

CITY OF GIG HARBOR

RESOLUTION NO. 237

A resolution relating to the establishment of a money purchase retirement plan.

WHEREAS, the City of Gig Harbor adopted Resolution #150 initiating the withdrawal of the city from the federal social security system which became effective on December 31, 1982; and

WHEREAS, the City of Gig Harbor adopted Resolution #167 establishing a deferred compensation plan (IRC 457 Plan) whereby contributions by the city and employees are made into this plan in lieu of participation in the social security system; and

WHEREAS, the city recognizes the recent changes made in the federal tax laws and contribution limitations placed on deferred compensation plans has made the money purchase retirement plan (IRC 401(a) plan) more flexible and beneficial for city employees; and

WHEREAS, the city has employees rendering valuable services to the City of Gig Harbor; and

WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the city desires that its money purchase retirement plan be administered by the ICMA Retirement Corporation and that the funds held under such plan be invested in the ICMA Retirement Trust, a trust established by public employers for the collective investment of funds held under their money purchase retirement plans and deferred compensation plans;

NOW, THEREFORE, BE IT RESOLVED that the city hereby repeals Resolution #167 and establishes a money purchase retirement plan in the form of The ICMA Retirement Corporation Prototype Money Purchase Retirement Plan and Trust, pursuant to the specific provisions of the Adoption Agreement (copy attached hereto).

The plan and trust adopted by the city shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

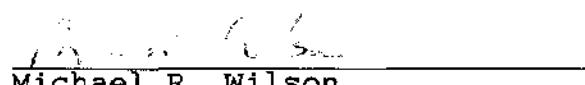
BE IT FURTHER RESOLVED that the city hereby executes the Declaration of Trust of the ICMA Retirement Trust, attached hereto; and

BE IT FURTHER RESOLVED that the city, unless it has already done so, hereby agrees to serve as trustee under the money purchase retirement plan and to invest all funds held under such plan in the ICMA Retirement Trust; and

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

  
\_\_\_\_\_  
Don McCarty, Mayor

ATTEST:

  
\_\_\_\_\_  
Michael R. Wilson  
City Administrator/Clerk

Filed with city clerk: 9/20/88  
Passed by city council: 9/26/88

ICMA RETIREMENT CORPORATION  
PROTOTYPE MONEY PURCHASE PLAN & TRUST  
ADOPTION AGREEMENT

The Employer hereby establishes a Money Purchase Plan and Trust to be known as Gig Harbor Retirement Plan (The "Plan") in the form of the ICMA Retirement Corporation Prototype Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution pension plan.

X Yes \_\_\_\_\_ No

If yes, please specify the name of the defined contribution pension plan which this Plan hereby amends and restates: \_\_\_\_\_

A. Employer: City of Gig Harbor

B. The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified: October 1, 1988.

C. Plan Year will mean:

( ) the 12-consecutive month period which coincides with the limitation year. (See section 5.05(h) of the Plan.)

(x) the 12-consecutive month period commencing on October 1, 1988 and each anniversary thereof.

D. ELIGIBILITY REQUIREMENTS:

1. The following group or groups of Employees are eligible to participate in the Plan:

X All Employees  
\_\_\_\_\_ All Full-Time Employees  
\_\_\_\_\_ Salaried Employees  
\_\_\_\_\_ Non-union Employees  
\_\_\_\_\_ Management Employees  
\_\_\_\_\_ Public Safety Employees  
\_\_\_\_\_ General Employees  
\_\_\_\_\_ Other (specify below)

2. The Employer hereby waives or reduces the requirement of a twelve-month Period of Service for participation. The period of service shall be N/A (write N/A if an Employee is eligible to participate upon employment).

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21). Write N/A if no minimum age is declared.

4. Normal Retirement Age shall be 59½ (not to exceed age 65). If a different Normal Retirement Age is established for one or more groups of Employees, please specify.

Age	Group
_____	_____
_____	_____
_____	_____

#### E. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose one):

Employer Percentage Match Of Employee Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\_\_\_\_\_ % of the contributions made by the Participant for the Plan Year (not including Participant contributions exceeding \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_);

PLUS \_\_\_\_\_ % of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Participant contributions exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_).

Employer contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

\* Employer shall contribute on behalf of each participant the amount the city would otherwise make to the federal social security program less the cost of survivor and disability insurance. Employees shall contribute a matching sum from their base salary equal to the city's contribution, plus any other voluntary contribution.

