

“**Amended Effective Date**” means September 1, 2009, unless otherwise indicated herein.

“**Anniversary Date**” means July 1.

“**Beneficiary**” means the person, persons, trust or trusts designated by a Member, or, in the absence of a designation, entitled by will or the laws of descent and distribution, to receive the benefit specified under this Plan if the Member dies and means the Member’s executor or administrator if no other Beneficiary is designated and able to act under the circumstances.

“**CalPERS**” means the California Public Employees’ Retirement System.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Compensation**” means, for Plan Years beginning after December 31, 2001 or 90 days after the opening of the first legislature session on or after January 1, 2002, all compensation for that portion of the Plan Year during which the Employee was a Member, paid in cash by the Employer to the Member for personal services. Compensation in excess of \$200,000 shall be disregarded. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year the Compensation limit shall be an amount equal to the Compensation limit for

the calendar year in which the Plan Year begins multiplied by a ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, the annual compensation limit described in this Section 7.1. for determination periods beginning before January 1, 2002 shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

“Effective Date” means, unless otherwise indicated herein, September 1, 2009.

“Eligible Employee” means an Employee who fulfills the requirements of Section 1.1.

“Employee” means an employee of the Employer.

“Employer” means the City of Concord, which has adopted this Plan.

“Final Pay” means the Member’s monthly base wage, modified to exclude differentials, special duty, special assignment, education incentive pay, or Employer Paid Member Contributions as of June 1, 2009, multiplied by twelve (12).

“Member” means an Employee eligible to receive benefits under this Plan.

“Normal Form of Benefit” is the form of benefit described in Section 4.1.

“Normal Retirement Age” shall be age fifty (50) for safety Employees and age sixty-two (62) for non-safety Employees.

“Plan” means the City of Concord PARS Supplementary Retirement Plan.

“Plan Administrator” means the individual or position designated by the Employer to act on behalf of the Employer in matters relating to this Plan. If no designation is made, the Employer shall be the Plan Administrator. If a Plan Administrator has been appointed the word

“Employer” as used in this Plan shall mean Plan Administrator unless the context indicates a different meaning is intended.

“**Plan Year**” means the consecutive twelve-month period beginning on July 1 and ending on June 30.

“**Public Agency**” means an employer authorized under California Government Code Article 1.5, sections 53215 through 53224 to establish a pension trust.

“**Regulations**” means the regulations adopted or proposed by the Department of Treasury from time to time pursuant to the Code.

“**Retirement Benefits**” means the benefits payable to the Member following retirement, as described in Article II.

“**Trust**” means the trust established as part of the Public Agency Retirement System Trust to hold the assets of the Plan.

“**Trustee**” means the trustee of the Trust.

“**Vested**” means the nonforfeitable portion of any account maintained on behalf of a Member.

“**Year of Participation**” means any year in which an employee has met the requirements of Section 1.1(a).

**ADOPTION OF THE CITY OF CONCORD
PARS SUPPLEMENTARY RETIREMENT PLAN**

The Amended and Restated City of Concord PARS Supplementary Retirement Plan is hereby adopted effective September 1, 2009.

By: _____
Valerie Barone

Title: Assistant City Manager

Date: _____

The City of Concord PARS Supplementary Retirement Plan

Amended and Restated

Effective September 1, 2009

Defined Benefit Plan

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~~THE CITY OF CONCORD
PUBLIC AGENCY RETIREMENT SYSTEM (PARS)
SUPPLEMENTARY RETIREMENT PLAN~~

~~EFFECTIVE SEPTEMBER 1, 2009~~

~~DEFINED BENEFIT~~

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INTRODUCTION

The City of Concord (“Employer”) has adopted this tax-qualified governmental defined benefit plan for the benefit of its eligible employees to provide supplemental retirement benefits to eligible employees of the Employer in addition to the benefits employees will receive from the California Public Employees’ Retirement System (“CalPERS”). CalPERS is designated as the Employer’s primary plan for any Member of this ~~Plan~~plan. This document is a full and complete amendment and restatement of the City of Concord PARS Supplementary Retirement Plan adopted effective September 1, 2009.

It is intended that this ~~Plan~~plan and the ~~Trust~~trust established to hold the assets of the ~~Plan~~plan shall be qualified under Section-401(a) and tax-exempt under Section 501(a) of the Internal Revenue Code of 1986, together with any amendments thereto (~~“(the “Code”)~~). It is further intended that this ~~Plan~~plan and the ~~Trust~~trust established hereunder shall meet the requirements of a pension trust under California Government Code (~~“(Act”)~~ ~~Sections~~sections 53215 ~~–~~ 53224, or their successor sections (the “Act”). Furthermore, this plan is a “governmental plan,” as defined in Code Section 414(d). At any time prior to the satisfaction of all liabilities with respect to ~~Members~~members and their ~~Beneficiaries~~beneficiaries under the ~~Trust~~trust created pursuant to this ~~Plan~~plan, the ~~Trust~~trust assets shall not be used for, or diverted to, purposes other than the exclusive benefit of ~~Members~~members or their ~~Beneficiaries~~beneficiaries, as prescribed in Section 401(a)(2) of the Code.

