
POULSBO DISTRIBUTION SCHEDULE

RESOLUTION NO. 2010-07

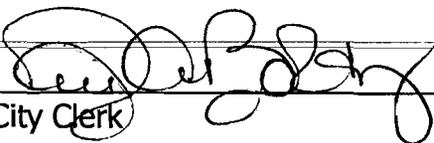
SUBJECT: Deferred Compensation Plan – ICMA Retirement Corporation

CONFORM AS TO DATES & SIGNATURES

- (X) Filed with the City Clerk: 02/01/2010
- (X) Passed by the City Council: 03/10/2010
- (X) Signature of Mayor
- (X) Signature of City Clerk
- (X) Publication: N/A
- (X) Effective: 03/10/2010

DISTRIBUTED COPIES AS FOLLOWS:

- NK Herald:
- (1) Resolution Book (copy)
- Code Publishing - via email if in electronic format
- City Attorney
- Civil Service Commission and/or Sec/Chief Examiner
- (X) Clerk's Department: Original
- City Council
- Finance: Finance Director Booher
- Fire District No. 18
- Mayor
- Municipal Court
- MRSC from website:
- Parks/Recreation: via e-mail
- Planning/Building:
- Police
- Public Works
- (X) Posted to Library Drive and Website


City Clerk

March 12, 2010
Date

RESOLUTION NO. 2010-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, ESTABLISHING A DEFERRED COMPENSATION PLAN FOR EMPLOYEES TO BE ADMINISTERED BY ICMA RETIREMENT CORPORATION

WHEREAS, the Employer has employees rendering valuable services; and

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

WHEREAS, the Employer has determined that the establishment of a deferred compensation plan to be administered by the ICMA Retirement Corporation serves the above objectives; and

WHEREAS, the Employer desires that its deferred compensation plan be administered by the ICMA Retirement Corporation, and that some or all of the funds held under such plan be invested in the VantageTrust Company, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans; now therefore,

IT IS RESOLVED that the Employer hereby adopts the deferred compensation plan (the "Plan") in the form of the ICMA Retirement Corporation Deferred Compensation Plan and Trust referred to as Appendix A.

BE IT FURTHER RESOLVED that the Employer hereby executes the Declaration of Trust of the VantageTrust Company, attached hereto as Appendix B, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the VantageTrust Company.

BE IT FURTHER RESOLVED that the assets of the Plan shall be held in trust, with the

Employer serving as trustee, for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose. Participation in the Plan is voluntary and the Plan is not the exclusive deferred compensation vehicle but rather one of the benefits offered by the Employer.

BE IT FURTHER RESOLVED that the Employer hereby agrees to serve as trustee under the Plan.

BE IT FURTHER RESOLVED that the Human Resources Manager shall be the coordinator for this program; shall receive necessary reports, notices, etc. from the ICMA Retirement Corporation or the VantageTrust Company; shall cast, on behalf of the Employer, any required votes under the VantageTrust Company; Administrative duties to carry out the plan may be assigned to the appropriate departments, and is authorized to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the Plan.

RESOLVED this 10th day of March, 2010.

APPROVED:



MAYOR, REBECCA ERICKSON

ATTEST/AUTHENTICATED:



CITY CLERK, JILL A. BOLTZ

FILED WITH THE CITY CLERK: 02/01/2010
PASSED BY THE CITY COUNCIL: 03/10/2010
RESOLUTION NO. 2010-07

Appendix A

DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated Effective January 1, 2006

Article I. Purpose

The Employer hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter 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 and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article 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 Accounting Date.** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 75 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 75 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.
- 2.04 Automatic Distribution Date.** April 1 of the calendar year after the Plan Year the Participant attains age 70½ or, if later, has a Severance Event.
- 2.05 Beneficiary.** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.
- 2.06 Deemed IRA.** A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code, the Income Tax Regulations thereunder, and any other IRS guidance.

- 2.16 Participant.** Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes an employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.
- 2.17 Percentage Limitation.** 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.
- 2.18 Plan Year.** The calendar year.
- 2.19 Retirement.** The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.
- 2.20 Severance Event.** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event 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, a Severance Event 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, or such other events as may be permitted under the Code.

- 2.21 Trust.** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

- 3.01 Duties of the 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. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.
- 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.

