MEMORANDUM

TO: Mayor Prussing and Members, Urbana City Council

FROM: City Comptroller Ron E.

RE: Amendment to Employee's Deferred Compensation Plan

DATE: October 24, 2011

For the last 26 years, the City has sponsored a Section 457 Deferred Compensation Plan as another tool to assist city employees in planning and saving for retirement. This is similar to a 401K except it is for government employees only and is authorized under section 457 of the IRS Code. This plan is administered for the City by the International City Manager's Association Retirement Corporation. Initial approval and amendments do require approval of the City Council.

This plan allows city employees to put a portion of their salary (payroll deduction) into this plan rather than receive it in their current paycheck. This is an entirely voluntary election on the part of the employees. Approximately 1/3 of city employees participate. There is no city contributions involved in this plan . The advantage for the employees is that they pay no taxes on this amount until they begin withdrawing it (eligible when they leave city employment and they must begin withdrawing at age 70.5). At that time, they are most probably retired and are in a lower tax rate bracket. The employee chooses what type of investment they desire (stock market, treasury bills, etc.) and interest earn accrues in their account.

Of course, the IRS places limits on the maximum amounts that can be deferred by the employee and if the employee withdraws the amount before the eligible age, there are penalties and interest. One of the provisions that is allowed by the IRS but not currently authorized in our plan is a loan provision.

A loan provision allows the employee to borrow his own money in the form of a loan that must be repaid before the employees begins normal withdrawals. I have recently had 2 different employees ask me if the City would amend our plan to include a loan provision. Since there are very little if any impacts on the City, I have attached a resolution that would accomplish this.

Some of the major parts on the loan program are:

Employees can only have 1 outstanding loan at a time. Minimum loan amount is $1,000. The maximum loan amount is $50,000 or ½ of the employee's account balance (whichever is less). Employee chooses amount of time to pay off the loan but no more than 5 years. Employee can pay off the loan early at any time without any penalties or interest. Repayment will be thru automatic payroll deduction. If employee leaves employment, he will be required to continue to make payments directly. Interest rate is prime rate plus ½% (current would be 3.75%). If employee dies or becomes delinquent in loan, a taxable distribution of the amount is reported to the IRS and the employee will be required to pay taxes and a 10% penalty.

Recommendation. Approval of the attached resolution.

RESOLUTION NO. 2011-10-034R

A RESOLUTION TO AMEND THE CITY OF URBANA I.C.M.A. RETIREMENT CORPORATION SECTION 457 DEFERRED COMPENSATION PLAN #300515, TO PERMIT LOANS

WHEREAS, the City of Urbana (the "City") has established a Section 457 Deferred Compensation Retirement Plan (the "Plan") for "City" employees, which serves the interest of the "City" by enabling it to provide additional retirement security for "City" employees, and by assisting in the attraction and retention of personnel; and

WHEREAS, the City of Urbana has determined that permitting participants in the retirement plan to take loans from the Plan will serve this objective;

NOW, THEREFORE BE IT RESOLVED that the Plan will permit loans.

Section 3. Effective Date. This Resolution shall become effective upon its passage and approval as required by law.

This Resolution is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said City Council on the ____ day of _________, 2011, A.D.

PASSED by the City Council this ____ day of ___________, 2011.

____
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of __________, 2011.

____
Laurel Lunt Prussing, Mayor

Name of Plan (please state the Employer's complete name, including state): CITY OF URBANA, IL.

Plan Type: ☐ 401(a) Money Purchase Plan ☐ 401 Profit-Sharing Plan ☒ 457 Deferred Compensation Plan

ICMA-RC Plan Number: 300515

I. Purpose

The purpose of these guidelines is to establish the terms and conditions under which the Employer will grant loans to participants. This is the only official Loan Provision Document of the above named Plan.

II. Eligibility

Loans are available to all active employees. Loans will not be granted to participants who have an existing loan in default.
Loans will be pro-rated among all the funds in which the participant is invested at the time the loan is made.

