

DEFERRED COMPENSATION PLAN AND TRUST

OF THE CITY OF ORLANDO

**EFFECTIVE JANUARY 1, 1998
AS AMENDED MAY 1, 2000, JANUARY 1, 2002, AND MAY 1, 2005**

TABLE OF CONTENTS

	<u>Page</u>
DEFERRED COMPENSATION PLAN AND TRUST PROVISIONS	
ARTICLE I. Introduction and Purpose	1
ARTICLE II. Definitions	1
ARTICLE III. Administration.....	5
ARTICLE IV. Participation in the Plan	5
ARTICLE V. Distributions	10
ARTICLE VI. Unforeseeable Emergency.....	14
ARTICLE VII. Leave of Absence	15
ARTICLE VIII. Amendment or Termination of Plan.....	15
ARTICLE IX. Relationship to Other Plans.....	16
ARTICLE X. Transfer in Lieu of Benefits	16
ARTICLE XI. Non-Assignability; QDRO's	16
ARTICLE XII. Creation of Trust and Trust Fund.....	18
ARTICLE XIII. Disclaimer with Respect to Investments	21
ARTICLE XIV. Plan-to-Plan Transfers.....	21
ARTICLE XV. Employer Participation.....	25
ARTICLE XVI. Miscellaneous.....	25
ARTICLE XVII. Interpretation	26

**DEFERRED COMPENSATION PLAN AND TRUST
OF THE CITY OF ORLANDO**

**ARTICLE I
INTRODUCTION AND PURPOSE**

In accordance with the provisions of Florida Statute 112.215, and established by Article XII, Division 2, Section 2.79 of the Code of the City of Orlando, and as provided in Section 457 of the Internal Revenue Code of 1986, as amended, the CITY OF ORLANDO hereby establishes the Deferred Compensation Plan of the CITY OF ORLANDO, 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 CITY OF ORLANDO in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended.

The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of the Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the CITY OF ORLANDO or be used for or diverted to purposes other than the exclusive benefit of the Participants and their Beneficiaries.

This Plan shall be an agreement solely between the CITY OF ORLANDO and the Participants. Nothing contained in this Plan shall be deemed to constitute an employment agreement between any Participant and the CITY OF ORLANDO, nor shall anything contained herein be deemed to give a Participant any right to be retained in the employ of the CITY OF ORLANDO.

**ARTICLE II
DEFINITIONS**

All terms used herein in capitalized form, unless otherwise defined herein, shall have the same meanings as ascribed thereto in the Internal Revenue Code (as such terms are applied to Section 457 or in the context of an eligible deferred compensation plan). For the purposes of the Plan, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words of a masculine gender shall include the feminine and neuter gender.

2.01 "Administrator" shall mean the Chief Financial Officer for the CITY appointed, pursuant to Section 2.77 of the City Code, to administer both the Deferred Compensation Program and the Plan.

2.02 "Automatic Distribution Date" shall mean April 1 of the calendar year after the Plan Year that the Participant attains age 70-1/2 or, if later, April 1 of the calendar year after the Participant's actual retirement or other Severance from Employment.

2.03 "Beneficiary" shall mean the persons or entities designated by a Participant pursuant to section 5.05 herein.

2.04 "CITY" shall mean the CITY OF ORLANDO, the employer, when acting under authority given by the Orlando City Council.

2.05 "Compensation" shall mean all payments made to an Employee by the CITY as remuneration for services rendered, including, but not limited to, salaries, fees, wages, bonuses and overtime pay that is includible in the Employee's gross income for the calendar year.

2.06 "Deferred Compensation" shall mean the amount of Compensation deferred in any calendar year pursuant to this Plan. The Deferred Compensation cannot be more than the Participant's Compensation for that calendar year.

2.07 "Dollar Limitation" shall mean the applicable dollar amount within the meaning of Section 457(b)(2)(A) of the IRC, as adjusted for the cost of living in accordance with Section 457(e)(15) of the IRC.

2.08 "457 Catch-Up Dollar Limitation" shall mean twice the Dollar Limitation.

2.09 "Employee" shall mean any employee in a Permanent Full-time Position, Permanent Part-time Position or Contract Employee position (as such terms are defined in Section 808.5 of the CITY's Policy and Procedure Manual, as amended from time to time), including any elected and appointed officials, who receives any type of Compensation from the CITY (or from any agency, department, subdivision or instrumentality thereof) for services rendered.

2.10 "Includable Compensation" shall mean an Employee's actual wages in box 1 of Form W-2 for a year of services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the IRC) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the IRC (including an election to defer Compensation under Article IV herein).

2.11 "IRC" shall mean the Internal Revenue Code of 1986, as amended, or any future United States Internal Revenue law. References herein to specific section numbers shall be deemed to likewise refer to any applicable Treasury regulations thereunder and to corresponding provisions of any future United States Internal Revenue law.

2.12 "Normal Retirement Age" shall mean the earlier of age 70-1/2 or:

- (i) when a Participant, who is also a member of the CITY's Police Officers Pension Fund or Firefighters Pension Fund, has completed twenty (20) years of credited service, but in no event earlier than reaching age 40; or
- (ii) the point in time at which a Participant, who is also a member of one of the CITY's General Employee Retirement Plans, reaches Normal Retirement

Age as defined in the CITY's General Employee Defined Contribution Retirement Plan; or

- (iii) age 65 for a Participant who is not also a member of one of the CITY's Retirement Plans or Pension Funds.

Normal Retirement Age determines the period during which a Participant may utilize the Limited Catch-Up provision under section 4.03 herein.

Notwithstanding the foregoing, if a Participant continues employment after attaining any of (i) through (iii) above or after attaining age 70-1/2, then that Participant's Normal Retirement Age shall be not later than the mandatory retirement age, if any, established by the CITY or the age at which the Participant actually separates from service if the CITY has no mandatory retirement age.

2.13 "Participant" shall mean any Employee who executes a Participation Agreement assenting to the provisions of this Plan, once the Agreement has been approved by the Administrator. Except for purposes of Articles IV, VII, and XV, "Participant" shall include former Participants. The Administrator, if he or she is otherwise eligible, may participate in the Plan.

2.14 "Participation Agreement" shall mean any and all agreements, enrollment forms and other related documents executed and filed by an Employee with the CITY or the Service Provider pursuant to section 4.01 herein, through which the Employee elects to become a Participant in the Plan and provide for such deferral of Compensation.

2.15 "Percentage Limitation" shall mean one hundred percent (100%) of the Participant's Includable Compensation for the calendar year.

2.16 "Plan" shall mean this Deferred Compensation Plan, as may hereafter be amended, which is designed to implement the Deferred Compensation Program authorized under Sections 2.76-2.79 of the City Code.

2.17 "Plan Year" shall mean the calendar year.

2.18 "Program" shall mean the City of Orlando Deferred Compensation Program for all Employees.