It is intended that the ~~Plan~~plan satisfy the requirement of the applicable provisions of the Economic Growth and Tax Relief Reconciliation Act (commonly known as "EGTRRA") and the Pension Protection Act of 2006 (commonly known as the "PPA"), ~~the Heroes Earnings~~

~~Assistance and Relief Tax Act of 2008 (commonly known as the “HEART Act”) and final regulations under Section 415 of the Code,~~ and that the provisions of this Planplan reflecting ~~such requirements~~the EGTRRA and PPA amendments are hereby made effective as of the dates required by the legislation referred to in this sentence.

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~~ARTICLE I~~
~~ARTICLE I~~

PARTICIPATION

1.1 Eligibility for Benefits.

An Employee shall be eligible to receive Retirement Benefits under this Plan if he or she meets the requirements ~~below~~under one of the following tiers:

Tier I

(a) is classified as a Miscellaneous or Safety Employee of the Employer as of June 1, 2009 (excluding the City Manager, City Attorney, and Department Heads as determined by the City Manager);

~~(b) is~~has attained at least fifty (50) years of age ~~with~~as of September 1, 2009;

~~(b)(c)~~ has completed at least five (5) years of employment with the Employer ~~and eligible to retire under CalPERS,~~ as of September 1, 2009;

~~(e)(d)~~ has terminated employment with the Employer no later than ~~on or before~~ August 31, 2009;

(e) has applied for benefits under this Plan; and

(f) has concurrently retired under CalPERS no later than ~~on or before~~ September 1, 2009, and remains in retired status under CalPERS.

Tier II

(a) is classified as the Community Development Director of the Employer as of June 1, 2009;

(b) has attained at least fifty (50) years of age as of September 1, 2009;

(c) has completed at least five (5) years of employment with the Employer as of September 1, 2009;

(d) has terminated employment with the Employer on or before June 30, 2010;

(d)(e) has applied for benefits under this Plan; and

(e)(f) has applied for benefits under this Plan concurrently retired under CalPERS on or before July 1, 2010, and remains in retired status under CalPERS.

1.2 Commencement of Benefits.

Benefits shall commence the later of October 1, 2009, or the first day of the month after an Employee meets the eligibility requirements of Section ~~1.1.~~ 1.1, and may be made retroactive to such date.

1.3 ~~1.3~~ Participation.

An Employee will be credited with one ~~(1)~~ Year of Participation for any year during which the Employee ~~is employed by~~ meets the ~~Employer.~~ requirements of Section 1.1(a).

ARTICLE II

BENEFITS

2.1 ~~2.1~~ **Retirement Benefits.**

The monthly benefit commencing pursuant to Section 1.2 shall be paid in the Normal Form of Benefit and ~~shall be in~~ an amount equal to one-twelfth (1/12) of seven percent (~~7%~~6%) of ~~Base~~the Member's Final Pay.

~~2.2~~ **Survivor Continuance Benefit**

~~No Survivor Continuance Benefit shall be provided unless the Member elects to have the benefit paid in an Optional Form of Benefit.~~

~~2.3~~ **Pre-Retirement Disability Benefit**

~~No Pre-Retirement Disability Benefits shall be provided under this Plan.~~

~~2.4~~ **Pre-Retirement Death Benefit**

~~No Pre-Retirement Death Benefits shall be provided under this Plan.~~

~~2.5~~ **Deferred Retirement Benefit**

~~No Deferred Retirement Benefits shall be provided under this Plan.~~

2.2 ~~2.6~~ **Designation of Beneficiary.**

~~(a)~~ (a) Each Member shall have the right to designate a Beneficiary to receive the death benefits, if any, that are payable to a Beneficiary from this Plan. Such designation does not permit the Member to change a person identified under another provision of the Plan as being eligible to receive a benefit. Such designation must be evidenced by a written instrument filed with the Employer, on a form prescribed by the Employer, and signed by the Member.

(b) The Beneficiary for a married Member shall be the Member's spouse at the date of death, unless the written consent of such spouse is provided upon a form acceptable to the

Employer. Each such designation for death benefits must be evidenced by a written instrument filed with the Employer, on a form prescribed by the Employer, and signed by the Member. If no such designation is on file with the Employer at the time of the death of the Member, or if for any reason at the sole discretion of the Employer, such designation is defective, then the spouse of such Member shall be conclusively deemed to be the Beneficiary designated to receive such benefit.

(c) The signature of the Member's spouse shall be required on a designation of beneficiary form or an application for a benefit under the Plan if the spouse is not the ~~Beneficiary~~beneficiary, unless the Member declares in writing that one of the following conditions exists:

~~(1)~~ ~~(4)~~ The Member is not married;

~~(2)~~ ~~(2)~~ The Member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse;

(3) The spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition;

(4) The Member and spouse have executed a marriage settlement agreement that makes the community property laws inapplicable to the marriage; or

(5) The current spouse has no identifiable community property interest in the benefits.