For 401 plans only: N/A

Loans are available from the following sources: [select one or both]

☐ Employer Contribution Account (vested balances only)

☐ Participant Contribution Accounts (pre- and post-tax, if applicable, including Employee Mandatory, Employee Voluntary, Employer Rollover, and Portable Benefits Accounts, but excluding the Deductible Employee Contribution/Qualified Voluntary Employee Contribution Account)

For Roth 401(k) plans only: N/A

A participant's Designated Roth Account balance can be used to secure a participant loan.

Designated Roth Account balances [select one]

☐ will not (default option) be available as a source for loans under the Plan.

☐ will be available as a source for loans under the Plan. **(Note: Using the Roth source for loans may have negative tax consequences for participants.)**

For all plan types:

III. Loan Purpose

Loans are available for the following purposes and must be requested in the corresponding method (select one):

☒ **All purposes**

Online, through Direct Loan Application and Loans by Call Center: All loans must be requested either online by employees through ICMA-RC's Account Access site at www.icmarc.org, or through the Direct Loan application, both of which require preauthorization by the Employer as outlined in italics under Section IV. Application Process. The Loans by Call Center service will allow plan participants to request loans directly over the phone with an Investor Services Associate.

☐ **Hardship Only:**

Loans shall only be granted in the event of a participant's hardship or for the purpose of enabling a participant to meet certain specified financial situations. The employer shall approve the participant's loan application after determining, based on all relevant facts and circumstances, that the amount of the loan is not in excess of the amount required to relieve the financial need. For this purpose, financial need shall include, but not be limited to: unreimbursed medical expenses of the participant or members of the participant's immediate family, establishing or substantially rehabilitating the principal residence of the participant, or paying for a college education (including graduate studies) for the participant or his/her dependents. **(Note: Online, Direct Loans, or Loans by Call Center not applicable with this option. Participant must complete the loan application for employer approval.)**

IV. Application Process

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access. In the case of the Direct Loan Application, spousal consent should be sent along with the application.

The promissory note, truth-in-lending rescission notice, and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents and terms at the time the endorsed check is presented for payment.

The Employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.

The loan amount will generally be redeemed from the employee's account on the same day as either ICMA-RC receipt of loan application (complete and in good order), the completion of a loan request via telephone with an Investor Services representative, or the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

V. Frequency of loans [select one]

☒ Participants may receive one loan per calendar year. Moreover, participants may have only one (1) outstanding loan at a time.

☐ Participants may receive one loan per calendar year. Moreover, no participant may have more than five (5) loans outstanding at one time.

VI. Loan amount

The minimum loan amount is $1,000.

The maximum amount of all loans to the participant from the plan and all other plans sponsored by the Employer that are qualified employer plans under section 72(p)(4) of the Code is the ***lesser*** of:

(1) $50,000, reduced by the highest outstanding balance of all loans from any 401 or 457 plans for that participant during the one-year period ending on the day before the date a loan is to be made, or

(2) one half of the participant's vested account balance, reduced by the current outstanding balance of all 401 and 457 loans from all plans for that participant.

If a participant has any loans outstanding at the time a new loan is requested, the new loan will be limited to the maximum amount calculated above reduced by the total of the outstanding loans.

A loan cannot be issued for more than the above amount. The participant's requested loan amount is subject to downward adjustment without notice due to market fluctuation between the time of application and the time the loan is made.

VII. Length of loan

A loan must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years.

Loans for a principal residence must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed 5 years [state number of years] years (maximum 30 years).

VIII. Loan repayment process

Loan repayments for active employees must be through **(choose one)**:

- [x] Payroll deduction only.
  PL642(2) = 2
- [ ] ACH debit only.*
  PL642(2) = 0
- [ ] Employee may choose either payroll deduction or ACH debit.*
  PL642(2) = 1

* Please note that a $20 processing fee will be assessed to a participant's ICMA-RC account when a scheduled loan repayment(s) via ACH is rejected due to insufficient funds, invalid bank account information, or account closure in the participant's designated payment account.

