

CITY OF ORLANDO

**GENERAL EMPLOYEE DEFINED CONTRIBUTION
RETIREMENT PLAN**

Effective October 1, 1998

[Approved by Resolution adopted September 28, 1998; effective October 1, 1998]

[As Amended by Resolution adopted April 17, 2000; effective May 1, 2000]

[As Amended by Resolution adopted April 19, 2004; effective May 1, 2004]

[As Amended by Resolution adopted April 25, 2005; effective May 1, 2005]

[As Amended on June 8, 2009; effective June 8, 2009]

[As Amended on April 26, 2010; effective April 26, 2010]

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ARTICLE I

NAME OF PLAN; EFFECTIVE DATE; SHORT TITLE

- 1.1 The City of Orlando General Employee Defined Contribution Retirement Plan is hereby established effective October 1, 1998.

- 1.2 This Plan shall be known and may be cited as the DC Retirement Plan.

ARTICLE II

DEFINITIONS

As used in the DC Retirement Plan:

- 2.1 “Anniversary Date” means September 30 of each year commencing September 30, 1999.
- 2.2 “Beneficiary” means the person to whom all or a portion of a deceased Participant’s Aggregate Account is payable.
- 2.3 “City” means the City of Orlando, Florida.
- 2.4 “DB Retirement Plan” means the City of Orlando General Employee Defined Benefit Retirement Plan, formerly known as the City of Orlando General Employee Retirement Plan.
- 2.5 “Earnings” means the base salary or wages, including shift differentials and working out of job classification pay, paid a Participant for personal services rendered the City, including:
 - (a) longevity pay applicable to the period of credited service;
 - (b) base salary or wages while absent from work on account of vacation, holidays, illness or other City authorized paid leave; and
 - (c) elective contributions to a IRC Section 457 deferred compensation plan, a IRC Section 125 cafeteria plan, and employee contributions made to this Plan.

Earnings shall not include any salary, wage or other remuneration not specifically designated in this section as included in Earnings.

Earnings in excess of \$150,000 shall be disregarded. Such amount shall be adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning within such calendar year.

2.6 “Employee” means an individual not otherwise excluded in Section 3.4, who is employed by the City in a position subject to withholding of federal income and FICA tax, including elected and appointed officials.

2.7 “Employer” means the City.

2.8 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

2.9 “IRC” means the Internal Revenue Code, Title 26, United States Code, as amended.

2.10 “Leased Employee” means any person (other than an Employee of the City) who pursuant to an agreement between the City and any other person (leasing organization) has performed services for the City for a period of at least one (1) year under the primary control or direction of the City. A Leased Employee shall not be eligible to participate in this Plan if such individual is provided pension benefits by the leasing organization in compliance with Code Section 414(n)(5)(A) and (B).

2.11 “Participant” means an individual who is a Participant in the DC Retirement Plan as provided in Article III.

2.12 “Plan” means this instrument, including all amendments as may be made from time to time thereto.

2.13“Plan Administrator” means the City official, or officials, designated by the Retirement Board as established under Article IX of this document.

2.14“Plan Year” means the Plan’s fiscal year of twelve (12) months commencing on October 1 of each year and ending the following September 30.

2.15“Retirement Board” means the City Council of the City.

2.16“Trust Fund” means the assets of the Plan, as the same shall exist from time to time.

2.17“Vested” means the nonforfeitable portion of any account maintained on behalf of a Participant.

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply.