~~(d)~~ Effective as of January 1, 2005, for purposes of this Section 2.62 only, all references in this Section 2.62 to the term "marriage" shall also include the term "registered domestic partnership.""". All references to the term "married" shall also include "registered domestic partnership" and all references in this Section 2.62 to the term "spouse" shall also include the

term "registered domestic partner." The inclusion of "registered domestic partner" in the definition of "spouse" shall not apply for the purposes of Sections [4.3, 2\(d\)](#), [4.54](#) and 6.2 of this Plan.

ARTICLE III~~ARTICLE III~~

VESTING

3.1 ~~3.1~~ **Vesting.**

A Member will be fully vested in his ~~or her~~ Retirement Benefit upon meeting the requirements of Section 1.1.

3.2 ~~3.2~~ **Full or Partial Termination.**

Notwithstanding the vesting schedule, upon the complete discontinuance of Employer contributions to the Plan or upon any full or partial termination of the Plan, the Member's Retirement Benefit ~~accrued to the date of such termination~~ shall become one hundred percent (100%) Vested.

3.3 ~~3.3~~ **Attainment of Normal Retirement Age.**

A Member shall be fully vested in his ~~or her~~ Retirement Benefit upon attainment of Normal Retirement Age ~~and fulfilling all requirements established in Section 1.1.~~

3.4 ~~3.4~~ **Effect**~~Affect~~ **of Vesting.**

Vesting shall entitle a Member to payment during his ~~or her~~ lifetime of the Retirement Benefit at the times and upon the conditions specified herein, and shall entitle the Member's survivor or Beneficiary to any death benefits provided herein. Any unpaid Retirement Benefits are forfeited upon the Member's death ~~under the Normal Form of Benefit.~~

ARTICLE IV~~ARTICLE IV~~

DISTRIBUTIONS

4.1 ~~4.1~~ **Normal Form of Benefit.**

Unless the Member elects ~~an Optional Form~~ another form of ~~Benefit~~ benefit as described under Section 4.2, payments to a Member of a Retirement Benefit shall be made in the form of monthly payments commencing pursuant to Section 1.2 and ending on the first day of the month in which the Member's death occurs, in the amount specified in Section 2.1. This form of payment shall be the "Normal Form of Benefit."

The Retirement Benefit shall cease for any Member who returns to active CalPERS status and shall recommence ~~ass~~ of the first day of the month after the Member returns to retired status under CalPERS at the same benefit amount and option immediately prior to the suspension of benefits.

4.2 ~~4.2~~ **Optional**~~Other~~ **Forms of Benefit.**

In lieu of the Normal Form of Benefit, a Member may elect a form of benefit payment of Actuarial ~~Equivalence as follows~~ Equivalent value to the Normal Form of Benefit in one of the following forms:

(a) ~~(a)~~ **Joint and 100% Survivor Continuance**~~Optional Form of Payout~~. Under this form of payment:

~~(1) (1)~~ The Member receives a reduced monthly benefit, and if the Member predeceases the Beneficiary, the Beneficiary will receive a monthly payment for the life of the Beneficiary equal to 100% of such reduced monthly benefit; provided, however, that if the Beneficiary is not the spouse of the MemberParticipant, this form of payment

shall be available only to the extent permitted pursuant to Section 4.3(b)(4)(A2(d)(2)(D)(I).

~~(2) (2)~~ If the Beneficiary predeceases the Member, the Member's reduced monthly payment will not increase.

~~(3) (3)~~ The Member's designation of a Beneficiary shall become irrevocable upon the Member's retirement date selected by the Employer prior to commencement of benefits if electing this form of payment.

~~(b) **Life or Ten Years.**~~ Under this form of payment:

~~(1) A benefit is paid in equal fixed monthly payments over the life of the Member.~~

~~(2) In the event the Member dies prior to receiving a total of one hundred and twenty (120) payments, the remaining unpaid monthly payments shall be paid to a designated Beneficiary.~~

~~(b) (e) **Fixed-Term Payout.**~~ Under this form of payment:

~~(1) (4)~~ The Member receives a benefit paid over a designated period of time (not to exceed the Member's life expectancy) that is actuarially equivalent to the Normal Form of Benefit. The Plan Administrator shall determine the term of the payment.

(2) Any remaining payments in the fixed-term payout schedule shall continue to the Beneficiary or subsequent Beneficiaries in the event of the Member's death.

~~(c) **Other Forms of Payout.**~~ Under this form of payment:

~~(1) At the option of the Member, and with the agreement of the Plan Administrator, and upon completion of a form provided by the Plan Administrator, the benefit shall be paid in the following form that is actuarially equivalent to the Normal~~

Form of Benefit: a benefit is paid in equal fixed monthly payments over the life of the Member.

(2) In the event the Member dies prior to receiving a total of one hundred and twenty (120) payments, the remaining unpaid monthly payments shall be paid to a designated Beneficiary.~~4.3~~

(d) Limitations.

~~(1) (a)~~ In the case of a Member who attains age 70-1/2, distribution of such Member's entire interest must commence not later than the first day of April following the later of the calendar year in which such Member attains age 70-1/2 or the calendar year in which the Member retires (the "Required Beginning Date"). In all cases, distributions shall be made in at least the amounts determined in accordance with Code Section 401(a)(9) and the regulations thereunder, as described in Section ~~4.3(b)(d)(2)~~ below.