( ) Employer Dollar Match Of Employee Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\$ \_\_\_\_\_ for each \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ that the Participant contributes for the Plan Year (not including Participant contributions exceeding \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_);

PLUS \$ \_\_\_\_\_ for each \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ that the Participant contributes for the Plan Year in excess of those included in the above paragraph (but not including Participant contributions exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_).

Employer contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

( ) Fixed Percentage Employer Contributions With Or Without Mandatory Employee Contributions.

The Employer shall contribute on behalf of each Participant \_\_\_\_\_ % of Earnings for the Plan Year (subject to the limitations of Article V of the Plan). Each Participant is required to contribute \_\_\_\_\_ % of Earnings for the Plan Year as a condition of participation. (Write "0" if no contribution is required.)

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution.

\_\_\_\_\_ Yes \_\_\_\_\_ No

[Note to Employer: Neither an opinion letter issued by the Internal Revenue Service with respect to the prototype plan, nor a determination letter issued to an adopting employer is a ruling by the Internal Revenue Service that Participant contributions that are picked up by the Employer are not includable in the Participant's gross income for federal income tax purposes. The Employer may seek such a ruling.]

Picked up contributions are excludable from the Participant's gross income under section 414(h)(2) of the Internal Revenue Code of 1986 only if they meet the requirements of Rev. Rul. 81-35, 1981-1 C.B. 255. Those requirements are (1) that the Employer must specify that the contributions, although designated as employee contributions, are being paid by the Employer in lieu of contributions by the employee; and (2) the employee must not have the option of receiving the contributed amounts directly instead of having them paid by the Employer to the plan.]

( ) Fixed Dollar Employer Contributions With Or Without Mandatory Employee Contributions.

The Employer shall contribute on behalf of each Participant \$ \_\_\_\_\_ for the Plan Year (subject to the limitations of Article V of the Plan). Each Participant is required to contribute \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ for the Plan Year as a condition of participation. (Write "0" if no contribution is required.)

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution.

\_\_\_\_\_ Yes \_\_\_\_\_ No

[See the above Note to Employer regarding the tax treatment of picked up contributions.]

2. Each Participant may make a voluntary, after-tax contribution, subject to the limitations of Section 4.04 and Article V of the Plan.

\_\_\_\_\_ X \_\_\_\_\_ Yes \_\_\_\_\_ No

3. Employer contributions and Participant contributions shall be contributed to the Trust in accordance with the following payment schedule:

\_\_\_\_\_ Payments shall be made each month during the normal payroll process. \_\_\_\_\_

F. EARNINGS

Earnings, which form the basis for computing Employer contributions, are defined as all of each Participant's:

( ) W-2 earnings for the plan year which are subject to tax under section 3101(a) of the Internal Revenue Code without the dollar limitation of section 3121(a); plus any contributions through a salary reduction agreement to a cash or deferred plan under section 401(k), to a tax deferred annuity under section 403(b), and compensation voluntarily deferred under an eligible deferred compensation plan under section 457; and excluding overtime compensation and bonuses.

(X) earnings as defined above, plus the following (check whichever is applicable, if any):

X      Overtime      X      Bonuses

which are actually paid within such Plan Year.

G. LIMITATION ON ALLOCATIONS

If you maintain or ever maintained another qualified plan in which any participant in this plan is (or was) a participant or could possibly become a participant, you must complete this section.

1. If the participant is covered under another qualified defined contribution plan maintained by the employer, other than a master or prototype plan:

( ) The provisions of section 5.02(a) through (g) will apply as if the other plan were a master or prototype plan.

( ) Other Method. (Provide the method under which the plans will limit total annual additions to the maximum permissible amount, and will properly reduce any excess amounts, in a manner that precludes employer discretion.)

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2. If the participant is or has ever been a participant in a defined benefit plan maintained by the employer:

( ) If the limitation in section 5.04 would be exceeded, then the participant's projected annual benefit under the defined benefit plan shall be reduced in accordance with the terms thereof to the extent necessary to satisfy such limitation. If such plan does not provide for such reduction, or if the limitation is still exceeded after the reduction, annual additions shall be reduced to the extent necessary in the manner described in sections 5.01 through 5.03.

( ) Other Method. (Note to Employer: Provide below language which will satisfy the 1.0 limitation of section 415(e) of the Code. Such language must preclude Employer discretion. See section 1.415-1 of the Regulations for guidance.)

