

Ordinance No. 119159

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The City of Seattle
Council Bill/Ordinance

Council Bill No. 112316

AN ORDINANCE relating to The City's Deferred Compensation Plan, declaring a trust for the Plan assets consistent with Section 457 of the Internal Revenue Code, adopting a new restated Plan and Trust Document to provide for the administration of the Plan and investment of its assets through a Plan and Trust Committee, adding new sections to the Plan Trust Document regarding certification of domestic relations orders and designation of beneficiaries, repealing the codified Plan Document, repealing Ordinances 118956, 118327, 117151, 115911, 114095, 113136, 112517, 112516, and Sections 2, 3, and 4 of Ordinance 114697, repealing SMC 4.38.010 through 4.38.1510 and adding a new SMC 4.38.010.

*As Amended
passed 2-0*

Madison C

9-21-98 Full

(exc)

CF No. _____

Date Introduced: <u>SEP 8 - 1998</u>	
Date 1st Referred: <u>SEP 8 - 1998</u>	To: (committee) <u>Finance & Budget Committee</u>
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: <u>9-21-98</u>	Full Council Vote: <u>8-0</u>
Date Presented to Mayor: <u>9-21-98</u>	Date Approved: <u>SEP 21 1998</u>
Date Returned to City Clerk: <u>SEP 22 1998</u>	Date Published: <u>5 PM</u>
Date Vetoes by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

This file is complete and ready

Law Department

Law Dept. Review

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The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

CHOE

Councilmember

*As Amended
used 2-0*

Committee Action:

Marked Over

*9-21-98 Full Council Action: Passed 8-0
(Excused: Pagelee)*

This file is complete and ready for presentation to Full Council. Committee: _____

(initial/date)

Law Department

Law Dept. Review

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**City Clerk
Review**

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Indexed

ORDINANCE 119159

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3 AN ORDINANCE relating to The City's Deferred Compensation Plan, declaring a trust for the Plan
4 assets consistent with Section 457 of the Internal Revenue Code, adopting a new restated Plan
5 and Trust Document to provide for the administration of the Plan and investment of its assets
6 through a Plan and Trust Committee, adding new sections to the Plan Trust Document
7 regarding certification of domestic relations orders and designation of beneficiaries, repealing
8 the codified Plan Document, repealing Ordinances 118956, 118327, 117151, 115911, 114095,
9 113136, 112517, 112516, and Sections 2, 3, and 4 of Ordinance 114697, repealing SMC
10 4.38.010 through 4.38.1510 and adding a new SMC 4.38.010.

11 WHEREAS, the City of Seattle maintains the City of Seattle Voluntary Deferred Compensation Plan
12 under Section 457 of the Internal Revenue Code (hereinafter "IRC") for its employees,
13 hereinafter referred to as the "Plan"; and

14 WHEREAS, the City presently owns the assets of the Plan, and such assets are held by the City's
15 custodian or invested in insurance annuity contracts or other short term investments; and

16 WHEREAS, the City desires to establish a trust to hold and to provide for the investment of the assets of
17 the Plan and to administer through the Plan and Trust Committees the deferred salaries or wages
18 of Plan Participants transferred to the trust by the City; and

19 WHEREAS the Internal Revenue Code Section 457(g) requires government deferred compensation
20 plan assets and income to be held in trust for the exclusive benefit of participants and their
21 beneficiaries on or before January 1, 1999, and

22 WHEREAS, the individuals who are appointed trustees of the trust are willing and able to serve as
23 trustees; now therefore,

24 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective on January 1, 1999 the City of Seattle hereby adopts the restated Deferred
Compensation Plan and Trust for City officers and employees (called the "Plan and Trust Document")

1 attached as Exhibit A to this ordinance. The Plan Committee which has the power to administer the
2 Plan under the Plan and Trust Document is authorized to adopt future amendments to the Plan and
3 Trust Document as may be in the best interests of the Participants, so long as such amendments do not
4 require or increase City contributions to the Plan and are within the Committee's powers as set forth
5 in the Plan and Trust Document.

6 Section 2. The City hereby establishes a Trust effective January 1, 1999 with the Trustees
7 pursuant to the Plan and Trust Document, which shall be comprised of all assets under the Plan,
8 including all sums of money, all deferred amounts, all property and rights purchased with deferred
9 amounts, and all means attributed to such amounts, property or rights currently held by the City as
10 follows: all assets invested through the Recordkeeping and Administrative Services Agreement
11 executed between the City and Fidelity Investments Public Sector Services Company on December 20,
12 1996, all assets invested with the Seattle Metropolitan Credit Union, all assets invested with Nationwide
13 Life Insurance Company, all assets invested with Great-West Life and Annuity Insurance Company, and
14 the contractual rights associated with these assets, all other assets of the Plan owned by the City as of the
15 effective date of the trust, and such amounts as shall from time to time be paid or delivered to the Plan's
16 Trustees by the City and the earnings and profits thereon. All such money and property, all investments
17 and proceeds thereof and earnings and appreciations thereon are referred to herein as the "Trust Fund".

18 Any investments applied for by the Trustees shall be immediately registered in the name of the
19 Trustees for the purposes of the Trust. On January 1, 1999 the City shall irrevocably transfer to the
20 Trust all rights, title, and interest in all assets that the City previously owned under the Plan. The
21 purpose of the Trust is to hold the Plan investments and any other money, and property solely as assets
22 of the Plan for the purpose of investing and paying Plan distributions. The Plan Trust is established for
23 the exclusive benefit of Plan participants and their beneficiaries, and all assets and income shall be held
24

1 for the exclusive benefit of the Plan participants and their beneficiaries. The Plan is intended to be an
2 eligible deferred compensation plan within the meaning of IRC §457(b) and the trust is intended to be
3 tax exempt under IRC §501(a) pursuant to IRC §457(g).

4 Section 3. The Plan Committee may arrange with the Personnel Director for the provision of
5 day to day administrative services for the Plan, including arranging for the enrollment of new
6 employees, providing forms for the withdrawal of their deferred amounts, and other administrative
7 services as requested by the Committee and agreed to by the Personnel Director, and the Personnel
8 Director is authorized to provide such services. All participant fees previously accepted by the City
9 and appropriated for the administrative services provided by the Personnel Director shall be
10 transferred to a trust fund or a separate accounting shall be kept by the City for the receipt of and the
11 expenditure of such fees for administrative services rendered by the City. Future amendments of
12 contracts transferred to the Trust shall be performed by the Plan Committee or the Trust Committee.

13 Section 4. The Finance Director is authorized to withhold the amounts which a participant
14 authorizes for deferral from his or her salary or wages; to pay the deferred amounts to the financial
15 institution or investment underwriter(s) selected by the participant or as requested by the Plan
16 Committee or the Trust Committee; to continue such deferrals and payment for as long as the
17 participant's authorization remains in effect; and if a late change or an error affects the amount
18 deferred from a participant and is already transmitted, to make an immediate adjustment, or in the
19 Finance Director's discretion, to make a corresponding offset on the next succeeding payroll for the
20 participant or to request return of amounts transferred by mistake of fact from the Plan Trustee.

21 Section 5. The Finance Director or the City Auditor are further authorized to audit upon
22 request by the Plan Committee the Plan trust accounts.
23
24

1 Section 6. The City Clerk is requested and authorized to continue to maintain a continuous
2 record of materials for the Plan, including the Plan and Trust Document, the Plan rules, and any
3 amendments to the Plan and Trust Document and the Plan rules as may be adopted from time to time,
4 a copy of all Plan materials, brochures used, reports of general applicability prepared from time to
5 time, and contracts executed to implement the Plan. All such records shall be available for inspection
6 and copying during ordinary business hours.

