

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

cc: 10C  
Amend No. \_\_\_\_\_

Date prepared: February 10, 2009

Council Meeting Date: March 3, 2009

**TO:** Carl Swenson, City Manager  
**THROUGH:** Susan K. Thorpe, Deputy City Manager *SJT*  
**FROM:** Wynette Reed, Human Resources Director *WR*  
**PREPARED BY:** Nancy Fantasia, Benefits Administrator *DFK*  
**SUBJECT:** Amend the ICMA 457 Plan (#301719) and Nationwide 457 Plan (#0396UF) to Allow for a Loan Provision

**RECOMMENDATION:**

Discussion and possible action to amend the ICMA 457 Plan (#301719) and Nationwide 457 Plan (#0396UF) to allow for a loan provision program.

**SUMMARY:**

Presently all personnel are eligible to participate in the City's 457 deferred compensation program offered through ICMA or Nationwide (Public Safety). Contributions are made by the employee into one of these plans. The City does match \$15.00 for non-management, non-public safety employees participating in the ICMA plan, as well as \$35.00 for fire public safety employees participating in the Nationwide plan. During recent months, several employees have been negatively impacted by the economy and have requested hardship distributions or emergency withdrawals from their plan to assist them with meeting their financial obligations.

Under a 457(b) plan, a hardship distribution can only occur when the participant is faced with an unforeseeable emergency. (Code § 457(d)(1)(iii))

Because of the restrictive definition of what constitutes a hardship distribution many employee requests have not been approved. Often employees will request the distribution to bridge income lost when a spouse has lost their employment or to prevent their home from going into foreclosure. Unfortunately neither of these examples meet the qualifying criteria for a hardship distribution even though the financial need may be great.

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # 09-34  
LCON# 12403A LIC. # \_\_\_\_\_  
Action Date:  
**ACON 29105B**

**Council Communication, Amend ICMA and Nationwide 457 Plans to Allow for a Loan Provision**

**March 3, 2009**

**Page 2**

The proposed amendment to the City's 457 plans offered through ICMA and Nationwide (Public Safety) will allow employees the flexibility to address their serious financial concerns by allowing them access to these funds on a limited basis through the loan provision. This structured approach will ensure that an employee does not abuse the loan provision, while allowing the City to assist the employee in addressing their financial hardship. The loan provision includes the following:

1. Employees may receive only one loan at a time;
2. Repayment terms of the loan may not exceed five (5) years;
3. Repayment of the loan will be established through payroll deduction;
4. Loans are available only to active employees;
5. Application will be made online eliminating the need for paper applications;
6. All loans are due and payable in full upon the employee's separation from service.

**FISCAL NOTE:**

There is no cost to the City in amending the ICMA 457 Plan (#301719) or the Nationwide 457 Plan (#0396UF).

**ATTACHMENTS:** A. IMCA Loan Guidelines Agreement  
B. Nationwide Loans to Participants Amendment to Plan Document

RESOLUTION NO. 09-34

A RESOLUTION OF THE COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, AUTHORIZING AMENDMENT TO THE 457 PLAN (ICMA PLAN #30-1719 AND NATIONWIDE PLAN #0396UF) TO PERMIT ADOPTION OF A LOAN PROVISION.

WHEREAS the City of Peoria has employees rendering valuable services;  
and

WHEREAS, the City of Peoria has established retirement plans ("ICMA Plan and Nationwide Plan) for such employees which serves the interest of the City by enabling it to provide reasonable retirement security for its employees by providing increased flexibility in its personnel management system and by assisting in the attraction and retention of competent personnel: and

WHEREAS, the City of Peoria has determined that due to unforeseen economic hardships employees have unprecedented need for attaining access to these funds; and

WHEREAS, the City of Peoria has determined that permitting participants in the retirement plan to take loans from the Plan will serve these objectives;

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PEORIA as follows: That the City Manager or his designees is hereby authorized and empowered to amend the ICMA 457 Plan and the Nationwide 457 Plan to include loan provision(s) in accordance with the respective administrative procedures

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona, this 3<sup>rd</sup> day of March 2009.

