

WHEREAS, the City of Stayton has employees rendering valuable services; and

WHEREAS, the establishment of a deferred compensation plan for such employees will serve the interest of the City of Stayton by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the City of Stayton has determined that the establishment of a deferred compensation plan to be administered by the ICMA Retirement Corporation will serve the above objectives, and

WHEREAS, the City of Stayton desires that the investment of funds held under its deferred compensation plan be administered by the ICMA Retirement Corporation, as Trustee, with the understanding that such funds will be held by the ICMA Retirement Trust, a trust established by public employers for the purpose of representing the interests of such employers with respect to the collective investment of funds held under their deferred compensation plans:

NOW THEREFORE BE IT RESOLVED that the City of Stayton adopts the deferred compensation plan, attached hereto as Appendix A, and appoints the ICMA Retirement Corporation to serve as Administrator thereunder; and

BE IT FURTHER RESOLVED that the City of Stayton hereby executes the ICMA Retirement Trust, attached hereto as Appendix B; and

BE IT FURTHER RESOLVED that the City of Stayton hereby adopts the trust agreement, attached hereto as Appendix C, and appoints the ICMA Retirement Corporation as Trustee thereunder, and directs the ICMA Retirement Corporation, as Trustee, to invest all funds held under the deferred compensation plan through the ICMA Retirement Trust as soon as is practicable; and

BE IT FURTHER RESOLVED that the City Administrator shall be the coordinator for this program and shall receive necessary reports, notices, etc. from the ICMA Retirement Corporation as Administrator, and shall cast, on behalf of the City of Stayton, any required votes under the program. Administrative duties to carry out the plan may be assigned to the appropriate departments.

PASSED BY THE COMMON COUNCIL THIS 21st DAY OF July, 1986.

Signed by the Mayor this 22 day of July, 1986.

Clare Larson
MAYOR

ATTEST:

Alan Vandenberg
CITY ADMINISTRATOR

("EMPLOYER")

DEFERRED COMPENSATION PLAN

I. INTRODUCTION

The Employer hereby establishes the Employer's Deferred Compensation Plan, hereinafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer in accordance with the provisions of section 457 of the Internal Revenue Code of 1954, as amended.

This Plan shall be an agreement solely between the Employer and participating Employees.

II. DEFINITIONS

2.01 Account: The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.02 Administrator: The person or persons named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 60 days advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 60 days advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.

2.03 Beneficiary: The person or persons designated by the Participant in his Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death.

2.04 Deferred Compensation: The amount of Normal Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.03, or any other amount which the Employer agrees to credit to a Participant's Account.

2.05 Employee: Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

2.06 Includible Compensation: The amount of an Employee's compensation from the Employer for a taxable year that is attributable to services performed for the Employer and that is includible in the Employee's gross income for the taxable year for federal income tax purposes; such term does not

include any amount excludable from gross income under this Plan or any other plan described in section 457(b) of the Internal Revenue Code, any amount excludable from gross income under section 403(b) of the Internal Revenue Code, or any other amount excludable from gross income for federal income tax purposes. Includible Compensation shall be determined without regard to any community property laws.

2.07 Joinder Agreement: An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

2.08 Normal Compensation: The amount of compensation which would be payable to a Participant by the Employer for a taxable year if no Joinder Agreement were in effect to defer compensation under this Plan.

2.09 Normal Retirement Age: Age 70, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to Separation from Service. A Participant's Normal Retirement Age determines (a) the latest time when benefits may commence under this Plan (unless the Participant continues employment after Normal Retirement Age), and (b) the period during which a Participant may utilize the catch-up limitation of Section 5.02 hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02, his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under the Employer's basic retirement plan covering the Participant and may not be later than the date the Participant attains age 70. If a Participant continues employment after attaining age 70, not having previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually separates from service if the Employer has no mandatory retirement age. If the Participant will not become eligible to receive benefits under a basic retirement plan maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than attainment of age 55 and may not be later than attainment of age 70.

2.10 Participant: Any Employee who has joined the Plan pursuant to the requirements of Article IV.

2.11 Plan Year: The calendar year.

2.12 Retirement: The first date upon which both of the following shall have occurred with respect to a Participant: Separation from Service and attainment of Normal Retirement Age.

2.13 Separation from Service: Severance of the Participant's employment with the Employer. A Participant shall be deemed to have severed his employment with the Employer for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, Separation from Service shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer.

