

SPECIAL TOWN COUNCIL MEETING

WEDNESDAY, JULY 10, 1996

5:30 P.M.

AGENDA

1. Roll Call and Pledge of Allegiance
2. Consider and Approve a Transfer of Funds in the Amount of \$2,500 from Street Lighting and Signal Acct. #596 to Customer Installation Expense Acct. #587 in the F.Y. 1995-96 Budget of the Electric Division
3. Consider and Approve a Budget Amendment in the Amount of \$1,000,000 to Purchased Power Acct. #555; \$700,000 to Residential Revenue Acct. #440 and \$300,000 to Commercial Revenue Acct. #442 in the F.Y. 1995-96 Budget of the Electric Division
4. Consider and Approve a Waiver of Bid and Authorize the Mayor to Enter Into a Contract with PEBSCO (Public Employee Benefit Services Corporation) to Provide a Deferred Compensation Plan for the Manager's Union - Mayor's Office

SPECIAL TOWN COUNCIL MEETING

JULY 10, 1996

5:30 P.M.

A Special Meeting of the Wallingford Town Council was held on Wednesday, July 10, 1996 in the Robert Earley Auditorium of the Wallingford Town Hall and called to Order by Chairman Robert F. Parisi at 5:35 P.M. All Councilors answered present to the Roll Called by Town Clerk Rosemary A. Rascati. Mayor William W. Dickinson, Jr. and Town Attorney Janis M. Small were also present.

The Pledge of Allegiance was given to the Flag.

ITEM #2 Consider and Approve a Transfer of Funds in the Amount of \$2,500 from Street Lighting and Signal Acct. #596 to Customer Installation Expense Acct. #587 in the F.Y. 1995-96 Budget of the Electric Division

Motion was made by Mr. Rys, seconded by Mr. Knight.

Mr. Rys read correspondence into the record which explained that the shortfall in the Customer Installation Expense Account was attributed to labor expense related to the repairs of leased area floodlighting fixtures.

There was no discussion on this item of business.

VOTE: All ayes; motion duly carried.

ITEM #3 Consider and Approve a Budget Amendment in the Amount of \$1,000,000 to Purchased Power Acct. #555; \$700,000 to Residential Revenue Acct. #440 and \$300,000 to Commercial Revenue Acct. #442 in the F.Y. 1995-96 Budget of the Electric Division

Motion was made by Mr. Rys, seconded by Mr. Knight.

Raymond F. Smith, Director of Public Utilities stated, when this budget was compiled back in December 1994/January 1995, the budgeted number used for the most recent fiscal year was 575 million kwh of sales. That came about by looking at where we were at the time and projecting ahead with a 1.5% sales growth. What did occur was a 4.32% increase in sales translating to 25 million kwh more than what was sold in the last fiscal year. There is obviously an offset in the sales so you are seeing more income as a result of that and that is why we are asking you to transfer \$1 million to the income account and \$1 million to the expense account to buy the power, itself. In essence, it is a trade-off. Last year was an unusually hot year, we picked up a lot of sales during the summertime; the winter was colder than normal...about fifteen percent (15%) colder based on degree days so we did pick up weather-influenced sales. We also had a better commercial and

industrial market in the last fiscal year than we anticipated. I may suggest that we watch this account during the year since we are at such a high starting level, we may be back to you next year to adjust that account again. I would expect that the purchased power would be higher and, obviously, the revenues would be higher as an offset.

Mayor Dickinson stated, we are going to look to try and quarterly adjust sales, the revenue picture, so that it does not happen all at once. It is better to look at the actuals at interval periods to keep everyone abreast of what is actually happening.

Mr. Zappala stated, this morning you told me, Mr. Smith, that you did not need \$1 million.

Mr. Smith responded, when we put this transfer together we were asking for \$1 million and when the bill came across my desk this morning it appears as though the actual number is going to be \$785,000. I don't know if there will be any other adjustments that will come in between now and July 23rd (next Town Council meeting). Obviously, what ever monies are put into an account that are not spent falls back into the Retained Earnings account.

Mr. Zappala stated, if you only need \$700,000 then we can transfer \$700,000. It should not make that much difference...if you (Mr. Smith) don't feel that it makes that much difference.

Mr. Smith responded, I recommend leaving the figure at \$1 million for the paperwork is in place. What ever we don't use in the account will fall back into the Retained Earnings account.

Mr. Centner asked, is this \$1 million coming from Retained Earnings? Where is it coming from?

Mr. Smith responded, it is coming from the customers. We are increasing sales by \$1 million and you are increasing your expense. It is like a production line, the good news is you are selling more of your product but the bad news is that it costs you more to produce them....there is a trade-off for you take in more revenues but you have more expenses....it is a wash. There is no bottom line impact on the budget, you brought in \$1 million in revenue and you are spending \$1 million on expenses.

Mr. Knight stated, but that is not how you are running the division, what would you estimate as the percentage attributed to purchased power?

Mr. Smith responded, the marginal price is about \$.06 and if our average rate now is approximately \$.065, there is a little bit of profit and we will increase. It will probably be more than \$1 million of revenue when it all shakes out but we don't have those

numbers yet. The million dollars for budgetary purpose is a nice match, that is all.