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Bob Barrett, Mayor

ATTEST:

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Mary Jo Kief, City Clerk (SEAL)

RESOLUTION NO. 09-34  
PAGE 2 OF 2

APPROVED AS TO FORM:

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Stephen M. Kemp, City Attorney

REVIEWED BY:

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Carl Swenson, City Manager

# LOAN GUIDELINES AGREEMENT FOR A RETIREMENT PLAN



## **INSTRUCTIONS**

**(Please refer to the previous section, "A Guide to Implementing a Loan Program")**

These Loan Guidelines must be completed before loans can be made from your retirement plan. You should consider each option carefully before making your selections because your selections will apply to all loans made while the selection is in effect. If you later change any provision, the changes will apply only to loans made after the change is adopted. Loans in existence at the time of any future changes will continue to operate under the guidelines that were in effect at the time the loan was originally made.

Note: If loans are available to your employees from other plans (e.g. other Section 457 deferred compensation plans or other Section 401 plans), calculation of the maximum loan amount must consider the aggregate of all loans from all 401 and 457 plans in which the employee participates. See the Maximum Loan Amount Worksheet on page 7 of *A Guide to Implementing a Loan Program*, found in this packet.

Name of Plan (please state the Employer's complete name, including state): City of Peoria 457 Plan

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

ICMA-RC Plan Number: 301719

**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:

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 all plan types:

Loans are available for the following purposes: [select one]

~~None~~ All purposes

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.

**III. 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.

**IV. 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.

**V. 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 15 [state number of years] years (maximum 30 years).

**VI. Loan repayment process**

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

- Payroll deduction only.  
PI.642(2) = 2
- ACH debit only.  
PI.642(2) = 0
- Employee may choose either payroll deduction or ACH debit.  
PI.642(2) = 1

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)
- 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.

## VII. 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](http://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](http://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.

## VIII. Loan application procedure

Loans must be requested using the following method (**check one**):

**Online only:** All loans must be requested online by employees through ICMA-RC's Account Access site at [www.icmarc.org](http://www.icmarc.org), with Employer pre-authorization as outlined in italics below.

*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.*

*The promissory note, truth-in-lending rescission notice and disclosure statement are presented to the employee online through Account Access at the time the employee submits the loan request. The employee confirms receipt and acceptance of these documents by clicking on the affirmative buttons on the Account Access program.*

*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 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.*

## ICMA - RC

- **Online and through Direct Loan application:** All loans must be requested either online by employees through ICMA-RC's Account Access site at [www.icmarc.org](http://www.icmarc.org), or through the Direct Loan application, both of which require pre-authorization by the Employer as outlined in italics below.

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's receipt of a loan application (complete and in good order), 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.

- **Direct Loan application only:** All loans must be requested through the Direct Loan application, which requires pre-authorization by the Employer as outlined in italics below.

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 along with the Direct Loan 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 at the time the endorsed check is presented for payment.

*The employer hereby authorizes all future loans requested 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 ICMA-RC's receipt of a loan application (complete and in good order).

The loan check will generally be issued from the employee's account on the next business day following redemption. The loan check 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.

- **Loan application through the Employer:** All loans must be requested in writing on an application approved by the plan administrator. The application must be signed by the participant. The Employer must review and approve each participant's application.

Because a refinancing is considered a new loan, only active employees may refinance an outstanding loan.

Section IV above.

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 III above. Refinancing includes any situation in which one loan replaces another loan and the term of the replacement loan does not exceed the latest permissible term of the replaced loan.

**XII. Refinancing existing loans**

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.

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.

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.

**XI. Reamortization**

- 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.
- 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 in full upon separation from service.

**X. Acceleration** [select one]

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.