III. ADMINISTRATION

3.01 Duties of Employer: The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan.

3.02 Duties of Administrator: The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

IV. PARTICIPATION IN THE PLAN

4.01 Initial Participation: An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned.

4.02 Amendment of Joinder Agreement: A Participant may amend an executed Joinder Agreement to change the amount of compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero) or to change his investment preference (subject to such restrictions as may result from the nature or terms of any investment made by the Employer). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed. A Participant may at any time amend his Joinder Agreement to change the designated Beneficiary and such amendment shall become effective immediately.

V. LIMITATIONS ON DEFERRALS

5.01 Normal Limitation: Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year shall not exceed the lesser of \$7,500.00 or 33 1/3 percent of the Participant's Includible Compensation for the taxable year. This limitation will ordinarily be equivalent to the lesser of \$7,500.00 or 25 percent of the Participant's Normal Compensation.

5.02 Catch-up Limitation: For each of the last three (3) taxable years of a Participant ending before his attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) \$15,000 or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) that portion of the Normal Limitation for each of the prior taxable years of the Participant commencing after 1978 during which the Plan was in existence and the Participant was eligible to participate in the Plan (or in any other plan established under section 457 of the Internal Revenue Code by an employer within the same State as the Employer) less the amount of Deferred Compensation for each such prior taxable year (including amounts deferred under such other

plan). For purposes of this Section 5.02, a Participant's Includible Compensation for the current taxable year shall be deemed to include any Deferred Compensation for the taxable year in excess of the amount permitted under the Normal Limitation, and the Participant's Includible Compensation for any prior taxable year shall be deemed to exclude any amount that could have been deferred under the Normal Limitation for such prior taxable year.

5.03 Section 403(b) Annuities: For purposes of Sections 5.01 and 5.02, amounts contributed by the Employer on behalf of a Participant for the purchase of an annuity contract described in section 403(b) of the Internal Revenue Code shall be treated as if such amounts constituted Deferred Compensation under this Plan for the taxable year in which the contribution was made and shall thereby reduce the maximum amount that may be deferred for such taxable year.

VI. INVESTMENTS AND ACCOUNT VALUES

6.01 Investment of Deferred Compensation: All investments of Participants' Deferred Compensation made by the Employer, including all property and rights purchased with such amounts and all income attributable thereto, shall be the sole property of the Employer and shall not be held in trust for Participants or as collateral security for the fulfillment of the Employer's obligations under the Plan. Such property shall be subject to the claims of general creditors of the Employer, and no Participant or Beneficiary shall have any vested interest or secured or preferred position with respect to such property or have any claim against the Employer except as a general creditor.

6.02 Crediting of Accounts: The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then-current value of his Account.

6.03 Acceptance of Transfers: Pursuant to an appropriate written agreement, the Employer may accept and credit to a Participant's Account amounts transferred from another employer within the same State representing amounts held by such other employer under an eligible State deferred compensation plan described in section 457 of the Internal Revenue Code. Any such transferred amount shall not be treated as a deferral subject to the limitations of Article V, provided however, that the actual amount of any deferral under the plan from which the transfer is made shall be taken into account in computing the catch-up limitation under Section 5.02.

6.04 Employer Liability: In no event shall the Employer's liability to pay benefits to a Participant under Article VI exceed the value of the amounts credited to the Participant's Account; the Employer shall not be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

VII. BENEFITS

7.01 Retirement Benefits and Election on Separation from Service: Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence during the second calendar month after the close of the Plan Year of the Participant's Retirement, and the distribution of such Retirement benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, the Participant may irrevocably

cably elect within 60 days following separation from Service to have the distribution of benefits commence on a date other than that described in the preceding sentence which is at least 60 days after the date such election is delivered in writing to the Employer and forwarded to the Administrator but not later than 60 days after the close of the Plan Year of the Participant's Retirement.

7.02 Payment Options: As provided in Sections 7.01, 7.05 and 7.06, a Participant may elect to have the value of his Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his Account is exhausted;
- (b) One lump sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;
- (d) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;
- (e) Any other payment option elected by the Participant and agreed to by the Employer.

A Participant's election of a payment option must be made at least 30 days before the payment of benefits is to commence. If a Participant fails to make a timely election of a payment option, benefits shall be paid monthly under option (c) above for a period of five years.

7.03 Limitation on Options: No payment option may be selected by the Participant under Section 7.02 unless the present value of the payments to the Participant, determined as of the date benefits commence, exceeds 50 percent of the value of the Participant's Account as of the date benefits commence. Present value determinations under this Section shall be made by the Administrator in accordance with the expected return multiples set forth in section 1.72-9 of the Federal Income Tax Regulations (or any successor provision to such regulations).