If payroll deduction repayment is allowed, and the employee wishes to use this method, the employee must notify the Employer so that the Employer can ensure that repayment will begin as soon as practicable on a date determined by the Employer's payroll cycle. Failure to begin payroll deduction in a timely way could lead to the employee's loan entering delinquency status. Payroll deduction should begin within two payroll cycles following the employee's receipt of the loan.

Repayments through payroll deduction will be sent via check or wire by the Employer to ICMA-RC on the following cycle **(choose one)**:

- [ ] Weekly (52 per year)
- [x] Bi-weekly (26 per year)
- [ ] Semi-monthly (24 per year)
- [ ] Monthly (12 per year)

If ACH debit repayment is allowed, debits from the employee's designated bank account will begin approximately one month following the date the employee's signed ACH authorization form is received and processed by ICMA-RC, or, in the case of online loans, approximately one month following the date the loan check has been cleared for payment. Debits will normally be made on a monthly basis.

Loans outstanding for former employees or employees on a leave of absence must be repaid on the same schedule as if payroll deductions were still being made unless they reamortize their loans and establish a new repayment schedule that provides that substantially equal payments are made at least monthly over the remaining period of the loan.

Loan payments, including loan payments from former employees, are allocated to the participant's current election of investment options on file with ICMA-RC.

The participant may pay off all or a portion of the principal and interest early without penalty or additional fee. Extra payments are applied forward to both principal and interest as specified in the original repayment schedule, unless the additional payment is for the balance due.

IX. Loan interest rate

The rate of interest for loans of five (5) years or less will be based on prime plus 0.5%.

The rate of interest for loans for a principal residence will be based on the FHA/VA rate.

Interest rates are determined on the last business day of the month preceding the month the loan is disbursed. The interest rate is locked in at the time a loan is approved and remains constant throughout the life of the loan.

The prime interest rate is determined on the last business day of each month using www.nfsn.com as the source. The FHA/VA interest rate is also determined on the last business day of each month using www.bankofamerica.com as the source.
Loan interest rates for new loans taken in different months may fluctuate upward or downward monthly, depending on the movement of the prime and FHA/VA interest rates.

The employer may modify the manner in which loan interest rates will be determined, but only with respect to future loans.

X. Security/Collateral

That portion of a participant's account balance that is equal to the amount of the loan is used as collateral for the loan. The collateral amount may not exceed 50 percent of the participant's account balance at the time the loan is taken. Only the portion of the account-balance that corresponds to the amount of the outstanding loan balance is used as collateral.

XI. Acceleration [select one]

- ☐ All loans are due and payable in full upon separation from service.

- ☐ All loans are due and payable when a participant receives a distribution of **all** of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

- ☒ All loans are due and payable when a participant receives a distribution of **part** of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

XII. Reamortization

Any outstanding loan may be reamortized. Reamortization means changing the terms of a loan, such as length of repayment period, interest rate, and frequency of repayments. A loan may not be reamortized to extend the length of the loan repayment period to more than five (5) years from the date the loan was originally made, or in the case of a loan to secure a principal residence, beyond the number of years specified by the employer in Section V above.

A participant must request the reamortization of a loan in writing on a reamortization application acceptable to the plan administrator. Upon processing the request, a new disclosure statement will be sent to the employer for endorsement by the participant and approval by the employer. The executed disclosure statement must be returned to the plan administrator within 10 calendar days from the date it is signed. The new disclosure statement is considered an amendment to the original promissory note, therefore a new promissory note will not be required.

A reamortization will not be considered a new loan for purposes of calculating the number of loans outstanding or the one loan per calendar year limit.