ARTICLE III

PARTICIPATION

- 3.1 Mandatory Participation. Each Employee of the City hired on or after October 1, 1998 shall be a Participant of this Plan unless excluded from participation in accordance with Section 3.4 of this Article.
- 3.2 Transferring Participants. Employees who were participants of the DB Retirement Plan on October 1, 1998 may elect to transfer to this Plan, with the present value of their accrued benefit (determined in accordance with the provisions of the DB Retirement Plan) transferred to this Plan as of the date of transfer.
- (a) Participants of the DB Retirement Plan who had ten (10) or more years of credited service in the DB Retirement Plan as of October 1, 1998 may elect to transfer to this Plan within thirty (30) calendar days of termination of active participation in the DB Retirement Plan.
 - (b) Participants of the DB Retirement Plan who had less than ten (10) years of credited service in the DB Retirement Plan as of October 1, 1998 may elect to transfer to this Plan at any date prior to the earlier of (i) thirty (30) calendar days after termination of active participation in the DB Retirement Plan or (ii) October 1, 2001.
 - (c) In the event of the death of a participant in the DB Retirement Plan who had (a) completed ten (10) years of credited service as of October 1, 1998, or (b) was employed on October 1, 1998 and died prior to October 1, 2001, the present value of his accrued benefit in the DB Retirement Plan may be transferred to this Plan by the Participant's designated Refund Beneficiary as defined in the DB Retirement Plan. If more than one (1) such Refund Beneficiary has been designated by the Participant in writing prior to his or her death, then the transfer may be made by any such

designated Refund Beneficiary, or combination of designated Refund Beneficiaries, who would be entitled to receive more than fifty percent (50%) of the benefit. If no Refund Beneficiary has been designated, then the transfer may be made by the executor or administrator of the Participant's estate. In any event, the transfer must be elected within six (6) months of the date of the Participant's death.

3.3 Beneficiary. The Beneficiary of a deceased Participant shall be deemed a Participant of this Plan.

3.4 Exclusions From Participation. The following employees are excluded from participation:

- (a) Employees designated by the City as being employed in a SEASONAL position;
- (b) Employees designated by the City as being employed in a TEMPORARY position;
- (c) An individual retained or contracted by the City in a manner not subject to withholding of federal income tax or FICA tax;
- (d) sworn police officers and firefighters of the City who are non-retired participants in another retirement plan to which the City makes employer contributions; and
- (e) Former Participants of the DB Retirement Plan who are re-employed by the City after October 1, 1998 and become Participants of the DB Retirement Plan by not electing to transfer into this DC Retirement Plan.

3.5 Termination of Participation. A Participant shall no longer be a Participant upon ceasing to be an Employee or upon becoming excluded from participation as provided in Section 3.4 of this Article.

ARTICLE IV

CONTRIBUTIONS

4.1 Effective Date. For Employees hired on or after October 1, 1998, all contributions provided for in this article shall become effective the first pay period commencing after the first of the month next following the completion of ninety days of participation. For Employees transferring into this Plan from the DB Retirement Plan, all contributions shall become effective immediately upon transfer.

4.2 Employee Irrevocable Contributions. At date of first participation, each Participant shall be given the opportunity to elect to contribute to this Plan three percent (3%) of Earnings. The election shall be in writing and shall be irrevocable. Such Employee Irrevocable Contributions shall be picked up by the Employer in accordance with Internal Revenue Code Section 414(h).

Employee Irrevocable Contributions picked up under this Section 4.2 shall be treated as City contributions for purposes of determining income tax obligations under the Internal Revenue Code. Such picked up contributions, however, shall be included in determining the Participant's gross annual compensation for all other purposes under federal and state law.

Employee Irrevocable Contributions picked up under this Section 4.2 shall be designated "employee contributions" for all purposes of the Plan and shall be considered as part of the Participant's Earnings for purposes of determining the amount of the Participant's contributions.

4.3 Employee Optional Matched Contributions. Each active Participant who does not make the irrevocable election in Section 4.2 may elect to make after-tax contributions to this Plan.

Such contributions (i) shall be elected in writing, (ii) shall be in multiples of one percent (1%), and (iii) shall not exceed three percent (3%) of Earnings.

A Participant may change his Optional Matched Contribution election, but not more frequently than annually.

- 4.4 Employee Optional Unmatched Contributions. In addition to amounts contributed under Section 4.2 or 4.3 above, each active Participant may elect to make after-tax contributions to this Plan. Such contributions (i) shall be elected in writing, (ii) shall be in multiples of one percent (1%), and (iii) shall not exceed seven percent (7%) of Earnings.

A Participant may change his Optional Unmatched Contribution election from time to time in accordance with rules and procedures set by the Plan Administrator.