7 Section 7. The Plan Committee shall prepare an annual report to the Mayor and the City
8 Council on the Plan and its implementation. The report shall include a financial statement prepared by
9 the Plan Trustee with balances at the end of the Plan year, and the appropriate statistical information
10 on the participation by City personnel including if requested by the City Librarian a segregation of
11 Library Department participation.

12 Section 8. As provided in the Plan and Trust Document, all members of the Plan Committee
13 and the Trust Committee, including the two union representatives regardless of their employment
14 status with the City, shall be indemnified for liabilities arising from their membership on the
15 Committee. The City's Risk Manager shall provide adequate insurance coverage for the City's
16 indemnification obligations as provided in the Plan and Trust Document.

17 Section 9. The Library Board may continue to authorize participation by Library personnel in
18 the City's Plan. The Library Board reserves the authority to offer the City Plan exclusively or in
19 conjunction with another arrangement and the authority to withdraw its participation.
20

21 Section 10. Ordinances 118956, 118327, 117151, 115911, 114697, 114095, 113136, 12517,
22 and 112516 are hereby repealed. Sections 2, 3, and 4 of Ordinance 114697 are hereby repealed.

23 Section 11. Section 4.38.010 through 4.38.1510 are repealed.
24

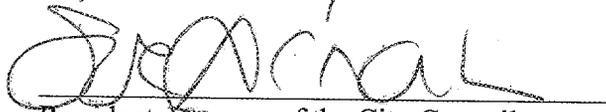
1 Section 12. A new Section 4.38.010 is added to Seattle Municipal Code as follows:

2 4.38 City of Seattle Voluntary Deferred Compensation Plan.

3 The City of Seattle hereby adopts the Deferred Compensation Plan and Trust for City employees as
4 stated in The City of Seattle Voluntary Deferred Compensation Plan and Trust ("Plan and Trust
5 Document"), which shall be filed with the City Clerk. The administration and investment of employee
6 deferrals shall be governed by the provisions of the Plan and Trust Document.

7 Section 13. This ordinance shall take effect and be in force thirty (30) days from and after its
8 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
9 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

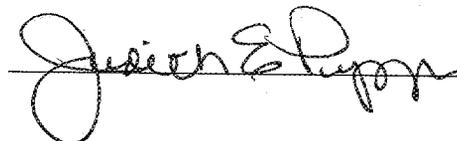
10 Passed by the City Council the 21st day of September, 1998, and signed by me in open
11 session in authentication of its passage this 21st day of September, 1998.

12 
13 _____
14 President _____ of the City Council

14 Approved by me this 21st day of September, 1998.

15 
16 _____
17 Acting Mayor

18 Filed by me this 22 day of September, 1998. 

19 
20 _____
21 City Clerk

21 (Seal)

THE CITY OF SEATTLE VOLUNTARY

DEFERRED COMPENSATION PLAN AND TRUST

ADOPTED EFFECTIVE JANUARY 1, 1999

**THE CITY OF SEATTLE VOLUNTARY
DEFERRED COMPENSATION PLAN AND TRUST**

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**THE CITY OF SEATTLE VOLUNTARY
DEFERRED COMPENSATION PLAN AND TRUST**

ARTICLE 1

1. INTRODUCTION

1. 1. Adoption of Deferred Compensation Plan and Trust.

The City of Seattle hereby establishes the following restated deferred compensation plan and trust for City officers and employees (called the "Plan").

1. 2. Plan Overview

When the Participant enrolls in this Plan, The City of Seattle (called the "City") will defer paying a part of the Participant's salary or wages. The deferred amounts will be deposited in Trust for the exclusive benefit of the Employee and the Employee's Beneficiaries and invested in accordance with the provisions of this Plan. After the Participant leaves the service of the City, retires or dies, the Plan will pay the Participant, or the Participant's beneficiaries, benefits based on the invested value of the deferred amount (the Participant's "Account Value"). If the Participant becomes employed by another employer with an eligible plan, the City may transfer the Participant's Account Value to the Participant's new employer's Plan. The Account Value will be based on the amount deferred, less administrative fees and expenses, plus gain or minus losses from market fluctuations, and, when applicable, deductions for withdrawal ("surrender") fees. An earlier withdrawal may only occur if the Participant suffers an unforeseeable

financial emergency or if the Participant is eligible for an in-service cash out as provided by this Plan. The Participant's right to commence payment of benefits and the manner and timing of benefit payments will be governed by the provisions of this Plan, the Internal Revenue Code, its applicable regulations, and the administrative rules adopted by the Plan Committee which may be changed from time to time.

1. 3. Compliance with Internal Revenue Code.

The Plan and Trust is intended to be an eligible deferred compensation plan under Section 457 of the Internal Revenue Code of 1986, as amended, (the "Code") and a trust exempt from tax under Code Sections 457(g) and 501(a). It is subject to all eligibility standards established by the Code for eligible deferred compensation plans (called "Code Requirements"). Code Requirements take precedence over any conflicting provision in this Plan Document or any ordinance implementing the Plan, and all provisions of this Plan shall be interpreted and applied in a manner to conform with Code requirements.

1. 4. Plan Document.

This Plan Document may be supplemented by administrative rules and agreements adopted or entered into by the Plan and/or Trust Committee from time to time. These rules and agreements provide for the Plan's administration, reports and fees, and terms and conditions useful in carrying out the Plan. This Plan Document may be amended from time to time in accord with Articles III and VII.

1. 5. Definitions and citations.

Article IX defines words and terms used in this Plan. Brackets in the text contain citations to the Code or to the Code's implementing regulations [Regs. § 1.457] in order to assist in understanding and applying the section.

1. 6. Name of Plan.

The City of Seattle Voluntary Deferred Compensation Plan and Trust

1. 7. Exclusive benefit.

This Plan shall at all times be operated for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the City or be used for or diverted to purposes other than the exclusive benefit of Participants and their beneficiaries.

ARTICLE 2

2. ENROLLMENT AND DEFERRAL

2. 1. Participation

Only City officers and employees may enroll in the Plan.

2. 2. Enrollment.

By enrolling the Participant accepts the terms and conditions of this Plan, authorizes the City to defer paying a part of the Participant's salary or wages for each pay period, and consents to applying the deferred amount in accord with this Plan.

2. 3. Deferrals.

When enrolling, the Participant sets an amount to be deferred from the Participant's salary or wage for each pay period. The Participant may later increase or decrease the amount, or stop and resume further deferrals, each as authorized by this Plan. A deferral and an authorization to increase the Participant's deferral takes effect in the month following the Participant's request. [Code § 457(b)(4)]. The Participant's authorization to begin a deferral, to increase or decrease the amount, or to stop or resume deferrals applies to salary

or wages the Participant earns afterward. A change or stoppage of the Participant's authorized deferral will not cause any refund or return of any amount already deferred.

2. 4. Limits on annual deferrals.

(a) The Participant may defer as much under the Plan in any year as Code § 457 allows for an eligible deferred compensation plan. Unless the "catch-up" provision of Code § 457 applies, the most the Participant may now defer of the Participant's compensation for any taxable year beginning on or after January 1, 1999 is the lesser of Eight Thousand Dollars (\$8,000.00) or such larger amount as determined periodically by the Secretary of the Treasury, or one-third (1/3) of the Participant's "includable compensation" (see Plan § 9.6). This amount is called the "Plan Ceiling."