~~(2) (b)~~ With respect to required minimum distributions under this Section ~~4.32(d)~~ for calendar years beginning after December 31, 2002, the following rules shall apply:

~~(1A)~~ All distributions required under this Section ~~4.32(d)~~ shall be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code, including, without limitation, the minimum distribution incidental benefit requirements. The requirements of this Section ~~4.32(d)~~ will take precedence over any inconsistent provisions of the Plan, provided that this Section ~~4.32(d)~~ shall not be considered to allow a Member or Beneficiary to delay a distribution or elect an optional form of benefit not otherwise provided in the Plan.

(2B) Time and Manner of Distribution

(~~AI~~) The Member's entire interest will begin to be distributed to the Member no later than the Member's Required Beginning Date as defined in Section 4.~~3(a)2(d)(1)~~.

(~~BII~~) If the Member dies before distributions begin, then the Member's entire interest will begin to be distributed no later than as follows:

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

(~~Hb~~) If the Member's surviving spouse is not the Member's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

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

(~~IV-d~~) If the Member's surviving spouse is the Member's sole designated Beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Section

4.~~3(b)~~2(d)(2)(B)(II), other than Section 4.~~3(b)2(d)~~(2)(B)(III)(a), will apply as if the surviving spouse were the Member.

For purposes of this Section 4.~~3(b)~~2(d)(2)(B)(II) and Section 4.~~3(b)52(d)~~(2)(E), distributions are considered to begin on the Member's Required Beginning Date (or, if Section 4.~~3(b)2(d)~~(2)(B)(IV)(d) applies, the date distributions are required to begin to the surviving spouse under Section 4.~~3(b)2(d)~~(2)(B)(III)(a)). If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 4.~~3(b)2(d)~~(2)(B)(III)(a)), the date distributions are considered to begin is the date distributions actually commence.

(CIII) Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.~~3(b)3~~.~~42(d)~~(2)(C), (D) and (SE). If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

(3C) Determination of Amount to be Distributed Each Year

(AI) If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(Ia) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(Hb) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Sections 4.3(b)(42(d)(2)(D) or (5E);

(Hc) once payments have begun under a fixed-term payout under Section 4.2. ~~(if such a benefit is available~~(b), the fixed-term payout period will not be changed even if the period certain is shorter than the maximum permitted;

(IVd) payments will either be non-increasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 4.3(b)(42(d)(2)(D) dies or is no longer the Member's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code; or

(iii) to pay increased benefits that result from a Plan amendment.

~~(BII)~~ The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under Sections 4.3~~(b)2(d)~~(2)(B)~~(HII)(a)~~ or ~~(Hb)~~) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date.

~~(3) (C)~~ Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

~~(4D)~~ Requirements For Annuity Distributions That Commence During Member's Lifetime

~~(AI)~~ If the Member's interest is being distributed in the form of a benefit described in Section 4.2~~(a)~~ for the joint lives of the Member and a nonspouse Beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated Beneficiary after the Member's death must not

at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2(c)(2) of Section 1.401(a)(9)-6 of the Treasury Regulations in the manner described in Q&A-2(c)(1) of the Treasury Regulations. If the form of distribution combines a benefit described in Section 4.2(a) for the joint lives of the Member and a nonspouse Beneficiary and a fixed-term payout annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the fixed-term payout period.

(BII) Unless the Member's spouse is the sole designated Beneficiary and the form of distribution is a fixed-term payout annuity, the fixed-term payout period for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the benefit commencement date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Treasury Regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the benefit commencement date. If the Member's spouse is the Member's sole designated Beneficiary and the form of distribution is a fixed-term payout annuity, the fixed-term payout period may not exceed the longer of the Member's applicable distribution period, as determined under this Section 4. ~~3(b)(4)(d)(2)(D)~~, or the

joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3 of the Treasury Regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the benefit commencement date.

(5E) Requirements For Minimum Distributions Where Member Dies Before Date Distributions Begin

(AI) If the Member dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Sections 4.3**(b)2(d)(2)(B)(III)(a)** or **(Hb)**, over the life of the designated Beneficiary or over a fixed-term payout period not exceeding:

(Ia) unless the benefit commencement date is before the first distribution calendar year, the life expectancy of the designated Beneficiary is determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(Hb) if the benefit commencement date is before the first distribution calendar year, the life expectancy of the designated Beneficiary is determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the benefit commencement date.

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

(~~CI~~) If the Member dies before the date distribution of his or her interest begins, the Member's surviving spouse is the Member's sole designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 4.~~3(b)(5)(d)(2)(E)~~ will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to Section 4.~~3(b)(2)(d)(2)(B)(III)(a)~~.

~~6~~

(F) Definitions

(~~AI~~) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 2.~~62~~ of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-~~1, Q&A-4~~, of the Treasury Regulations.

(~~BII~~) Distribution Calendar Year. ~~calendar year~~. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first

distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 4.~~3(b)(d)~~(2)(B)(II).