Mr. Knight asked, will that be coming back to us as well?

Mayor Dickinson asked, how will that be adjusted ultimately?

Mr. Smith responded, what ever it is at the end of the year, just like other years. There are no further adjustments made. It will show on the last financial statement.

Mr. Parisi stated, for clarity of record, we sold more electricity and we have more income because of that, right?

Mr. Smith responded, that is correct.

VOTE: All ayes; motion duly carried.

ITEM #4 Consider and Approve a Waiver of Bid and Authorize the Mayor to Enter Into a Contract with PEBSCO (Public Employees Benefit Services Corporation) to Provide a Deferred Compensation Plan for the Manager's Union - Mayor's Office

Motion was made by Mr. Rys, seconded by Mr. Centner.

Mr. Rys read the corresponding resolution into the record (Appendix I).

Mr. Parisi informed the Mayor that the Council did not receive copies of the contract as of this very moment.

Mayor Dickinson distributed copies to all Councilors at this time (Appendix II).

Mr. Parisi asked, is there any reason why the Council could not have a copy of the contract ahead of time?

Terrence Sullivan, Personnel Director responded (off microphone) that the contract was overnight express'd to the Town and was received this morning.

Mr. Parisi stated for the record, I will say this just one more time, if we cannot get the information ahead of the meeting then I will adjourn the meeting and we will act on it on another day but I am not going to vote on things that I have not read and I don't expect this Council to either. I think it is common courtesy and respect for our jobs so that we can feel that we have performed it (jobs) right. That is a concern.

Mayor Dickinson responded, I understand that and I think that you are also aware of some of the time factors that are involved, here.

I think in looking at that you will also appreciate how very complicated this very subject is. Beyond those documents are documents for a fixed fund retirement contract, documents for options for various transfers in and out that have to be signed for employees...this whole subject matter is very frustrating.

Mr. Parisi responded, I understand and respect what you had to go through but again, I am asking for and I think that we should have the consideration that we should be able to read the contract before we vote on it.

Mayor Dickinson responded, on the other hand this is an approved plan. We are not setting up a new plan. It is through the U.S. Conference of Mayors and the Public Employees Service Corporation. The plan is offered in any number of cities throughout the United States.

Mr. Parisi responded, you are missing my point. No one is questioning the plan or the validity of it, I can probably find three plans that are also acceptable, my point is if this is going to be presented to us I am simply asking for a couple of days warning ahead of time.

Mayor Dickinson stated, we tried to do that but...also keep in mind the background on this..this was not one of the ones that were originally discussed. None of the five plans qualified under what we considered to be important concerns for the Town. This is the only one so far that has qualified in terms of controls either on investments or guaranteeing the principle that is submitted. The Council waived the bidding on five investment firms and the Town was to choose three. None of those worked out. That is why we are back with a new one.

Mr. Parisi stated, I don't have a problem with this recommendation, I just think that we should be entitled to read the contract. That is all I want. Next time I think we had better be sure we have the documents then we will plan the meeting. That is better for everyone. I don't want it to appear as though I am rubber-stamping things. I don't expect the Council to feel that way either.

Mrs. Rascati asked that copies be given to her to place on file in her office for freedom of information purposes.

Mr. Knight asked, what is the time crunch on this?

Mayor Dickinson answered, we were supposed to implement a plan last April, over one year ago.

Terrence Sullivan, Personnel Director responded, November 17, 1994 we were given sixty (60) days or as soon as possible, there was no final deadline given.

Mr. Knight stated that this issue has been "hashed" around since then and we are now hearing it is now or never with this?

Mayor Dickinson responded, we are not saying it is now or never but we want to have a plan in effect or available as soon as possible. We are getting a lot of pressure to comply and we are trying to do so.

Mr. Parisi reminded the Mayor that he (Mayor) also had some very strong feelings on certain things that he wanted included for the protection of the Town. That is what you had to search for.

Mayor Dickinson agreed. We were very committed to the view that they are town funds and investment of them must comply with Town of Wallingford policies, either that or there must be a guarantee that the principle on those funds could not be lost so we would not suffer that kind of exposure.

Mr. Parisi stated, there are funds that dip below the principle and the benefit of this plan is while you may lose the interest that is generated by the investment, this program guarantees that you will not lose your principle.

Mayor Dickinson added, what makes this awkward is that it is a deferred compensation for employees but the funds we hold are Town of Wallingford funds. The Town of Wallingford owns the funds, they appear on our financial statements so if we use different policies for investment or handling of them than we do with other funds, I think that we would have an exposure of liability. It has taken a lot of work and effort to get at that issue and drive it home with the various firms that provide this service, or say they provide it.

Mr. Zappala stated that he will abstain from voting on this issue because he just received the contract and does not believe it is fair to vote on it without the time to review it. He is not saying that there is anything wrong with the contract, he is sure it is fine but does not feel comfortable voting on it.

Mr. Farrell asked, of the criteria that you (Mayor) were looking for, does this meet the criteria on all forms?