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3. The limitation year is the following 12-consecutive month period:

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#### H. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to 1) the minimum vesting requirements as noted and 2) the concurrence of the Plan Administrator.

<u>Years of Service Completed</u>	<u>Specified Percent Vesting</u>	<u>Minimum Vesting Requirements**</u>
Zero	<u>100</u> %	No minimum
One	<u>      </u> %	No minimum
Two	<u>      </u> %	No minimum
Three	<u>      </u> %	No minimum
Four	<u>      </u> %	Not less than 40%
Five	<u>      </u> %	Not less than 45%
Six	<u>      </u> %	Not less than 50%
Seven	<u>      </u> %	Not less than 60%
Eight	<u>      </u> %	Not less than 70%
Nine	<u>      </u> %	Not less than 80%
Ten	<u>      </u> %	Not less than 90%
Eleven, or more	<u>100</u> %	Must equal 100%

(\*\*These minimum vesting requirements conform to the IRS's Forty-Fourty schedule, which is the most restrictive schedule for which an advance determination ruling for qualification will be issued by the IRS without a pre-test for nondiscrimination.)

I. INVESTMENT OPTION

A Participant may direct his/her investment only in an investment option which provides a guarantee of principal.

A Participant may direct his/her investment of not more than \_\_\_\_\_ % in an investment option which does not provide any guarantee of principal.

A Participant may direct his/her investment, without restriction, among various investment options available under the Trust.

Specify any other investment restrictions \_\_\_\_\_

J. BENEFITS UPON SEPARATION

1. Upon separation from service for reason other than death, disability or attainment of Normal Retirement Age, the Participant may elect to commence receiving benefits from the following accounts, without regard to age:

a) Employer Contribution Account (Nonforfeitable Interest)

Yes \_\_\_\_\_ No \_\_\_\_\_

b) Participant Contribution Account (if applicable)

Yes \_\_\_\_\_ No \_\_\_\_\_

c) Participant Portable Benefits Account

Yes \_\_\_\_\_ No \_\_\_\_\_

2. If "no" to any of the above, the earliest age is \_\_\_\_\_, at which the Employer will allow a distribution from the Employer Contribution Account, the Participant Portable Benefits Account, and/or the Participant Contribution Account, if applicable.

3. Notwithstanding Section J(2) above, a distribution shall be made pursuant to Section 9.05 of the Plan, De Minimis Accounts. Further, the Participant shall be entitled to make a rollover contribution pursuant to Section 9.03 of the Plan.

K. Loans are permitted under the Plan, as provided in Article XIII:

X Yes \_\_\_\_\_ No

L. WAIVER OF FUNDING (complete this section only if waiver of minimum funding applied for)

The Employer, if unable to satisfy the minimum funding standard for a given Plan Year, may apply to the Internal Revenue Service for a waiver of the minimum funding standard. If the waiver is granted, the following provisions shall apply and suspend any contrary provision: N/A

M. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

N. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA PROTOTYPE MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

O. An adopting Employer may not rely on an opinion letter issued by the National Office of the Internal Revenue Service as evidence that the Plan is qualified under Section 401 of the Internal Revenue Code. In order to obtain reliance with respect to plan qualification, the Employer must apply to the appropriate key district office for a determination letter.

This Adoption Agreement may be used only in conjunction with basic Plan document number 01.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

EMPLOYER: CITY OF GIG HARBOR

Accepted: ICMA RETIREMENT  
CORPORATION

By: John J. Whaley

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

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# DECLARATION OF TRUST OF ICMA RETIREMENT TRUST

## ARTICLE I. NAME AND DEFINITIONS

**Section 1.1 Name:** The Name of the Trust, as amended and restated hereby, is the ICMA Retirement Trust.

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

(a) **By-Laws.** The By-Laws referred to in Section 4.1 hereof, as amended from time to time.

(b) **Deferred Compensation Plan.** A deferred compensation plan established and maintained by a Public Employer for the purpose of providing retirement income and other deferred benefits to its employees in accordance with the provisions of section 457 of the Internal Revenue Code of 1954, as amended.

(c) **Employees.** Those employees who participate in Qualified Plans.

(d) **Employer Trust.** A trust created pursuant to an agreement between RC and a Public Employer for the purpose of investing and administering the funds set aside by such Employer in connection with its Deferred Compensation agreements with its employees or in connection with its Qualified Plan.