7.04 Post-retirement Death Benefits: Should the Participant die after he has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall be payable to the Participant's Beneficiary commencing within 60 days after the Administrator receives proof of the Participant's death, unless the Beneficiary elects payment under a different payment option at least 30 days prior to the date that the first payment becomes payable to the Beneficiary. In no event shall the Employer or Administrator be liable to the Beneficiary for the amount of any payment made in the name of the Participant before the Administrator receives proof of death of the Participant. Notwithstanding the foregoing, payments to a Beneficiary shall not extend over a period longer than (i) the Beneficiary's life expectancy if the Beneficiary is the Participant's spouse or (ii) fifteen (15) years if the Beneficiary is not the Participant's spouse. If no Beneficiary is designated in the Joinder Agreement, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the commuted value of any remaining payments under the payment option shall be paid in a lump sum to the estate of the Participant. If the designated Beneficiary survives the Participant for a period of fifteen (15) days, but does not continue to live for the remaining period of payments under the payment option (as modified, if necessary, in conformity with the third sentence of this section), then the commuted value of any remaining payments under the payment option shall be paid in a lump sum to the estate of the Beneficiary.

7.05 Pre-retirement Death Benefits: Should the Participant die before he has begun to receive the benefits provided by

Sections 7.01 or 7.06, a death benefit equal to the value of the Participant's Account shall be payable to the Beneficiary commencing no later than 60 days after the close of the Plan Year in which the Participant would have attained Normal Retirement Age. Such death benefit shall be paid in a lump sum unless the Beneficiary elects a different payment option within 90 days of the Participant's death. A Beneficiary who may elect a payment option pursuant to the provisions of the preceding sentence shall be treated as if he were a Participant for purposes of determining the payment options available under Section 7.02; provided, however, that the payment option chosen by the Beneficiary must provide for payments to the Beneficiary over a period no longer than the life expectancy of the Beneficiary if the Beneficiary is the Participant's spouse and must provide for payments over a period not in excess of fifteen (15) years if the Beneficiary is not the Participant's spouse.

7.06 Disability: In the event a Participant becomes disabled before the commencement of Retirement benefits under Section 7.01, the Participant may elect to commence benefits under one of the payment options described in Section 7.02 on the last day of the month following a determination of disability by the Employer. The Participant's request for such determination must be made within a reasonable time after the impairment which constitutes the disability occurs. A Participant shall be considered disabled for purposes of this Plan if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of long-continued and indefinite duration. The disability of any Participant shall be determined in accordance with uniform principles consistently applied and upon the basis of such medical evidence as the Employer deems necessary and desirable.

7.07 Unforeseeable Emergencies: In the event an unforeseeable emergency occurs, a Participant may apply to the Employer to receive that part of the value of his account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship. An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in section 152(a) of the Internal Revenue Code) of the Participant, loss of the Participant's property due to casualty, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

VIII. NON-ASSIGNABILITY

No Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

IX. RELATIONSHIP TO OTHER PLANS AND EMPLOYMENT AGREEMENTS

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under

any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

X. AMENDMENT OR TERMINATION OF PLAN

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment. The Employer may at any time terminate this Plan.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day

period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

No amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

XI. APPLICABLE LAW

This Plan shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible State deferred compensation plan" under section 457 of the Internal Revenue Code of 1954, as amended. The provisions of this Plan shall be interpreted wherever possible in conformity with the requirements of that section.

XII. GENDER AND NUMBER

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

DECLARATION OF TRUST of ICMA RETIREMENT TRUST

ARTICLE I. Name and Definitions

SECTION 1.1. Name. The Name of the Trust created hereby is the ICMA Retirement Trust.

SECTION 1.2. Definitions. Wherever they are used herein, the following terms shall have the following respective meanings:

- (a) By-Laws. The By-Laws referred to in Section 4.1 hereof, as amended from time to time.
- (b) Deferred Compensation Plan. A deferred compensation plan established and maintained by a Public Employer for the purpose of providing retirement income and other deferred benefits to its employees in accordance with the provisions of section 457 of the Internal Revenue Code of 1954, as amended.
- (c) Guaranteed Investment Contract. A contract entered into by the Retirement Trust with insurance companies that provides for a guaranteed rate of return on investments made pursuant to such contract.
- (d) ICMA. The International City Management Association.
- (e) ICMA/RC Trustees. Those Trustees elected by the Public Employers who, in accordance with the provisions of Section 3.1(a) hereof, are also members of the Board of Directors of ICMA or RC.
- (f) Investment Adviser. The Investment Adviser that enters into a contract with the Retirement Trust to provide advice with respect to investment of the Trust Property.
- (g) Employer Trust. A trust created pursuant to an agreement between RC and a Public Employer for the purpose of investing and administering the funds set aside by such employer in connection with its deferred compensation agreements with its employees.
- (h) Portfolios. The Portfolios of investments established by the Investment Adviser to the Retirement Trust, under the supervision of the Trustees, for the purpose of providing investments for the Trust Property.
- (i) Public Employee Trustees. Those Trustees elected by the Public Employers who, in accordance with the provisions of Section 3.1(a) hereof, are full-time employees of Public Employers.
- (j) Public Employer. A unit of state or local government, or any agency or instrumentality thereof, that has adopted a Deferred Compensation Plan and has executed this Declaration of Trust.
- (k) RC. The International City Management Association Retirement Corporation.
- (l) Retirement Trust. The Trust created by this Declaration of Trust.
- (m) Trust Property. The amounts held in the Retirement Trust on behalf of the Public Employers. The Trust Property shall include any income resulting from the investment of the amounts so held.
- (n) Trustees. The Public Employee Trustees and ICMA/RC Trustees elected by the Public Employers to serve as members of the Board of Trustees of the Retirement Trust.

ARTICLE II. Creation and Purpose of the Trust; Ownership of Trust Property

SECTION 2.1. Creation. The Retirement Trust is created and established by the execution of this Declaration of Trust by the Trustees and the participating Public Employers.

SECTION 2.2. Purpose. The purpose of the Retirement Trust is to provide for the commingled investment of funds held by the Public Employers in connection with their Deferred Compensation Plans. The Trust Property shall be invested in the Portfolios, in Guaranteed Investment Contracts and in other investments recommended by the Investment Adviser under the supervision of the Board of Trustees.

SECTION 2.3 Ownership of Trust Property. The Trustees shall have legal title to the Trust Property. The Public Employers shall be the beneficial owners of the Trust Property.

ARTICLE III. Trustees

SECTION 3.1. Number and Qualification of Trustees.

(a) The Board of Trustees shall consist of nine Trustees. Five of the Trustees shall be full-time employees of a Public Employer (the Public Employee Trustees) who are authorized by such Public Employer to serve as Trustee. The remaining four Trustees shall consist of two persons who, at the time of election to the Board of Trustees, are members of the Board of Directors of ICMA and two persons who, at the time of election, are members of the Board of Directors of RC (the ICMA/RC Trustees). One of the Trustees who is a director of ICMA, and one of the Trustees who is a director of RC, shall, at the time of election, be full-time employees of a Public Employer.

(b) No person may serve as a Trustee for more than one term in any ten-year period.

SECTION 3.2. Election and Term.

(a) Except for the Trustees appointed to fill vacancies pursuant to Section 3.5 hereof, the Trustees shall be elected by a vote of a majority of the Public Employers in accordance with the procedures set forth in the By-Laws.

(b) At the first election of Trustees, three Trustees shall be elected for a term of three years, three Trustees shall be elected for a term of two years and three Trustees shall be elected for a term of one year. At each subsequent election, three Trustees shall be elected for a term of three years and until his or her successor is elected and qualified.

SECTION 3.3. Nominations. The Trustees who are full-time employees of Public Employers shall serve as the Nominating Committee for the Public Employee Trustees. The Nominating Committee shall choose candidates for Public Employee Trustees in accordance with the procedures set forth in the By-Laws.

SECTION 3.4. Resignation and Removal.

(a) Any Trustee may resign as Trustee (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the other Trustees and such resignation shall be effective upon such delivery, or at a later date according

to the terms of the instrument. Any of the Trustees may be removed for cause, by a vote of a majority of the Public Employers.

(b) Each Public Employee Trustee shall resign his or her position as Trustee within sixty days of the date on which he or she ceases to be a full-time employee of a Public Employer.

SECTION 3.5. Vacancies. The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, removal, adjudicated incompetence or other incapacity to perform the duties of the office of a Trustee. In the case of a vacancy, the remaining Trustees shall appoint such person as they in their discretion shall see fit (subject to the limitations set forth in this Section), to serve for the unexpired portion of the term of the Trustee who has resigned or otherwise ceased to be a Trustee. The appointment shall be made by a written instrument signed by a majority of the Trustees. The person appointed must be the same type of Trustee (i.e., Public Employee Trustee or ICMA/RC Trustee) as the person who has ceased to be a Trustee. An appointment of a Trustee may be made in anticipation of a vacancy to occur at a later date by reason of retirement or resignation, provided that such appointment shall not become effective prior to such retirement or resignation. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in this Section 3.5, the Trustees in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration. A written instrument certifying the existence of such vacancy signed by a majority of the Trustees shall be conclusive evidence of the existence of such vacancy.