**IX. Security/Collateral**

The participant will be required to sign a promissory note evidencing the loan and a disclosure statement that includes an amortization schedule prior to receiving a loan check. Loan checks will generally be issued on the next business day following ICMA-RC's receipt of a complete loan application. The loan check, promissory note, disclosure statement and truth-in-lending resission notice will be sent to the employer, who will obtain the necessary signatures and deliver the check to the participant. All executed documents must be returned to ICMA-RC within 10 calendar days from the date the check is issued.

### **XIII. 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.

### **XIV. 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 the 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.

### **XV. 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*.

**XVI. 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: Robert J. Kemelton

Title: HR MANAGER

Attest: \_\_\_\_\_

Accepted: ICMA RETIREMENT CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

# SUGGESTED RESOLUTION



**SUGGESTED RESOLUTION FOR A LEGISLATIVE BODY  
RELATING TO AMENDING A RETIREMENT PLAN TO PERMIT LOANS**

Section 401 Money Purchase Plan or  
Section 401 Profit-Sharing Plan  
ICMA-RC Plan # 10 \_\_\_\_\_

Section 457 Deferred Compensation Plan  
ICMA-RC Plan # 30 1719

Name of Employer: City of Peoria State: Arizona

Resolution of the above named Employer ("Employer")

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the Employer has established a retirement plan (the "Plan") for such employees which serves the interest of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the Employer has determined that permitting participants in the retirement plan to take loans from the Plan will serve these objectives;

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

I, \_\_\_\_\_, Clerk of the (City, County, etc.) of \_\_\_\_\_, do hereby certify that the foregoing resolution, proposed by (Council Member, Trustee, etc.) \_\_\_\_\_, was duly passed and adopted in the (Council, Board, etc.) of the (City, County, etc.) of \_\_\_\_\_ at a regular meeting thereof assembled this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

AYES:

NAYS:

ABSENT:

(seal)

\_\_\_\_\_  
Clerk of the (City, County, etc.)

This resolution should be returned to:

New Business Analyst  
ICMA Retirement Corporation  
777 N. Capitol St., NE  
Washington, DC 20002-4240  
Phone 1-800-326-7272

# **LOAN ADMINISTRATION AGREEMENT FOR SECTION 457 DEFERRED COMPENSATION PLANS**



# ICMA-RC 457 LOAN ADMINISTRATION AGREEMENT

This Agreement is not required if you have 1) only one 457 plan provider or 2) more than one plan provider each with its own plan document and provisions unique to each provider. **The Agreement only applies if you have adopted a single 457 plan document under which ICMA-RC and one or more other provider(s) must operate.** Please refer to pages 5-6 of *A Guide to Implementing a Loan Program* for more details.

This Agreement shall serve as an Addendum to the Loan Guidelines established by the Employer identified below as an Addendum to the Administrative Services Agreement (ASA) made by and between the ICMA Retirement Corporation (ICMA-RC) and the Employer.

The Employer currently sponsors a section 457 deferred compensation plan administered by two or more providers (co-provider plan). In order to ensure the efficient administration of the loan program established by the Employer, the Employer hereby agrees and declares that

- (1) For purposes of issuing loans from the plan, that portion of the plan's assets administered by ICMA-RC will be treated as though it were a separate and distinct plan.
- (2) The Employer shall calculate the amount a participant may borrow from the ICMA-RC administered portion of the plan. No loan amount may exceed the lesser of (a) the maximum loan amount specified in Internal Revenue Code section 72(p)(2)(A) or (b) 50% of the participant's ICMA-RC-administered account balance.
- (3) All loan repayments must be made to the participant's ICMA-RC-administered account for the life of the loan.