2.19 "Service Provider" shall mean the company(ies) or entity(ies) designated by the CITY to provide custodial, investment, accounting, reporting or other related services under the Plan, including any successors or assigns consented to by the CITY.

2.20 "Severance from Employment" shall mean a severance of the Participant's employment with the CITY within the meaning of Section 457(d)(1)(A)(ii) of the IRC. Generally, a Participant shall be deemed to have had a Severance from Employment for purposes of this Plan when, in accordance with the established practices of the CITY, the employment relationship is considered to have actually terminated, whether voluntary or involuntary. In the case of a

Participant who is a contract employee or an independent contractor of the CITY, Severance from Employment shall be deemed to have occurred when the Participant's contract (or in the case of more than one contract, all contracts) under which services are performed has completely expired and such expiration constitutes a good faith and complete termination of the contractual relationship and terminated. Circumstances where there is not a good faith and complete termination of the contractual relationship include, without limitation, where the CITY (a) reasonably anticipates a renewal of the contract(s), (b) reasonably anticipates that the Participant will become an Employee of the CITY or (c) intends to enter into a new contract for the same services provided under the expired contract and has not eliminated the Participant as a possible provider of such services. The CITY will be considered to intend to enter into a new contract with the Participant for such services if such contract is conditioned only upon the CITY's incurring the need for such services or the availability of funds, or both.

2.21 "Total Amount Deferred" shall mean, with respect to each Participant, the sum of all Compensation deferred under the Plan, plus gain or less loss thereon (including amounts determined with reference to life insurance policies), calculated in accordance with section 4.09 herein and based upon the deferral and investment elections made by the Participant, less the amount of any expenses or distributions authorized by this Plan.

2.22 "Trust" shall mean the trust created under Article XII of the Plan during any period that the Orlando City Council is serving as Trustee, or the trust created by separate written trust agreement between the CITY and a Trustee other than the Orlando City Council, and shall consist of all Plan assets held by the Trustee.

2.23 "Trustee" shall mean the Orlando City Council or, if approved by action of the Orlando City Council, the bank, trust company or other institution selected by the CITY to be Trustee and who agrees, in writing, to act as Trustee and hold in trust the Plan assets.

2.24 "Unforeseeable Emergency" shall mean severe financial hardship to a Participant resulting from a sudden and unexpected illness or accident of the Participant, the Participant's spouse, or of a dependent (as defined in Section 152(a) of the IRC) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The payment of alimony or other support pursuant to a court order, the payment of college or private school tuition, or the purchase of a home or payment of a rental deposit are a few examples of financial burdens that shall not constitute Unforeseeable Emergencies. A divorce or separation does not in itself constitute an Unforeseeable Emergency. (The Administrator, or his designee(s), shall determine, in his, her or its sole discretion, whether a hardship to a Participant constitutes an Unforeseeable Emergency under the IRC. See Article VI.)

ARTICLE III

ADMINISTRATION

3.01 The Deferred Compensation Program and this Plan shall be administered by the Administrator, or his designee(s). In accordance with Section 2.77 of the City Code, the Administrator shall represent the CITY in all matters concerning the administration of this Program and shall have full power and authority to adopt rules and regulations for administration of the Program and to interpret, alter, amend or revoke any rules and regulations so adopted, all being subject to review by the City Council.

The rights, powers, privileges, and duties of the Administrator shall pass to his or its successor.

3.02 Every action taken by the Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him or it. The Administrator shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Administrator shall not be liable for amounts payable under the Plan.

3.03 Subject to any applicable laws and any approvals required by the CITY, the Administrator may designate another person or entity to act in his or its behalf with respect to any and all administrative matters of the Plan, and may pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

ARTICLE IV **PARTICIPATION IN THE PLAN**

4.01 Enrollment in the Plan:

(A) An Employee may become a Participant by executing a Participation Agreement. A portion of the Employee's Compensation will be deferred beginning with the calendar month following the month in which the execution of the Participation Agreement is made by the Participant and the Administrator. Notwithstanding the preceding sentence, with respect to a new Employee, a portion of the Employee's Compensation will be deferred for the calendar month during which a Participant first becomes an Employee if a Participation Agreement providing for such deferral is executed by the Participant and approved by the Administrator before the first day on which the Participant becomes an Employee.

(B) In signing the Participation Agreement, the Participant elects to participate in this Plan and consents to the deferral by the CITY of the amount specified in the Participation Agreement from the Participant's gross compensation for each pay period. To maintain active participation under the Plan, the Participant must agree to defer a minimum amount of \$12.50 weekly or \$25.00 bi-weekly to any investment option or options designated pursuant to Section 4.08 herein.

(C) The Participation Agreement shall, at a minimum, fix the amount of Deferred Compensation, specify the type of investment options and designate Participant's Beneficiaries.

4.02 Deferral Limitation:

(A) Except for the additional deferral amounts permitted under Section 4.03 herein, the maximum amount of Deferred Compensation under the Plan for any Participant for any calendar year shall not exceed the lesser of the Dollar Limitation or the Participant's Includable Compensation. Notwithstanding any provision of this Plan to the contrary, the amount excludible from a Participant's gross income for federal income tax purposes under this Plan or any other eligible deferred compensation plan under Section 457(b) of the IRC shall not exceed the limits set forth in Sections 457(b) and 414(v) of the IRC.

(B) In the case of a Participant who participates in more than one deferred compensation plan governed by Section 457 of the IRC, the deferral limitations set forth in this Section 4.02 and Section 4.03 shall apply to all such plans considered together. For purposes of this Section, Compensation deferred shall be taken into account at its value in the later of the Plan Year in which deferred or the Plan Year in which such Compensation is no longer subject to a substantial risk of forfeiture (within the meaning of Section 457 of the IRC).

(C) If the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above, or the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the IRC for which the Participant provides information that is accepted by the Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

(D) An Employee whose employment is interrupted by qualified military service under IRC section 414(u) or who is on a leave of absence for qualified military service under IRC section 414(u) may elect to make 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 Compensation) without the interruption or leave, reduced by the 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).

4.03 Catch-Up Limitations:

(A) **Catch-up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Deferral Limitation, may make elective deferrals in addition to those permitted by the Section 4.02 in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Section 414(v)(2)(B) of the IRC, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the IRC, or (2) the excess, if any, of (i) the Participant's compensation (as defined in Section 415(c)(3) of the IRC) for the year, over (ii) any other elective deferrals of the Participant for such year which are made

without regard to this Section 4.03(A). An additional contribution made pursuant to this Section 4.03(A) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 4.02 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 4.03(A) shall not apply in any year to which Section 4.03(B) applies.