- 4.5 Employee Contribution Account. Amounts contributed under Sections 4.2, 4.3 and 4.4 above shall be credited to each individual's Employee Contribution Account.

No Employee Contributions shall be made during a period in which a Participant is receiving long term disability benefits from a program maintained by the City.

- 4.6 Employer Contributions. The City shall contribute to each active Participant's Employer Contribution Account an amount equal to the sum of:

- (a) a basic contribution equal to seven percent (7%) of Earnings; plus
- (b) a matching contribution equal to the Participant's contributions, if any, under either Sections 4.2 or 4.3 above.

A Participant who is receiving Long Term Disability (LTD) benefits from a long term disability benefit program maintained by the City may remain a Participant during the period LTD benefits are paid and the Participant has not opted to withdraw his Aggregate

Account. In such case, the Employer Contribution shall be three and one-half percent (3.5%) of the Participant's base pensionable Earnings immediately prior to disablement. In no instance shall the Earnings upon which contributions are based be any greater than they are at the point of disablement. Such contributions must be nonforfeitable when made. Furthermore, said Participant shall receive one (1) day of credited service for each two (2) days of time on LTD for vesting purposes.

A Participant on LTD who elects to receive a distribution from his Aggregate Account shall no longer be considered an Employee of the City and shall cease to be a Participant in the DC Retirement Plan and not be eligible for any additional Employer Contribution or service credit.

- 4.7 Deposits to Trust Fund. Employer and Employee Contributions will be transferred to the Trust Fund as soon as conveniently possible after each pay day, but not later than thirty (30) days after such pay day.
- 4.8 Mandatory Restriction. In no event shall the sum of the annual Employee and Employer Contributions, hereafter referred to as the Annual Addition, exceed the limitations of IRC Section 415, as applicable to Government plans. For purposes of applying these limitations under IRC Section 415, all defined contribution plans of the City, whether terminated or not, are to be treated as one (1) defined contribution plan. Similarly, all defined benefit plans of the City, whether terminated or not, are to be treated as one (1) defined benefit plan. The limitation in effect on January 1 of any calendar year shall be effective for the Limitation Year beginning within such calendar year. If necessary, the Employer Contribution under Section 4.6(a) shall be reduced or curtailed. Contributions made in excess of the limitations in the preceding paragraph shall be applied towards the payment of subsequent Employer Contributions pursuant to IRC Section 1.415-6(b)(6)(iii).
- 4.9 Limitation Year. The limitation year is the Plan Year.

4.10 Transferred Funds. Employees transferring from the DB Retirement Plan to this Plan in accordance with Section 3.2 shall have the actuarial present value of their accrued benefits under the DB Retirement Plan transferred to this Plan. The actuarial present value shall be determined in accordance with the provisions set forth in the DB Retirement Plan. The amounts so transferred shall be allocated as follows:

- (a) That portion consisting of employee (pre-tax and post-tax) contributions and related interest thereon shall be deposited in the Employee Contribution Account.
- (b) The remaining balance shall be deposited in the Employer Contribution Account.

Funds transferred from the DB Retirement Plan to this Plan shall be transferred within thirty (30) days of the date of participation transfer.

ARTICLE V

ACCOUNT BALANCES

- 5.1 Aggregate Account. Each Participant's Aggregate Account shall include his:
- (a) Employee Contribution Account, consisting of Employee Contributions and accumulated income earned thereon;
 - (b) Employer Contribution Account, consisting of Employer Contributions and accumulated income earned thereon; and
 - (c) Rollover Account, if any, consisting of amounts transferred to the Trust Fund from another qualified pension plan or plans, in an "eligible rollover distribution" as defined in IRC Section 402(c)(4) and accumulated income earned thereon.
- 5.2 Rollover Accounts. Any Participant of this Plan may elect to have an "eligible rollover distribution" from another qualified pension plan transferred to this Plan by a direct trustee-to-trustee transfer. Such transfer shall be made in accordance with IRC Section 401(a)(31) and shall not include any employee post-tax contributions.
- 5.3 Participant-Directed Investments. Each Participant may direct the investment of his Aggregate Account balance in specific investments or an array of investments made available by the Retirement Board.