SECTION 3.6. Trustees Serve in Representative Capacity. By executing this Declaration, each Public Employer agrees that the Public Employee Trustees elected by the Public Employers are authorized to act as agents and representatives of the Public Employers collectively.

ARTICLE IV. Powers of Trustees

SECTION 4.1. General Powers. The Trustees shall have the power to conduct the business of the Trust and to carry on its operations. Such power shall include, but shall not be limited to, the power to:

- (a) receive the Trust Property from the Public Employers or from a Trustee of any Employer Trust;
- (b) enter into a contract with an Investment Adviser providing, among other things, for the establishment and operation of the Portfolios, selection of the Guaranteed Investment Contracts in which the Trust Property may be invested, selection of other investments for the Trust Property and the payment of reasonable fees to the Investment Adviser and to any sub-investment adviser retained by the Investment Adviser;
- (c) review annually the performance of the Investment Adviser and approve annually the contract with such Investment Adviser;
- (d) invest and reinvest the Trust Property in the Portfolios, the Guaranteed Investment Contracts and in any other investment recommended by the Investment Adviser, provided that if a Public Employer has directed that its monies be invested in specified Portfolios or in a Guaranteed Investment Contract, the Trustees of the Retirement Trust shall invest such monies in accordance with such directions;
- (e) keep such portion of the Trust Property in cash or cash balances as the Trustees, from time to time, may deem to be in the best interest of the Retirement Trust created hereby, without liability for interest thereon;
- (f) accept and retain for such time as they may deem advisable any securities or other property received or acquired by them as Trustees hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (g) cause any securities or other property held as part of the Trust Property to be registered in the name of the Retirement Trust or in the name of a nominee, and to hold any investments in bearer form, but the books and records of the Trustees shall at all

times show that all such investments are a part of the Trust Property;

- (h) make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) vote upon any stock, bonds, or other securities; give general or special proxies or powers of attorney with or without power of substitution; exercise any conversion privileges, subscription rights, or other options, and make any payments incidental thereto; oppose, or consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and delegate discretionary powers, and pay any assessments or charges in connection therewith; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Trust Property;
- (j) enter into contracts or arrangements for goods or services required in connection with the operation of the Retirement Trust, including, but not limited to, contracts with custodians and contracts for the provision of administrative services;
- (k) borrow or raise money for the purpose of the Retirement Trust in such amount, and upon such terms and conditions, as the Trustees shall deem advisable, provided that the aggregate amount of such borrowings shall not exceed 30% of the value of the Trust Property. No person lending money to the Trustees shall be bound to see the application of the money lent or to inquire into its validity, expediency or propriety of any such borrowing;
- (l) incur reasonable expenses as required for the operation of the Retirement Trust and deduct such expenses from the Trust Property;
- (m) pay expenses properly allocable to the Trust Property incurred in connection with the Deferred Compensation Plans or the Employer Trusts and deduct such expenses from that portion of the Trust Property beneficially owned by the Public Employer to whom such expenses are properly allocable;
- (n) pay out of the Trust Property all real and personal property taxes, income taxes and other taxes of any and all kinds which, in the opinion of the Trustees, are properly levied, or assessed under existing or future laws upon, or in respect of, the Trust Property and allocate any such taxes to the appropriate accounts;
- (o) adopt, amend and repeal the By-Laws, provided that such By-Laws are at all times consistent with the terms of this Declaration of Trust;
- (p) employ persons to make available interests in the Retirement Trust to employers eligible to maintain a deferred compensation plan under section 457 of the Internal Revenue Code, as amended;
- (q) issue the Annual Report of the Retirement Trust; and the disclosure documents and other literature used by the Retirement Trust;
- (r) make loans, including the purchase of debt obligations, provided that all such loans shall bear interest at the current market rate;
- (s) contract for, and delegate any powers granted hereunder to, such officers, agents, employees, auditors and attorneys as the Trustees may select, provided that the Trustees may not delegate the powers set forth in paragraphs (b), (c) and (o) of this Section 4.1 and may not delegate any powers if such delegation would violate their fiduciary duties;
- (t) provide for the indemnification of the officers and Trustees of the Retirement Trust and purchase fiduciary insurance;
- (u) maintain books and records, including separate accounts for each Public Employer or Employer Trust and such additional separate accounts as are required under, and consistent with, the Deferred Compensation Plan of each Public Employer; and

(v) do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or appropriate to administer the Trust Property and to carry out the purposes of the Retirement Trust.