Article 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, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.
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- 4.02 Amendment of Joinder Agreement.** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

5.04 Other Plans. Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

5.05 Excess Deferrals. Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.

5.06 Protection of Person Who Serves in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article VI. Trust and Investment of Accounts

6.01 Investment of Deferred Compensation. A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.

6.02 Investment Powers. The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled

funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 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 pursuant to Sections 6.05 and 6.06. 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 or her Account.

6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.

(a) *Incoming Transfers:* A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:

- (1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;
- (2) The other employer's plan provides that such transfer will be made; and
- (3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(c)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

(b) *Outgoing Transfers:* An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:

- (1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;
- (2) The other employer's plan provides that such transfer will be accepted;
- (3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.

- (2) *Eligible Retirement Plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
- (3) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) *Direct Rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

- (a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01.

- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining benefits payable under the payment option applicable to the Beneficiary shall, subject to the requirements set forth in Section 7.04, be paid to an additional beneficiary designated by the Beneficiary. If no additional beneficiary is named, payment shall be made to the Beneficiary's estate in a lump sum.
- (c) In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Pre-Retirement Death Benefits.

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.07 Unforeseeable Emergencies.

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary 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.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the participant or beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 7.07(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

7.08 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.09 In-Service Distribution to Participants Age 70½ or Older. A Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account. A Participant may only receive two (2) such distributions pursuant to this Section 7.09 in any calendar year.

- (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; or
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
- (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.
- (g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) *Promissory Note.* The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

8.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

- (b) *Maximum Annual Contributions.*
- (1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;
 \$4,000 for any taxable year beginning in 2005 through 2007; and
 \$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living-increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.
 - (2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005; and
 \$1,000 for any taxable year beginning in 2006 and thereafter.
 - (3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.
- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.
- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.
- (e) *Minimum Required Distributions.*
- (1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Section 1.401(a)(9)-6T of the Income Tax Regulations (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than paragraphs (2), (3) and (4) below and Section 9.05(f). The minimum required distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of Section 1.408-8 of the Income Tax Regulations.
 - (2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Employee attains age 70½ (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.
 - (3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70½ and continuing through the year of death shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Section 401(a)(9)-9 of the Income Tax Regulations, using the Employee's age of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint

remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(ii) above).
- (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient to be obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.
- (v) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
- (vi) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

9.06 Deemed Roth IRA Requirements. Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.
- (b) *Maximum Annual Contributions.*
 - (1) *Maximum Permissible Amount.* Except in the case of a qualified rollover contribution or recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and not reduced below \$200.

- (ii) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.
 - (4) *Qualified Rollover Contribution Limit.* A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of \$100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.
 - (5) *SIMPLE IRA Limits.* No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.
 - (6) *Recharacterization.* A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in Section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.
 - (7) *Modified AGI.* For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").
 - (8) *Compensation.* For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of Section 1402 of the Code included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code. In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.
- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (3) The “value” of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
- (4) If the sole Beneficiary is the Employee’s surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2(f) of the Income Tax Regulations.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, 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.

10.02 Domestic Relations Orders.

(a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an “Alternate Payee”). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant’s Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.

(b) *Release from Liability to Participant:* The Employer’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

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 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.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan (other than Deemed IRAs) are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, 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.

Article XIII. Applicable Law

This Plan and Trust 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 deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. 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.

ICMA RETIREMENT CORPORATION
GOVERNMENTAL 457 DEFERRED COMPENSATION
AMENDMENT FOR POST-EGTRRA LEGISLATIVE AND REGULATORY CHANGES

Pursuant to Article XII of the ICMA Retirement Corporation Governmental Deferred Compensation Plan & Trust (the "Plan"), ICMA Retirement Corporation, as Plan Administrator, hereby adopts this Amendment on behalf of all adopting Employers to add a new Appendix A as follows, effective as provided therein.

Appendix A

ARTICLE I
PREAMBLE

1.01 Applicability. This Appendix memorializes the operation of the Plan in accordance with the following legislative and regulatory items.

(a) Pension Protection Act of 2006;

(b) Emergency Economic Stabilization Act of 2008;

(c) Worker, Retiree, and Employer Recovery Act of 2008;

(d) Katrina Emergency Tax Relief Act of 2005; and

(e) Gulf Opportunity Zone Act of 2005.

1.02 Superseding of Inconsistent Provisions. This Appendix supersedes the provisions of the Plan and Adoption Agreement to the extent those provisions are inconsistent with the provisions of this Appendix.