(b) Under the "catch-up" provision, for one or more of the Participant's last three (3) years before the year in which the Participant reaches "Normal Retirement Age," the Participant may defer the lesser of Fifteen Thousand Dollars (\$15,000.00), or the amount of the "Plan Ceiling" for the current year plus so much of the "Plan Ceiling" for earlier taxable years as the Participant failed to use. Any deferral during the year the Participant made under another eligible deferred compensation plan established under Code § 457 will be counted in applying these limits. The Participant may use the "catch-up" provision only once; the Participant cannot invoke the higher limits a second time by resetting his/her retirement age or returning to City service after the Participant retires [regs. § 1.457-(f)2].

(c) For purposes of determining the maximum limitations on deferrals under this Section, the following amounts will reduce the Plan Ceiling and the catch-up limitation (but not below zero) for a taxable year: (1) elective deferrals

or employer contributions made on behalf of a Participant to a Code §403(b) plan (Code §403(b)(1) annuity contract or Code §403(b)(7) custodial account) for the taxable year; (2) elective deferrals under a Code §401(k) arrangement; (3) elective deferrals under a Simplified Employee Pension; (4) SIMPLE IRA contributions under Code §408(p); and (5) deductible contributions under a Code §501(c)(18) plan.

(d) "Normal Retirement Age" for the purpose of determining the three year "catch-up" period, means a retirement age selected by the Participant from the range of ages ending not later than when the Participant reaches seventy and one-half (70 1/2) and not sooner than the time when the Participant has the right to retire without the City's consent, and to immediately receive unreduced retirement benefits under the City Employees' Retirement System, the Law Enforcement Officers' and Fire Fighters' Retirement System, or the Washington Public Employees' Retirement System, whichever may be applicable to the Participant; or, if none apply, the time the Participant would have been eligible for unreduced retirement benefits had the Participant joined the City Employees' Retirement System. If the Participant continues to work beyond this age, the Participant may set a later date or age; the later date or age must come not later than the last date for beginning distribution established by Plan § 4.1, provided the Participant may only use the catch up provision once under this Plan. [Code §§ 457 (d)(2)(A) and 401 (a)(9)(c); Regs. § 1.457-2(f)(4)].

2. 5. Investment selections.

When enrolling, the Participant needs to make an investment selection or selections from among the investment alternatives chosen by the Trustee for this Plan. It is the Participant's responsibility throughout the Participant's participation in this Plan to direct the investment of the Participant's deferred

amounts to the Plan's investment options. The Participant may change the Participant's investment selection from time to time. The Participant's investment directions must be given according to the procedure or form required by the Plan Committee and may be subject to reasonable restrictions imposed by the Plan Committee as to the frequency with which an individual Participant and the Participants collectively may give investment directions. The City, the Trustee, the Plan Committee, its custodian, Plan Administrator, or any person deemed to be a fiduciary of the Plan shall have no liability of any kind for any damage, loss, or claim which may arise from the participant or the beneficiary's investment direction or the failure of the participant or the beneficiary to exercise investment direction.

2. 6. Investment transfers.

The Participant may transfer amounts already deferred from one investment option to another in accordance with this Plan and rules adopted by the Plan Committee and Trustees. A transfer will be based on the current value of the previous investment selection, including any gains or less any losses that had already been credited or debited to the Participant's account and may involve a fee or charge.

2. 7. Forms and methods.

The Plan Committee will provide for the manner in which enrollment, deferral changes, and investment selections are to be conducted and implemented. The Participant's authorization and the Participant's investment selection continue in effect for future pay periods so long as the Participant is employed until the Participant directs otherwise in the manner established by the Plan Committee.

2. 8. Investment options and transfers between options.

The Plan's investment options shall include investment alternatives chosen by the Trustee pursuant to the Plan's investment policy, and may include such investment options such as securities, mutual funds, money market accounts, and annuities. From time to time the Trustee may change, add to or remove investment options from the Plan, and the Trustee may employ professional investment advisors for the purpose of reviewing the investment options offered through this Plan. If an investment option is removed from the Plan, the Participant's deferred amounts shall be transferred to similar replacement investment options according to administrative procedures adopted for their transfer unless the Participant directs otherwise in the manner established by the Trustee. Losses may be incurred as a result of a transfer from one investment option to another due to market fluctuations, among other reasons. A participant, or after a participant's death, a beneficiary, may transfer funds between the investment options offered by the Plan. Transfers must be made in accordance with administrative rules, or as required by the Plan Committee and/or Trustee in the manner that securities transactions are conducted under the rules of the New York Stock Exchange or the National Association of Securities Dealers, and subject to the terms and conditions for crediting account values in any contract with outside service providers to the Plan. For cause, the Plan Committee and/or Trustee may require that transfers be authorized in writing in advance.

ARTICLE 3

3. ADMINISTRATION, ACCOUNTS AND REPORTS

3. 1. Plan Committee.

The Plan will be administered by a Plan Committee consisting of seven (7) members. The members shall be: (1) the Executive Services Department Personnel Division Director; (2) the Executive Services Department City Budget Office Director; (3) the Executive Services Department Finance Division Treasury Director; (4) the Executive Services Department Finance Division Investment Director; (5) the Retirement Systems Executive Director; and (6) two union representatives selected by the Coalition of City Unions.

The members selected by the Coalition of City Unions shall serve for a term of three (3) years. Any such union member may be re-selected for additional three (3) year terms. Any elected union member need not be a Participant.

Any member of the Committee may resign by notice in writing filed with the Trustee and the Committee. Any vacancy thus created shall be promptly filled by the City or the Coalition of City Unions, as appropriate. Any person appointed to fill the vacancy of a selected member shall serve only until the end of the original term. The City shall appoint a replacement if a vacancy occurs in a City position. Any vacancies unfilled for ninety (90) days shall be filled by a majority vote of the remaining members of the Committee. If a vacancy occurs in the position occupied by a Coalition of City Unions member, the City shall give notice to the Coalition to appoint a new trustee. If no new member is appointed



by the Coalition within the 90 day period for filling a vacancy, the Committee may select a represented employee to fill the vacancy.

3. 2. Officers and duties.

The Plan Committee shall choose from among its members a Chairperson and a Secretary. The Secretary shall keep minutes of the Committee's proceedings and all dates, records and documents pertaining to the Committee's supervision of the Plan. The Committee may adopt rules for the conduct of its meetings. The Committee may employ, and suitably compensate, such attorneys, actuaries, accountants, consultants, advisory, clerical or other employees as it may deem necessary for the performance of its duties.

3. 3. Decision-making procedure.

All actions of the Committee shall be determined by vote of a majority of its members who may act with or without a meeting. Either the Chairperson or the Secretary may execute any certificate or other written direction on behalf of the Committee. A member of the Committee shall not vote on any question relating exclusively to the individual member or his/her relatives; in the determination of any such question, the decision of a majority of the remaining members of the Committee shall govern. The members of the Committee shall serve without bond and without compensation for their services as such.

3. 4. Limits of liability.

No member of the Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his/her own part, except his/her own willful misconduct. The City shall indemnify and hold harmless, and defend each member of the Committee from any and all liabilities arising out of his membership on the Committee, except liabilities arising out of

and Beneficiaries, for examination during reasonable business hours, such records as pertain to the person wishing to examine the same. The indemnification provisions of this Section apply to the Trustees if such Trustees are also employees of the City, provided that a Trustee who is a union representative and not a City employee shall be indemnified under this provision. This provision shall not apply to an outside service provider who is compensated. The Committee shall notify the City as soon as possible of any such claims which it may seek indemnification and defense under this provision, and consult with the City Attorney on choice of defense counsel. The City may elect to conduct the defense of the Committee through outside counsel.

