

**RESOLUTION NO. 1090**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
REDMOND, WASHINGTON, AUTHORIZING AND  
DIRECTING THE MAYOR TO EXECUTE TRUST  
DOCUMENTS AND TRANSFER THE CITY'S 457 DEFERRED  
COMPENSATION PLAN INTO A TRUST.

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WHEREAS, the City maintains two 457 Deferred Compensation Plans as provided in Section 457 of the Internal Revenue Code ("Plans"); and

WHEREAS, the assets within the City's Plans are presently owned by the City and held within the custody of Great West Life Insurance Company and ICMA Retirement Corp.; and

WHEREAS, Congress enacted the 1996 Small Business Job Protection Act, amending Section 457 of the Internal Revenue Code; and

WHEREAS, the amendments to Section 457 of the Internal Revenue Code ("IRC") require that all assets of a Section 457 Deferred Compensation Plans be held in trust, effective January 1, 1999; and

WHEREAS, the City must transfer its Section 457 Deferred Compensation Plan assets into a trust to comply with Section 457(g) of the Internal Revenue Code, as amended,

WHEREAS, the City desires to establish a trust to hold and to provide for the investment of the assets of the Plans and to contribute the deferred salaries or wages of the Plans' Participants to the trust to be administered by the Plan Committee of the City of Redmond Employee's Benefit Plan; and

WHEREAS, the individuals who are appointed as the Plan Committee of the City of Redmond Employee's Benefit Plan are willing to serve as trustees of the trust; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON,  
HEREBY RESOLVES AS FOLLOWS:

Section 1. The Mayor and the trustees are hereby authorized and directed to execute all necessary trust documents to establish a trust and to effectuate the transfer of the City's Section 457 Deferred Compensation Plan assets into a trust, substantially in the form of the trust attached hereto at Exhibit A ("Trust Document"). The current Plan Committee of the City of Redmond Employee's Benefit Plan is hereby appointed and authorized to act as the Plan Committee, Trust Committee and Investment Advisory Committee of the Trust Document as further set forth in the Trust Document attached as Exhibit A. The present Plan Committee consists of: Lenda Crawford, Kelley Wood, Tom Trueblood, Diane Kenderesi, Mike Haley, Larry Gainer and Bert Eymberts. The Plan Committee is authorized to adopt such future amendments to the Plans and Trust Document as may be in the best interests of the Participants, so long as such amendments do not require City contributions to the Plans and are within the Committee's powers as set forth in the Trust Document attached as Exhibit A.

Section 2. The City hereby establishes a trust effective January 1, 1999 with the trustees, pursuant to the Trust Document, which shall be comprised of all assets under the Plans, including all sums of money, all deferred amounts, all property and rights purchased with deferred amounts, and all income attributable to such amounts, property or rights currently held by the City with Great West Life Insurance Company and ICMA Retirement Corporation and such amounts as shall from time to time be paid or delivered to the trustees by the City. All such money and property, all investments and proceeds thereof and earnings and losses thereon, less payments, which shall have been made by the trustees at any time of reference as authorized herein, are referred to herein as the "Trust Fund."

Any investments applied for by the trustees shall be immediately registered in the name of the trustees for the purposes of the trust. The City hereby irrevocably transfers to the trust all rights, title and interest in all assets that the City previously owned under the Plans. The purpose of the trust is to hold the Plan investments and any other money and property solely as assets of the Plans for the purpose of investing and paying Plan benefits. The Plans and trust are established for the exclusive benefit of the Plan participants and beneficiaries. The Plans are

intended to be eligible deferred compensation plans within the meaning of IRC Section 457(b) and the trust is intended to be tax exempt under IRC Sections 501(a) and 457(g).

Section 3. The Mayor or the Mayor's designee and the Plan Committee are further authorized and directed to execute all other documents necessary or helpful to effectuate the transfer of the City's Section 457 Deferred Compensation Plan assets into the trust created pursuant to Section 1 to this Resolution.