The Plan Administrator shall establish such written forms and procedures as are needed.

If any Participant elects not to direct his investments, the Plan Administrator will direct the Participant's investment either in a balanced mutual fund or in a balanced array of

investments. The Administrator will advise both the Participant and the Retirement Board in writing of the selected investments.

- 5.4 Income. The income earned on each Participant's investment shall be credited directly to his accounts. Income includes interest, dividends, rents, royalties, realized gains and losses and unrealized appreciation/depreciation, reduced by investment and administrative charges as may be appropriate.
- 5.5 Reports to Participants. Detailed written reports of contributions and investments income shall be provided to each Participant at least annually.
- 5.6 Specified Inventory Date. The assets of the plan will be valued at fair market value as of the last day of the Plan Year. On such date, the earnings and losses of the plan will be allocated to each Participant's account in the ratio that such account bears to all account balances.

ARTICLE VI

BENEFITS

- 6.1 Employment Termination. In the event of employment termination for any reason, the Vested portion of the Participant's Aggregate Account is payable to the Participant, his Beneficiary or estate with the vested percentage to be determined in accordance with the following table.

Years of <u>Credited</u> <u>Service</u>	Vested Percentage		
	<u>Employee</u> <u>Contribution Account</u>	<u>Employer</u> <u>Contribution</u> <u>Account</u>	<u>Rollover</u> <u>Account</u>
Less than 3	100%	0%	100%
3	100%	25%	100%
4	100%	50%	100%
5	100%	75%	100%
6 or more	100%	100%	100%

Notwithstanding the above, upon attainment of age sixty-five (65), a Participant's Aggregate Account is fully vested. Provided also, any Participant who terminates employment as a result of being selected to participate in the 2010 Voluntary Separation Program is fully vested.

That portion of the Employer Contribution Account which is not payable to the Participant is forfeited and will be applied towards the payment of subsequent Employer Contributions or administration fees. Payment of the termination benefit is to be made in accordance with Section 6.2.

6.2 Benefit Options. Subject to the limitations in Sections 6.3 and 6.4, benefits payable under this Article VI may be made:

- (a) in a single lump sum; or
- (b) by lump sum payment of a portion of the account balance; or
- (c) by monthly, quarterly, semi-annual or annual installments; or
- (d) by purchase of an annuity contract from an insurance company.

Any benefits paid by this Plan in a single lump sum or in a series of payments over a period not exceeding ten (10) years may be transferred to another qualified plan or individual retirement account by direct trustee-to-trustee transfer. Such transfer shall be made in accordance with IRC Section 401(a)(31) and shall not include any employee post-tax contributions.

Alternately, a terminated Participant may elect to leave account balances in the Trust Fund. While no further contributions may be made, the terminated Participant will retain the right to direct the investments.

Any benefit with a single sum value of less than \$5,000 (or such other amount set forth in IRC Section 411(a)(11)(A)) will be paid by the Plan Administrator in a single lump sum within sixty (60) calendar days of employment termination.

Any benefits payable to a Participant's estate shall be made in a single lump sum.

6.3 Mandatory Requirements

- (a) Benefit payments shall commence no later than April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age seventy and one-half (70 ½) or (ii) the calendar year in which the Participant's employment with the City terminates.
- (b) Benefits shall be paid over a period not exceeding the life expectancy of the Participant or over the life expectancy of such Participant and the designated Beneficiary at the day of death.
- (c) In the event Benefit payments have begun to a Participant and the Participant dies before his entire interest has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution in effect prior to the death.
- (d) In the event a Participant dies prior to the commencement of distribution of Benefits, the Participant's entire Benefit:
 - (i) Will be distributed within five (5) years of death;
 - (ii) If payment is to be made to the Participant's designated Beneficiary, will commence within one (1) year of death and will be distributed over a period not exceeding the Beneficiary's life expectancy; or
 - (iii) If payment is to be made to the Participant's spouse, will commence at a date elected by the spouse which will be no later than the date the Participant would have attained age seventy and one-half (70 ½) and will be distributed over a period not exceeding the spouse's life expectancy.