3. 5. Powers of Plan Committee.

The Committee shall administer and enforce the Plan in accordance with its terms and shall have all the powers convenient or necessary to accomplish that purpose including, but not limited to, the following powers:

- a) To determine all questions relating to the rights or of the eligibility of employees to become Participants and the value of a Participant's account;
- b) To certify to the Trustee the fact of Retirement, Death, termination of employment or of participation of any Participant;
- c) To interpret, construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- d) To adopt rules of procedure and regulations necessary for the administration of the Plan provided the rules are not inconsistent with the terms of this Plan;

- e) To adopt amendments to the Plan on behalf of the City (without the approval of any other body); provided, such power of adoption is limited to amendments which the Plan Committee determines: (1) will facilitate the administration of the Plan; (2) are in the best interest of the Participants and their Beneficiaries; or (3) are necessary to maintain the Plan and/or the Trust in tax-qualified status under the Internal Revenue Code Section 457, 501(a) as amended, and any other relevant Internal Revenue Code section, or to conform to any other law; and (4) which do not increase the City's contributions under this Plan.
- f) To direct the Trustee with respect to the crediting and distribution of the Trust;
- g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan and to establish a claims procedure for Participants and their beneficiaries if necessary.;
- h) To establish a policy in making distributions for unforeseeable emergencies;
- i) To furnish the City with information which the City may require for tax or other purposes;
- j) To comply with the reporting and disclosure rules, if any, applicable to the Plan.

All decisions of the Plan Committee in matters properly coming before it according to the terms of this Plan, and all actions taken by the Plan Committee in the proper exercise of its administrative powers, duties and responsibilities, will be final and binding upon all Employees, Participants and their Beneficiaries and

upon any person having or claiming any rights or interest in this Plan unless it can be shown that the decision, action, interpretation or determination was arbitrary and capricious. The City and the Plan Committee will make and receive any reports and information, and retain any records necessary or appropriate to the administration of this Plan or to the performance of duties hereunder, or satisfying any requirements imposed by law. In the performance of its duties, the Plan Committee will be entitled to rely on information furnished by an employee, Participant or Beneficiary or by the City or Trustee.

3. 6. Transmittal of information.

To enable the Committee to perform its functions, the City shall supply full and timely information concerning the compensation of Participants, their Retirement, Death, termination of employment or of participation, and such other pertinent facts as the Committee may require. The Committee shall advise the Trustee of such facts as may be pertinent to the Trustee's administration of the Trust.

3. 7. Expenses of administration.

The costs of carrying out the Plan will be borne by those participating through reasonable fees agreed to by the Plan Committee for administrative, record-keeping, investment and other services performed and for appropriate expenses incurred. The Participants' deferred amounts will be subject to fees charged by the City, its custodian, its independent Trustee, if any, or the Plan recordkeeper for the administrative costs and expenses of the Plan. The administrative fees charged to the Participants may include the costs and expenses of services rendered by a third party administrator, custodian, recordkeeper, or services rendered by a professional investment advisor, accountant, or legal counsel. A fee may take the form of an assessment

calculated as a percentage of the current value of the Participant's account, a deduction measured by a payment or transaction, and/or a fixed charge for a service, among other reasonable methods. The Plan Committee may direct the Trustee to allocate fees and expenses for administration incurred pursuant to Section 5.6 as a charge against all participant accounts on a pro rata basis.

3. 8. Accounts.

An account will be kept for everyone who participates in the Plan. Like all others, the Participant's account will be credited with a sum equal to the amounts deferred from the Participant's salary or wages; it will be adjusted to reflect the current market performance of the Participant's investment selection(s); and the Participant's account will be reduced by fees charged to the Participant's account as authorized by Section 3.7, emergency withdrawals under Section 4.6, or in-service cash out taken under Section 4.9. The adjustment will reflect interest, dividends, and other distributions received; gains or losses from market fluctuations; investment losses; and/or any default by an investment underwriter, each if and when occurring, and, if applicable, a withdrawal ("surrender") fee. The current value of the Participant's account will determine the amount of benefits paid under Article IV.

3. 9. Deposit of deferrals into Trust and time lag.

Transfers to the Trust will be made within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.

3. 10. Annual account report.

The Participant will be given a written report of the current value of the Participant's account at least annually. Unless the Participant take exception to the information supplied, the Participant's annual statement will establish the current value of the Participant's account as of the account date.

3. 11. Annual Plan report.

An annual report on the operation and condition of the Plan (including a schedule of receipts and disbursements during the preceding year) will be filed with the City Clerk as a public record.

3. 12. Access to Plan records.

Upon reasonable notice the Participant may inspect records maintained for the Plan generally by the City or a Plan administrator and the Participant's account during normal business hours.

ARTICLE 4

4. BENEFITS

4. 1. Timing for distribution of benefits.

(a) **Earliest availability of benefits.** Except for hardship withdrawals and in-service distributions allowed under Sections 4.6 and 4.9, the payment of the Participant's benefits under this Plan shall begin not earlier than sixty one (61) days after the Participant's permanent separation from City service. [Code § 457(d)(1)(A) and (e)(9); Regs. §1.457-2(h)]. The Participant's permanent separation from City service is the earliest of the following events: the Participant's resignation, retirement, the termination of the Participant's employment with the City, or the Participant's death.

(b) **Distribution commencement date.** Unless the Participant (or the Participant's beneficiary) elects to defer the Participant's distribution commencement distribution date or the Participant transfers his/her account to another eligible plan, the Participant's distribution commencement date under this Plan shall be sixty one (61) days after the date of the Participant's

permanent separation, and the actual payment of the Participant's benefits shall commence within the next monthly payment cycle.

(c) **Last date to commence distribution of benefits.** The Participant's distribution commencement date shall not be later than the last date for beginning distribution under this Plan, which shall be April 1st of the calendar year following the calendar year in which the Participant reaches age 70 1/2, and, if the Participant continues his/her service with the City beyond age 70 1/2, the Participant's distribution commencement date shall be no later than April 1st of the calendar year following the calendar year in which the Participant leaves City service. [Code §§ 457(d)(2) and 401(a)(9)(C).]

4. 2. Election to defer distribution commencement date.

The Plan allows two election periods for the Participant to postpone, but not accelerate, the Participant's distribution commencement date.

(a) **First election period.** The Participant (or the Participant's beneficiary(ies)) may elect to defer the Participant's distribution commencement date to a fixed future calendar date which is not later than the last date for beginning distribution under Section 4.1. The Participant's election to defer the commencement of the benefit payment(s) must be made in the manner designated by the City and must be received by the City not later than sixty (60) days after the date of the Participant's permanent separation from City service. During this first election period ending sixty (60) days after the Participant's separation, the Participant may change his/her elected distribution commencement date any number of times. The last election that the Participant makes within this sixty (60) day election period will be considered the Participant's first election, and this election may not be revoked unless the

Participant chooses to exercise his/her second election under subsection B.
[Reg. 1.457-1(b).]

(b) Second election. After the Participant's first sixty (60) day election period has passed, the Participant may have one additional election to defer his/her distribution commencement date to a fixed future date no later than the last date for beginning distribution under Section 4.1(c). The Participant may only exercise this second election to defer one time, and the second election must be made in the manner designated by the Plan Committee and must be received by the Plan Committee no later than thirty (30) days before the Participant's benefit payments would otherwise begin. Once the Participant makes his/her second election to defer, it is irrevocable. [Code §457(e)(9)(B).]