RESOLVED this 1st day of December, 1998.

CITY OF REDMOND



Mayor Pro Tem

ROSEMARIE IVES, MAYOR

ATTEST/AUTHENTICATED:

  
BONNIE MATTSON, CITY CLERK

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO. 1090

November 24, 1998  
December 1, 1998

AMENDMENT TO THE  
CITY OF REDMOND  
457 DEFERRED COMPENSATION PLANS

The City of Redmond (hereinafter referred to as the "Employer") hereby amends the 457 Deferred Compensation Plans currently administered on behalf of the Employer by ICMA Retirement Corporation and by Great West Life and Annuity Insurance Company to comply with certain miscellaneous provisions of the Small Business Job Protection Act of 1996 (P.L. 104-188), the Taxpayer Relief Act of 1997 (P.L. 105-34) and the Mandatory Trust Requirements of Section 457(g) of the Code as implemented by Sections 1448 of the Small Business Job Protection Act of 1996 and IRS Revenue Procedure 98-41. In the event of a conflict between the provisions of the Plan or Plans and this Amendment, the provisions of this Amendment shall supersede and control the administration and interpretation of the Plan or Plans.

I. VOLUNTARY IN-SERVICE DISTRIBUTIONS

- 1.01. A Participant who is an active Employee of an Eligible Employer (as defined in Code § 457(e)(1)) shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:
- a) The total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under Code § 411(a)(11), if greater);
  - b) The Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan;
  - c) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
  - d) the Participant elects to receive the distribution.

II. ADDITIONAL DISTRIBUTION ELECTIONS

- 2.01. If a Participant has elected, in accordance with the Plan, to defer the commencement of distributions beyond the first permissible payout date, then the Participant may make an additional election to further defer the commencement of distributions, provided that the election is filed before distributions actually begin and the later commencement date meets the required distribution commencement date provisions of Code §§ 401(a)(9) and 457(d)(2). A Participant may not make more than one such additional deferral election after the first permissible payout date. For purposes of this paragraph, the "first permissible payout date" is the earliest date on which the Plan

permits payments to begin after separation from service, disregarding payments to a Participant who has an unforeseeable emergency or attains age 70½, or under the in-service distribution provisions of the Plan, as amended.

### III. ADMINISTRATION, ACCOUNTS AND REPORTS

- 3.01. PLAN COMMITTEE. The Plan will be administered by a Plan Committee appointed by the Employer. The Employer shall appoint a Plan Committee consisting of seven (7) members who shall hold office for a period determined by rules established by the Plan Committee. Any Committee member may be removed by the Employer upon the recommendation of a majority of the remaining Committee members. Any member of the Committee may resign by notice in writing filed with the Trustee and with the Committee. Any vacancy among the members of the Committee shall be promptly filled by the Employer and shall be for the unexpired term of office, if applicable. Any vacancies unfilled for ninety (90) days shall be filled by majority vote of the remaining members of the Committee.

The Plan Committee shall be the same members as the Plan Committee of the Employer of Redmond Employees' Benefit Plan. It is intended that the Plan Committee will also be the Trust Committee (or Trustee) (see Section 7.01) and the Investment Advisory Committee (see Section 7.02).

- 3.02. OFFICERS AND DUTIES. The Plan Committee shall choose from among its members a Chairperson and a Secretary. The Secretary shall keep minutes of the Committee's proceedings and all dates, records and documents pertaining to the Committee's supervision of the Plan. The Committee may adopt rules for the conduct of its meetings. The Committee may employ, and suitably compensate, such attorneys, actuaries, physicians, advisory, clerical or other employees as it may deem necessary for the performance of its duties.
- 3.03. DECISION-MAKING PROCEDURE. All actions of the Committee shall be determined by vote of a majority of its members who may act with or without a meeting. Either the Chairperson or the Secretary may execute any certificate or other written direction on behalf of the Committee. A member of the Committee shall not vote on any question relating exclusively to himself or his relatives; in the determination of any such question, the decision of a majority of the remaining members of the Committee shall govern. The members of the Committee shall serve without bond and without compensation for their services as such.
- 3.04. LIMITS OF LIABILITY. No member of the Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his own part, except his own willful misconduct. The Employer shall indemnify and hold harmless, and defend each member of the Committee from any and all liabilities arising out of his membership on the Committee, except liabilities arising out of his