Mayor Dickinson responded, it meets the criteria as far as a guarantee on the principle and accumulated interest. They are not willing to sign off on our investment policy. If we only invest in this fixed fund account they will guarantee principle and accumulated interest. My fear is, if there is a loss the Town of Wallingford can be held liable. Now you collect the funds twice, once when they are put in the plan and then a second time when you have to cover someone's loss. That is an unreasonable exposure for the person who lives in Town or pays taxes.

Mr. Farrell stated, we have seen it happen on many occasions with private companies, the funds seem to get sidetracked somehow. Under the type of fiscal policies the Town has that will never be the case with this plan.

Mayor Dickinson stated, the company is guaranteeing it in addition with a large insurance company behind it. We will have the protection of the reserves that the State of Connecticut requires an insurance company to put up to do business in Connecticut. It is a state guaranteed investment fund.

VOTE: Centner, Knight and Zappala abstained; Doherty, no; all others, aye; motion duly carried.

Motion was made by Mr. Rys to Adjourn the Meeting, seconded by Mr. Knight.

VOTE: All ayes; motion duly carried.

There being no further business the meeting adjourned at 6:00 P.M.

Meeting recorded and transcribed by:

*Kathryn F. Milano*

Kathryn F. Milano  
Town Council Secretary

Approved by:

*Robert F. Parisi*

Robert F. Parisi, Chairman

7-23-96

Date

*Rosemary A. Rascati*  
Rosemary A. Rascati, Town Clerk

7-23-96

Date

Appendix I

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WALLINGFORD

WHEREAS, the Town has considered the establishment of a Deferred Compensation Plan to be made available to all eligible employees belonging to the Managers Union; and pursuant to Federal legislation permitting such Plans; and

WHEREAS, the U.S. Conference of Mayors has established a master prototype deferred compensation program for cities and political subdivisions permitting its member cities and their employees to enjoy the advantages of this program;

WHEREAS, the U.S. Conference of Mayors, as Plan Administrator agrees to hold harmless and indemnify the Town, its appointed and elected officers and participating employees from any loss resulting from The U.S. Conference of Mayors or its Agent's failure to perform its duties and services pursuant to The U.S. Conference of Mayors Program;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WALLINGFORD DOES HEREBY RESOLVE AS FOLLOWS:

The Town Council hereby adopts the U.S. Conference of Mayors Deferred Compensation Program and its group fixed fund retirement contract and hereby establishes the Town of Wallingford Deferred Compensation Plan for the voluntary participation of all eligible employees belonging to the Managers Union.

The Mayor is hereby authorized to execute for the Town, and to execute such agreements and contracts as are necessary to implement the Program.

I hereby certify that the above Resolution was enacted by the Town Council of the Town of Wallingford this      day of      , 1996.

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Rosemary A. Rascati, Town Clerk

**UNITED STATES CONFERENCE OF MAYORS  
DEFERRED COMPENSATION PROGRAM**

**THE DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

**PLAN DOCUMENT**

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NAME OF CITY

The Plan consists of the provisions set forth in this document, and is applicable to each Public Employee who elects to participate in the Plan. The Plan is effective as to each such Public Employee upon the date he becomes a "PARTICIPANT" by signing and filing with the Administrator the Participation Agreement referred to herein.

## **ARTICLE I**

### **Definitions**

1.01. The following terms shall, for purposes of this Plan, have the meaning set forth below.

- (a) **ADMINISTRATOR** means the person, department, agency or organization appointed by the **EMPLOYER** to administer the Plan.
- (b) **BENEFICIARY** means the person properly designated by a **PARTICIPANT** to receive the **PARTICIPANT'S** benefit under this Plan.
- (c) **COMPENSATION** means all payments made by the **EMPLOYER** as remuneration for services rendered, including salaries, fees, etc.
- (d) **EMPLOYER** means the above referenced city or any of its agencies, departments, subdivisions or instrumentalities for which services are performed by a **PARTICIPANT**.
- (e) **INCLUDIBLE COMPENSATION** means, for the purposes of the limitations on deferrals, compensation for services performed for the **EMPLOYER** which is currently includible in gross income after giving effect to all provisions of the IRC. The amount of Includible Compensation shall be determined without regard to any community property laws.
- (f) **INDEPENDENT CONTRACTOR** means any person receiving any type of compensation from the **EMPLOYER** or any of its agencies, departments, subdivisions or instrumentalities for which services are rendered pursuant to one or more written or oral contracts, if such person is not an employee.
- (g) **IRC** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended.
- (h) **NORMAL RETIREMENT AGE** means the age specified in writing by the **PARTICIPANT**. If the **EMPLOYER** has an **EMPLOYER'S** Retirement System, the Normal Retirement Age specified by the **PARTICIPANT** must be an age at which the **PARTICIPANT** is eligible to retire pursuant to the **EMPLOYER'S** Retirement System, by virtue of age, length of service, or both, without consent of the **EMPLOYER** and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. In no event shall Normal Retirement Age be later than age 70 1/2.
- (i) **PARTICIPANT** means any Public Employee who is eligible to defer Compensation under the Plan and who participates under this Plan by signing the Participation Agreement.
- (j) **PARTICIPATION AGREEMENT** means the application to the Administrator to participate in the Plan.