(~~III~~) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1 of the Treasury Regulations.

(~~IV~~) Required Beginning Date. The date set forth in Section 4.~~3(a)(d)~~(1).

~~4.3~~ ~~4.4~~ Actuarial Equivalence.

~~For the purpose of establishing~~ Actuarial Equivalence ~~shall be determined using for any form of benefit~~ the mortality assumption ~~based on shall be~~ the 1983 Group Annuity Mortality (GAM) ~~table~~ and the interest assumption shall be 6% per annum.

~~4.4~~ ~~4.5~~ Direct Rollovers.

(a) (~~a~~) ~~1~~ This section applies to all distributions made on or after January 1, ~~1993-2002~~. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this ~~plan~~Plan, a distributee 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 distributee in a direct rollover. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(b2) A Beneficiary who is not the spouse of the MemberParticipant may elect a direct trustee to trustee transfer that qualifies as an eligible rollover distribution under this Section 4.5.4. Such transfer shall be made to an individual retirement planaccount described in Section 408(a) of the Code or an individual retirement accountannuity described in Section 408(b) that is established for the purpose of receiving the distribution on behalf of such Beneficiary. Such individual retirement account shall be deemed an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Code. In the case of a nonspouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Section 408(a) or Section 408(b) (“IRA”) that is established on behalf of the designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(b) (1) ~~(1)~~ Definitions.

(A) Eligible Rollover Distribution

(1). An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: ~~(i)~~ any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated Beneficiary, or for a specified period of ten years or more; ~~(ii)~~ any distribution to the extent such distribution is required under Section- 401(a)(9) of the

Internal Revenue Code, ~~(iii)~~ any hardship distribution, and ~~(iv)~~ the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), unless and any other distribution(s) that is reasonably expected to total less than \$200 during a year. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion is may be transferred ~~in a direct trustee to trustee transfer~~ only to (1) an individual retirement account or annuity described in Section 408(a) or (b) of the Code; (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a ~~plan which is a~~ defined contribution plan ~~and which that~~ agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

~~(B)~~ Eligible Retirement Plan

(2) . An eligible retirement plan is 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~~ defined contribution plan described in Section 401(a) of the Code that accepts the distributee's eligible rollover distribution, an annuity contract described in Section 403(b) of the Code, ~~a Roth IRA~~ an annuity plan described in Code

Section ~~408A (but only if 403(a) of the distributee satisfies the requirements of Code Section 408A(c)(3)(B)), or Code, and~~ an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

~~(C)~~ Direct Rollover

(3). A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE V

ARTICLE V

ADMINISTRATION AND AMENDMENT OF PLAN

5.1 ~~5.1~~ Member's Rights Not Subject To Execution.

The right of a Member to a benefit under this Plan is not assignable and is not subject to execution or any other process whatsoever, except to the extent permitted by the Code of Civil Procedure and the Family Code of the State of California. Any payment hereunder required under the California Family Code to a person other than the Member must not alter the form or amount of benefits hereunder, except that to the extent provided in a valid court order, an ~~Actuarial~~Actuarially Equivalent payment may be made to the spouse or child of a Beneficiary pursuant to a qualified domestic relations order (as defined in Code Section 414(p)) prior to the Member's retirement.

5.2 ~~5.2~~ Rules and Regulations.

The Employer has full discretionary authority to supervise and control the operation of this Plan in accordance with its terms and may make rules and regulations for the administration of this Plan that are not inconsistent with the terms and provisions hereof. The Employer shall determine any questions arising in connection with the interpretation, application or administration of the Plan (including any question of fact relating to age, employment, compensation or eligibility of Employees) and its decisions or actions in respect thereof shall be conclusive and binding upon any and all persons and parties.

The Employer shall have all powers necessary to accomplish its purposes, including, but not by way of limitation, the following:

- ~~(a)~~ (a) To determine all questions relating to the eligibility of Employees to participate;
- ~~(b)~~ (b) To construe and interpret the terms and provisions of the Plan;

~~(c) (e)~~ To compute, certify to, and direct the Trustee with regard to the amount and kind of benefits payable to the Members and their Beneficiaries;

~~(d) (d)~~ To authorize all disbursements by the Trustee from the Trust;

~~(e) (e)~~ To maintain all records that may be necessary for the administration of the Plan other than those maintained by the Trustee; and

~~(f) (f)~~ To appoint a ~~Plan Administrator~~plan administrator or, any other agent, and to delegate to them or to the Trustee such powers and duties in connection with the administration of the Plan as it may from time to time prescribe, and to designate each such administrator or agent as a fiduciary with regard to matters delegated to him.

 With respect to management and control of investments, the Employer shall have the power to direct the Trustee in writing with respect to the investment of the Trust assets or any part thereof. Where investment authority, management and control of Trust assets have been delegated to the Trustee by the Employer, the Trustee shall be a fiduciary with respect to the investment, management and control of the Trust assets contributed by the Employer and Members with full discretion in the exercise of such investment, management and control. Where investment authority, management and control of Trust assets is not specifically delegated to the Trustee, the Trustee shall be subject to the direction of the Employer.