(B) **Last Three Years Catch-Up Contribution:** For one or more of the Participant's last three calendar years ending before the calendar year in which the Participant attains Normal Retirement Age, the maximum amount of Deferred Compensation for each such calendar year shall be the lesser of:

(1) the 457 Catch-Up Dollar Limitation; or

(2) the sum of:

(i) the Dollar Limitation for such calendar years beginning after December 31, 2001, during which the Participant was an Employee under the Plan (determined without regard to this section 4.03(B)), minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(ii) the Dollar Limitation referred to in section 457(b)(2) of the IRC for each prior calendar year commencing after December 31, 1978 and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 4.02 and 4.03), less the aggregate amount of the Participant's contributions to Pre-2002 Coordination Plans for such prior calendar years. A prior calendar year shall only be considered for purposes of this subsection if (a) the Participant was eligible during such prior calendar year to participate in this Plan or in any other Pre-2002 Coordination Plans and (b) the compensation, if any, so deferred for such prior year under this Plan or such other eligible Pre-2002 Coordination Plan was itself subject to the Dollar Limitation.

(3) For purposes of Section 4.03(B)(2)(ii), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible IRC section 457(b) plan, or a salary reduction or elective contribution under any IRC section 401(k) qualified cash or deferred arrangement, IRC section 402(h)(1)(B) simplified employee pension (SARSEP), IRC section 403(b) annuity contract, and IRC section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in IRC section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.03(B)(2)(ii) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of

the IRC for that year.

4.04 Administrative Adjustments. The CITY or Administrator shall have the right to modify or disallow the periodic deferral of Compensation elected by the Participant:

(A) If the annual deferral elected is in excess of the limitations stated in Sections 4.02 and 4.03 herein;

(B) If the deferral elected would on a per pay period basis be in excess of the Participant's net Compensation for any pay period;

(C) Upon any change in the length of pay period utilized by CITY. In such case the periodic deferral shall be adjusted so that approximately the same percentage of pay will be deferred on an annual basis;

(D) In order to round periodic deferrals to the nearest whole dollar amount;

(E) To reduce the future deferrals in the event that the amount actually deferred for any pay period exceeds, for any reason whatsoever, the amount elected by the Participant. In the alternative, such amount of excess deferral may be refunded to the Participant. At the request of the Participant, the Administrator may make an adjustment in future deferrals to the extent necessary to correct a missed periodic deferral or one where the amount actually deferred is less than the deferral amount elected; or

(F) If the deferral elected for any pay period is less than the minimum amount specified in Section 4.01(B) herein.

The CITY and the Administrator shall have no liability to any Participant or Beneficiary with respect to the exercise of, or the failure to exercise, the authority provided in this Section 4.04.

4.05 Notice of Change in Amount. A Participant may change the amount of Deferred Compensation with respect to compensation to be earned in a subsequent pay period, provided that notice is given at least thirty (30) days prior to the beginning of the pay period for which such change is to be effective. Earlier commencement of the change may be implemented at the option of the Administrator, if administratively practical.

4.06 Revocation of Deferral. A Participant may, at any time, revoke his agreement to defer Compensation by filing a written request for revocation with the Administrator on a form approved by the Administrator, at least 30 days prior to the beginning of the weekly or bi-weekly pay period for which revocation is to be effective, unless a shorter period is administratively practical. The Participant may request a reinstatement of deferrals not earlier than 90 days after the effective date of the revocation.

Notwithstanding the first sentence of the immediately preceding paragraph, the Participant's

Total Amount Deferred shall be distributed only as provided in Articles V and VI and will be subject to the terms and conditions of the affected investment option.

A Participant's request for a distribution in the event of an Unforeseeable Emergency shall in addition be treated as a request for revocation of deferrals as of a date determined by the Administrator; however, the Participant may request a reinstatement of deferrals not earlier than 90 days after the effective date of the revocation set by the Administrator.

4.07 Re-enrollment. A Participant who (i) returns to employment with the CITY after a Severance from Employment, (ii) has made a withdrawal pursuant to an Unforeseeable Emergency or (iii) revokes his Participation Agreement, as set forth in Section 4.06 above, may again become a Participant by executing, in an enrollment period authorized by the Administrator, a new Participation Agreement. Deferral of Compensation will begin in the calendar month after such new Participation Agreement is executed by the Participant and accepted by the Administrator, unless an earlier date coinciding with the Participant's pay period is administratively practical.

4.08 Choice of Investments: Investment gains or losses will be attributed to amounts deferred under the Plan in accordance with the following procedure.

(A) The CITY will in its sole discretion select certain investment options for any Participant to choose from for investment of deferrals. Investment gains or losses will be determined based on investment options selected by the Participant. These investment options, more particularly identified in the prospectus(es) and other descriptive literature of the Service Provider or other investment product provider, may include, but is not necessarily limited to, specified life insurance policies, annuity contracts, or other investment media (such as stock, bond and mutual funds).

(B) Each Participant will designate on his Participation Agreement such investment options that will be used for amounts deferred by him. If the investment chosen by the Participant experiences a gain, the Participant's account under the Plan likewise will reflect such gain for that period. If the investment chosen by a Participant experiences a loss, or if there are investment fees associated with such investment, the Participant's account under the Plan likewise will reflect such loss or investment fees for that period.

(C) The CITY may from time to time change the investment options under the Plan. If the CITY eliminates a certain investment option, all Participants who had chosen that investment will select another option; the Participants will have no right to require the CITY to select or retain any investment option. To the extent permitted by and subject to any rules or procedures adopted by the Administrator, a Participant may from time to time change his choice of investment options. Any change with respect to investment options made by the CITY or a Participant, however, will be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options and may affect only income to be accrued after that change.

(D) If the CITY changes or eliminates an investment option, and a Participant with amounts invested in or allocated to such affected investment option, upon notice of such an event and in the time allotted, fails to select a substitute investment option(s), then the Administrator shall have the power and is authorized to select an alternate investment option on behalf of such

Participant which is, in the sole discretion of the Administrator, of equal or lesser risk. The Participant's deferral amounts affected shall remain in the alternate investment option selected by the Administrator until such time as the Participant submits the appropriate documentation to change the investment option and the same can be processed.

(E) If the CITY changes Service Providers and such event requires a transfer of Plan assets to different, albeit possibly similar, investment options, and a Participant upon notice of such an event and in the time allotted fails to select a substitute investment option(s), then the Administrator shall have the power and is authorized to select one or more alternate investment options on behalf of such Participant which are, in the sole discretion of the Administrator, of equal or lesser risk. Each Participant's deferral amounts affected shall remain in the alternate investment option(s) selected by the Administrator until such time as the Participant submits the appropriate documentation to change the investment option and the same can be processed.

4.09 Deemed IRAs. Effective for Plan Years beginning after December 31, 2002, the CITY may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the IRC and any regulations promulgated thereunder. Such accounts or annuities shall meet the applicable requirements of Sections 408 or 408A of the IRC and shall be treated as an individual retirement plan that is not part of the Plan.