- (k) PLAN means the Deferred Compensation Plan For Public Employees as set forth in this document and as it may be amended from time to time.
- (l) PLAN YEAR means the calendar year in which the Plan becomes effective, and each succeeding calendar year during the existence of this Plan.
- (m) PUBLIC EMPLOYEE means any person who receives any type of compensation from the EMPLOYER for which services are rendered (including, but not limited to, elected or appointed officials, salaried employees, and independent contractors).
- (n) SEPARATION FROM SERVICE means Separation From Service as defined in IRC Section 402(e)(4)(A)(iii), and on account of the PARTICIPANT'S death or retirement. An Independent Contractor shall not be considered Separated From Service with the EMPLOYER and shall not receive any benefits hereunder unless (1) at least 12 months have expired since the date on which the last contract, pursuant to which the Independent Contractor provided any services to the EMPLOYER, was terminated, and (2) the Independent Contractor has performed no services for the EMPLOYER during the 12-month period referred to herein either as an Independent Contractor or employee.
- (o) UNFORESEEABLE EMERGENCY means severe financial hardship to the PARTICIPANT resulting from a sudden and unexpected illness or accident of the PARTICIPANT or a dependent (as defined in IRC Section 152(a)) of the PARTICIPANT, loss of the PARTICIPANT'S property due to casualty, or other similar or extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the PARTICIPANT.

## ARTICLE II

### Election to Defer Compensation

2.01. The PARTICIPANT may elect to participate by signing the Participation Agreement and consenting to a reduction of salary by the deferral amount specified in the Participation Agreement. The amount of the reduction ("deferred amount") must equal at least \$20 per month.

2.02. The EMPLOYER shall commence the reduction no earlier than the first pay period commencing during the first month after the date on which the Participation Agreement is filed with the Administrator.

2.03. (a) The PARTICIPANT may revoke his election to participate and may amend the amount of Compensation to be deferred by signing and filing with the Administrator a written revocation or amendment on a form and in the procedural manner approved by the Administrator. In addition, the PARTICIPANT may amend his investment specification in the procedural manner approved by the Administrator. Any amendment which increases the amount deferred for any pay period shall be effective only if an agreement providing for such additional deferred amount is entered into before the beginning of the month in which the pay period commences. Any revocation or amendment of the amount deferred shall be effective prospectively only. Any change in the PARTICIPANT'S investment specification by the PARTICIPANT, whether it applies to amounts previously deferred or amounts to be deferred in the future, shall be effective prospectively only and shall be effective on a date consistent with the rules and specifications of the investment carrier.

(b) After the death of the PARTICIPANT, his Beneficiary shall have the right to amend the PARTICIPANT'S, or the Beneficiary's own, investment specification by signing and filing with the Administrator a written amendment on a form and in the procedural manner approved by the Administrator. Any change in an investment specification by a Beneficiary shall be effective on a date consistent with the rules and specifications of the investment carrier. The right of a Beneficiary to amend an investment specification shall terminate on the last day available for an election concerning the mode of payment pursuant to Section 8.03 below.

**Notice to ALL PARTICIPANTS to Read These Provisions Providing Deferral Limitations and "Catch-up" Deferrals Under the Plan.**

2.04. Except as provided in Section 2.05, the maximum deferred amount under the Plan for the PARTICIPANT'S taxable year shall not exceed the lesser of (a) \$7,500 or (b) 33 1/3 % of the PARTICIPANT'S Includible Compensation as provided in IRC Section 457.

2.05. For one or more of the PARTICIPANT'S last 3 taxable years ending before the attainment of Normal Retirement Age under the Plan, the maximum deferral shall be the lesser of: (a) \$15,000 or (b) the limitation established for the taxable year under Section 2.04, plus the limitation established for purposes of Section 2.04 for prior taxable years beginning after December 31, 1978, during which the PARTICIPANT was eligible to participate less the amount of Compensation deferred under the Plan for such prior taxable years.

2.06. In applying the deferral limitations of Sections 2.04 and 2.05, any amounts excluded from the PARTICIPANT'S gross income for the taxable year under IRC Section 403(b), and, effective January 1, 1989, under IRC Sections 402(a)(8) and 402(h)(1)(B) and deductible contributions to an organization described in IRC Section 501(c)(18), shall be treated as amounts deferred as provided in IRC Section 457(c).

### **ARTICLE III**

#### **EMPLOYER Contributions**

The EMPLOYER may contribute to the Plan for PARTICIPANTS. EMPLOYER contributions shall vest at the time such contributions are made. For purposes of administering Sections 2.04 and 2.05, EMPLOYER contributions shall apply toward the maximum deferral limits in the Plan Year that such contributions are made.

### **ARTICLE IV**

#### **Plan Transfers**

4.01. If a PARTICIPANT terminates employment with the EMPLOYER and accepts employment with another employer which maintains an eligible deferred compensation plan (as defined in IRC Section 457) and the new employer's plan accepts transfers, the PARTICIPANT may transfer his account balance from the Plan to the plan maintained by the new employer.

4.02. Transfers from other eligible deferred compensation plans (as defined in IRC Section 457) to the Plan will be accepted at the PARTICIPANT'S request if such transfers are in cash or non-annuity products currently offered under the Plan. Any such transferred amount shall not be subject to the limitations of Section 2.04, provided, however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitation for that year. For purposes of determining the limitation set forth in Section 2.05, years of eligibility to participate in the prior plan and deferrals under that plan shall be considered.