AGREED as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_;

Name of Employer: City of Peoria \_\_\_\_\_  
Authorized Official - Print Name

State: \_\_\_\_\_

Employer Plan Number 

3	0	1	7	1	9
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 \_\_\_\_\_  
Signature of Authorized Official

ICMA RETIREMENT CORPORATION

Angela C. Montez  
Angela Montez  
Assistant Secretary

**Mail this Agreement and the completed 457 Plan Loan Guidelines to:**  
**ICMA-RC**  
**Attention: New Business Analyst**  
**777 North Capitol Street, NE**  
**Washington, DC 20002-4240**

**THE INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS - FC PROGRAM**

**THE DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

**LOANS TO PARTICIPANTS AMENDMENT TO PLAN DOCUMENT**

WHEREAS, PLAN SPONSOR executed the above referenced Plan Document, as amended: and

WHEREAS, effective \_\_\_\_\_, PLAN SPONSOR now desires to further amend the plan document.

The following Section 8.06 is hereby added:

**8.06 Loans to PARTICIPANTS**

- (a) PLAN SPONSOR has elected to make loans available to PARTICIPANTS and has delegated certain administrative duties regarding loans from the PLAN to the ADMINISTRATOR.
- (b) Any loan by the PLAN to a PARTICIPANT under this Section shall be subject to the loan administrative procedures established by the ADMINISTRATOR as well as the following requirements:
  - (i) Loan Eligibility. Any PARTICIPANT may apply for a loan from the PLAN. A PARTICIPANT who has defaulted on a previous loan from the PLAN shall not be eligible for another loan from the PLAN until all defaulted loans are repaid in full, including accrued interest and fees.
  - (ii) Loan Application and Loan Agreement. A PARTICIPANT must complete and return to ADMINISTRATOR a loan application. A non-refundable application fee established by ADMINISTRATOR will be deducted from the PARTICIPANT'S ACCOUNT(s) at the time of loan origination. Before a loan is issued, the PARTICIPANT must enter into a legally enforceable loan agreement as provided for by the ADMINISTRATOR.
  - (iii) Loan Repayment. The PARTICIPANT receiving a loan shall be required to furnish to ADMINISTRATOR any information and authorization necessary to effectuate repayment of the loan prior to the commencement of a loan. In the event that a payment cannot be processed because of lack of sufficient funds, the ADMINISTRATOR shall assess an insufficient funds charge, which will be deducted from the PARTICIPANT'S ACCOUNT(s).

- (iv) **Loan Term and Interest Rate.** The maximum term over which a loan may be repaid is five (5) years (fifteen (15) years if the PLAN SPONSOR permits loans for the purchase of a PARTICIPANT'S principal residence). Each loan shall be amortized in substantially equal payments consisting of principal and interest during the term of the loan, except that the amount of the final payment may be higher or lower. The ADMINISTRATOR shall establish the interest rate for any loan.
- (v) **Loan Frequency.** Each Participant may have only one (1) PLAN loan outstanding at any given time. A PLAN loan which is in default, even if the defaulted loan was treated as a "deemed distribution" under federal regulations, shall be treated as an outstanding loan until such PARTICIPANT'S account balance is offset by the amount of principal and accrued interest under the loan. A PARTICIPANT will be granted a loan no more frequently than two (2) times in any twelve (12) month period.
- (vi) **Default.** The PARTICIPANT must pay the full amount of each loan payment (principal and interest) on the date that it is due. Failure to make such a payment by the due date, or within any cure period established by the ADMINISTRATOR, shall cause the PARTICIPANT to be in default for the entire amount of the loan, including any accrued interest. A loan will also be in default if the PARTICIPANT either refuses to execute, revoke, or rescind any agreement necessary to comply with the provisions of this Section or the loan administrative procedures established by the ADMINISTRATOR, commences or has commenced against PARTICIPANT a bankruptcy case, or upon the death of the PARTICIPANT.
- (vii) **Loan Security.** By accepting a loan, the PARTICIPANT is giving a security interest in their vested PLAN balance as of the loan process date, together with all additions thereof, to the PLAN that shall at all times be equal to 100% of the unpaid principal balance of the loan together with accrued interest.
- (viii) **Loan Amount.** The maximum amount of any loan permitted under the PLAN is the lesser of (i) 50% of the PARTICIPANT'S vested account balance less any outstanding loan balances under the PLAN or (ii) \$50,000 less the highest outstanding loan balance during the preceding one-year period. The ADMINISTRATOR shall establish the minimum loan amount. The PARTICIPANT and not the ADMINISTRATOR shall at all times remain responsible for ensuring that any loan received under the PLAN is in accordance with these limits with regard to any other loans received by the PARTICIPANT under any other plans of the PARTICIPANT'S employer.