own willful misconduct. The Committee shall make available to Participants and Beneficiaries, for examination during reasonable business hours, such records as pertain to the person wishing to examine the same. The indemnification provisions of this Section apply to the Trustees if such Trustees are also employees of the Employer. This provision shall not apply to an outside service provider who is compensated. The Committee shall notify the Employer as soon as possible of any such claims which it may seek indemnification and defense under this provision, and consult with the Employer on choice of defense counsel.

- 3.05. POWERS OF COMMITTEE. The Committee shall administer and enforce the Plan in accordance with its terms and shall have all the powers convenient or necessary to accomplish that purpose including, but not limited to, the following powers:
- (a) To determine all questions relating to the rights or of the eligibility of employees to become Participants and the value of a Participant's account;
  - (b) To certify to the Trustee the fact of retirement, death, termination of employment or of participation of any Participant;
  - (c) To interpret, construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
  - (d) To adopt rules of procedure and regulations necessary for the administration of the Plan provided the rules are not inconsistent with the terms of this Plan;
  - (e) To adopt amendments to the Plan on behalf of the Employer (without the approval of any other body); provided, such power of adoption is limited to amendments which the Plan Committee determines: (1) will facilitate the administration of the Plan; (2) are in the best interest of the Participants and Beneficiaries; or (3) are necessary to maintain the Plan and/or the Trust in tax-qualified status under the Internal Revenue Code Section 457, 501(a) as amended, and any other relevant Internal Revenue Code section, or to conform to any other law; and (4) which do not increase the Employer's contributions under this Plan;
  - (f) To direct the Trustee with respect to the crediting and distribution of the Trust;
  - (g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan and to establish a claims procedure for Participants and their Beneficiaries, if necessary;
  - (h) To establish a policy in making distributions for unforeseeable emergencies;

- (i) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (j) To comply with the reporting and disclosure rules, if any, applicable to the Plan.

All decisions of the Plan Committee in matters properly coming before it according to the terms of this Plan, and all actions taken by the Plan Committee in the proper exercise of its administrative powers, duties and responsibilities, will be final and binding upon all Employees, Participants and Beneficiaries and upon any person having or claiming any rights or interest in this Plan unless it can be shown that the decision, action, interpretation or determination was arbitrary and capricious. The Employer and the Plan Committee will make and receive any reports and information, and retain any records necessary or appropriate to the administration of this Plan or to the performance of duties hereunder, or satisfying any requirements imposed by law. In the performance of its duties, the Plan Committee will be entitled to rely on information furnished by an employee, Participant or Beneficiary or by the Employer or Trustee.

- 3.06. TRANSMITTAL OF INFORMATION. To enable the Committee to perform its functions, the Employer shall supply full and timely information concerning the compensation of Participants, their Retirement, Death, termination of employment or of participation, and such other pertinent facts as the Committee may require. The Committee shall advise the Trustee of such facts as may be pertinent to the Trustee's administration of the Trust.
- 3.07. EXPENSES OF ADMINISTRATION. The costs of carrying out the Plan will be borne by those participating through reasonable fees agreed to by the Plan Committee for administrative, record-keeping, investment and other services performed and for appropriate expenses incurred. The Participant's deferred amounts will be subject to fees charged by the Employer, its custodian, its independent Trustee, if any, or the Plan record-keeper for the administrative costs and expenses of the Plan. The administrative fees charged to the Participants may include the costs and expenses of services rendered by a third party administrator, custodian, record-keeper, or services rendered by a professional investment advisor, accountant, or legal counsel. A fee may take the form of an assessment calculated as a percentage of the current value of the Participant's account, a deduction measured by a payment or transaction, and/or a fixed charge for a service, among other reasonable methods. The Plan Committee may direct the Trustee to allocate fees and expenses for administration incurred pursuant to Section 6.06 as a charge against all participant accounts on a pro rata basis.
- 3.08. ACCOUNTS. An account will be kept for everyone who participates in the Plan. Like all others, the Participant's account will be credited with a sum equal to the amounts deferred from the Participant's salary or wages; it will be adjusted to reflect the current market performance of the Participant's investment selection(s); and the