4.10 Account. For convenience and to facilitate the orderly administration of the Plan, the Administrator shall maintain or shall cause the Service Provider to maintain a deferred compensation ledger account or similar individual account for each Participant. Each Participant's account shall be credited with the amount of any Compensation deferred or amounts transferred pursuant to Section 14.01 herein; debited with any applicable administrative or investment expense, allocated on a reasonable and consistent basis; credited or debited with investment gain or loss, as appropriate; and debited with the amount of any distribution. Quarterly, each Participant will be notified in writing of his Total Amount Deferred.

ARTICLE V DISTRIBUTIONS

5.01 Distribution to Participant. (NOTE: SUBSECTIONS A THROUGH C PERTAIN TO THE COMMENCEMENT DATE OF DISTRIBUTION AND THE ELECTION THEREOF, WHILE SUBSECTION D PERTAINS TO THE SETTLEMENT OPTIONS FOR DISTRIBUTION AND THE ELECTION THEREOF);

(A) Subject to Section 5.03 herein, payment of benefits under the Plan to a Participant or Beneficiary shall not be made, or made available, earlier than the earlier of:

- (1) the Participants' actual retirement;
- (2) the Participant's Severance from Employment;
- (3) the calendar year in which the participant attains age 70 1/2;
- (4) the Participant's account having met all of the requirements for a De Minimis Account Distribution pursuant to Section 5.04 herein; or

- (5) the Participant having incurred a qualifying financial hardship as a result of an Unforeseeable Emergency pursuant to Article VI.

(B) Except as otherwise provided in this Article V, benefit payments to the Participant shall commence not later than the later of April 1 of the calendar year after (1) the Plan Year in which such Participant attains (or would have attained) age 70 1/2 or (2) the Plan Year of the Participant's actual retirement or Severance from Employment (the "Automatic Distribution Date").

(C) In the event of the Participants actual retirement or Severance from Employment, the Participant may elect to have the commencement of distribution of benefits under the Plan deferred until a fixed determinable date not later than the Automatic Distribution Date. Such election must be made not less than thirty (30) days prior to the date the distribution would otherwise commence. Effective January 1, 2002, a Participant may change such election at anytime to further postpone their originally elected deferred date for commencement of distribution to a later date (not later than the Automatic Distribution Date), provided that such election is made after amounts may be available under the Plan pursuant to Sections 5.01(A)(1) or 5.01(A)(2) and before the commencement of distribution of any benefit. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

(D) Subject to the Administrator's approval, each Participant may elect the settlement option and payment period for distribution of the value of the Participant's account from among any alternatives offered by the CITY. Such election may be made or modified, and must be received by the Service Provider, by no later than thirty (30) days prior to the time that benefit payments are to commence, or, if the Participant dies prior to the date the benefit payments are to commence, then the election must be received by the Service Provider within sixty (60) days of the Service Provider receiving proof of the Participant's death. The settlement options and payment periods available under the Plan are:

- (1) A single lump-sum distribution;
- (2) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant until the Participant's account has been exhausted;
- (3) Annual or more frequent (but not more frequently than monthly) installments as nearly equal as practicable over a definite period chosen by the Participant (not to exceed the life expectancy of the Participant or the joint life expectancies of the Participant and Beneficiary);
- (4) Payments equal to payments made under an annuity, including an annuity with term certain or survivorship features, for the life or lives of the Participant and Beneficiary, or a definite period not to exceed the life expectancy of the Participant or joint life expectancies of the Participant and his or her Beneficiary;
- (5) Annual payments equal to the minimum distributions required under Section 401(a)(9) of the IRC, including the incidental death benefit requirements of Section

401(a)(9)(G), over the life expectancy of the Participant or joint life expectancies of the Participant and his or her Beneficiary; and

(6) Any other settlement option and payment terms offered by the Service Provider(s) and agreed to by the Administrator that are not inconsistent with the applicable sections of the IRC.

If a Participant does not effectively elect a settlement option and payment period for distribution of benefits, then the settlement option and payment period for any distribution to a Participant shall provide for payments in such amounts to satisfy the minimum distribution incidental benefit requirement under Section 401(a)(9) of the IRC and in accordance with Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Federal Income Tax Regulations, 26 CFR Part 1.

5.02 Distribution to a Beneficiary:

(A) If a Participant dies after benefit payments have commenced, his Beneficiary(ies) shall be entitled to benefits, if any, determined by the settlement option agreed to in writing by the Participant and Administrator, provided, however, that the method of distribution to the Beneficiary shall be at least as rapid as that payable to the Participant on the date of his death and the subsequent subsections of this Section 5.02 shall not be applicable.

With respect to benefits payable under this Section 5.02(A), the Beneficiary may, at the Administrator's discretion and to the extent permitted by the settlement option selected by the Participant, elect the settlement option and payment period for such benefits, provided, however, that such settlement option and payment period shall cause benefits to be paid to the Beneficiary not less rapidly than the method of distribution payable to the Participant on the date of his death. Such elections shall be made after the Participant's death but prior to the time any amounts become payable to the Beneficiary, and shall be subject to rules corresponding to those contained in Sections 5.01 and 5.02.

(B) Subject to Section 5.03, in the event a Participant dies prior to the commencement of the distribution of his benefits, the Participant's Beneficiary(ies) shall be eligible to receive the Total Amount Deferred.

(C) Subject to Section 5.02(D), distribution of benefits to the Beneficiary(ies) pursuant to Section 5.02(B) shall commence thirty (30) days following receipt by the Administrator of satisfactory proof of the Participant's death. However, with the consent of the Administrator and subject to Section 5.02(C), the Beneficiary(ies) may elect to defer commencement of benefit payments pursuant to Section 5.02(D) until a fixed or determinable date subsequent to the date of commencement specified in the preceding sentence. Such election by the Beneficiary(ies) must be made within the thirty (30) day period following the receipt by the Administrator of satisfactory proof of the Participant's death and such election shall be irrevocable.

(D) A Participant may elect a settlement option specified in Section 5.01(D) for benefits payable to his Beneficiary under Section 5.02(B), provided, however, that the Total Amount Deferred shall be distributed to the Beneficiary over a period not to exceed (i) five (5) years from the

Participant's date of death in either one lump-sum distribution at the beginning of such period or substantially equal annual payments over such period, if the Beneficiary is the Participant's estate, (ii) the Beneficiary's life or life expectancy, if the Beneficiary is the Participant's surviving spouse and if distribution commences on or before the date the deceased Participant would have attained age 70-1/2, (iii) the lesser of fifteen (15) years or the life expectancy of the Beneficiary, if the Beneficiary is not the Participant's surviving spouse and if distributions commence within one (1) year of the date of the Participant's death in equal or substantially equal payments, or (iv) the lesser of five (5) years from the date of the Participant's death or the Beneficiary's life expectancy, if subsections (i), (ii) and (iii) are inapplicable.