### **ARTICLE V**

#### **Designation of Beneficiary**

The PARTICIPANT shall have the right to file, with the Administrator, a written Beneficiary or change of Beneficiary form designating the person or persons who shall receive the benefits payable under this Plan in the event of the PARTICIPANT'S death. The form for this purpose shall be provided by the Administrator and will have no effect until it is signed, filed with the Administrator by the PARTICIPANT, and accepted by the Administrator. If the PARTICIPANT dies without having a Beneficiary form on file, the benefits will be paid to the PARTICIPANT'S estate. The PARTICIPANT accepts and acknowledges that he has the burden for executing and filing with the Administrator a proper Beneficiary designation form.

### **ARTICLE VI**

#### **Accounts and Reports**

6.01. THE EMPLOYER shall remit the amounts deferred to the Administrator or his designated agent. The Administrator shall have no duty to determine whether the funds paid to him by the EMPLOYER are correct, nor to collect or enforce such payment.

6.02. For convenience and to facilitate an orderly administration of the Plan, the Administrator shall maintain a deferred account with respect to each PARTICIPANT. A written report of the status of the PARTICIPANT'S deferred account shall be furnished at least annually and within ninety (90) days after the end of each calendar year to the PARTICIPANT.

6.03. Within ninety (90) days after the end of the calendar year, the Administrator shall file with the EMPLOYER a written report of the assets of the Plan, a schedule of all receipts and disbursements, and a report of all material transactions of the Plan during the preceding year.

6.04. The Administrator's records shall be open to inspection during normal business hours by the EMPLOYER or any PARTICIPANT, or their designated representatives.

6.05. All reports to the PARTICIPANT shall be based on fair market value as of the reporting date.

## **ARTICLE VII**

### **Investment of Deferred Amount**

7.01. The deferred amounts shall be delivered by the EMPLOYER to the Administrator or his designated agent for investment as designated by the EMPLOYER.

7.02. The EMPLOYER shall use the PARTICIPANT'S or Beneficiary's investment specifications so as to determine the value of the deferred account maintained with respect to the PARTICIPANT as if the deferred amounts had been invested according to such specifications. The EMPLOYER shall be under no obligation to invest the deferred amounts as specified by the PARTICIPANT or Beneficiary.

7.03. All interest, dividends, charges for premiums and administrative expenses, and changes in value due to market fluctuations applicable to each PARTICIPANT'S deferred account shall be credited or debited to the account as they occur.

7.04. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributable to such deferred amounts, property or rights, shall remain (until made available to the PARTICIPANT or Beneficiary) solely the property and rights of the EMPLOYER (without being restricted to the provision of benefits under the Plan), subject only to the claims of creditors of the EMPLOYER. Contracts and other evidences of the investments of all assets under this Plan shall be registered in the name of the EMPLOYER which shall be the owner and beneficiary thereof. The rights of the PARTICIPANT created by this Plan shall be those of a general creditor of the EMPLOYER, and in an amount equal to the fair market value of the deferred account maintained with respect to the PARTICIPANT. The PARTICIPANT acknowledges that his rights are no greater than those of a general creditor of the EMPLOYER and that in any suit for an accounting, to impose a constructive trust, or to recover any sum under this Plan, the PARTICIPANT'S rights are limited to those of a general creditor of the EMPLOYER. The EMPLOYER acknowledges that the Administrator is the agent of the EMPLOYER.

## **ARTICLE VIII**

### **Benefits**

8.01. Commencement of Distributions: The PARTICIPANT may elect the time at which distributions under the Plan are to commence by designating the month and year during which the first distribution is to be made. The earliest distribution commencement date that may be elected by the PARTICIPANT shall be the earlier of:

- (a) The date on which the PARTICIPANT separates from service; or
- (b) The date on which the PARTICIPANT attains age 70½ or terminates deferrals under this Plan, whichever is later.

In addition, the date chosen must be at least five (5) days following the date on which the election is filed with the Administrator. The PARTICIPANT shall make such election no later than sixty (60) days following the end of the calendar year in which the PARTICIPANT separates from service or sixty (60) days following attainment of age 70, whichever occurs first. Benefits payable to the PARTICIPANT will be the equivalent of the total benefits that would have been created had the deferred amounts been invested as specified by the PARTICIPANT.

The date elected for commencement of distributions ("the Elected Commencement Date") shall be not later than the Mandatory Commencement Date, which is the later of:

- (a) April 1 of the calendar year following the calendar year in which the PARTICIPANT attains age 70½; or
- (b) April 1 of the calendar year following the calendar year in which the PARTICIPANT separates from service with the EMPLOYER.

Such election shall not be changed once the election is made. Failure to file an election with the Administrator within the appropriate time period will result in the Administrator beginning distributions on the Mandatory Commencement Date.