(e) **Guaranteed Investment Contract.** A contract entered into by the Retirement Trust with insurance companies that provides for a guaranteed rate of return on investments made pursuant to such contract.

(f) **ICMA.** The International City Management Association.

(g) **ICMA/RC Trustees.** Those Trustees elected by the Public Employers who, in accordance with the provisions of Section 3.1(a) hereof, are also members of the Board of Directors of ICMA or RC.

(h) **Investment Adviser.** The Investment Adviser that enters into a contract with the Retirement Trust to provide advice with respect to investment of the Trust Property.

(i) **Portfolios.** The Portfolios of investments established by the Investment Adviser to the Retirement Trust, under the supervision of the Trustees, for the purpose of providing investments for the Trust Property.

(j) **Public Employee Trustees.** Those Trustees elected by the Public Employers who, in accordance with the provisions of Section 3.1(a) hereof, are full-time employees of Public Employers.

(k) **Public Employer Trustees.** Public Employers who serve as trustees of the Qualified Plans.

(l) **Public Employer.** A unit of state or local government, or any agency or instrumentality thereof, that has adopted a Deferred Compensation Plan or a Qualified Plan and has executed this Declaration of Trust.

(m) **Qualified Plan.** A plan sponsored by a Public Employer for the purpose of providing retirement income to its employees which satisfies the qualification requirements of Section 401 of the Internal Revenue Code, as amended.

(n) **RC.** The International City Management Association Retirement Corporation.

(o) **Retirement Trust.** The Trust created by this Declaration of Trust.

(p) **Trust Property.** The amounts held in the Retirement Trust on behalf of the Public Employers in connection with Deferred Compensation Plans and on behalf of the Public Employer Trustees for the exclusive benefit of Employees pursuant to Qualified Plans. The Trust Property shall include any income resulting from the investment of the amounts so held.

(q) **Trustees.** The Public Employee Trustees and ICMA/RC Trustees elected by the Public Employers to serve as members of the Board of Trustees of the Retirement Trust.

## ARTICLE II. CREATION AND PURPOSE OF THE TRUST; OWNERSHIP OF TRUST PROPERTY

**Section 2.1 Creation:** The Retirement Trust is created and established by the execution of this Declaration of Trust by the Trustees and the Public Employers.

**Section 2.2 Purpose:** The purpose of the Retirement Trust is to provide for the commingled investment of funds held by the Public Employers in connection with their Deferred Compensation and Qualified Plans. The Trust Property shall be invested in the Portfolios, in Guaranteed Investment Contracts, and in other investments recommended by the Investment Adviser under the supervision of the Board of Trustees. No part of the Trust Property will be invested in securities issued by Public Employers.

**Section 2.3 Ownership of Trust Property:** The Trustees shall have legal title to the Trust Property. The Public Employers shall be the beneficial owners of the portion of the Trust Property allocable to the Deferred Compensation Plans. The portion of the Trust Property allocable to the Qualified Plans shall be held for the Public Employer Trustees for the exclusive benefit of the Employees.

## ARTICLE III. TRUSTEES

### Section 3.1 Number and Qualification of Trustees.

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

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

### Section 3.2 Election and Term.

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

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

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

**Section 3.4 Resignation and Removal.**

- (a) Any Trustee may resign as Trustee (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the other Trustees and such resignation shall be effective upon such delivery, or at a later date according to the terms of the instrument. Any of the Trustees may be removed for cause, by a vote of a majority of the Public Employers.
- (b) Each Public Employee Trustee shall resign his or her position as Trustee within sixty days of the date on which he or she ceases to be a full-time employee of a Public Employer.

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

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

**ARTICLE IV. POWERS OF TRUSTEES**

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

- (a) receive the Trust Property from the Public Employers, Public Employer Trustees or other Trustee of any Employee Trust;
- (b) enter into a contract with an Investment Adviser providing, among other things, for the establishment and operation of the Portfolios, selection of the Guaranteed Investment Contracts in which the Trust Property may be invested, selection of other investments for the Trust Property and the payment of reasonable fees to the Investment Adviser and to any sub-investment adviser retained by the Investment Adviser;
- (c) review annually the performance of the Investment Adviser and approve or modify the contract with such Investment Adviser;
- (d) invest and reinvest the Trust Property in the Portfolios, the Guaranteed Interest Contracts and in any other investment recommended by the Investment Adviser, but not including securities issued by Public Employers, provided that if a Public Employer has directed that its monies be invested in specified Portfolios or in a Guaranteed Investment Contract, the Trustees of the Retirement Trust shall invest such monies in accordance with such directions;
- (e) keep such portion of the Trust Property in cash or cash balances as the Trustees, from time to time, may deem to be in the best interest of the Retirement Trust created hereby, without liability for interest thereon;