SECTION 4.2. Distribution of Trust Property. Distributions of the Trust Property shall be made to, or on behalf of, the Public Employer, in accordance with the terms of the Deferred Compensation Plans or Employer Trusts. The Trustees of the Retirement Trust shall be fully protected in making payments in accordance with the directions of the Public Employers or the Trustees of the Employer Trusts without ascertaining whether such payments are in compliance with the provisions of the Deferred Compensation Plans or the agreements creating the Employer Trusts.

SECTION 4.3. Execution of Instruments. The Trustees may unanimously designate any one or more of the Trustees to execute any instrument or document on behalf of all, including but not limited to the signing or endorsement of any check and the signing of any applications, insurance and other contracts, and the action of such designated Trustee or Trustees shall have the same force and effect as if taken by all the Trustees.

ARTICLE V. Duty of Care and Liability of Trustees

SECTION 5.1. Duty of Care. In exercising the powers hereinbefore granted to the Trustees, the Trustees shall perform all acts within their authority for the exclusive purpose of providing benefits for the Public Employers, and shall perform such acts with the care, skill, prudence and diligence in the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

SECTION 5.2. Liability. The Trustees shall not be liable for any mistake of judgment or other action taken in good faith, and for any action taken or omitted in reliance in good faith upon the books of account or other records of the Retirement Trust, upon the opinion of counsel, or upon reports made to the Retirement Trust by any of its officers, employees or agents or by the Investment Adviser or any sub-investment adviser, accountants, appraisers or other experts or consultants selected with reasonable care by the Trustees, officers or employees of the Retirement Trust. The Trustees shall also not be liable for any loss sustained by the Trust Property by reason of any investment made in good faith and in accordance with the standard of care set forth in Section 5.1.

SECTION 5.3. Bond. No Trustee shall be obligated to give any bond or other security for the performance of any of his or her duties hereunder.

ARTICLE VI. Annual Report to Shareholders

The Trustees shall annually submit to the Public Employers a written report of the transactions of the Retirement Trust, including financial statements which shall be certified by independent public accountants chosen by the Trustees.

ARTICLE VII. Duration or Amendment of Retirement Trust

SECTION 7.1. Withdrawal. A Public Employer may, at any time, withdraw from this Retirement Trust by delivering to the Board of Trustees a statement to that effect. The withdrawing Public Employer's beneficial interest in the Retirement Trust shall be paid out to the Public Employer or to the Trustee of the Employer Trust, as appropriate.

SECTION 7.2. Duration. The Retirement Trust shall continue until terminated by the vote of a majority of the Public Employers, each casting one vote. Upon termination, all of the Trust Property shall be paid out to the Public Employers or the Trustees of the Employer Trusts, as appropriate.

SECTION 7.3. Amendment. The Retirement Trust may be amended by the vote of a majority of the Public Employers, each casting one vote.

SECTION 7.4. Procedure. A resolution to terminate or amend the Retirement Trust or to remove a Trustee shall be submitted to a vote of the Public Employers if: (a) a majority of the Trustees so direct, or (b) a petition requesting a vote, signed by not less than 25% of the Public Employers, is submitted to the Trustees.

ARTICLE VIII. Miscellaneous

SECTION 8.1. Governing Law. Except as otherwise required by state or local law, this Declaration of Trust and the Retirement Trust hereby created shall be construed and regulated by the laws of the District of Columbia.

SECTION 8.2. Counterparts. This Declaration may be executed by the Public Employers and Trustees in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

TRUST AGREEMENT WITH THE ICMA RETIREMENT CORPORATION

AGREEMENT made by and between the Employer named in the attached resolution and the International City Management Association Retirement Corporation (hereinafter the "Trustee" or "Retirement Corporation"), a nonprofit corporation organized and existing under the laws of the State of Delaware, for the purpose of investing and otherwise administering the funds set aside by Employers in connection with deferred compensation plans established under section 457 of the Internal Revenue Code of 1954 (the "Code"). This Agreement shall take effect upon acceptance by the Trustee of its appointment by the Employer to serve as Trustee in accordance herewith as set forth in the attached resolution.

WHEREAS, the Employer has established a deferred compensation plan under section 457 of the Code (the "Plan");

WHEREAS, in order that there will be sufficient funds available to discharge the Employer's contractual obligations under the Plan, the Employer desires to set aside periodically amounts equal to the amount of compensation deferred;

WHEREAS, the funds set aside, together with any and all assets derived from the investment thereof, are to be exclusively within the dominion, control, and ownership of the Employer, and subject to the Employer's absolute right of withdrawal, no employees having any interest whatsoever therein;

NOW, THEREFORE, this Agreement witnesseth that (a) the Employer will pay monies to the Trustee to be placed in deferred compensation accounts for the Employer; (b) the Trustee covenants that it will hold said sums, and any other funds which it may receive hereunder, in trust for the uses and purposes and upon the terms and conditions hereinafter stated; and (c) the parties hereto agree as follows:

ARTICLE I. General Duties of the Parties.