8.02. Mode of Payment: Benefits shall be paid in accordance with the payment option elected by the PARTICIPANT. Payment, method of payment, and settlement options are available as provided by each of the available investment specifications. At least thirty (30) days prior to the Elected or Mandatory Commencement Date, the PARTICIPANT shall elect the mode of payment based upon the options then available. Such election shall be irrevocable after the thirtieth (30th) day preceding the date on which benefits will commence. Failure to file an election with the Administrator will result in:

- (a) If the PARTICIPANT'S account value is \$10,000.00 or less, the Administrator shall make a lump sum distribution to the PARTICIPANT; or
- (b) If the PARTICIPANT'S account value is greater than \$10,000.00, the Administrator shall elect an annuity payout for the PARTICIPANT which provides for monthly payments to the PARTICIPANT in the form of a life annuity with a ten (10) year certain period.

8.03. Payments to Beneficiary: If the PARTICIPANT dies while employed with the EMPLOYER, or the PARTICIPANT dies before the benefits to which he is entitled under this Plan have been exhausted, the benefit payable under this Plan shall be paid to his designated Beneficiary.

The Beneficiary shall have the right to elect the time and mode of payment of such benefits, subject to the limitations set forth in this Plan. Such election as to the time of payment (distribution commencement date) shall be filed by the Beneficiary not later than one hundred twenty (120) days following the PARTICIPANT'S death and shall not be changed once the election is made. The distribution commencement date must be at least five (5) days following the date on which the election as to the time of payment is filed with the Administrator (subject to the December 31 commencement date for surviving spouses as described later in this Section), and distributions to a Beneficiary shall be completed within the applicable time period specified in the remaining paragraphs of this Section. An election concerning the mode of payment shall be filed by the Beneficiary either (i) at least thirty (30) days prior to the date elected for the commencement of benefits, or (ii) within one hundred twenty (120) days following the PARTICIPANT'S death, whichever is later.

Failure to file an election as to the time of payment will result in the Administrator beginning distribution to the Beneficiary no earlier than one hundred twenty-five (125) days following the PARTICIPANT'S death (subject to the December 31 commencement date for surviving spouses as described later in this Section). Failure to file an election as to the manner of payment will result in the Administrator making a lump sum cash distribution.

If the PARTICIPANT dies prior to January 1, 1989, benefits payable to a Beneficiary shall, in all events, be completed during a period not in excess of (a) the life of the Beneficiary, if such Beneficiary is the surviving spouse of the PARTICIPANT, or (b) 15 years, in all other circumstances.

If the PARTICIPANT dies on or after January 1, 1989, and after the commencement of distributions, then any amount not distributed to the PARTICIPANT during his life shall be distributed to the Beneficiary at least as rapidly as under the method of distribution used by the PARTICIPANT at the time of the PARTICIPANT'S death. In addition, if the PARTICIPANT dies prior to the commencement of distributions, but on or after January 1, 1989, then the PARTICIPANT'S account shall be distributed to the Beneficiary within 5 years (or over the life or life expectancy of the Beneficiary, but not to exceed 15 years, if distributions commence within 1 year); provided, however, that if such Beneficiary is the surviving spouse of the PARTICIPANT, then (a) such distributions need not commence prior to December 31 of the calendar year in which the PARTICIPANT would have attained age 70½ (or such other date as may be permitted under applicable Treasury Regulations), and (b) benefits payable to such spouse shall be completed during a period not in excess of such spouse's life expectancy.

No settlement option available to the PARTICIPANT shall provide benefits to Beneficiaries which are equal to or greater than 33 1/3% of the maximum benefit (or such other amount as may be permitted under applicable Treasury Regulations) that would have been payable to the PARTICIPANT if no provision had been made for payment to a Beneficiary (as determined by the use of the expected return multiples in Treasury Regulation Section 1.72-9, or, in the case of payments under a contract issued by an insurance company, by the use of the mortality tables of such company). In addition, any settlement option payable over a period of more than 1 year shall be made only in substantially nonincreasing amounts paid not less frequently than annually.

8.04. Unforeseeable Emergency: Notwithstanding any other provisions herein, in the event of an Unforeseeable Emergency, a PARTICIPANT may request that benefits be paid to him immediately; provided, however, that payment of any such benefits after the Elected or Mandatory Commencement Date shall be subject to any limitations specified by an investment carrier. Such request shall be filed in accordance with procedures established pursuant to this Plan. If the application for payment is approved by the EMPLOYER or its designee, payments shall be effected within 45 days of such approval. Benefits to be paid shall be limited strictly to the amount necessary to meet the Unforeseeable Emergency constituting financial hardship to the extent such Unforeseeable Emergency is not relieved:

- (a) through reimbursement or compensation by insurance or otherwise;
- (b) by liquidation of the PARTICIPANT'S assets, to the extent the liquidation of such assets would not itself cause financial hardship; or
- (c) by cessation of deferrals under the Plan.

Foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., will not constitute an Unforeseeable Emergency. The decision of the EMPLOYER or its designee concerning the payment of benefits under this Section shall be final.

## ARTICLE IX

### Administration of Plan

9.01. The Employer may at any time amend, modify, or terminate the Plan without the consent of the PARTICIPANT (or any Beneficiary thereof). All amendments shall become effective forty-five (45) days after the issuance of notice of the amendments by the Administrator to the EMPLOYER. To the extent it is possible to do so, the Administrator shall mail an explanation of all amendments that become effective during the year to the PARTICIPANT with his annual report. No amendments shall deprive the PARTICIPANT of any of the benefits to which he is entitled under this Plan with respect to deferred amounts credited to his account prior to the effective date of the amendment.