4. 3. Election of benefit distribution method.

(a) Election of method of distribution. The Participant's benefits may be paid in a lump sum or in periodic payments or such other method allowed by administrative rule, the Code, and its implementing regulations. The Participant must elect the method of distribution of benefits in writing no later than thirty (30) days before his/her scheduled (the elected distribution date or the default date designated by the Plan) distribution commencement date. The Participant may not revoke his/her election of a method of distribution after payments commence, nor can the Participant accelerate his/her payments after the Participant's payments commence. If the Participant's beneficiary elects a method of distribution, the period of time and the manner in which the benefits are distributed is governed by administrative rule. If the Participant (or his/her beneficiary) does not chose a method of distribution within the time specified in this section, the Plan will use the applicable default method of distribution.

(b) Default method of distribution. If the Participant (or his/her beneficiary) does not elect a method of distribution thirty (30) days before the Participant's scheduled distribution commencement date and the current market value of the Participant's account is equal to or greater than twenty five thousand dollars (\$25,000), the Plan will distribute the Participant's benefits in monthly installments over a period of one hundred twenty (120) months or in such other periods or amounts as may be required by the minimum payout requirements of the Internal Revenue Code (see Section 4.3(c)). If the Participant does not elect a method of distribution within the required time period and the current market value of the Participant's account is less than twenty five thousand dollars (\$25,000), the Plan will distribute the total amount of the Participant's benefits in one lump sum payment. If the Participant's beneficiary is an estate, trust or other entity, the distribution of the Participant's benefits will be governed by administrative rule.

(c) Minimum distribution requirements. If the Participant's benefits are distributed in periodic payments under this Plan, the amount and timing of such payments shall be governed by administrative rule and the minimum distribution requirements of the Internal Revenue Code and its applicable regulations. [Code § 457(d)(2) and 401(a)(9).] The Participant's benefit payments must commence no later than the last date for beginning distribution under Section 4.1. The payment of benefits must be scheduled so that the amounts do not increase substantially after the first year; at least one (1) payment occurs every year; and most of the payments will go to the Participant over the Participant's life expectancy or over the joint life expectancy of the Participant and the Participant's beneficiary. [Code §401(a)(9).]

4. 4. Designating a beneficiary.

The Participant has the right and duty to designate a beneficiary to receive benefits under this Plan if the Participant dies. Any Participant may from time to time designate, in writing, any person or persons, contingently or successively, to whom the Trustee will pay his benefits (including any life insurance proceeds payable to the Participant's account) in the event of his death. The Plan Committee will prescribe the form for the written designation of Beneficiary and, upon the Participant's filing the form with the Plan Committee, the form effectively revokes all designations filed prior to that date by the same Participant. The Beneficiary Designation of a married Participant is not valid unless the Participant's spouse consents to the Beneficiary Designation. The spousal consent requirement in this paragraph does not apply if the Participant's spouse is the Participant's sole primary Beneficiary. A married Participant's consent is not valid unless the Participant's spouse has consented in writing, the spouse's consent acknowledges the effect of the election, and a Notary Public or the Plan Administrator (or his representative) witnesses the spouse's consent.

The Plan Committee will accept as valid a consent which does not satisfy the spousal consent requirements if the Plan Committee establishes that the Participant does not have a spouse, if the Plan Committee is not able to locate Participant's spouse, if the Participant is legally separated or has been abandoned (within the meaning of state law) and the Participant has a court order to that effect, or if other circumstances exist under which the Secretary of the Treasury would excuse the consent requirements under applicable Tax Code rules. If the Participant's spouse is legally incompetent to give consent, the spouse's legal guardian (even if the guardian is the Participant) may give consent.

If the Participant fails to name a Beneficiary in accordance with the above procedures, or if the Beneficiary named by Participant predeceases him, then the Trustee will pay the Participant's benefit in the following order of priority:

- (a) The Participant's surviving spouse;
- (b) The Participant's surviving children, including adopted children, in equal shares;
- (c) The Participant's surviving parents, in equal shares;
- (d) The Participant's surviving brothers and sisters, in equal shares; or
- (e) The Participant's estate.

4. 5. Payments to beneficiaries.

If the Participant dies before drawing benefits or before all benefits are paid, benefits shall be paid to the Participant's beneficiary in the manner provided by administrative rule, [Regs. § 1.457-2(i)(3)]. Payments must be sufficiently rapid to satisfy the requirements of Code § 457(d)(2) and Code § 401(a)(9).

4. 6. Unforeseeable emergency.

Upon application, the City may authorize a payment to the Participant in an amount reasonably needed to meet an "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident to the Participant or a dependent, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control. No payment can be made to the extent that the Participant's hardship may be relieved through reimbursement, compensation by insurance or otherwise; a sale of the Participant's assets without causing severe

financial hardship; or suspending the Participant's deferrals. The payment may not exceed the lesser of the current value of the Participant's account (see Section 3.2) or the amount required to satisfy the Participant's emergency need [Regs. § 1.457-2(h)(4-5)]. The Participant's account will be reduced by an amount equal to any payment made; and any balance remaining in the Participant's account after the payment will be paid as benefits in accordance with Section 4.1. This is one of two ways in which payment of deferred amounts may be authorized by the City prior to the Participant's permanent separation from active City service. The Participant may also receive an "in-service cash out election" payment if the conditions of Section 4.9 are satisfied.

4. 7. Temporary interruption of service.

Unless the Participant declares and makes the Participant's departure from City service permanent or the Participant becomes permanently separated from City service as defined by the Plan and/or administrative rule, the Participant's account will continue to be maintained during the following absences although the Participant's deferrals cease: A layoff of less than one year for lack of work; military service while reemployment rights are maintained; or an extended authorized leave of absence.

4. 8. Distribution date for separated Participants.

A participant who has separated from the City prior to May 6, 1998, and who has not commenced distribution of benefits or previously elected a distribution commencement date shall elect a distribution commencement date in writing in the time and manner required by the Plan Committee. If the separated participant does not elect a distribution commencement date as required by the Plan Committee, the Participant's distribution shall commence at age sixty-five (65). [Treas. Reg. 1.457-2(f)(4).] Those separated Participants who receive a

default distribution date of age sixty-five (65) may use the second election to postpone the distribution date to a future date as permitted by Section 4.2(b).

A separated participant receiving a default distribution commencement date under this section may appeal the designation of a default distribution date by submitting a written appeal to the Plan Committee giving a reasonable explanation why he/she failed to elect a distribution commencement date as required by this section and providing evidence that the participant is permanently separated from City service. The Plan Committee shall allow the participant to elect a distribution date if the participant has stated reasonable cause for failing to elect a distribution date as required by notice under this section. Reasonable cause may include the failure to send or receive notice, the absence, death, or incapacity of a participant, or other circumstance preventing the participant (or beneficiary) from receiving notice under this section. All decisions of the Plan Committee may be appealed to the Director of Personnel. The decision of the Director of Personnel shall be final.

4. 9. In Service cash-out election before separation.

The Participant may elect to receive a lump sum "in-service cash out" payment prior to the Participant's permanent separation from City service if the Participant meets certain Code requirements which include the following: no deferrals have been made to the Participant's account for the previous twenty-four (24) month period, the Participant's account balance is less than the maximum amount allowed by Section 457 of the Code, and the Participant have not previously received an in-service cash out distribution under this Plan. Payment will be made at least thirty (30) days after the City receives and approves the Participant's written request for payment. Only one in-service cash

out election will be made available to the Participant during the Participant's membership in this Plan. [Code §457(e)(9)(A).]