Section 1.1. General Duty of the Employer. The Employer shall make regular periodic payments equal to the amounts of its employees' compensation which are deferred in accordance with the terms and conditions of the Plan to the extent that such amounts are to be invested under the Trust.

Section 1.2. General Duties of the Trustee. The Trustee shall hold all funds received by it hereunder, which, together with the income therefrom, shall constitute the Trust Funds. It shall administer the Trust Funds, collect the income thereof, and make payments therefrom, all as hereinafter provided. The Trustee shall also hold all Trust Funds which are transferred to it as successor Trustee by the Employer from existing deferred compensation arrangements with its Employees under plans described in section 457 of the Code. Such Trust Funds shall be subject to all of the terms and provisions of this Agreement.

ARTICLE II. Powers and Duties of the Trustee in Investment, Administration, and Disbursement of the Trust Funds.

Section 2.1. Investment Powers and Duties of the Trustee. The Trustee shall have the power to invest and reinvest the principal and income of the Trust Funds and keep the Trust Funds invested, without distinction between principal and income, in securities or in other property, real or personal, wherever situated, including, but not limited to, stocks, common or preferred, bonds, retirement annuity and insurance policies, mortgages, and other evidences of indebtedness or ownership, investment companies, common or group trust funds, or separate and different types of funds (including equity, fixed income) which fulfill requirements of state and local governmental laws,

provided, however, that the Employer may direct investment by the Trustee among available investment alternatives in such proportions as the Employer authorizes in connection with its deferred compensation agreements with its employees. For these purposes, these Trust Funds may be commingled with Trust Funds set aside by other Employers pursuant to the terms of the ICMA Retirement Trust. Investment powers vested in the Trustee by the Section may be delegated by the Trustee to any bank, insurance or trust company, or any investment advisor, manager or agent selected by it.

Section 2.2. Administrative Powers of the Trustee. The Trustee shall have the power in its discretion:

(a) To purchase, or subscribe for, any securities or other property and to retain the same in trust.

(b) To sell, exchange, convey, transfer or otherwise dispose of any securities or other property held by it, by private contract, or at public auction. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Trust Funds.

(d) To cause any securities or other property held as part of the Trust Funds to be registered in its own name, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are a part of the Trust Funds.

(e) To borrow or raise money for the purpose of the Trust in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and, for any sum so borrowed, to issue its promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Funds. No person lending money to the Trustee shall be bound to see the application of the money lent or to inquire into its validity, expediency or propriety of any such borrowing.

(f) To keep such portion of the Trust Funds in cash or cash balances as the Trustee, from time to time, may deem to be in the best interest of the Trust created hereby, without liability for interest thereon.

(g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investment hereunder.

(h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Funds; to commence or defend suits or legal or administrative proceedings; and to represent the Trust Funds in all suits and legal and administrative proceedings.

(j) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Funds and to carry out the purposes of this Trust.

Section 2.3. Distributions from the Trust Funds. The Employer hereby appoints the Trustee as its agent for the purpose of making distributions from the Trust Funds. In this regard the terms and conditions set forth in the Plan are to guide and control the Trustee's power.

Section 2.4. Valuation of Trust Funds. At least once a year as of Valuation Dates designated by the Trustee, the Trustee shall determine the value of the Trust Funds. Assets of the Trust Funds shall be valued at their market values at the close of business on the Valuation Date, or, in the absence of readily ascertainable market values as the Trustee shall determine, in accordance with methods consistently followed and uniformly applied.

ARTICLE III. For Protection of Trustee.

Section 3.1. Evidence of Action by Employer. The Trustee may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Trustee believes to have been signed by a duly designated official of the Employer. No communication shall be binding upon any of the Trust Funds or Trustee until they are received by the Trustee.

Section 3.2. Advice of Counsel. The Trustee may consult with any legal counsel with respect to the construction of this Agreement, its duties hereunder, or any act, which it proposes to take or omit, and shall not be liable for any action taken or omitted in good faith pursuant to such advice.

Section 3.3. Miscellaneous. The Trustee shall use ordinary care and reasonable diligence, but shall not be liable for any mistake of judgment or other action taken in good faith. The Trustee shall not be liable for any loss sustained by the Trust Funds by reasons of any investment made in good faith and in accordance with the provisions of this Agreement.