XIII. Refinancing existing loans

If a participant has one outstanding loan, that loan may be refinanced. If a participant has more than one outstanding loan, no loans may be refinanced. Refinancing means concurrently repaying an existing loan and borrowing an additional amount through a new loan. Refinancing includes any situation in which one loan replaces another loan and the term of the replacement loan does not exceed the latest permissable term of the replaced loan.

In order to refinance an existing loan, a participant must request this in writing on an application approved by the plan administrator. Such request must be made at a time when the participant is eligible to obtain a loan as defined by the employer in Section III above. The amount of the additional loan amount requested for the purpose of refinancing is subject to the loan limits specified in Section IV above.

Because a refinancing is considered a new loan, only active employees may refinance an outstanding loan. Residential loans are not eligible for refinance.

XIV. Reduction of Loan

If a participant dies prior to full repayment of the outstanding loan(s), the outstanding loan balance(s) will be deducted from the account prior to distribution to the beneficiary(ies). The unpaid loan amount is a taxable distribution and may be subject to early withdrawal penalties. The participant's estate is responsible for taxes or penalties on the unpaid loan amount, if any. A beneficiary is responsible for taxes due on the amount he or she receives. A Form 1099 will be issued to both the beneficiary and the estate for these purposes.

XV. Deemed Distribution

Loan repayments must be made in accordance with the plan document, plan loan guidelines, and as reflected in the promissory note signed by the participant. If a scheduled payment is not paid within 30, 60, and/or 90 days of the due date, a notice will be sent to both the employee and the employer.

A loan will be deemed distributed when a scheduled payment is still unpaid at the end of the calendar quarter following the calendar quarter in which the payment was due. If the total amount of any delinquent payment is not received by ICMA-RC by the end of the calendar quarter following the calendar quarter in which they payment was due, the loan is considered a taxable distribution, and the principal balance, in addition to any accrued interest, is reported as a distribution to the IRS. However, no money is paid in this distribution, because the participant already has the loan proceeds.

The loan is deemed distributed for tax purposes, but it is not an actual distribution and therefore remains an asset of the participant's account. Interest continues to accrue. The outstanding loan balance and accrued interest are reported on the participant's account statement.

Repayment of a deemed distribution will not change or reverse the taxable event.

The loan continues to be outstanding, and to accrue interest, until it is repaid or offset using the participant's account balance. An offset can occur only if the participant is eligible to receive a distribution from the plan as outlined in the plan document. Participants are required to repay any outstanding loan which has been deemed distributed before they can be eligible for a new loan. The deemed distribution and any interest accrued since the date it became a taxable event is taken into account when determining the maximum amount available for a new loan. New loans must be repaid through payroll deduction.

The employer is obligated by federal regulation to comply with the loan guideline requirements applicable to participant loans, and to ensure against deemed distribution by monitoring loan repayments, regardless of the method of repayment, and by advising employees if loans are in danger of being deemed distributed. The tax-qualified status or eligibility of the entire plan may be revoked in cases of frequent repayment delinquency or deemed distribution.

XVI. Fees

Fees may be charged for various services associated with the application for and issuance of loans. All applicable fees will be debited from the participant's account balance and/or from the participant's loan repayments prior to crediting the repayment of principal and interest to the participant's account. A schedule of fees applicable to this plan is specified in ICMA-RC's current publication of *Making Sound Investment Decisions: A Retirement Investment Guide.*

XVII. Other

The employer has the right to set other terms and conditions as it deems necessary for loans from the plan in order to comply with any legal requirements. All terms and conditions will be administered in a uniform and non-discriminatory manner.

In Witness Whereof, the employer hereby caused these Guidelines to be executed this ______________________ day

of ____________________, 20 _________.

EMPLOYER

By: ______________________________

Title: ______________________________

Attest: ______________________________

Accepted: ICMA RETIREMENT CORPORATION

By: ______________________________

Title: ______________________________

Attest: ______________________________