 Expenses and fees in connection with the administration of the Plan and the Trust shall be paid from the Trust assets to the fullest extent permitted by law, unless the Employer determines otherwise.

~~To the extent determined by the Employer or its delegate, elections and consents made by means of electronic media shall be permissible if made according to the relevant provisions of Treasury Regulation Section 1.401(a)-21.~~

5.3 5.3—Amendment and Termination.

The Employer shall have the right to amend, modify or terminate this Plan at any time. In the event of the complete discontinuance of this Plan, the entire interest of each Member affected thereby shall immediately become 100% vested. ~~All~~The Employer shall not be liable for the payment of any benefits under this Plan and all benefits hereunder shall be payable solely from the assets of the Trust.~~After~~ Pursuant to Treasury Regulation Section 1.401-2(b), after all liabilities of this Plan to Members and their Beneficiaries have been satisfied following the termination of this Plan, any residual assets of this Plan shall be used for such purposes as determined by the Employer, including a distribution of the assets to the general funds of the Employer.~~—~~ Furthermore, a contribution made by the Employer may be returned if: (1) the contribution is made by reason of a mistake of fact (Section 403(c)(2)(A); (2) the contribution is conditioned on qualification of the plan under the Code and the plan does not so qualify; or (3) the contribution is conditioned on its deductibility under Section 404 of the Code. The return to the Employer of the amount involved must be made within one year of the mistaken payment of the contribution, the date of denial of qualification, or disallowance of the deduction.

5.4 5.4—Military Service.

Effective December 12, 1994 and notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section ~~414(u) of the Code.~~ ~~In the case of a Member who dies while performing qualified military service, the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Member resumed and then terminated employment on account of death.~~ ~~A Member receiving a ‘differential wage payment,’ as defined in Code Section~~

~~3401(h)(2) shall be treated as an employee of the Employer, and the differential wage payment shall be treated as compensation 414(u) of the Code.~~

~~**5.5 Administrative Expenses**~~

~~In accordance with Section 53217 of the Act, the Employer may make contributions to the Trust sufficient to defray all or part of the expenses of administering the Plan or may pay such expenses directly.~~

~~ARTICLE VI~~
ARTICLE VI

ANNUAL BENEFIT LIMITATIONS

6.1 ~~6.1~~ **Definitions and Application.**

As used in this Article VI, the following terms shall have the meanings specified below.

Unless otherwise stated below, the provisions of this Article VI shall apply to Limitation Years beginning on or after ~~July~~January 1, ~~2007~~2002.

“Affiliated Company” means a company required to be aggregated with the Employer for Purposes of Code Sections 414(b) and (c), provided, however, the determination under Section 414(b) and (c) of the Code shall be made as if the phrase “more than 50 percent” were substituted for the phrase “at least 80 percent” each place it is incorporated into Section 414(b) and (c) of the Code.

“Annual Benefit” means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which Employees do not contribute and under which no rollover contributions are made, or to which assets have been transferred from a qualified plan that was not maintained by the Employer. If the benefit is payable in a form other than a straight life annuity, such form must be adjusted actuarially to be the equivalent of a straight life annuity before applying the limitations of Section 6.2(a). The actuarial adjustment to the equivalent of a straight life annuity will apply to all Plan benefits ~~except as set forth herein.~~ The actuarial adjustment ~~for benefits paid in a form to which Code Section 417(e)(3) does not apply~~ shall be equal to the greater of (x) or (y), where (x) is an adjustment based on 5% (5.5% for benefits subject to Section 417(e)(3) of the Code commencing in 2004 and 2005) and the mortality table specified in Section ~~Treasury Regulation Section 1.417(e)-1(d)(15)(b)(2) for that annuity starting date, and (y) is the annual amount~~(E) of the ~~straight life annuity~~Code (which, for distributions

commencing on ~~the same annuity starting date as the form of benefit payable to the Member, based on or after December 31, 2002, shall be the table prescribed by Rev. Rul. 2001-62), and (y) is an adjustment based on~~ the factors specified in the Plan to adjust the applicable form of benefits. ~~The actuarial adjustment for benefits paid in a form to which Code Section 417(e)(3) applies shall be equal to the greatest of (xx), (yy) or (zz), where (xx) is an adjustment based on 5.5% and the mortality table specified in Section Treasury Regulation Section 1.417(e)-1(d)(2) for that annuity starting date, (yy) is the annual amount of the straight life annuity commencing on the same annuity starting date as the form of benefit payable to the Member, based on the factors specified in the Plan to adjust the applicable form of benefits, and (zz) is an adjustment based on the applicable interest rate for the distribution under Regulation Section 1.417(e)-1(d)(3) and the mortality table specified in Section Treasury Regulation Section 1.417(e)-1(d)(2) for that annuity starting date, divided by 1.05.~~ No actuarial adjustment is required for the following: qualified joint and survivor annuity benefits, pre-retirement disability benefits, ~~pre-retirement~~preretirement death benefits, post-retirement medical benefits, and the value of ~~an automatic benefit increase feature~~post-retirement cost-of-living increases made in accordance with applicable Treasury Regulations.