4. 10. Distributions under domestic relations orders.

Nothing contained in this Plan prevents the Trustee, in accordance with the direction of the Plan Committee, from complying with the provisions of a Domestic Relations Order under the Plan. However, this section does not give an alternate payee the right to receive distribution at a time otherwise not permitted under the Plan nor does it permit the alternate payee to receive a form of payment not otherwise permitted under the Plan.

The Plan Committee may establish reasonable procedures to certify the domestic relations order. Upon receiving a domestic relations order, the Plan Committee promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for certifying the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Committee must notify the Participant and each alternate payee, in writing, of its determination. The Plan Committee will provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

After the Plan Committee certifies the domestic relations order, the Plan Committee must make a separate accounting of the amounts payable under the domestic relations order until the amounts are eligible for distribution. The Trustee will make any payments or distributions required under this section by separate benefit checks or other separate distribution to the alternate payee(s).

ARTICLE 5

5. CUSTODIAN/TRUSTEE, POWERS AND DUTIES

5. 1. Acceptance and Trust Committee.

The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee agrees to hold the Trust Fund in trust for the exclusive benefit of the Participants and their Beneficiaries in accordance with the provisions of this Plan and Trust.

The Trustee shall be the Trust Committee which is the same body as the Plan Committee and is appointed in the same manner as set forth in Plan Section 3.1. The same persons shall serve as the Chair and Secretary of the Plan and Trust Committee. Members of the Trust Committee shall serve without bond and without compensation for their services as such.

5. 2. Investment Advisory Committee.

In accordance with RCW 35.39.080, there is also established an Investment Advisory Committee which is also the Trust Committee.

5. 3. Receipt of contributions.

The Trustee is accountable to the City for the funds contributed to it by the City, but does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obliged to collect any contributions from the City, nor is obliged to see that funds deposited with it are deposited according to the provisions of the Plan.

5. 4. Investment powers.

(a) **Trustee powers.** The Trustee has full discretion and authority with regard to the investment of the Trust Fund, except with respect to

a Plan asset under the control or direction of a properly appointed Investment manager or with respect to a Plan asset properly subject to City, Participant or Plan Committee direction of investment. The Trustee must coordinate its investment policy with Plan financial needs as communicated to it by the Plan Committee. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- (1) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate, as a prudent person would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith is proper but must be of a kind constituting a

diversification considered by law suitable for trust investments.

- (2) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.
- (3) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code § 414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code § 584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.
- (4) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

- (5) To credit and distribute the Trust as directed by the Plan Committee. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Committee.
- (6) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.
- (7) To compromise, contest, arbitrate or abandon claims and demands, in its discretion.
- (8) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights.
- (9) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.
- (10) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship.

- (11) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.
- (12) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction.
- (13) To file all tax returns required of the Trustee.
- (14) To furnish to the City and the Plan Committee an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the City and the Plan Committee, except as to any act or transaction concerning which the City or the Plan Committee files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object.
- (15) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee is not obliged or required to do so unless indemnified to its satisfaction.

5. 5. Records and statements.

The records of the Trustee pertaining to the Plan must be open to the inspection of the Plan Committee and the City at all reasonable times and may be audited from time to time by any person or persons as the City or Plan Committee may specify in writing. The Trustee must furnish the Plan Committee with whatever information relating to the Trust Fund the Plan Committee considers necessary.

5. 6. Fees and expenses from Fund.

The Trustee will receive reasonable annual compensation as may be agreed upon from time to time between the City and the Trustee. No person who is receiving full pay from the City may receive compensation for services as Trustee. The Trustee will pay from the Trust Fund all fees and expenses reasonably incurred by it in its administration of the Trust unless the City pays such fees and expenses. Any fee or expense paid, directly or indirectly, by the City is not an employer contribution to the Plan, provided the fee or expense relates to the ordinary and necessary administration of the Fund.

5. 7. Parties to litigation.

Except as otherwise provided by federal law, no Participant or Beneficiary is a necessary party or is required to receive notice of process in any court proceeding involving the Plan, the Trust Fund or any fiduciary of the Plan. Any final judgment entered in any proceeding will be conclusive upon the City, the Plan Committee, the Trustee, Custodian, Participants and Beneficiaries.

5. 8. Professional agents.

The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any

agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

5. 9. Distribution of cash or property.

The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

5. 10. Distribution directions.

If no one claims a payment or distribution made from the Trust, the Trustee must promptly notify the Plan Committee and then dispose of the payment in accordance with the subsequent direction of the Plan Committee.

5. 11. Notice to third parties dealing with multiple trustees.

No person dealing with the Trustee is obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan will be conclusive in favor of any person relying on the certificate. If more than two persons act as Trustee, a decision of the majority of such persons controls (with or without a meeting) with respect to any decision regarding the administration or investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustee. However, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.

5. 12. Resignation.

The Trustee may resign its position at any time by giving 30 days' written notice in advance to the City and to the Plan Committee. If the City fails to appoint a successor Trustee within 60 days of its receipt of the Trustee's written notice of resignation, the Trustee will be the Benefits & Safety Unit Director of the Personnel Division of the Executive Services Department or if the Benefits & Safety Unit Director is not available for service, then a new trustee will be appointed by the Executive Services Department Director.

5. 13. Removal.

The City, by giving 30 days' written notice in advance to the Trustee, may remove any Trustee. In the event of the resignation or removal of a Trustee, the City must appoint a successor Trustee. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee.

5. 14. Interim duties and successor Trustee.

Each successor Trustee succeeds to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under this Plan upon his predecessor. A successor Trustee is not personally liable for any act or failure to

act of any predecessor Trustee, except as required under federal law. With the approval of the City and the Plan Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

5. 15. Valuation of Trust.

The Trustee will value the Trust Fund as of each Valuation Date to determine the fair market value of each Participant's Account Value in the Trust. The Trustee will also value the Trust Fund on such other valuation dates as directed by the Plan Committee.

5. 16. Limitation on liability - if investment manager, ancillary trustee or independent fiduciary appointed.

The Trustee is not liable for the acts or omissions of any investment manager the Plan Committee or Trustee may appoint, nor is the Trustee under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed investment manager. The Plan Committee, the Trustee and any properly appointed investment manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the Trust Fund under the control of the investment manager.

The limitation on liability described in this Section 5.16 also applies to the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 5.18 of the Plan. However, if a discretionary Trustee, pursuant to the delegation described in Section 5.18 of the Plan, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with

applicable law. The City, the discretionary Trustee and an ancillary trustee may execute a letter agreement as a part of this Plan delineating any indemnification agreement between the parties.

5. 17. Investment in group trust fund.

The Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the City maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Value under the plan(s) in which he/she is a Participant.

5. 18. Appointment of ancillary trustee or independent fiduciary.

The Trust Committee, in writing, may appoint any person in any State to act as ancillary trustee with respect to a designated portion of the Trust Fund. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status. The ancillary trustee has the rights, powers, duties and discretion as the City may delegate, subject to any limitations or directions specified in the instrument evidencing appointment of the ancillary trustee and to the terms of the Plan or applicable law. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 5.4 of the Plan including the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a State and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the

common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The City also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 5.17 of the Plan.

The ancillary trustee may resign its position at any time by providing at least 30 days' advance written notice to the City, unless the City waives this notice requirement. The City, in writing, may remove an ancillary trustee at any time. In the event of resignation or removal, the City may appoint another ancillary trustee, return the assets to the control and management of the Trustee or receive such assets in the capacity of ancillary trustee. The City may delegate its responsibilities under this Section 5.18 to a Trustee under the Plan.