Participant's account will be reduced by fees charged to the Participant's account as authorized by Section 3.07 or emergency withdrawals under Section 3.05(h). The adjustment will reflect interest, dividends, and other distributions received; gains or losses from market fluctuations; investment losses; and/or any default by an investment underwriter, each if and when occurring, and, if applicable, a withdrawal ("surrender") fee. The current value of the Participant's account will determine the amount of benefits paid under the Plan.

- 3.09. DEPOSIT OF DEFERRALS INTO TRUST AND TIME LAG. Transfers to the Trust will be made within a period that is not longer than is reasonable for the proper administration of the accounts of participants.
- 3.10. ANNUAL ACCOUNT REPORT. The Participant will be given a written report of the current value of the Participant's account at least annually. Unless the Participant takes exception to the information supplied, the Participant's annual statement will establish the current value of the Participant's account as of the account date.
- 3.11. ACCESS TO PLAN RECORDS. Upon reasonable notice the Participant may inspect records maintained for the Plan generally by the Employer or a Plan administrator and the Participant's account during normal business hours.

#### IV. COST OF LIVING ADJUSTMENTS

- 4.01 The Plan is hereby amended to substitute the following phrase in place of each reference to the \$7,500 limitation that appears in the Plan:

"\$7,500, as adjusted for the calendar year to reflect increases in cost-of-living in accordance with Code §§ 457(e)(15) and 415(d)."

In accordance with the above provisions, the maximum deferral amount for 1998 shall be \$8,000, subject to the catch-up election rules and other limitations regarding "includable compensation" as defined in the Plan.



## V. TRUST REQUIREMENTS UNDER CODE § 457(g)

- 5.01. Notwithstanding any contrary provision of the Plan, in accordance with Code § 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts and all income attributable to such amounts, property or rights shall be held in Trust pursuant to Article VI of this Amendment for the exclusive benefit of Participants and beneficiaries under the Plan. Any Trust under the Plan shall be established pursuant to a written agreement that constitutes a valid Trust under the laws of the State of Washington. Furthermore, all amounts of compensation deferred under the Plan shall be transferred to a Trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of Participants. The Employer, in adopting this Amendment, specifically references the Trust provisions of this Amendment as being in compliance with the laws of the State of Washington and constituting a valid Trust Agreement under state law.

## VI. TRUST PROVISIONS

- 6.01. ACCEPTANCE AND TRUST COMMITTEE. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee agrees to hold the Trust Fund in trust for the exclusive benefit of the Participants and their Beneficiaries in accordance with the provisions of this Plan and Trust.

The Trustee shall be the Trust Committee which is the same body as the Plan Committee and is appointed in the same manner as set forth in Section 3.01. The same persons shall serve as the Chair and Secretary of the Plan and Trust Committee. Members of the Trust Committee shall serve without bond and without compensation for their services as such.

- 6.02. INVESTMENT ADVISORY COMMITTEE. In accordance with RCW 35.39.080, there is also established an Investment Advisory Committee which is also the Trust Committee. At least three members of the Investment Advisory Committee/Trust Committee should be considered experienced and qualified in the field of investments.
- 6.03. RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the funds contributed to it by the Employer, but does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obliged to collect any contributions from the Employer, nor is obliged to see that funds deposited with it are deposited according to the provisions of the Plan.
- 6.04. INVESTMENT POWERS.
- (a) Trustee Powers. The Trustee has full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the