In the event a Participant fails to effectively elect a settlement option and payment period for benefits payable under Section 5.02(B), such benefits shall be paid in a lump-sum distribution within the applicable period specified above provided, however, that if the Participant has not elected the settlement option for benefits payable pursuant to Section 5.02(B), then after the Participant's death, but at least 30 days prior to the date benefit payments are to commence, the Beneficiary may elect (in the same manner as specified in and subject to the Administrator's approval and other restrictions contained in this section) to receive benefits in a different form. If the Beneficiary does not effectively elect a settlement option and payment period for distribution of benefits, then the settlement option and payment period for any distribution to the Beneficiary shall provide for payments in such amounts to satisfy the minimum distribution incidental benefit requirement under Section 401(a)(9) of the IRC and in accordance with Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Federal Income Tax Regulations, 26 CFR Part 1.

5.03 General Provisions:

(A) If the Total Amount Deferred is less than \$5,000, or if the applicable settlement option requires installment or annuity payments of less than \$25.00 per month, determined as of the date benefit payments are to commence, then notwithstanding any election made or other provision hereunder, the Administrator shall pay the Total Amount Deferred to the Participant or his Beneficiary in a single payment on the date payments are to commence.

(B) The Administrator shall take any and all actions necessary for the distribution of benefits hereunder, including, without limitation, notifying the appropriate entity through which such distribution is to be paid of such distribution and providing such other information as it may require relevant to such distribution.

(C) For purposes of this Article V, life expectancies for Participants shall be calculated by use of the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations. For Beneficiaries, the life expectancies shall be calculated by use of the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations. Pursuant to section 401(a)(9)(D) of the IRC, the life expectancy of a Participant and a Participant's spouse that is used to determine the period over which payments must be made may be redetermined, but not more frequently than annually.

5.04 De Minimis Account.

(A) **Mandatory if Less Than \$1,000.** Prior to the Participant's actual retirement or Severance from Employment, if the value of a Participant's account is less than \$1,000, the Administrator shall, without the consent of the Participant, make a single lump sum distribution to the Participant of the entire account, provided that:

(1) no amount has been deferred under the Plan with respect to such Participant during the 2-year period ending on the date of the distribution; and

(2) there has been no prior distribution under the Plan to such Participant pursuant to this Section 5.04.

(B) **Optional if Between \$1,000 and \$5,000.** Prior to the Participant's actual retirement or Severance from Employment, if the value of a Participant's account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the IRC, the Participant may elect to receive his or her entire account in a single lump sum distribution, provided that:

(1) no amount has been deferred under the Plan with respect to such Participant during the 2-year period ending on the date of the distribution; and

(2) there has been no prior distribution under the Plan to such Participant pursuant to this Section 5.04.

5.05 Beneficiary. Each Participant may designate in his Participation Agreement a Beneficiary or Beneficiaries to receive any amounts which may be distributed in the event of his death prior to the complete distribution of benefits. If one or more designated Beneficiaries survive the Participant, then payment shall be made equally to the surviving Beneficiary(ies), unless otherwise provided in the Participation Agreement. The Participant may designate primary and secondary Beneficiaries. A Participant may change his designation of Beneficiary(ies) at any time by filing with the Administrator and Service Provider written notice (on a form approved by the Administrator).

If no such designation is in effect upon a Participant's death, or if the designated Beneficiary(ies) does not survive the Participant by 30 days, his Beneficiary shall be the surviving spouse, if any, and then the estate.

ARTICLE VI

UNFORESEEABLE EMERGENCY

6.01 Unforeseeable Emergency Application. Notwithstanding any other provision herein, in the event of an Unforeseeable Emergency as defined in Section 2.24 herein, a Participant may complete and submit an Unforeseeable Emergency application requesting that the Administrator pay to him all or a portion of his Total Amount Deferred to the date of payment. The submittal of an Unforeseeable Emergency application shall in addition be treated as a request for a revocation of deferrals, as provided in section 4.06 herein. If the request for payment, after review by the Service Provider or a committee made up of at least three City employees designated by the Administrator, is approved by the Administrator, payment will be made as soon thereafter as

administratively practicable. Payment shall be limited strictly to that amount reasonably necessary to meet the situation constituting the Unforeseeable Emergency, and payments may not be made to the extent that the Unforeseeable Emergency is or may be relieved through (i) reimbursement or compensation by insurance or otherwise, (ii) liquidation of the Participant's assets (to the extent such liquidation does not itself cause severe financial hardship), or (iii) cessation of deferrals under the Plan. Any remaining amounts shall be paid in accordance with Article V of the Plan.

ARTICLE VII LEAVE OF ABSENCE

7.01 If a Participant is on an approved leave of absence, with compensation, from the CITY, or on approved leave of absence without compensation that does not constitute a Severance from Employment, said Participant's participation in the Plan may continue. The Participant under an approved leave of absence without compensation not constituting a Severance from Employment may again have his compensation deferred upon returning to work and submission and approval by the Administrator of the necessary forms.

7.02 If a Participant is on an approved leave of absence without compensation and such leave of absence continues to such an extent that it becomes a Severance from Employment, said Participant shall be considered to have terminated employment with the CITY for purposes of this Plan, provided, however, that pursuant to section 5.01 herein, said Participant may elect to postpone commencement of benefit payments until a future date. Upon return to active status, the Participant may execute a new Participation Agreement to be effective when permitted by Section 4.01 of the Plan.

ARTICLE VIII AMENDMENT OR TERMINATION OF PLAN

8.01 Plan Termination. The CITY may at any time terminate this Plan; provided, however, that no termination shall affect the amount of benefits, which at the time of such termination shall have accrued for Participants or Beneficiaries, to the extent of any Compensation deferred before the time of the termination and income thereon accrued to the date of the termination (calculated in accordance with Section 4.08 herein and the terms and conditions of the affected investment option). Upon such termination, each Participant in the Plan will be deemed to have revoked his agreement to defer future compensation as provided in Section 4.06 as of the date of such termination. Each Participant's full Compensation on a non-deferred basis will thereupon be restored.

8.02 Plan Amendment. The CITY may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the amount of benefits, which at the time of such amendment shall have accrued for Participants or Beneficiaries, to the extent of any Compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment (calculated in accordance with Section 4.08 herein and the terms and conditions of the investment options hereunder).

8.03 Copies of Amendments. The Administrator shall provide a copy of any Plan amendment to the issuers of any investment options selected pursuant to Section 4.08 herein.

ARTICLE IX
RELATIONSHIP TO OTHER PLANS

9.01 Treatment of Compensation Under Plan. It is intended that pursuant to Section 457 of the IRC, the amount of Deferred Compensation will not be considered current compensation for purposes of Federal income taxation. Such amounts will, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA).

9.02 Plan is Supplemental. Payments under this Plan will supplement retirement and death benefits payable under the CITY's group insurance, benefit, and retirement plans, if any.