- (e) All required distributions must be made in accordance with the provisions of IRC Section 401(a)(9), including the treatment of incidental death benefit distributions contained in Section 401(a)(9)(G).
- (f) All required distributions will be made in accordance Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Federal Income Tax Regulations, 26 CFR Part 1.
- (g) The provisions of IRC Section 401(a)(9) will take precedence over any distribution options in the Plan that are inconsistent with that Section.

6.4 Nonalienation of Benefits. Except as otherwise provided in this Section 6.4, the right of a Participant to the Vested portion of his Aggregate Account is unassignable and is not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law. The exceptions to this rule are:

- (a) Assignment to an alternate payee made in compliance with a domestic relations order issued by a court of competent jurisdiction and in conformance with IRC Section 414(p)(11); provided however, that such assignment may not allocate to the alternate payee a portion greater than fifty percent (50%) of the Participant's Aggregate Account balance multiplied by the factor of (i) credited service earned during marriage, divided by (ii) total credited service.
- (b) Other court orders, judgements, decrees or settlement agreements that require all or part of a Participant's benefits to be paid to the Plan, resulting from a breach of fiduciary duty to the Plan or a criminal act committed against the Plan, provided such ruling conforms to the provisions of IRC Section 401(a)(13)(C).

ARTICLE VII

PARTICIPANT LOANS

- 7.1 In General. Commencing October 1, 1999, the Retirement Board, acting in its capacity as Plan trustee, shall make loans available to all active Participants on a reasonably equivalent basis, at a reasonable rate of interest, adequately secured, and repayable over a reasonable period of time.
- 7.2 Specific Conditions. Any loan made to a Participant shall be:
- (a) made from the Vested portion of the Participant's Aggregate Account;
 - (b) for not less than \$1,500.00;
 - (c) for not more than forty percent (40%) of the balance in the Vested portion of the Participant's Aggregate Account or \$50,000, whichever is less;
 - (d) charged interest at the prime rate published at the time of such loan in the Wall Street Journal or successor thereto, if any;
 - (e) secured by a promissory note signed by the Participant;
 - (f) repaid to the Aggregate Account by payroll deductions over a period not exceeding five (5) years. Loan repayments will be suspended under this Plan with respect to qualified military service as permitted under IRC Section 414(u); and
 - (g) restricted such that the debt service payments on the loan cannot exceed 20% of the Participant's Earnings.

No new loan requests will be processed while a Participant has an outstanding loan, unless the new loan refinances in its entirety the existing outstanding loan. Only one refinancing shall be permitted per loan. A new loan that refinances an existing loan will not be eligible to be refinanced.

- 7.3 Defaults. If a Participant fails to make repayments when due and, upon investigation, the Plan Administrator determines that such default will not be corrected, the Administrator shall rule the unpaid balance to be a Plan distribution.
- 7.4 Unpaid Balance. If a participant terminates with an outstanding loan the participant shall settle the unpaid balance in one (1) of the following manners:
- (a) The Participant may elect to leave his account balances in the trust Fund and repay the unpaid balance through any remaining opportunity for a payroll deduction.
 - (b) The Participant may elect to leave his account balances in the Trust Fund and not repay the unpaid balance. The Vested portion of the Participant's Aggregate Account shall be reduced by the unpaid balance of the loan. The administrator shall rule the unpaid balance to be a Plan distribution.
 - (c) The Participant may elect to receive the Vested portion of the Participant's Aggregate Account reduced by the unpaid balance of the loan under one (1) of the Benefit Options specified in Section 6.2 of this document.
 - (d) The Participant may elect to make a transfer to another qualified plan or individual retirement account by direct trustee-to-trustee transfer as specified in Section 6.2 of this document. The amount transferred shall be the Vested portion of the Participant's Aggregate Account reduced by the unpaid balance of the loan.