- (ix) Loan Maintenance Fee. Until a loan is repaid in full, an annual loan maintenance fee established by ADMINISTRATOR will be deducted from the PARTICIPANT'S ACCOUNT(s).
- (x) Loan Default Fee. At the time when a default occurs, a loan default fee established by ADMINISTRATOR will be deducted from the PARTICIPANT'S ACCOUNT(s).
- (c) The ADMINISTRATOR shall fix such other terms and conditions necessary to the administrative maintenance of the provisions of this Section and as necessary to comply with the IRC and regulations there under.

IN WITNESS WHEREOF, the undersigned has executed this Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF PEORIA AZ  
(Name of PLAN SPONSOR)

Roberta J. Kemellin  
By: HR MANAGER

# THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS – FC PROGRAM

## PARTICIPANT LOAN ADMINISTRATIVE PROCEDURES

Nationwide Retirement Solutions, Inc. ("Nationwide"), as Third Party Administrator of the International Association of Fire Fighters - FC Program, administers your Deferred Compensation Plan for Public Employees ("Plan"). Recently issued proposed regulations under Internal Revenue Code Section 457 provide that eligible governmental 457(b) plans may permit loans to Participants. Nationwide recommends that you, as Plan Sponsor and/or Employer (hereinafter collectively referred to as "Plan Sponsor"), consult with your own legal advisor in determining whether you wish to add this optional feature to your Plan.

In the event that you decide to offer loans from your Plan to Participants, you will need to return to Nationwide at **Nationwide Retirement Solutions, PO Box 182797, Columbus OH 43272-8450, Attn: Loans Administrator** a fully executed original of this document and a fully executed original of the enclosed Plan Document Amendment. Nationwide cannot begin processing Participant loans from your Plan until it receives fully executed originals of both of these documents.

Nationwide may need from time-to-time to make changes to the administrative procedures set forth herein and in the Plan Document Amendment. In such a case, Nationwide will provide you with timely notice of such changes as they become necessary.

The following administrative procedures shall govern the making of loans from your Plan:

- 1. Loan Administration.** Plan Sponsor delegates to Nationwide certain administrative duties regarding the administration of loans from the Plan, which are set forth herein and which may be modified by Nationwide upon timely notice to Plan Sponsor.
- 2. Loan Eligibility.** Any Participant in the Plan is eligible to receive a loan from the Plan. Each Participant is entitled to one (1) loan at any time. In addition, a Participant who has defaulted on a previous loan shall not be eligible for another loan from the Plan until all defaulted loans are repaid in full, including accrued interest and fees.
- 3. Loan Application and Loan Agreement.** In order to receive a loan from the Plan, an eligible Participant must complete a loan application and return it to Nationwide. A loan application fee of \$50.00\* will be deducted from the Participant's account(s). Before a loan is issued, the Participant must enter into a legally enforceable loan agreement as provided by Nationwide. If the Plan Sponsor permits loans for the purchase of the Participant's principal residence, the Participant will be required to sign a Primary Residence Certificate form and provide Nationwide with a copy of the contract or other documents relating to the acquisition of the dwelling unit. If the source for a single loan includes both the Participant's Deferred Compensation and Eligible Rollover Accounts, the Participant will be required to complete a loan application and loan agreement for each account which will be treated as separate and distinct for all purposes herein except that they will be considered a single loan for purposes of Sections 2, 6 and 10 herein.
- 4. Loan Repayment/Maximum Loan Term.** Repayment of any loan made to a Participant shall be made in a manner and pursuant to the terms set forth in the loan agreement. The Participant receiving a loan shall be required to furnish the information and authorization necessary to effectuate the foregoing payments prior to the commencement of a loan. The maximum term over which a loan may be repaid is five (5) years (fifteen (15) years if the Plan Sponsor permits loans for the purchase of the Participant's principal residence).