ARTICLE X
TRANSFER IN LIEU OF BENEFITS

10.01 Upon the occurrence of any event requiring the payment of amounts under this Plan, the Administrator may, in his sole discretion, elect to honor a request from the Participant to substitute the transfer in-kind and assignment of any asset which the CITY has acquired in connection with this Plan at fair market value.

ARTICLE XI
NON-ASSIGNABILITY; QDRO's

11.01 Non-Assignability. It is agreed that neither the Participant, nor his Beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable. In the event of attempt to assign or transfer, the CITY shall have no further liability hereunder, nor shall any unpaid amounts be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, except to the extent otherwise required by law.

11.02 Impact of Qualified Domestic Relations Orders ("QDRO's") on the Plan. A QDRO is a court order requiring that distributions of a Participants benefits be made to a spouse or other alternate payee to meet alimony or support obligations. Because 457 plans generally are not treated as qualified exempt trusts under Section 401(a) of the IRC, distributions ordered pursuant to QDRO's must be made only at or after the time the Participant becomes entitled to a benefit in accordance with Section 457(d)(1)(A) of the IRC (i.e. Severance from Employment, retirement or death).

Any QDRO approved by the Administrator as a legal and valid final judgment, decree or order, duly served upon the CITY and to which the CITY is subject, shall be administered as follows:

(A) The Administrator may establish a separate account with respect to the spouse, former spouse, child or other dependent, as the case may be (the "alternate payee"), and in an amount consistent with the QDRO, set aside a portion of a Participant's then current account in such separate account for payment to such alternate payee. Before a separate account can be established,

the Administrator must have received a QDRO assigning a specific percentage or dollar amount to the alternate payee as of a given date. If a percentage amount is assigned, then any earnings on that amount from the given valuation date to the effective date of transfer to the separate account will be given to the Participant, unless the QDRO otherwise directs. If a dollar amount is assigned, no earnings will be transferred to the alternate payee. All funds transferred out of the investments in the Participant's account will be on a proportional basis, unless the QDRO otherwise directs.

Where a separate account is established, the alternate payee shall be entitled to make investment selections with respect thereto in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the separate account established for the alternate payee making the investment selection.

Amounts held in the separate account for an alternate payee shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the QDRO directs a different form of payment or later payment date, in which case such amount may be paid in such other form or at such later date at the discretion of the Administrator. In no event is the alternate payee entitled to receive a distribution from the Plan prior to the time that the Participant separates from service with the CITY or becomes age 70 1/2. 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 of the IRC. In the event of the alternate payee's death before distribution of funds in the separate account, the balance shall be paid to the alternate payee's estate.

Any payment made to a person other than the Participant pursuant to this Section shall be reduced by required income tax withholding. The fact that payment is made to a person other than the Participant may not prevent such payment from being includable in the gross income of the Participant for withholding and income tax reporting purposes and reported on a W-2 form issued to the Participant at the end of the year in which a disbursement is made. Such withholding and income tax reporting shall be done under the terms of the IRC as amended from time to time.

(B) The CITY'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 a spouse, former spouse, child or other alternate payee pursuant to this Section. No amount shall be paid or set aside unless the CITY or the Service Provider has been provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the CITY from any claim with respect to such amounts in any case in which the CITY has been served with, notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant's account for an alternate payee, and the Participant fails to obtain an order of the court in the proceeding relieving the CITY from the obligation to comply with the QDRO.

(C) The CITY shall not be obligated to comply with any final judgment, decree or order which requires some action which, in the sole discretion of the Administrator, would violate any provision of the Plan or any provision of Section 457 of the IRC. Neither the CITY nor the Service Provider shall be obligated to defend against or set aside any final judgment, decree, or order described herein or any legal order relating to the division of a Participant's benefits under the Plan, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the CITY or the Service Provider to incur such

expense, the amount of the expense may be charged against the Participant's account and thereby reduce CITY's obligation to pay benefits to the Participant. By voluntarily participating in this Plan, each Participant is deemed to have consented that, in the course of any proceeding relating to divorce, separation, or child support, the CITY or the Service Provider are authorized to disclose information relating to Participant's individual account to the Participant's spouse, former spouse, child, dependent or other alternate payee (including their legal representatives), or to a court.

ARTICLE XII

CREATION OF TRUST AND TRUST FUND

12.01 Establishment of Trust. A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of the Participants and Beneficiaries. The Trust shall consist of all contributions made under the Plan and the investment thereof and earnings thereon. All contributions and the earnings thereon less payments made under the terms of the Plan, including fees and expenses, shall constitute the Trust. Except in the event that the Orlando City Council approves a separate written trust agreement between the CITY and a bank, insurance company, or other institutional Trustee, the Orlando City Council will act as Trustee and the Trust shall be administered as provided in this document.

In the event the Orlando City Council approves a separate written trust agreement between the CITY and an institutional Trustee, a Trust shall be created to hold all of the assets of the Plan for the exclusive benefit of the Participants and Beneficiaries pursuant to such separate written trust agreement setting out the Trustee's rights, powers, privileges, liabilities, responsibilities, duties, division of duties, indemnification and fees and expenses. The Trust shall consist of all contributions made under the Plan, and the investments and earnings thereon, which are held by the Trustee. The provisions of this Article XII shall not apply when a separate written trust agreement between the CITY and an institutional Trustee is in effect.

12.02 Acceptance and Performance. By adoption of this Plan, the Orlando City Council agrees to act as Trustee, accepts the Trust created and agrees to perform the obligations imposed hereunder, until such time as it may select or appoint a successor institutional Trustee and enter into a separate written trust agreement. In such event, the Orlando City Council shall take, or cause to be taken, any and all action necessary to vest the rights, powers, privileges, liabilities, responsibilities and duties of the Trustee in its successor.

12.03 Control of Plan Assets. The assets of the Trust or evidence of ownership shall be held by the Trustee, under the terms of the Plan and under this Article XII. If the assets represent amounts transferred from a former plan, the Trustee shall not be responsible for the propriety of any accounting or investment under the former plan.

12.04 General Duties of the Trustee. As Trustee, the Orlando City Council, or the qualified individual(s) in the employ of the CITY as designated by the Orlando City Council, shall be responsible for the administration of the Trust. The Trustee's duties shall include:

- (A) receiving contributions under the terms of the Plan;
- (B) making distributions from Plan assets held in trust;

(C) keeping accurate records reflecting its administration of the Trust assets and making such records available for review and audit. The Trustee shall produce annually an accounting of its administration of the Trust assets from the end of the preceding Plan Year. Such accounting shall include a statement of cash receipts and disbursements since the date of its last accounting and shall contain an asset list showing the fair market value of investments held in the Trust as of the end of the Plan Year; and

(D) employing such agents, attorneys or other professionals as the Trustee may deem necessary or advisable in the performance of its duties.

The CITY, by authority from the Trustee, may contract with the Service Provider to perform those duties set forth in (A), (B) and (C) above. The Trustee's duties shall be limited to those described above. The Administrator shall be responsible for any other administrative duties required under the Plan or by applicable law.