ARTICLE VIII

CREDITED SERVICE

8.1 Requirements for Credit.

- (a) Personal services rendered the City while a Participant in this Plan shall be credited to each Participant's credited service account no less frequently than each Plan Year or upon Participant termination. The amount of service to be credited for a Plan Year is equal to the Participant's hours of service during a Plan Year divided by 2,080, rounded to the nearest one-twelfth (1/12) year. In no case shall a Participant be credited with more than one year of service for all hours of service in a Plan Year. An hour of service is an hour for which the Participant is paid Earnings.
- (b) Participants who transfer to this Plan from the DB Retirement Plan shall also be credited with the credited service accrued under the DB Retirement Plan at date of transfer.
- (c) Retired Participants who are re-employed and participate in this DC Retirement Plan shall not be credited with the Credited Service accrued under the DB Retirement Plan.

8.2 Unpaid Absences. A Participant shall not be credited with service for any period of unpaid absence from work, except as provided in Section 8.3 or Section 8.4 of this Article. Receipt of Worker's Compensation payments on account of an absence from work shall be considered an unpaid absence from work.

8.3 Long Term Disability. A Participant who is paid long term disability benefits from a long term disability program maintained by the City shall be granted partial credited service for creditable periods covered by the long term disability payments. The amount of credited service granted shall be fifty percent (50%) of the amount of credited service the

Participant would have been credited with had the Participant worked during the creditable periods in the position held immediately prior to going on long term disability.

8.4 Forfeiture of Credited Service.

- (a) Credited service shall be forfeited if a Participant who is not a vested Former Participant incurs a break in participation of more than sixty (60) consecutive months. Such credited service will not be reinstated.
- (b) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with IRC Section 414(u).
- (c) Credited service shall be forfeited, if the Participant's Aggregate Account balance is paid to the Participant, the Participant's designated Beneficiary or estate.

8.5 Reinstatement of Forfeited Service. Credited service forfeited for a reason other than a break in participation of more than sixty (60) consecutive months shall be reinstated for prospective vesting purposes only in the event a Former Participant is rehired by the City in a position qualifying the Former Participant for immediate participation in the Plan.

ARTICLE IX

RETIREMENT BOARD

- 9.1 Function and Authority. The Retirement Board shall be the trustee of the Plan and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the DC Retirement Resolution including, in addition to any specific powers provided for in the DC Retirement Resolution, but without limiting the generality of the foregoing, the power:
- (a) to administer the DC Retirement Resolution, including the management of the DC Plan and making effective the provisions of the DC Retirement Resolution;
 - (b) to administer oaths;
 - (c) to create and maintain records;
 - (d) to make and adopt such reasonable rules and regulations as may be necessary or convenient to carry out the duties of the Retirement Board and activities of the DC Retirement Plan, including any rules and regulations necessary to preserve the status of the Plan as a qualified pension plan under the provisions of the Internal Revenue Code of the United States, as amended, or under successor or related provisions of law;
 - (e) to designate committees and to designate committee participants, including individuals who may not be Participants in the Plan;
 - (f) to designate a Plan Administrator for the DC Retirement Plan; and

(g) to establish a pension advisory committee which shall be representative of the Participants in the Plan and which shall function in accordance with the policies and procedures established by the Retirement Board.

9.2 Composition. The Retirement Board shall be the City Council sitting as the Retirement Board.

9.3 Expenses of Office. Participants of the Retirement Board shall serve without additional salary for their services as Retirement Board members. They shall be reimbursed for necessary and reasonable travel expenses in accordance with City policy and employee members shall suffer no loss of salary or wage in fulfilling their Retirement Board duties.

9.4 Investments. All assets of the Plan shall be held and invested for the sole purpose of meeting the legitimate obligations of the Plan and shall be used for no other purposes. No part of the assets shall be used for or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries prior to satisfaction of all DC Retirement Plan obligations.

The Retirement Board as trustee of the Plan may invest and reinvest the assets of the Plan, as directed by the Participants, subject to the terms, conditions, limitations and restrictions imposed by the State of Florida on the investments of public employee retirement plans.