If the Plan is curtailed, terminated, or the acceptance of additional deferred amounts suspended permanently, the Administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred prior to the amendment, modification, or termination in accordance with Article VIII hereof.

9.02. Any companies that may issue any policies, contracts, or other forms of investment media used by the EMPLOYER or specified by the PARTICIPANT, are not parties to this Plan and such companies shall have no responsibility or accountability to the PARTICIPANT or his Beneficiary with regard to the operation of this Plan.

9.03. Participation in this Plan by a Public Employee shall not be construed to give a contract of employment to the PARTICIPANT or to alter or amend an existing employment contract of the PARTICIPANT, nor shall participation in this Plan be construed as affording to the PARTICIPANT any representation or guarantee regarding his continued employment.

9.04. The EMPLOYER and the Administrator do not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequence will occur because of the PARTICIPANT'S participation in this Plan. The PARTICIPANT should consult with his own representative regarding all questions of Federal or State income, payroll, personal property, or other tax consequences arising from participation in this Plan.

9.05. The Administrator shall have the power to appoint agents to act for and in the administration of this Plan and to select depositories for the assets of this Plan.

9.06. Whenever used herein, the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the Plan specifically require a different construction.

9.07. The laws of the state of the EMPLOYER shall apply in determining the construction and validity of this Plan.

9.08. The rights of the PARTICIPANT under this Plan shall not be subject to the rights of creditors of the PARTICIPANT or any Beneficiary, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.

9.09. It is agreed that neither the PARTICIPANT nor his Beneficiary nor any other designee shall have any right to commute, sell, assign, pledge, encumber, transfer, or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be nonassignable and nontransferable.

9.10. This Plan, and any properly adopted amendments, shall constitute the total agreement or contract between the EMPLOYER and the PARTICIPANT regarding the Plan. No oral statement regarding the Plan may be relied upon by the PARTICIPANT.

9.11. This Plan and any properly adopted amendments, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all Beneficiaries of the PARTICIPANT.

## **ARTICLE X**

### **Notice to ALL PARTICIPANTS to Read These Provisions Providing Broad Powers and Absolute Safeguards to the EMPLOYER**

10.01. The EMPLOYER, or its authorized agent, the Administrator, shall be authorized to resolve any questions of fact necessary to decide the PARTICIPANT'S right under this Plan and such decision shall be binding on the PARTICIPANT and any Beneficiary thereof.

10.02. The EMPLOYER, or its authorized agent, the Administrator, shall be authorized to construe the Plan and to resolve any ambiguity in the Plan.

10.03. The PARTICIPANT specifically agrees not to seek recovery against the EMPLOYER, the Administrator or any other employee, contractee, or agent of the EMPLOYER or Administrator, or any endorser for any loss sustained by the PARTICIPANT or his Beneficiary, for the non-performance of their duties, negligence, or any other misconduct of the above named persons except that this paragraph shall not excuse fraud or wrongful taking by any person.

10.04. The EMPLOYER, or its agents including the Administrator, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the person to receive the payment or allow the filing in any State court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The EMPLOYER shall comply with the final orders of the court in any such suit and the PARTICIPANT, for himself and his Beneficiary, consents to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.

10.05. The EMPLOYER and its agents, including the Administrator, are hereby held harmless from all court costs and all claims for the attorneys' fees arising from any action brought by the PARTICIPANT or any Beneficiary thereof under this Plan or to enforce his rights under this Plan, including any amendments hereof.

10.06. The Administrator shall not be required to participate in any litigation concerning the Plan except upon written demand from the EMPLOYER. The Administrator may compromise, adjust or effect settlement of litigation when specifically instructed to do so by the EMPLOYER.

**ARTICLE XI**

**Prior Plan**

If the EMPLOYER has already accepted the United States Conference of Mayors Deferred Compensation Program and adopted an eligible deferred compensation plan, as defined in IRC Section 457, under such Program (the "Prior Plan"), then the EMPLOYER intends that this Plan shall amend and restate the Prior Plan. In such event, this Plan shall apply to all participants in the Prior Plan on the effective date hereof, and also to each Public Employee who elects to participate in this Plan on and after the effective date hereof.

**ARTICLE XII**

**Effective Date**

This Plan shall be effective on the date and year written below.

IN WITNESS WHEREOF, the undersigned has executed this Plan this \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Name of City)

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

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\_\_\_\_\_  
(Name of City)

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

**PLEASE SIGN AND RETURN THIS PAGE ONLY.**

**UNITED STATES CONFERENCE OF MAYORS  
DEFERRED COMPENSATION PROGRAM  
CITY ADMINISTRATIVE AGREEMENT**

This agreement is executed by and between the United States Conference of Mayors (USCM) of Washington, D.C., and the City of \_\_\_\_\_ (City).

**RECITALS**

**I. THE PROGRAM:**

USCM has established a Master Deferred Compensation Program for Cities, permitting Cities, other local government agencies and their employees to enjoy the advantages to be derived from Section 457 of the Internal Revenue Code.