12.05 Investment Powers of the Trustee. The Trustee, through the Service Provider, shall implement an investment program for the Trust assets. If a Participant fails to issue investment directions, the Trustee shall have authority to invest the respective Trust assets in its sole discretion. In addition to powers given by law, the Trustee may, through the Service Provider:

(A) invest the Trust assets in any form of property, including common and preferred stocks, exchange and trade put and call options, bonds, money market instruments, mutual funds (including Trust assets for which the Trustee or its affiliates serve as investment advisor), Treasury bills, deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit, and other forms of securities or investment of any kind, class, or character whatsoever, or in any other property, real or personal;

(B) invest and reinvest all or any part of the Trust assets in any insurance policies or other contracts with insurance companies including but not limited to individual or group annuity, deposit administration, and guaranteed interest contracts. Such contracts shall be held in the name of the Trustee;

(C) transfer any assets of the Trust to any group or common, collective or commingled fund that is maintained by a bank or other institution that is established to permit the pooling of Trust assets of separate trusts so long as such Trust assets are available to Section 457 plans;

(D) hold cash uninvested and deposit same with any banking or savings institution at reasonable interest;

(E) hold investments in nominee or bearer form;

(F) to vote or refrain from voting any stocks, bonds, or other securities held in the Trust, to exercise any other right appurtenant to any securities or other property held in the Trust, to vote or refrain from voting proxies;

(G) exercise all ownership rights with respect to assets held in the Trust; and

(H) do any and all other reasonable acts that may be deemed necessary under the circumstances in the performance of the Trustee's duties hereunder.

12.06 Fees and Expenses. All reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Trust assets (including fees for legal services rendered to the Trustee) may be paid from the Trust. Reasonable compensation to the Service Provider as may be agreed upon from time to time may be paid by the CITY or from the Trust. In the event any part of the Trust assets become subject to tax, all taxes incurred shall be paid from the Trust unless the Administrator advises the Trustee not to pay such tax.

12.07 Exclusive Benefit Rules. No part of the Trust assets shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with an interest in the Plan, and the Beneficiary or Beneficiaries of a deceased Participant having an interest in the Trust assets at the death of the Participant.

12.08 Trustee Actions. Every action taken by the Trustee shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The Trustee shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Trustee shall not be liable for amounts of Compensation deferred by Participants or for other amounts payable under the Plan.

12.09 Delegation. Subject to any applicable laws and any approvals required, the Trustee may delegate any or all powers and duties hereunder to another institution or entity, and may pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

12.10 Division of Duties and Indemnification.

(A) The Trustee shall have the authority and discretion to manage and govern the Trust assets to the extent provided herein, but does not guarantee the Trust in any manner against investment loss or depreciation in asset value, or guarantee the adequacy of the Trust assets to meet and discharge any or all liabilities of the Plan.

(B) The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, or for any loss to, or diminution of the Trust assets or for any other loss or damage which may result from the discharge of its duties hereunder except to the extent it is judicially determined that the Trustee has failed to exercise the care, skill, prudence and diligence under 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 with like aims.

(C) The Trustee warrants that all directions issued to the Service Provider by it shall be in accordance with the terms of the Plan and not knowingly or willfully contrary to the provisions of the IRC and regulations issued thereunder.

(D) The Trustee shall not be answerable for any action taken pursuant to any direction, consent, certificate, or other paper or document on the reasonable belief that the same is genuine and signed by the proper person.

(E) The duties and obligations of the Trustee shall be limited to those expressly imposed upon it herein. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee shall rest solely with the Administrator.

(F) When acting in their capacity of Trustee, the individual members of the Orlando City Council shall not be subject to personal liability absent intentional wrongdoing and shall be indemnified and held harmless by the CITY from and against any and all liability to which the Trustee may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act.

ARTICLE XIII **DISCLAIMER WITH RESPECT TO INVESTMENTS**

The CITY and the Administrator make no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary, or any other person with respect to the financial soundness, investment performance, fitness, or suitability (for meeting a Participant's objectives, future obligations under the Plan, or any other purpose) of any investment option offered pursuant to section 4.08 herein or any investment vehicle in which amounts deferred under the Plan are actually invested.

ARTICLE XIV **TRANSFERS AND ROLLOVERS**

14.01 Transfers to the Plan.

(A) If a Participant was formerly a participant in an eligible deferred compensation plan (described in Section 457(b) of the IRC) maintained by another employer, and if such plan permits the direct transfer of the Participant's interest therein to this Plan, then this Plan shall accept transfer of the assets representing the value of such interest and credit such value to the Participant's account under this Plan; provided, however, that the Administrator may require in his or its sole discretion that some or all of such interest be transferred in cash or its equivalent. The CITY may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the IRC, to confirm that the predecessor plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the IRC and to assure that "transfers out" are permitted under the predecessor plan. Amounts transferred shall be held, accounted for, administered and otherwise treated in the same manner as Compensation deferred by the Participant under Section 4.01 herein, except that such amount shall not be considered Compensation deferred under the Plan in the calendar year of such transfer in determining the maximum deferral under Sections 4.02 and 4.03 herein. Income on such amounts shall be calculated in accordance with the choice of investments under Section 4.08 herein by the method designated by the Participant, including any subsequent election(s) to change methods, for determining income on

Compensation deferred on the date of the transfer.

(B) A Participant in another CITY sponsored eligible deferred compensation plan (described in section 457(b) of the IRC), if such plan permits the direct transfer of the Participant's interest therein to this Plan, may transfer such interest and this Plan shall accept transfer of the assets representing the value of such interest and credit such value to the Participant's account under this Plan; provided, however, that the Administrator may require in his or its sole discretion that some or all of such interest be transferred in cash or its equivalent. The Participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer. Deferred Compensation under all CITY sponsored plans in the same calendar year shall be subject to the maximum deferral limitations under Sections 4.02 and 4.03 herein.

14.02 Transfers from the Plan.

(A) If (i) a Participant has a Severance from Employment with the CITY, (ii) accepts employment by an entity which maintains an eligible deferred compensation plan within the meaning of Section 457(b) of the IRC and section 1-457-2(f) of the Income Tax Regulations, (iii) such plan provides for the acceptance of plan-to-plan transfers with respect to such former Participant and Beneficiaries, and (iv) each Participant and Beneficiary will have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred, then notwithstanding any other provision of this Plan, in the event that such Participant so elects, the payment of benefits hereunder shall not commence and such former Participant's Total Amount Deferred will be charged to the Participant's account and transferred to such other plan. Upon such Participant's election and the transfer of assets, the CITY's liability to pay benefits to the Participant under this Plan shall be discharged. The CITY may require such documentation from the new employer's plan as it deems necessary to effectuate the transfer, to confirm that the new employer's plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the IRC and to assure that "transfers in" are permitted under the new employer's plan.