“Employer” means the Employer and any Affiliated Company that adopts this Plan.

“Limitation Year” means a twelve-consecutive month period ending on the Anniversary Date. If the Limitation Year is amended to a different ~~twelve~~12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

“Related Plan” means any other defined benefit plan (as defined in Section 415(k) of the Code) maintained by the Employer.

“**Year of Participation**” means the ~~Employee~~employee shall be credited with a Year of Participation for each year in which the ~~Employee~~employee has met the requirements of Section 1.1(a). An ~~Employee~~employee who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for an ~~Employee~~employee to receive a Year of Participation for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any 12-month period.

~~6.2~~ ~~6.2~~ **Annual Limitation on Benefits.**

Notwithstanding any other provision of the Plan:

~~(a)~~ ~~(a)~~ ~~The~~ Annual Benefit payable with respect to a Member under the Plan for any Limitation Year shall not exceed an amount equal to \$160,000, or such other dollar limitation determined for the Limitation Year by automatically adjusting the \$160,000 limitation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code in such manner as the Secretary shall prescribe. The new dollar limitation shall apply to Limitation Years ending within the calendar year of the date of the adjustment. ~~Cost of living adjustments to the dollar limitation occurring after severance from employment are taken into account.~~

~~(b)~~ ~~(b)~~ If the Member has less than ten Years of Participation with the Employer, the limitation in Section 6.2(a) shall be reduced by multiplying it by a fraction, the numerator of which is the Member’s full and partial Years of Participation, and the denominator of which is ten. To the extent provided in Treasury Regulations or in other guidance issued by the Internal Revenue Service, the preceding sentence shall be applied separately with respect to each change

in the benefit structure of the Plan. The reduction provided in this paragraph does not apply to payments made to the Member if his payments commence after he has become disabled (within the meaning of Code Section 415(b)(2)(I)), and ~~does~~ not apply to payments made on account of the Member's death.

~~(c) (e)~~ If the Annual Benefit of a Member begins prior to age 62, the limitation under Section 6.2(a) applicable to the Member at such earlier age is an Annual Benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the limitation applicable to the Member at age 62 (adjusted under subsection ~~6.2~~(b) above, if required). The limitation applicable at an age prior to age 62 is determined as the lesser of (x) the actuarial equivalent (at such age) of the limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for early retirement calculations and (y) the actuarial equivalent (at such age) of the limitation computed using a five percent interest rate and the applicable mortality table specified in Section 415(b)(2)(E) of the Code. ~~Any~~ (which, for distributions commencing on or after December 31, 2002, shall be the table prescribed by Rev. Rul. 2001-62). A decrease in the limitation determined in accordance with the statutory factors set forth in clause (y) of this subsection ~~6.2~~(c) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account. The reduction in this Section 6.2(c) shall not apply for a Member who is a "qualified participant," as defined in Code Section 415(b)(2)(H).

~~(d)~~ ~~—————~~ ~~(d)~~ If the Annual Benefit of a Member begins after age 65, the limitation under Section 6.2(a) applicable to the Member at such later age is an Annual Benefit payable in the form of a straight life annuity beginning at the later age that is the actuarial

equivalent of the limitation applicable to the Member at age 65 (adjusted under subsection (b) above, if required). The limitation applicable at an age after age 65 is determined as the lesser of (x) the actuarial equivalent (at such age) of the limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for early retirement calculations and (y) the actuarial equivalent (at such age) of the limitation computed using a five percent interest rate and the applicable mortality table specified in Section 415(b)(2)(E) of the Code: (which, for distributions commencing on or after December 31, 2002, shall be the table prescribed by Rev. Rul. 2001-62). For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

~~(e) Pursuant to Treasury Regulation~~ If the benefit the Member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the limitation under Section 1.415(b)-1(a)(7)(iii)6.2(a), the rate of a Member's accrual shall not will be limited by this Article VI (but at all times the annual benefit payable to the Member is subject to the limits set forth in this Article VI reduced so that the Annual Benefit will equal the limitation under Section 6.2(a).

(f) The limitation in Section 6.2(a) is deemed satisfied if the Annual Benefit payable to a Member is not more than \$1,000 multiplied by the Member's number of years of service or parts thereof (not to exceed ten) with the Employer, and the Employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which such Member participated.

If the Employer maintains one or more defined benefit plans, in addition to this Plan, covering an Employee who is also a Member in this Plan, the sum of the Annual Benefits of all the plans will be treated as a single benefit for the purposes of applying the limitations of Section 6.2(a). For purposes of the preceding sentence, Annual Benefits under a "qualified governmental excess benefit arrangement," as described in Section 415(m)(3) of the Code, shall be

disregarded. If the Annual Benefits exceed, in the aggregate, the limitations of Section 6.2(a), the Normal Retirement Benefits under this Plan will be reduced (but not below zero) until the sum of the benefits of the Related Plan(s) satisfy the limitations. In the case of an individual who was a Member in one or more defined benefit plans of the Employer as of the first day of the first Limitation Year beginning after December 31, 1986, the application of the limitations of this Section 6.2 shall not cause the limitation under Section 6.2(a) for such individual under all such defined benefit plans to be less than the individual's Current Accrued Benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Section 415 of the Code, for all Limitation Years beginning before May 6, 1986. For purposes of this Section 6.2(f), an individual's Current Accrued Benefit means a Member's Accrued Benefit under the Plan, determined as if the Member had separated from service as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of Section 415(b)(2) of the Code. In determining the amount of a Member's Current Accrued Benefit, the following shall be disregarded: (i) any change in the terms and conditions of the Plan after May 5, 1986; and (ii) any cost of living adjustments occurring after May 5, 1986.