\* These fees, rates, and minimums are subject to change by Nationwide upon reasonable notice to Plan Sponsor. Loan fees will appear as administrative charges on Participant Statements.

In the event that a Participant elects to receive a distribution from the Plan (other than a distribution due to an unforeseeable emergency or other in-service withdrawal) at a time when such person has a Plan loan outstanding, the principal and any accrued interest with respect to such loan shall be taxable.

5. **Loan Amortization.** Each loan shall be amortized in substantially equal payments consisting of principal and interest during the term of the loan. Payments of principal and interest shall be made in a manner and pursuant to the terms set forth in the loan agreement on a monthly basis in equal amounts, except that the amount of the final payment may be higher or lower. Before the loan is made, the Participant will be notified of the date on which the first payment will be deducted and the dates on which subsequent payments are due.

6. **Loan Frequency/Renegotiations.** Each Participant may have only one (1) Plan loan outstanding at any given time. A Plan loan which is in default, even if the defaulted loan was treated as a "deemed distribution" under federal regulations, shall be treated as an outstanding loan until such Participant's account balance is offset by the amount of principal and accrued interest under the loan. A Participant will be granted a loan no more frequently than two (2) times in any twelve (12) month period. Under no circumstances may loan terms be renegotiated. A new loan shall not be granted prior to the repayment of an outstanding loan.

7. **Default.** The Participant must pay the full amount of each payment (principal and interest) on the date that it is due by having sufficient funds in the account designated for loan payments through the ACH process. If Nationwide is unable to process a payment on the date due because the Participant fails to have sufficient funds in the account on that date, Nationwide will assess a fee of \$25.00 that will be deducted from Participant account(s) and will send written notification to the Participant. The Participant shall be in default for the entire amount of the loan UNLESS the Participant does each of the following: 1) contacts Nationwide at the Deferred Compensation Service Center, 2) mutually agrees with Nationwide on a date, which is within 30 days of the missed payment on which funds sufficient to cover the missed payment will be in the account and; 3) actually pays the missed payments. Failure to make such a payment through mutually agreeable terms shall cause the Participant to be in default for the entire amount of the loan. The loan also shall be defaulted upon the death of the Participant or if the Participant commences or has commenced against Participant a bankruptcy case. No additional loans shall be made to a Participant who has defaulted on a Plan loan and who has not repaid all defaulted loans in full, including accrued interest and fees.

8. **Loan Prepayment.** The entire amount of a loan, including outstanding principal and any accrued interest, may be paid without penalty prior to the end of the term of the loan in the manner prescribed by Nationwide. However, payments made that are less than the remaining principal amount of the loan and any accrued interest with respect to the loan, or which are not paid in the form prescribed by Nationwide, are not permitted.

9. **Loan Security.** By accepting a loan, the Participant is giving a security interest in his or her vested Plan balance as of the date of the Loan Process Date, together with all additions thereof, to the Plan that shall at all times be equal to 100% of the unpaid principal balance of the loan together with accrued interest.

