

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE ALL DOCUMENTS RELATING TO THE AMENDMENT TO THE LINCOLN ALLIANCE® PROGRAM 457(b) GOVERNMENTAL DEFERRED COMPENSATION PLAN WITH THE CITY OF MESQUITE TO INCLUDE ROTH PROVISIONS; AND PROVIDING AN EFFECTIVE DATE OF MAY 1, 2011.

WHEREAS, on April 21, 2010, the City of Mesquite, Texas ("City") adopted the City of Mesquite Deferred Compensation Plan ("Plan") as set forth in that certain City of Mesquite Lincoln Alliance® Program 457(b) Governmental Deferred Compensation Plan ("Plan Document"); and

WHEREAS, pursuant to §8.02 of the Plan, the City has the authority to amend the Plan; and

WHEREAS, on April 21, 2010, the City adopted an amendment to the Plan and Plan Document to reflect applicable provisions of the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), the provision of the Emergency Economic Stabilization Act of 2008 (EESA) known as the Heartland Disaster Tax Relief Act of 2008, and the Worker, Retiree and Employer Recovery Act of 2008 (WRERA); and

WHEREAS, pursuant to the Small Business Jobs Act of 2010, governmental 457(b) deferred compensation plans may now include Roth provisions allowing plan participants to make roth deferral contributions on a post-tax basis and establishing Roth rollover accounts ("Roth Provisions"); and

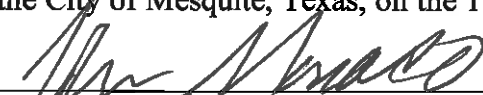
WHEREAS, Staff recommends the Plan and Plan Document be amended to include Roth Provisions.

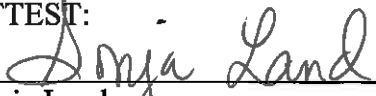
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:


SECTION 1. That the City Manager is hereby authorized to finalize and execute the amendment to the Plan and Plan Document to include the Roth Provisions as more fully set forth in the amendment attached hereto as Exhibit "A" and made a part hereof for all purposes (the "Amendment").

SECTION 2. That the Amendment will have an effective date on and after May 1, 2011.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of April, 2011.

  
\_\_\_\_\_  
John Monaco  
Mayor

ATTEST:  
  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:  
  
\_\_\_\_\_  
B. J. Smith  
City Attorney

**ROTH "GOOD FAITH" AMENDMENT PER  
THE SMALL BUSINESS JOBS ACT OF 2010**

PLAN NAME: City of Mesquite Deferred Compensation Plan  
EIN: 75-6000606

REMITTER/PLAN # : CMES-001

**WHEREAS**, the *employer* desires to amend the *plan* as provided herein in accordance with Section 8.02 of the *plan document* to reflect the Roth provisions of the Small Business Jobs Act of 2010. Except as otherwise provided, this amendment (*amendment*) is intended to provide good faith compliance with the requirements of those provisions, and shall supersede any inconsistent provisions of the *plan*. All terms in this *amendment* in italics are defined terms and will have the same meaning as provided in the *plan document* unless provided otherwise herein. The *administrator* of the *plan* will administer *roth deferrals* in accordance with applicable regulations or other binding authority not reflected in this *amendment*. Any applicable regulations or other binding authority shall supersede any contrary provisions of this *amendment*.

**WHEREAS**, the *employer* has authorized its city manager to execute this *amendment* and to complete such other matters, if any, its city manager believes is necessary to effectuate this *amendment*;

**NOW THEREFORE**, the City of Mesquite Deferred Compensation Plan (*plan*) as set forth in that certain City of Mesquite Lincoln Alliance® Program 457(b) Governmental Deferred Compensation Plan adopted by the City of Mesquite, Texas on the 21<sup>st</sup> day of April, 2010 (*plan document*) shall be amended as follows, and is adopted by the City of Mesquite, Texas (*employer*) as of the date provided next to the *employer's* signature hereto:

1. The *plan document* is hereby amended to add Article XX, entitled "**Roth Provisions**".
2. Article XX is amended to add a new Section 20.01, entitled "**Effective Date for Addition of Roth Provisions**" to read as follows:

**"20.01 Effective Date for Addition of Roth Provisions**

The effective date for the addition of Roth provisions to the *plan* is May 1, 2011 (*the "Roth Provisions Effective Date"*).