control or direction of a properly appointed Investment Manager or with respect to a Plan asset properly subject to Employer, Participant or Plan Committee direction of investment. The Trustee must coordinate its investment policy with Plan financial needs as communicated to it by the Plan Committee. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- (i) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith is proper but must be of a kind constituting a diversification considered by law suitable for trust investments.
- (ii) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.
- (iii) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code § 414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code § 584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.
- (iv) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of

the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

- (v) To credit and distribute the Trust as directed by the Plan Committee. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Committee.
- (vi) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.
- (vii) To compromise, contest, arbitrate or abandon claims and demands, in its discretion.
- (viii) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights.
- (ix) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship.
- (x) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.
- (xi) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction.
- (xii) To file all tax returns required of the Trustee.
- (xiii) To furnish to the Employer and the Plan Committee an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Employer and the Plan Committee, except as to any act or transaction concerning which

the Employer or the Plan Committee files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object.

- (xiv) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee is not obliged or required to do so unless indemnified to its satisfaction.

- 6.05. RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Plan must be open to the inspection of the Plan Committee and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Committee may specify in writing. The Trustee or Ancillary Trustee must furnish the Plan Committee with whatever information relating to the Trust Fund the Plan Committee considers necessary.
- 6.06. FEES AND EXPENSES FROM FUND. The Trustee will receive reasonable annual compensation as may be agreed upon from time to time between the Employer and the Trustee. No person who is receiving full pay from the Employer may receive compensation for services as Trustee. The Trustee will pay from the Trust Fund all fees and expenses reasonably incurred by it in its administration of the Trust unless the Employer pays such fees and expenses. Any fee or expense paid, directly or indirectly, by the Employer is not an employer contribution to the Plan, provided the fee or expense relates to the ordinary and necessary administration of the Fund.
- 6.07. PARTIES TO LITIGATION. Except as otherwise provided by applicable law, only the Employer, the Plan Committee and the Trustee shall be necessary parties to any court proceeding involving the Trustee as the Trustee of the Trust Fund or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Plan Committee, the Trustee, Participants and Beneficiaries.
- 6.08. PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust Fund, to the extent not otherwise paid by the Employer, reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.
- 6.09. DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

- 6.10. DISTRIBUTION DIRECTIONS. If no one claims a payment or distribution made from the Trust, the Trustee shall promptly notify the Plan Committee and shall handle or administer the payment in accordance with the subsequent direction of the Plan Committee.
- 6.11. THIRD PARTY DEALING WITH MULTIPLE TRUSTEES. No person dealing with Trustee shall be obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate. If more than one Trustee or individual shall act as Trustee(s), the decision of a majority of the Trustees shall control (with or without a meeting) with respect to any decision regarding the administration or investment of the Trust Fund. However, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.
- 6.12. RESIGNATION. The Trustee may resign its position at any time by giving 30 days' written notice in advance to the Employer and to the Plan Committee. If the Employer fails to appoint a successor Trustee within 60 days of its receipt of the Trustee's written notice of resignation, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed its acceptance of appointment with the former Trustee.
- 6.13. REMOVAL. The Employer, by giving 30 days' written notice in advance to the Trustee, may remove any Trustee. In the event of the resignation or removal of the Trustee, the Employer shall appoint a successor Custodian/Trustee if it intends to continue the Plan. During any period the selection of a Trustee is pending, or during any period a Trustee is unable to serve for any reason, the remaining person or persons will act as the Trustee(s).
- 6.14. INTERIM DUTIES AND SUCCESSOR TRUSTEE. Each successor Trustee succeeds to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under this Plan upon his predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under federal law. With the approval of the Employer and the Plan Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

- 6.15. VALUATION OF TRUST. The Trustee will value the Trust Fund as of each Valuation Date to determine the fair market value of each Participant's Account Value in the Trust. The Trustee will also value the Trust Fund on such other valuation dates as directed by the Plan Committee.