5. 19. Standard of care.

The Trustee, each investment manager and the Plan Committee shall discharge their respective investment duties as provided herein with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims and by diversifying the investments held hereunder consistent with investment policies, objectives and guidelines so as to minimize the risk of large losses, unless under the Plan or circumstances it would be clearly not prudent to diversify.

5. 20. Limits of liability.

No member of the Trust Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his/her own part, except his/her own willful misconduct. The City shall indemnify and

hold harmless and defend each member of the Committee from any and all liabilities arising out of his/her membership on the Committee, except liabilities arising out of his/her own willful misconduct, provided that a Trustee who is a union representative who is not a City employee shall be indemnified under this provision. This provision shall not apply to an outside service provider who is compensated. The Committee shall notify the City as soon as possible of any such claims which it may seek indemnification and defense under this provision, and consult with the City Attorney on choice of defense counsel. The City may elect to conduct the defense of the Committee through outside counsel.

ARTICLE 6

6. MISCELLANEOUS

6. 1. No assignment or alienation.

Neither the Participant nor the Participant's beneficiary, or any of the Participant's creditors or their creditors (if any), shall have any claim or right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Trustee will not recognize any such anticipation, assignment or alienation. The payments and rights under this Plan are expressly declared to be nonassignable and nontransferable by operation of law. Further, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution, or other legal or equitable process.

Except as provided in Article V, the City shall have no beneficial interest in any assets of the Trust established therein, and no part of any asset in the Trust shall ever revert to or be paid to the City, either directly or indirectly; nor shall any

part of the corpus or income of the Trust Fund, or any asset of the Trust, be, at any time, used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. The Trust Fund shall constitute a spendthrift trust under applicable state and federal law.

6. 2. Transfers between eligible plans.

This Plan will accept plan-to-plan transfers of deferred compensation accounts for employees who enter City service from another employer with an eligible deferred compensation plan established under Code § 457. Conversely, if the Participant leaves City service to take a position with another employer with an eligible deferred compensation plan, upon the notice to the City as provided in this section, the City will directly transfer the Participant's account to the Participant's new employer for deposit in its plan as long as the receiving plan accepts such transfers [Regs. § 1.457-2(k)]. If the Participant wishes to effect a plan to plan transfer, the Participant must give notice to the City in writing no more than sixty (60) days after the Participant's separation date and identify the eligible employer with whom the Participant has accepted employment.

6. 3. Priority.

This is a group plan. The concerns of the City and the need to accommodate all Participants as a whole comes first in Plan administration, adopting rules, setting fees and charges, and in making decisions that could affect many even though a practice, rule, charge or decision in a particular situation may seem unjust or arbitrary or cause hardship.

6. 4. Number.

The singular of a noun or verb covers the plural, and the plural number applies to the singular, too.

6. 5. Captions.

Captions are for convenient reference only and do not limit or comment upon the text of a section or article.

6. 6. Successors.

This Plan shall be binding on the parties, all beneficiaries, and anyone claiming through any of them.

6. 7. Entire agreement.

The Plan and Trust Document, as supplemented by implementing ordinances, written rules and procedures enacted from time to time, constitutes the entire agreement between the Participant and the City. The Participant may not rely upon any oral statements.

ARTICLE 7

7. AMENDMENT AND TERMINATION

7. 1. Amendment/termination.

The City or the Plan Committee on behalf of the City may at any time amend, modify, or terminate the Plan with or without the Participant's consent (or of any beneficiary) or of all Participants. The City reserves the power to participate in the State of Washington Deferred Compensation Plan; the Library Board reserves the same authority as to Library personnel, and the authority to establish its own Plan.

7. 2. Notice.

Amendments to the Plan will be enacted in the manner contemplated by the City Charter for City ordinances or, if proposed by the Plan Committee, in accordance with Plan Section 3.5(e). Wherever practical 30 days advance

notice of amendments to the Plan Document shall be provided, a public hearing will be held at which Participants may be heard, and a copy of the adopted amendment will be supplied to Participants and a copy filed with the City Clerk.

7. 3. Limitation on amendments.

No amendment will deprive the Participant of any benefits to which the Participant is entitled under the Plan with respect to deferred amounts credited to the Participant's account before the effective date of the amendment. However, the City may at any time amend the Plan, in the event such amendment is necessary to qualify the Plan for tax exemption notwithstanding that such amendment may have the effect of depriving a Participant or Beneficiary of a right or benefit which has accrued.

7. 4. Result of termination.

If the Plan is terminated or further deferrals stopped for all Participants, the City will provide for retaining amounts already deferred and the making of payment in accordance with Article IV. If the City elects to participate in the State of Washington deferred compensation plan, the City may transfer all deferred amounts to the State as long as Participants receive credit with the state plan for their accounts balances with the City; the Library Board reserves the same authority as to Library personnel.

ARTICLE 8

8. DISCLAIMERS AND LIMITATIONS

8. 1. Employment unaffected.

Enrolling in the Plan will not give the Participant any right to continue the Participant's service with the City nor restrict in any way the City's rights to terminate the Participant's service. Deductions for Social Security purposes (Federal Insurance Contributions Act), the City Employees' Retirement System, workers' compensation and other state or City benefits, shall be based upon the salary or wages the Participant receives as if no deferrals are made.

8. 2. Disclaimer as to tax impact.

The City makes no representation of any kind as to the benefits of the Plan or the tax consequences that may occur to the Participant. The Participant should consult the Participant's own counsel on these matters.

8. 3. Assumption of risks.

The Participant accepts and assumes all risks that adhere in the Plan and its administration. The City, the Plan Committee and/or the Trust Committee will not be liable for any loss due to market fluctuations, failure of investments, default by an investment underwriter or annuity carrier, or errors or misappropriation by any plan administrator. Any plan administrator, insurance company, investment underwriter, or financial institution will be an independent contractor responsible for its own actions.

ARTICLE 9

9. DEFINITIONS

9. 1. Account Value.

A Participant's "Account Value" will be an amount, in trust, which will represent the current value of the amounts deferred, less administrative fees and expenses, plus gains or minus losses from market fluctuations, and, which applicable, deductions for withdrawal (surrender) fees.

9. 2. City.

"City" means The City of Seattle.

9. 3. Code.

"Code" means the Internal Revenue Code of 1986 as now existing or later amended or replaced.

9. 4. Code requirements.

"Code requirements" means the eligibility standards established by the United States Internal Revenue Code for eligible deferred compensation plans, as now existing or amended or replaced. See Code § 457 for Code requirements in effect upon adoption of this Plan.

9. 5. Deferred amount.

"Deferred amount" means the part of the Participant's wage or salary which the City and the Participant mutually agree shall be deferred pursuant to this Plan and Trust.

9. 6. Includable compensation.

"Includable compensation" means the Participant's compensation from the City reported to the Internal Revenue Service for federal income tax purposes,

reduced by deferrals under this Plan and payments made on the Participant's behalf for retirement system purposes under Ordinance 111992 and Code § 414(h), and other non-taxable income. It is determined without taking into account Washington's community property laws [Code § 457(d)(5); Regs. § 1.457-2(e)(2)].

9. 7. Investment Advisory Committee.

"Investment Advisory Committee" means the group of individuals appointed as the Trust Committee pursuant to Section 5.1.

9. 8. Investment underwriter.

"Investment underwriter" means a financial institution; a mutual fund, a securities manager, trust, or dealer; or any other organization, except the City, itself, which invests and manages deferred amounts.