~~(g) — If a Member makes one or more contributions to the Plan to purchase “permissive service credit,” as defined in Code Section 415(n)(3), then the limitations of this Article VI shall be treated as met only if either (i) the limitations provided in Code Section 415(b) are met, determined by treating the accrued benefit derived from such contributions as an annual benefit for purposes of Code Section 415(b), or (ii) the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(e).~~

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~~ARTICLE VII~~
ARTICLE VII

DEFINITIONS

7.1 ~~7.1~~ Definitions.

Whenever the following terms are used in the Plan, with the first letter capitalized, they shall have the meanings specified below.

“**Act**” means the California Government Code.

“**Amended Effective Date**” means September 1, 2009, unless otherwise indicated herein.

“**Anniversary Date**” means July 1.

“**Beneficiary**” means the person, persons, trust or trusts designated by a Member, or, in the absence of a designation, entitled by will or the laws of descent and distribution, to receive the benefit specified under this Plan if the Member dies and means the Member’s executor or administrator if no other ~~beneficiary~~Beneficiary is designated and able to act under the circumstances.

“**CalPERS**” means the California Public Employees’ Retirement System.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Compensation**” means, for Plan Years beginning after December 31, 2001 or 90 days after the opening of the ~~final~~first legislature session on or after January 1, 2002, all compensation for that portion of the Plan Year during which the Employee was a Member, paid in cash by the Employer to the Member for personal services. Compensation in excess of \$~~220~~200,000 ~~(as adjusted through 2006)~~ shall be disregarded. Such amount shall ~~thereafter~~ be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year the Compensation limit

shall be an amount equal to the Compensation limit for the calendar year in which the Plan Year begins multiplied by a ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, the annual compensation limit described in this Section 7.1. for determination periods beginning before January 1, 2002 shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

“Effective Date” means, unless otherwise indicated herein, September 1, 2009.

~~“Eligible Class of Employees” means the eligible class of employees as provided herein and in the applicable governing board policies and regulations promulgated thereunder by the Employer.~~

“Eligible Employee” means an Employee who ~~meets~~fulfills the requirements ~~as described in of~~ Section 1.1.

“Employee” means an employee of the Employer.

“Employer” means the City of Concord ~~that, which~~ has adopted this Plan.

“BaseFinal Pay” means the ~~Employee’s~~Member’s monthly base wage, ~~exclusive of~~modified to exclude differentials, special duty, special assignment, education incentive pay, or Employer Paid Member Contributions (~~EPMC~~) as of June 1, 2009, multiplied by twelve (12).

~~“Ineligible Employee” means an ineligible employee as provided herein and in the applicable governing board policies and regulations promulgated thereunder by the Employer.~~

“Member” means an Employee eligible to receive benefits under this Plan.

“Normal Form of Benefit” is the form of benefit described in Section 4.1.

“Normal Retirement Age” ~~means~~shall be age fifty (50) for safety Employees and age sixty-two (62) for non-safety Employees.

“Plan” means the City of Concord PARS Supplementary Retirement Plan.

“Plan Administrator” means the individual or position designated by the Employer to act on behalf of the Employer in matters relating to this Plan. If no designation is made, the Employer shall be the Plan Administrator. If a Plan Administrator has been appointed the word “Employer” as used in this Plan shall mean Plan Administrator unless the context indicates a different meaning is intended.

“Plan Year” means the consecutive twelve-month period beginning on July 1 and ending on June 30.

“Public Agency” means an employer authorized under California Government Code Article 1.5, ~~Sections~~ sections 53215 through 53224 to establish a pension trust.

“Regulations” means the regulations adopted or proposed by the Department of Treasury from time to time pursuant to the Code.

“Retirement Benefits” means the benefits payable to the Member following retirement, as described in Article II.

“Trust” means the trust established as part of the Public Agency Retirement System Trust to hold the assets of the Plan.

“Trustee” means the trustee of the Trust.

“Vested” means the nonforfeitable portion of any account maintained on behalf of a Member.

“Year of Participation” means any year in which an ~~Employee~~employee has met the requirements of Section 1.1(a).

**ADOPTION OF THE
CITY OF CONCORD**

PARS SUPPLEMENTARY RETIREMENT PLAN

The Amended and Restated City of Concord PARS Supplementary Retirement Plan is hereby adopted effective September 1, 2009.

By: _____

- Valerie Barone

Title: Assistant City Manager

Date: _____

The City of Concord PARS Supplementary Retirement Plan

Amended and Restated

Effective September 1, 2009

Defined Benefit Plan

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