- (f) accept and retain for such time as they may deem advisable any securities or other property received or acquired by them as Trustees hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (g) cause any securities or other property held as part of the Trust Property to be registered in the name of the Retirement Trust or in the name of a nominee, and to hold any investments in bearer form, but the books and records of the Trustees shall at all times show that all such investments are a part of the Trust Property;
- (h) make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) vote upon any stock, bonds, or other securities, give general or special proxies or powers of attorney with or without power of substitution, exercise any conversion privileges, subscription rights, or other options, and make any payments incidental thereto, oppose, or consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and delegate discretionary powers, and pay any assessments or charges in connection therewith, and generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Trust Property;
- (j) enter into contracts or arrangements for goods or services required in connection with the operation of the Retirement Trust, including, but not limited to, contracts with custodians and contracts for the provision of administrative services;
- (k) borrow or reuse money for the purposes of the Retirement Trust in such amount, and upon such terms and conditions, as the Trustees shall deem advisable provided that the aggregate amount of such borrowings shall not exceed 30% of the value of the Trust Property. No person lending money to the Trustees shall be bound to see the application of the money lent or to inquire into its validity, expediency or propriety of any such borrowing;
- (l) incur reasonable expenses as required for the operation of the Retirement Trust and deduct such expenses from the Trust Property;
- (m) pay expenses properly allocable to the Trust Property incurred in connection with the Deferred Compensation Plans, Qualified Plans or the Employer Trusts and deduct such expenses from that portion of the Trust Property to whom such expenses are properly allocable;
- (n) pay out of the Trust Property all real and personal property taxes, income taxes and other taxes of any and all kinds which, in the opinion of the Trustees, are properly levied, or assessed under existing or future laws upon, or in respect of, the Trust Property and allocate any such taxes to the appropriate accounts;
- (o) adopt, amend and repeal the By-Laws, provided that such By-Laws are at all times consistent with the terms of this Declaration of Trust;
- (p) employ persons to make available interests in the Retirement Trust to employers eligible to maintain a Deferred Compensation Plan under Section 457 or a Qualified Plan under Section 401 of the Internal Revenue Code, as amended;
- (q) issue the Annual Report of the Retirement Trust, and the disclosure documents and other literature used by the Retirement Trust;
- (r) make loans, including the purchase of debt obligations, provided that all such loans shall bear interest at the current market rate;
- (s) contract for, and delegate any powers granted hereunder to, such officers, agents, employees, auditors and attorneys as the Trustees may select, provided that the Trustees may not delegate the powers set forth in paragraphs (b), (c) and (o) of this Section 4.1 and may not delegate any powers if such delegation would violate their fiduciary duties;
- (t) provide for the indemnification of the officers and Trustees of the Retirement Trust and purchase fiduciary insurance;
- (u) maintain books and records, including separate accounts for each Public Employer, Public Employer Trustee or Employer Trust and such additional separate accounts as are required under, and consistent with, the Deferred Compensation or Qualified Plan of each Public Employer, and
- (v) do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or appropriate to administer the Trust Property and to carry out the purposes of the Retirement Trust.

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

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

## ARTICLE V. DUTY OF CARE AND LIABILITY OF TRUSTEES

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

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

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

## ARTICLE VI. ANNUAL REPORT TO SHAREHOLDERS

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

## ARTICLE VII. DURATION OR AMENDMENT OF RETIREMENT TRUST

**Section 7.1 Withdrawal:** A Public Employer or Public Employer Trustee may, at any time, withdraw from this Retirement Trust by delivering to the Board of Trustees a written statement of withdrawal. In such statement, the Public Employer or Public Employer Trustee shall acknowledge that the Trust Property allocable to the Public Employer is derived from compensation deferred by employees of such Public Employer pursuant to its Deferred Compensation Plan or from contributions to the accounts of Employees pursuant to a Qualified Plan, and shall designate the financial institution to which such property shall be transferred by the Trustees of the Retirement Trust or by the Trustee of the Employer Trust.

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

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

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

## ARTICLE VIII. MISCELLANEOUS

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

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