9. 9. Normal retirement age.

"Normal retirement age." See Section 2.4(d).

9. 10. Participant.

"Participant" means each and everyone who enrolls in the Plan and for whom an account is maintained.

9. 11. Pay period.

"Pay period" means the regular calendar interval of City employment by which the Participant's salary or wages are paid.

9. 12. Plan Ceiling.

"Plan Ceiling" is the lesser of Eight Thousand Dollars (\$8,000.00) (or such larger amount as determined periodically by the Secretary of the Treasury pursuant to Code § 457(e)(15)) or one-third (1/3) of a participant's "includable compensation." See Section 2.4.



9. 13. Plan Committee.

"Plan Committee" means the group of individuals appointed as such pursuant to Section 3.1.

9. 14. Plan.

"Plan" means this City of Seattle Voluntary Deferred Compensation Plan and Trust Agreement as it now exists or hereafter may be amended.

9. 15. Plan Year.

"Plan Year" means the 12-month period ending on December 31.

9. 16. Regs.

"Regs." is an abbreviation for the Regulations implementing the Internal Revenue Code, Title 26, Code of Federal Regulations.

9. 17. Trust.

"Trust" means the separate Trust created under this Plan.

9. 18. Trustee.

"Trustee" means the Trust Committee appointed as such pursuant to Section 5.1.

9. 19. Unforeseeable emergency.

"Unforeseeable emergency" means the circumstances defined in Section 4.6 when payment may be made to Participants who remain in City service.

9. 20. Valuation Date.

"Valuation Date" means the last day of each Plan Year and such other date or dates as may be designated by the Plan Committee.

9. 21. The Participant.

"The Participant" means each and everyone who enrolls and participates in the Plan.

ARTICLE 10

10. EFFECTIVE DATE

This trust shall take effect and be in force on January 1, 1999.

ARTICLE 11

11. TRUSTEES

NOW THEREFORE, the Trustees accept the Trust created under the Plan and agree to perform the obligations imposed, and in recognition of the premises recited above, the Plan Trustees have signed below.

TRUSTEES:

Executive Services Department,
Personnel Division Director

Date: _____

Executive Services Department,
Budget Office Director

Date: _____

Executive Services Department,
Finance Division Treasury Director

Date: _____

Executive Services Department,
Finance Division Investment Director

Date: _____

Retirement Systems Executive Director

Date: _____

Union Representative

Date: _____

Union Representative

Date: _____





City of Seattle

Paul Schell, Mayor

Executive Services Department

Dwight D. Dively, Director

August 24, 1998

MEMORANDUM

TO: Honorable Sue Donaldson, President
Seattle City Council

FROM: 
Dwight Dively
Executive Services Director


Norma McKinney
Personnel Director

SUBJECT: Proposed Legislation Declaring a Trust for Deferred Compensation Plan Assets

Earlier this year we advised City Council of the City's need to establish a trust for Deferred Compensation Plan assets by January 1, 1999 in compliance with 1996 amendments to the Internal Revenue Code. The attached legislation accomplishes this objective by adopting a Plan and Trust Document and repealing obsolete ordinances. It also identifies the Plan trustees and provides for their indemnification and insurance coverage; defines the responsibilities of those administering the trust; authorizes the Plan trustees to adopt certain future amendments to the Plan and Trust Document; provides for annual reporting to the executive and legislative bodies; and confirms the Library's prerogative to participate in the Plan. The legislation also includes new sections which clarify the manner in which the Plan will administratively handle Domestic Relations Orders received due to marriage dissolutions and the designation of beneficiaries by participants.

The legislation will effect two significant changes to the Deferred Compensation Plan. First, consistent with current requirement of the Internal Revenue Code, the ordinance creates a trust and all current plan assets and future contributions to the plan will be held in trust for the exclusive benefit of participants and their beneficiaries and will be managed by the Plan Committee and Trustees. At the present the Plan assets are owned by the City and are subject to the claims of the City's general creditors. Second, the administration of the Plan and its investments will be placed with the Plan Committee and Trustees, thereby removing fiduciary responsibility and liability from the Mayor, Councilmembers and others currently affiliated with the Plan's administration. The Plan

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SEATTLE CITY ATTORNEY

Honorable Sue Donaldson, President
August 24, 1998
Page 2

Committee and Trustees are indemnified for liabilities arising from their service as Committee members. The Plan Committee will have the authority to adopt any new amendments to the Plan Trust Document and will have the authority to change and amend the Plan's current investment contracts.

We request you approve the attached ordinance as it satisfies the federal mandate, assigns appropriate and exclusive responsibility to the trustees administering the Plan, and removes the uncertainty for Plan participants as to the security of their Plan contributions. If you should have any questions regarding the attached legislation, please call Pat Schmidt, Benefits Supervisor, at 684-7833.

NM:cg

Attachment

c: Martha Choe

ARTICLE 3

3. ADMINISTRATION, ACCOUNTS AND REPORTS

3. 1. Plan Committee.

The Plan will be administered by a Plan Committee consisting of seven (7) members. The members shall be: (1) the Executive Services Department Personnel Division Director; (2) the Executive Services Department City Budget Office Director; (3) the Executive Services Department Finance Division Treasury Director; (4) the Executive Services Department Finance Division Investment Director; (5) the Retirement Systems Executive Director; and (6) two union representatives selected by the Coalition of City Unions.

The members selected by the Coalition of City Unions shall serve for a term of three (3) years. Any such union member may be re-selected for additional three (3) year terms. Any elected union member need not be a Participant.

Any member of the Committee may resign by notice in writing filed with the Trustee and the Committee. Any vacancy thus created shall be promptly filled by the City or the Coalition of Represented Employees, as appropriate. Any person appointed to fill the vacancy of a selected member shall serve only until the end of the original term. The City shall appoint a replacement if a vacancy occurs in a City position. Any vacancies unfilled for ninety (90) days shall be filled by a majority vote of the remaining members of the Committee. If a vacancy occurs in the position occupied by a Coalition of Represented Employees member, the City shall give notice to the Coalition to appoint a new trustee. If no new member is appointed by the Coalition within the 90 day period

for filling a vacancy, the Committee may select a represented employee to fill the vacancy.

3. 2. Officers and duties.

The Plan Committee shall choose from among its members a Chairperson and a Secretary. The Secretary shall keep minutes of the Committee's proceedings and all dates, records and documents pertaining to the Committee's supervision of the Plan. The Committee may adopt rules for the conduct of its meetings. The Committee may employ, and suitably compensate, such attorneys, actuaries, accountants, consultants, advisory, clerical or other employees as it may deem necessary for the performance of its duties.

3. 3. Decision-making procedure.

All actions of the Committee shall be determined by vote of a majority of its members who may act with or without a meeting. Either the Chairperson or the Secretary may execute any certificate or other written direction on behalf of the Committee. A member of the Committee shall not vote on any question relating exclusively to the individual member or his/her relatives; in the determination of any such question, the decision of a majority of the remaining members of the Committee shall govern. The members of the Committee shall serve without bond and without compensation for their services as such.

3. 4. Limits of liability.

No member of the Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his/her own part, except his/her own willful misconduct. The City shall indemnify and hold harmless, and defend each member of the Committee from any and all liabilities arising out of his membership on the Committee, except liabilities arising out of his own willful misconduct. The Committee shall make available to Participants

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Martha Chase

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

98052
City of Seattle, City Clerk

—ss.

No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 119159

was published on

03/30/38

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

Subscribed and sworn to before me on

03/30/38

Notary Public for the State of Washington,
residing in Seattle