As of the *Roth Provisions Effective Date*, the *plan* will accept *roth deferrals* made on behalf of *participants*. A *participant's roth deferrals* will be allocated to a separate individual account defined as the *roth deferral* account maintained for such *roth deferrals*."

3. Article XX is amended to add a new Section 20.02, entitled "**Roth Deferral**" to read as follows:

**"20.02 Roth Deferral**

A *roth deferral* is a deferral that is:

1. Designated irrevocably by the *participant* at the time of the salary reduction election as a *roth deferral* that is being made in lieu of all or a portion of the pre-tax deferrals the *participant* is otherwise eligible to make under the *plan*, and
2. Treated by the *employer* as includible in the *participant's* income at the time the *participant* would have received that amount in cash if the *participant* had not made a *participation agreement*.
3. Unless specifically stated otherwise, *roth deferrals* will be treated as deferral contributions for all purposes under the *plan*.

Furthermore, the *plan* will maintain a record of the amount of *roth deferrals* in each *participant's roth deferral* account. Contributions and withdrawals of *roth deferrals* will be credited and debited to the *roth deferral* account maintained for each *participant*. No contributions other than *roth deferrals* and properly attributable earnings will be credited to each *participant's roth deferral* account. Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each *participant's roth deferral* account and the *participant's* other accounts under the *plan*."

4. Article XX is amended to add a new Section 20.03, entitled "**Direct Roth Rollovers from the Plan**" to read as follows:

**"20.03** Notwithstanding the above, a direct *rollover* of a distribution from a *roth deferral* account under this *plan* will only be made to another *roth deferral* account under an applicable retirement plan described in *Code* §

402A(e)(1) or to a Roth IRA described in Code §408A, and only to the extent the *rollover* is permitted under the rules of Code §402(c).

Furthermore, the *plan* will not provide for a direct *rollover* (including an automatic *rollover*) for distributions from a *participant's roth deferral* account if the amount of the distributions that are eligible *rollover* distributions are reasonably expected to total less than \$200 during a *plan year*. In addition, any distribution from a *participant's roth deferral* account is not taken into account in determining whether distributions from a *participant's* other individual accounts are reasonably expected to total less than \$200 during a *plan year*. However, eligible *rollover* distributions from a *participant's roth deferral* account are taken into account in determining whether the total amount of the *participant's* individual account balances under the *plan* exceeds \$1,000 for purposes of mandatory distributions from the *plan*."

5. Section 4.10, entitled "Rollover" is amended by adding the following paragraph:

"Notwithstanding the above, at the discretion of the *administrator*, a direct *rollover* of a Roth contribution is permitted only if it is a direct *rollover* from another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) and only to the extent the Roth *rollover* contribution is permitted under the rules of Code section 402(c).

Furthermore, an indirect or *participant rollover* of the taxable portion of a distribution from a Roth elective deferral account to the *plan* is not permitted."

6. Section 5.06, entitled "Unforeseeable Emergency" is amended by adding the following paragraph:

"Notwithstanding the above, the *plan* will not permit an *unforeseeable emergency* distribution from a *roth deferral* account."

7. Section 19.01, entitled "Loans" is amended by adding the following paragraph:

"Notwithstanding the above, the *plan* will not permit a *participant* loan from a *roth deferral* account."

8. Section 5.10, entitled "Distribution of Excess Deferral" is amended by adding the following paragraph:

"Notwithstanding the above, if the excess deferral for the *plan year* is composed of pre-tax deferrals and *roth deferrals*, the affected *participant* may designate before March 1<sup>st</sup> which individual account will be used to distribute the excess deferral. In the absence of the *participant's* election, the *plan* shall distribute pre-tax deferrals first."

NOW THEREFORE, this *amendment* is hereby adopted as of date provided below.

City of Mesquite, Texas

Employer

Date:

April 22, 2011

By



Ted Barron, City Manager