- 6.16. LIMITATION ON LIABILITY - IF INVESTMENT MANAGER, ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY APPOINTED. The Trustee is not liable for the acts or omissions of any Investment Manager the Plan Committee or Trustee may appoint, nor is the Trustee under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Plan Committee, the Trustee and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

The limitation on liability described in this Section 6.16 also applies to the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 6.18. However, if a discretionary Trustee, pursuant to the delegation described in Section 6.18, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with applicable law. The Employer, the discretionary Trustee and an ancillary trustee may execute a letter agreement as a part of this Plan delineating any indemnification agreement between the parties.

- 6.17 INVESTMENT IN GROUP TRUST FUND. The Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Value under the plan(s) in which he is a Participant.

- 6.18. APPOINTMENT OF ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY. The Trust Committee, in writing, may appoint any person in any State to act as ancillary trustee with respect to a designated portion of the Trust Fund. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status. The ancillary trustee has the rights, powers, duties and discretion as the Trust Committee may delegate, subject to any limitations or directions specified in the instrument evidencing appointment of the ancillary trustee and to the terms of the Plan or applicable law. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 6.04 including the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such

assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a State and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Trust Committee also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 6.17.

The ancillary trustee may resign its position at any time by providing at least 30 days' advance written notice to the Trust Committee, unless the Trust Committee waives this notice requirement. The Trust Committee, in writing, may remove an ancillary trustee at any time. In the event of resignation or removal, the Trust Committee may appoint another ancillary trustee, return the assets to the control and management of the Trustee or receive such assets in the capacity of ancillary trustee. The Trust Committee may delegate its responsibilities under this Section 6.18 to a Trustee under the Plan.

- 6.19. STANDARD OF CARE. The Trustee, each Investment Manager and the Plan Committee shall discharge their respective investment duties as provided herein with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims and by diversifying the investments held hereunder consistent with investment policies, objectives and guidelines so as to minimize the risk of large losses, unless under the Plan or circumstances it would be clearly not prudent to diversify.
- 6.20. PARTICIPANT DIRECTION OF INVESTMENT. A Participant shall have the right to direct the Trustee with respect to the investment or reinvestment of the assets comprising the Participant's individual Account only if the Trustee consents in writing to permit such direction. If the Trustee does consent to Participant direction of investment, the Trustee and each Participant shall execute a letter agreement as a part of this Plan containing such conditions, limitations and other provisions they deem appropriate before the Trustee shall follow any Participant direction with respect to the investment or reinvestment of any part of the Participant's Individual Account. The Trustee shall not be liable for any loss, or by reason of any breach, resulting from a Participant's direction of the investment of any part of his individual Account.
- 6.21. LIMITS OF LIABILITY. No member of the Trust Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his/her own part, except his/her own willful misconduct. The Employer shall indemnify and hold harmless and defend each member of the Committee from any and all liabilities arising out of his/her membership on the Committee, except liabilities arising out of his/her own willful misconduct. This provision shall not apply to an outside service provider who is compensated. The Committee shall notify the

Employer as soon as possible of any such claims which it may seek indemnification and defense under this provision, and consult with the Employer on choice of defense counsel. All references to the Trust Committee include the members of the Investment Advisory Committee.

## VII. NON-ASSIGNABILITY

- 7.01. It is agreed that neither a Participant nor the Participant's Beneficiary or any other designee shall have any claim or 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 by operation of law. Further, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other equitable or legal process.
- 7.02. Except as provided in Article VI, the Employer shall have no beneficial interest in any assets of the Trust established therein, and no part of any asset in the Trust shall ever revert to or be paid to an Employer, either directly or indirectly; nor shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be, at any time, used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. The Trust Fund shall constitute a spendthrift trust under applicable state and federal law.