The Trustee's duties and obligations shall be limited to those expressly imposed upon it by this Agreement.

ARTICLE IV. Taxes, Expenses and Compensation of Trustee.

Section 4.1. Taxes. The Trustee shall deduct from and charge against the Trust Funds any taxes on the Trust Funds or the income thereof or which the Trustee is required to pay with respect to the interest of any person therein.

Section 4.2. Expenses. The Trustee shall deduct from and charge against the Trust Funds all reasonable expenses incurred by the Trustee in the administration of the Trust Funds, including counsel, agency, investment advisory, and other necessary fees.

ARTICLE V. Settlement of Accounts. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions hereunder.

Within ninety (90) days after the close of each fiscal year, the Trustee shall render in duplicate to the Employer an account of its acts and transactions as Trustee hereunder. If any part of the Trust Fund shall be invested through the medium of any common, collective or commingled Trust Funds, the last annual report of such Trust Funds shall be submitted with and incorporated in the account.

If within ninety (90) days after the mailing of the account or any amended account the Employer has not filed with the Trustee notice of any objection to any act or transaction of the Trustee, the account or amended account shall become an account stated. If any objection has been filed, and if the Employer is satisfied that it should be withdrawn or if the account is adjusted to the Employer's satisfaction, the Employer shall in writing filed with the Trustee signify approval of the account and it shall become an account stated.

When an account becomes an account stated, such account shall be finally settled, and the Trustee shall be completely discharged and released, as if such account had been settled and allowed by a judgment or decree of a court of competent jurisdiction in an action or proceeding in which the Trustee and the Employer were parties.

The Trustee shall have the right to apply at any time to a court of competent jurisdiction for the judicial settlement of its account.

ARTICLE VI. Resignation and Removal of Trustee.

Section 6.1. Resignation of Trustee. The Trustee may resign at any time by filing with the Employer its written resignation. Such resignation shall take effect sixty (60) days from the date of such filing and upon appointment of a successor pursuant to Section 6.3., whichever shall first occur.

Section 6.2. Removal of Trustee. The Employer may remove the Trustee at any time by delivering to the Trustee a written notice of its removal and an appointment of a successor pursuant to Section 6.3. Such removal shall not take effect prior to sixty (60) days from such delivery unless the Trustee agrees to an earlier effective date.

Section 6.3. Appointment of Successor Trustee. The appointment of a successor to the Trustee shall take effect upon the delivery to the Trustee of (a) an instrument in writing executed by the Employer appointing such successor, and exonerating such successor from liability for the acts and omissions of its predecessor, and (b) an acceptance in writing, executed by such successor.

All of the provisions set forth herein with respect to the Trustee shall relate to each successor with the same force and effect as if such successor had been originally named as Trustee hereunder.

If a successor is not appointed within sixty (60) days after the Trustee gives notice of its resignation pursuant to Section 6.1., the Trustee may apply to any court of competent jurisdiction for appointment of a successor.

Section 6.4. Transfer of Funds to Successor. Upon the resignation or removal of the Trustee and appointment of a successor, and after the final account of the Trustee has been properly settled, the Trustee shall transfer and deliver any of the Trust Funds involved to such successor.

ARTICLE VII. Duration and Revocation of Trust Agreement.

Section 7.1. Duration and Revocation. This Trust shall continue for such time as may be necessary to accomplish the purpose for which it was created but may be terminated or revoked at any time by the Employer as it relates to any and/or all related participating Employees. Written notice of such termination or revocation shall be given to the Trustee by the Employer. Upon termination or revocation of the Trust, all of the assets thereof shall return to and revert to the Employer. Termination of this Trust shall not, however, relieve the Employer of the Employer's continuing obligation to pay deferred compensation to Employees in accordance with the terms of the Plan.

Section 7.2. Amendment. The Employer shall have the right to amend this Agreement in whole and in part but only with the Trustee's written consent. Any such amendment shall become effective upon (a) delivery to the Trustee of a written instrument of amendment, and (b) the endorsement by the Trustee on such instrument of its consent thereto.

ARTICLE VIII. Miscellaneous.

Section 8.1. Laws of the District of Columbia to Govern. This Agreement and the Trust hereby created shall be construed and regulated by the laws of the District of Columbia.

Section 8.2. Successor Employers. The "Employer" shall include any person who succeeds the Employer and who thereby becomes subject to the obligations of the Employer under the Plan.

Section 8.3. Withdrawals. The Employer may, at any time, and from time to time, withdraw a portion or all of Trust Funds created by this Agreement.

Section 8.4. Gender and Number. The masculine includes the feminine and the singular includes the plural unless the context requires another meaning.