(B) A Participant in another CITY sponsored eligible deferred compensation plan (described in section 457(b) of the IRC), if (i) such plan provides for the acceptance of plan-to-plan transfers with respect to such Participants and Beneficiaries, and (ii) each Participant and Beneficiary will have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred, then, notwithstanding any other provision of this Plan, may elect such a transfer. In the event that such Participant so elects, the payment of benefits hereunder shall not commence and such Participant's Total Amount Deferred will be charged to the Participant's account and transferred to such other Plan. Upon such Participant's election and the transfer of assets, the CITY's liability to pay benefits to the Participant under this Plan shall be discharged. The Participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer. Deferred Compensation under all CITY sponsored plans in the same calendar year shall be subject to the maximum deferral limitations under Sections 4.02 and 4.03 herein.

(NOTE: THE PLAN-TO-PLAN TRANSFER PROVISIONS SHOULD BE

CONSISTENT WITH THE TERMS AND CONDITIONS OF INVESTMENT OPTIONS, WHICH MAY LIMIT OR AFFECT THE TRANSFERABILITY OF DEFERRED AMOUNTS.)

14.03 Administrative Rules. Plan-to-Plan Transfers shall be made only under such circumstances as are permitted under Section 457 of the IRC and regulations promulgated thereunder. The Administrator shall prescribe such rules consistent with the provisions of Sections 14.01 and 14.02 of the Plan and Section 457 of the IRC concerning plan-to-plan transfers as the Administrator in its sole judgment deems desirable for the orderly administration of the Plan.

14.04 Eligible Rollover Distributions:

(A) **Incoming Rollovers.** An Eligible Rollover Distribution may be accepted from an Eligible Retirement Plan maintained by another employer and credited to a Participant's account under this Plan. The CITY may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the IRC and to confirm that such plan is an Eligible Retirement Plan within the meaning of Section 402(c)(8)(B) of the IRC. The Plan shall separately account for Eligible Rollover Distributions from any Eligible Retirement Plan that is not an eligible deferred compensation plan described in Section 457(b) of the IRC maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the IRC. In addition, the Plan shall establish and maintain for the Participant a separate account for any Eligible Rollover Distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under section 457(b) of the IRC.

(B) **Outgoing Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.

(C) **Definitions.** For purposes of this Section 14.04 the following terms shall have the definitions as ascribed hereto:

(1) **Eligible Rollover Distribution:** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (a) 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, (b) any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the IRC and (c) 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).

(2) **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the IRC, an individual retirement annuity described in Section 408(b) of the IRC, an annuity plan described in Sections 403(a) or 403(b) of the IRC, a qualified trust described in Section 401(a) of the IRC, or an eligible deferred compensation plan described in Section 457(b) of the IRC which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the IRC, 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 IRC, 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.

14.05 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 IRC, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the IRC 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 IRC).

ARTICLE XV EMPLOYER PARTICIPATION

Notwithstanding any other provisions of this Plan, the CITY may add to the amounts payable to any Participant under the Plan additional Deferred Compensation for services to be rendered by the Participant to the CITY, provided:

(A) The Participant has elected to have such additional Compensation deferred, invested, and distributed pursuant to this Plan, prior to the calendar month in which the Compensation is earned, and

(B) Such additional Compensation deferred, when added to all other Compensation deferred under the Plan, does not exceed the maximum combined deferral permitted by Article IV.

ARTICLE XVI MISCELLANEOUS

16.01 Prohibited Activities. Service Provider shall not offer any insurance or other products which are not provided for herein during contacts with the CITY's Deferred Compensation Participants.

16.02 Limitation of CITY's Liability. In consideration of the approval by the

Participant of the Participation Agreement, the Participant agrees that the CITY's obligations and duties in connection herewith are confined to those specifically enumerated in this Plan. The CITY shall not be, in any manner, liable or responsible for the sufficiency, correctness, genuineness or validity of any instruments deposited with it, for the form of execution thereof, or the identity, authority or rights of any person executing or depositing them. The CITY shall not be liable for any loss which may occur by reason of forgeries, false representations or the exercise of its discretion in any particular manner, or for any other reason. Except to the extent required by law, the CITY assumes no liability for the payment of any personal property tax, sales tax, income tax, or social security deductions, any other tax, or other charge or assessment, it being understood that such matters will be paid or adjusted outside of this Plan.

Notwithstanding any provision herein to the contrary, the financial liability of the CITY under this Plan shall be limited in each instance to the value of the particular Annuity Contract which may have been purchased on behalf of any Participant under this Plan. The CITY shall have no other liability under this Plan.

16.03 Conflicts between CITY and Participants. The CITY and Participants expressly agree that the Administrator shall have the absolute rights at the Administrator's election to withhold and stop all further performance of the Agreement relating to a Participant, and the right to file suit to obtain an order from an appropriate court construing the rights of the parties hereto.

16.04 Spendthrift Provision. Except as provided in Section 11.02 herein, the interests of the Participant in his individual account, or the income or gains therefrom, shall not be subject to the rights of creditors of a Participant and shall be exempt from execution, attachment, distress for rent, and all other legal or equitable process issued by or on behalf of such creditors, and the interests of the Participant in his individual account or the income or gains therefrom shall not be assignable.

16.05 Determination of Taxability. In the event of a final determination by the Internal Revenue Service that amounts credited to an individual account are includable in the Participant's gross income for the year in which credited, then this Plan shall be null and void and all rights in the individual account shall fully vest in the Participant and each Participant shall be paid the value of his individual account the same as if he had terminated his employment as of the date of such final determination.

16.06 Venue. Any litigation concerning this Plan shall be conducted in the State courts of the State of Florida situated in Orange County, Florida.

16.07 Payroll Deductions. The CITY shall provide payroll deductions without charge for any Employee participating in the Plan.

16.08 No Employment Agreement. Nothing contained herein shall be deemed to constitute an employment agreement between the CITY and Participants or to give any Participant any right to be retained in the employ of the CITY.

16.09 Notice. Notice to CITY or the Administrator shall mean written notice

addressed to the City's Chief Financial Officer, Orlando City Hall, 400 South Orange Avenue, Orlando, Florida 32801.

ARTICLE XVII
INTERPRETATION

17.01 Applicable Laws and Regulations. This Plan shall be construed and applied pursuant to the laws of the STATE OF FLORIDA and the applicable rules and regulations issued by the Internal Revenue Service. 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 IRC.

17.02 Intent. This Plan is intended to be an eligible deferred compensation plan within the meaning of Section 457 of the IRC, and shall be interpreted so as to be consistent with such Section and all regulations promulgated thereunder.

17.03 Headings. The headings of articles, sections or other subdivisions herein are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control in determining the legal construction of the Plan.

17.04 Counterparts. This instrument may be executed in several counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by the counterpart.

DefComp2002Amend.doc