1.03 Construction. Except as otherwise provided herein, any reference to "Section" in this Appendix refers only to sections within this Appendix and is not a reference to the Plan. The Article and Section numbering in this Appendix is solely for purposes of this Appendix and does not relate to any Plan article, section, or other numbering designations.

ARTICLE II
PENSION PROTECTION ACT OF 2006

2.01 Background. On August 17, 2006, the Pension Protection Act, Pub. L. No. 109-280 ("PPA"), became law. It amended the Code to provide for a number of changes with regard to Code section 401(a) plans and Code section 457 plans. This Article incorporates the relevant provisions of PPA into the Plan.

2.02 Required Notice for Participant Distributions. With respect to any distribution notice and election form that is, under the terms of the Plan, to be delivered 90 days before the date as of which a distribution is to be made, the window for giving Participants such distribution notices and election forms shall be extended to 180 days before the date as of which a distribution is to commence. This Section 2.02 shall be effective for calendar years beginning after December 31, 2006.

2.03 Rollover by a Non-Spouse Designated Beneficiary.

(a) Unless otherwise elected by the Employer, for Plan Years beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an Inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (b) Notwithstanding the election made in subsection (a), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(F) may establish an individual retirement plan that will be treated as an Inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
- (c) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an Inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

2.04 Distributions for Unforeseen Financial Emergencies.

- (a) Unless otherwise elected by the Employer, after August 31, 2007, the determination of any unforeseen emergency will be expanded to include circumstances of severe financial hardship resulting from an illness or accident of a Primary Beneficiary or other similar extraordinary and unforeseeable circumstances of a Primary Beneficiary that result in a severe financial hardship.
- (b) A "Primary Beneficiary" is an individual or individuals who are named as a Beneficiary under the terms of the Plan and who have a right to all or a portion of the Participant's account balance upon the Participant's death.

2.05 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the employer who maintains the eligible retirement plan from which distributions pursuant to this Article are made. The term "Public Safety Officer" has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.
- (c) The term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

2.06 Rollovers to Roth IRAs. Effective for distributions after December 31, 2007, a Participant may elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Code section 408A.

ARTICLE III EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

3.01 Background. On October 3, 2008, the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 ("EESA"), became law. With regard to retirement plans, EESA generally permits plans to allow repayments of certain prior qualified distributions for home purchases for participants affected by certain 2008 Midwestern severe storms, tornadoes, and flooding and to permit repayments of prior qualified distributions for home purchases. This Article incorporates the relevant provisions of EESA into the Plan.

3.02 Qualified Disaster Recovery Assistance Distributions and Repayment Thereof. The provisions relating to qualified disaster recovery assistance distributions and repayment thereof set forth in section 702 of EESA shall apply to the Plan.

- 3.03 Repayment of Prior Qualified Distributions for Home Purchases to Plan.** The provisions relating to repayment of prior qualified distributions for home purchases set forth in section 702 of EESA shall apply to the Plan.

**ARTICLE IV
WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008**

- 4.01 Background.** On December 23, 2008, the Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. No. 110-458 ("WRERA"), became law. WRERA amended Code section 401(a)(9) to suspend required minimum distributions for 2009. It is also possible that legislation will be enacted in the future that suspends required minimum distributions for 2010 or a later year. This Article incorporates the relevant provisions of WRERA into the Plan and describes the Plan terms that will apply in the event that required minimum distributions are suspended in a year subsequent to 2009.
- 4.02 Application of Minimum Distribution Requirements.** The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year.
- 4.03 Special Rule for Scheduled Installment Payments.** All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 4.03, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

**ARTICLE V
KATRINA EMERGENCY TAX RELIEF ACT OF 2005
AND GULF OPPORTUNITY ZONE ACT OF 2005**

- 5.01 Background.** On September 23, 2005, the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73 ("KETRA"), became law, and on December 21, 2005, the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135 ("GOZA"), became law. Generally, KETRA and GOZA permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and/or Wilma. This Article incorporates the relevant provisions of KETRA and GOZA into the Plan.
- 5.02 Qualified Hurricane Distributions and Repayment Thereof.** The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code shall apply to the Plan.
- 5.03 Repayment of Prior Qualified Distributions for Home Purchases to Plan.** The provisions relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b) shall apply to the Plan.

Appendix B

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.