9.5 Prudent Person Standard Applies. In exercising its discretionary authority, the Retirement Board shall exercise the care, skill, prudence and diligence under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like characteristics and with like aims.

9.6 Prohibited Actions. Members of the Retirement Board and its employees, except in their capacity as Participants in the DC Retirement Plan, are prohibited from:

(a) having a beneficial interest, direct or indirect, in an investment of the Plan;

- (b) borrowing from the Plan; or
- (c) receiving any pay or emolument from any individual or organization providing services to the Plan.

9.7 Denial of Benefit Claim. A benefit claimant shall be notified by registered mail, within thirty (30) days, of denial of a claim for benefits. The notification shall give the reason for the denial.

A claimant may appeal the denial and request a hearing. The appeal shall be filed in writing with the Plan Administrator within thirty (30) days of the mailing of the notice of denial. The appeal shall contain a statement of the claimant's reason for claiming the denial to be improper. The Plan Administrator shall conduct a hearing of the appeal within sixty (60) days of receipt of the appeal. The hearing shall be before the Retirement Board or, at the discretion of the Retirement Board, before the pension advisory committee which shall report its findings and recommendations to the Retirement Board. A final decision on the matter being appealed shall be made by the Retirement Board.

Appeals from a final decision of the Retirement Board shall be to the circuit court and initiated by filing a petition for certiorari with the court within thirty (30) days after the Retirement Board has issued its final decision.

9.8 Qualified Plan.

The City intends the Plan to be a qualified pension plan under IRC Section 401, as amended, and that the trust be an exempt organization under IRC Section 501. The Retirement Board shall administer the Plan so as to fulfill this intent.

ARTICLE X

AMENDMENT TERMINATION AND DISCONTINUANCE OF THE PLAN

It is the intent of the City that the Plan be permanent and remain in effect for an indefinite period. The City, however, reserves the right to modify, amend or discontinue the Plan at any time. The City expressly reserves the right to amend the Plan in order to take advantage of or comply with any statute, rule or regulation of the federal government or State of Florida, or any duly constituted agency thereof.

In the event the Plan is discontinued or terminated, all Participants shall immediately become fully vested in their benefits. The discontinuance or termination shall be carried out in all respects in conformance with applicable statute, rule or regulation of the federal government or State of Florida, or any duly constituted agency thereof.

ARTICLE XI

MISCELLANEOUS

- 11.1 Correction of Errors. The Retirement Board shall correct errors in the records and actions of the Plan. The Retirement Board shall seek to recover overpayments and shall make up underpayments.
- 11.2 Employment Rights. The Plan shall not be construed as giving an Employee any right to be retained in the service of the City without its consent nor shall the Plan interfere with the right of the City to discharge an Employee, nor shall an Employee be given any right, claim or interest in any benefits of the Plan except upon fulfillment of the conditions and requirements of the Plan.
- 11.3 Applicable Laws. The Plan shall be construed and enforced under the laws of the State of Florida and any applicable federal law, rule or regulation, and all of the provisions hereof shall be administered in accordance therewith.
- 11.4 Severability. If any Article or part of the Article of the DC Retirement Resolution is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of the remaining Articles of the DC Retirement Resolution or the Resolution in its entirety.
- 11.5 Acts of Dishonesty. Notwithstanding any other provision in this Plan, a Participant will be disqualified from receiving his Employer Contribution Account if he has defrauded the City, has otherwise engaged in an act of dishonesty with respect to City assets, or has been convicted of a felony in connection with his position with the City which occurred while he was an employee of the City. To the extent that the value of the loss is less than that of the Employer Contribution Account, the Participant will be entitled to receive that portion of his Employer Contribution Account less the value of the loss.

11.6 Normal Retirement Age. For purposes of this Plan, the “normal retirement age” of any Participant will be deemed to be fifty-nine and one-half (59 ½) years of age or any age upon the completion of twenty (20) years of service.

11.7 Military Service. Notwithstanding any provisions of this Plan to the contrary, contributions and service credit with respect to qualified military service will be provided in accordance with IRC Section 414(u), as in effect on December 12, 1994.