10. **Maximum/Minimum Loan Amount.** The maximum amount of any loan permitted under the Plan is the lesser of (i) 50% of the Participant's vested account balance (not including any value attributable to applicable life insurance or deemed IRA account) less any outstanding loan balances under the Plan or (ii) \$50,000 less the highest outstanding loan balance during the preceding one-year period. The minimum loan amount permitted is \$1,000.00\*. Loans shall be made in accordance with these limits and those limits imposed under federal regulations without regard to any other loans received by the Participant from any other investment provider under the Plan or any other plans of the employer. The Participant and not Nationwide shall remain at all times responsible for ensuring that any loan received under the Plan is in accordance with these limits with regard to any other loans received by the Participant under any other plans of the Participant's employer. Any tax reporting required as a result of the receipt by a Participant of a loan that exceeds the limits imposed by

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federal regulations shall not be the responsibility of Nationwide, unless it is determined that such limits were exceeded solely as a result of a loan made through Nationwide as service provider. Consequently, Nationwide shall not be required to account for loans made pursuant to a plan other than this Plan or loans made under this Plan that are made by an investment provider other than Nationwide Life Insurance Company.

11. **Suspension of Loan Payments.** Nationwide may suspend a Participant's obligation to repay any loan under the Plan during the period in which the Participant is performing service in the uniformed services as may be required by law. At the expiration of any suspension of loan payments period, the outstanding loan balance, including any accrued interest and fees, will be re-amortized and the Participant will be required to execute an amended Loan Agreement.

12. **Loan Interest Rate.** The interest rate for any loan shall be established by Nationwide. These interest rates shall commensurate with interest rates being charged by entities in the business of lending money under similar circumstances. Generally, the rate assumed will be Prime Rate + 1.00%\*. The Prime Rate shall be the prime rate published by the Wall Street Journal two weeks prior to the end of the most recent calendar-year quarter. Nationwide may adjust the loan interest rate for loans to Participants entering active duty in the military services as may be required by law.

13. **Annual Loan Maintenance and Asset Fees.** An annual loan maintenance fee of \$50.00\* will also be deducted from the Participant's account until the loan is repaid in full. The amount of the outstanding loan balance will be subject to the maximum Variable Account Annual Expense Fee applicable under the Plan at the time the loan is issued.

14. **Loan Default Fee.** At the time when a default occurs, a \$50.00\* loan default fee will be deducted from the Participant's account. This charge will only affect Participants who fail to make a required loan payment.

15. **Loans for the Purchase of a Principal Residence.** All loans issued by the Plan will be general loans to be repaid in five (5) years unless the Plan Sponsor affirmatively elects to offer loans for the purchase of the Participant's principal residence, which may be repaid in fifteen (15) years. Such loans shall be solely secured by the Participant's vested account balance. All administrative procedures set forth herein shall apply to such loans.

If the Plan Sponsor elects to permit loans for the purchase of the Participant's principal residence, please check this box.

The undersigned Plan Sponsor hereby adopts these Participant Loan Administrative Procedures, effective for loans issued on or after the effective date set forth in the Loans to Participants Amendment to Plan Document, and instructs Nationwide to administer loans made to Plan Participants in accordance with these terms.

The Plan Sponsor acknowledges the following: (i) that the Plan Sponsor has decided to offer loans under the Plan and is instructing Nationwide to administer loans under the Plan; (ii) that it understands that, as a result of offering loans under the Plan, the Plan Sponsor, its Participants, and/or the Plan could be subject to adverse tax consequences; (iii) that the Plan Sponsor has independently weighed this risk and has determined that offering loans under the Plan is in the best interest of the Plan Sponsor, its Participants, and the Plan; and (iv) Nationwide shall not be liable for any adverse tax consequences described in (ii), except as specifically stated under paragraph 10 herein, resulting from the Plan Sponsor's decision to offer loans under the Plan.

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Plan Sponsor  
or Employer: City of Peoria

Street Address: 8401 W. Monroe

City, State, Zip Code: Peoria, AZ 85345

Plan Name: City of Peoria 457 Plan

Entity No.: 0396UF

By: *Robbie J. Kimelton* HR MANAGER

Its: \_\_\_\_\_

E-mail Address: BOBBIE.KIMELTON@PEORIAAZ.GOV

Date: \_\_\_\_\_

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