## VIII. PRE-1997 PROHIBITION AGAINST FUNDING

- 8.01. Prior to the effective date of Section 457(g) relating to the funding of amounts in trust by an eligible deferred compensation plan, nothing in the Plan shall obligate the Employer to invest Deferred Compensation funds in any annuity contract, mutual fund investment or any other asset. If the Employer shall acquire an annuity contract or any other asset in connection with the liabilities assumed by it hereunder, it is expressly understood and agreed that neither the Participant nor any Beneficiary of the Participant shall have any right with respect to, or claim against, such contract or other asset.
- 8.02. It is also expressly understood and agreed that if the Employer shall acquire an annuity contract or any other asset in connection with the Plan, the Employer shall be the sole applicant and owner thereof. Such contract or other assets shall not be held in any way as collateral security for the fulfillment of obligations of the Employer under this Agreement, and, prior to 1999, shall be subject to the general claims of creditors of the Employer.
- 8.03. Nothing contained in this Article VIII shall prohibit the Plan from transferring such pre-1997 amounts or assets to the Trust described in Article VI.



IX. AMENDMENT OR TERMINATION OF PLAN AND TRUST

- 9.01. The Employer reserves the right to terminate this Plan at any time. Upon such termination, the Participants in the Plan will be deemed to have ceased deferrals under the Plan as of the date of such termination, and the Participant's deferred salary will be restored and paid directly to the Participant as regularly scheduled. The Employer will thereafter retain such Participant's pre-1997 Deferred Compensation Account Value on its books (except to the extent they have been transferred to the Trust established under Article VI), and shall pay benefits under the Plan and Trust according to the Participant's Benefit Payment Agreement, at the time of the Participant's Separation from Service, or upon the death of the Participant, or such other payment event as described in this Plan and Trust.
- 9.02. The Employer also reserves the right to amend the provisions of this Plan at any time.
- 9.03. No amendment will deprive the Participant of any benefits to which the Participant is entitled under the Plan with respect to deferred amounts credited to the Participant's account before the effective date of the amendment. However, the Employer may at any time amend the Plan, in the event such amendment is necessary to qualify the Plan for tax exemption notwithstanding that such amendment may have the effect of depriving a Participant or Beneficiary of a right or benefit which has accrued.
- 9.04. The Employer also reserves the right to amend the Trust provisions at any time in order to maintain its tax exempt status under Section 501(a) of the Code and/or to comply with the provisions of Section 457(g) of the Code, as may be amended from time to time. In addition, the Employer reserves the right to terminate the Trust in conjunction with its election to terminate the Plan (as reserved in Section 9.01), or to continue the Trust as a "frozen Trust" following termination of the Plan, in its sole and absolute discretion.

X. RELATIONSHIP TO OTHER PLANS

- 10.01. The Trust established in Article VI herein shall be effective and operate in addition to any other retirement, pension or benefit plan or arrangement presently in existence or hereinafter established, and participation hereunder shall not affect benefits receivable under any such other plan or arrangement.

XI. INVESTMENT ADVISORY COMMITTEE

- 11.01. INVESTMENT ADVISORY COMMITTEE. "Investment Advisory Committee" means the group of individuals appointed as the Trust Committee pursuant to Section 6.01 and further described in Section 6.02. At least three members of the

Investment Advisory Committee/Trust Committee should be considered experienced and qualified in the field of investments.

## XII. RATIFICATION

12.01. Except as expressly modified herein, the provisions of the 457 Deferred Compensation Plans and this Trust are hereby ratified, approved and confirmed.

IN WITNESS WHEREOF, the Employer and the Trustee have executed this Plan and Trust in Redmond, Washington, this \_\_\_\_ day of \_\_\_\_\_, 1998.

EMPLOYER:  
CITY OF REDMOND

TRUSTEES:

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

By: \_\_\_\_\_  
Lenda Crawford, Trustee

By: \_\_\_\_\_  
Kelley Wood, Trustee

By: \_\_\_\_\_  
Tom Trueblood, Trustee

By: \_\_\_\_\_  
Diane Kenderesi, Trustee

By: \_\_\_\_\_  
Mike Haley, Trustee

By: \_\_\_\_\_  
Larry Gainer, Trustee

By: \_\_\_\_\_  
Bert Eymberts, Trustee