The intent of the Program is to assist Cities and their employees in establishing an increased measure of financial security by providing for additional retirement income through the deferral of before-tax dollars and the reduction of current income tax liability thus offsetting the effects of inflation on their ultimate retirement benefits.

The Program will provide Cities with a new way to help employees help themselves by providing an attractive incentive to build a voluntary fund for their supplemental retirement income requirements.

The Program will be provided at no cost to Cities other than incidental expenses related to payroll deductions.

**II. REGULATORY CONSIDERATIONS:**

USCM has received opinion of counsel that the Program meets all necessary criteria for approval by all federal regulatory authorities governing such Programs, including the Internal Revenue Service.

**III. COMPETITIVE BID PROCESS:**

USCM has conducted a competitive Bid selection process on behalf of its Member Cities and, as a result of careful evaluation of administrative abilities and experience, has selected those insurance and investment institutions proposing the most attractive combination of costs, benefits and services.

An independent actuary was retained to review the costs, benefits, services and investment yields of the products offered under the Program to insure their competitive balance in the marketplace and to best meet the needs of member cities.

This Bid selection process was performed by USCM in order to comply as closely as possible with governmental purchasing procedures.

**IV. PROGRAM ADMINISTRATOR:**

USCM has agreed to sponsor the Program and has selected and contracted with an independent plan administrator eminently qualified to accept and fulfill the responsibility for all administrative requirements necessary for the successful operation of the Program.

**V. CITY CONSIDERATION:**

City recognizes that such tax-deferred savings benefits will act as incentives for employees to voluntarily set aside and invest portions of their current income to meet their future financial requirements and supplement their City retirement income.

City recognizes that through the adoption of the USCM Program, all such regulatory, operational, administrative and other Program management responsibilities are assumed by USCM on behalf of City, in accordance with the Plan document.

City recognizes the important contribution of USCM's technical expertise in the design, implementation and administration of a national Program established and administered in compliance with all applicable regulatory jurisdictions.

City recognizes the advantages and economies of scale secured by the mass purchasing leverage of USCM and Cities through a comprehensive bid selection analysis.

City recognizes the benefits of USCM's establishment of a functional administrative system on behalf of Cities to administer the Program.

City has enacted the necessary resolution/court order to adopt the USCM Plan Agreement and to establish its Deferred Compensation Program for its employees.

**VI. USCM RESPONSIBILITIES:**

NOW, THEREFORE, it is agreed that USCM shall:

- A. Provide City with a Deferred Compensation Plan Agreement and necessary agreements for execution with its participating employees which is and will be maintained in compliance with the provisions of the Internal Revenue Code.
- B. Establish the overall Program, its funding options and administrative operations so as to comply with other regulatory authorities, including state statutes, constitutional restrictions and other appropriate authorities.
- C. Provide City with such technical assistance as is necessary to implement the Program in accordance with the needs and objectives of the City's individual requirements.
- D. Warrant that it has conducted, on behalf of Cities, a comprehensive bid selection process designed to provide the most competitive combination of costs, benefits, and services for Cities and their employees.
- E. Review annually the administrative, operational and financial performance of such selected companies and take such actions as are necessary to assure the City and its employees the best possible continuity of costs, benefits and services.
- F. Provide a comprehensive administrative service system to facilitate employee deferrals, reconciliations, disbursements to the investment media, maintenance of the individual and City account records, provide periodic statements and coordinate employee distributions, and assure proper tax reporting systems.
- G. Provide such accounting and audit systems as are necessary to insure the fiscal integrity of the Program and to provide City with reports and work papers as are reasonably necessary to meet the City's individual financial reporting requirements;
- H. Provide for an initial and continuous employee educational program to make certain all interested City employees receive a thorough understanding of the overall Program, its advantages and restrictive provisions of the Program.

- I. Provide such employee communication materials and other forms, documents and agreements as are necessary to administer the Program.
- J. Provide the City and its employees such convenience and timeliness of individual services as are required for effective employee understanding of participation.

**VII. CITY RESPONSIBILITIES:**

NOW, THEREFORE, it is agreed that the City shall:

- A. Provide USCM its full cooperation and support in administering the necessary deferral system for employee contributions.
- B. Disseminate from time to time such promotional material as provided by USCM for employee distribution.
- C. Arrange for representatives of USCM's Program to conduct orientation meetings with City employees.
- D. Name a City official or committee to act as Contract Administrator on behalf of the City on all material matters relating to activities of the Program.
- E. Accept the terms and conditions of the insurance and investment company contracts as represented by USCM pursuant to the operation of this Program.
- F. Assist USCM and the Plan Administrator, as necessary, in the development of comprehensive investment and service specifications.

It is mutually understood and agreed that USCM has designated Public Employees Benefit Services Corporation (PEBSCO) to act as its Agent in fulfilling certain of the administrative and marketing requirements of this Agreement.

If USCM or PEBSCO unsatisfactorily perform the responsibilities and services pursuant to this Agreement, the City shall give notice to both USCM and PEBSCO specifically stating the nature of USCM or PEBSCO's failure to perform. If the specified default is not corrected within ninety (90) days following the notice of default by the City, the City may terminate this Agreement.

This Agreement is effective until written notice of termination is provided by either party.

CITY

UNITED STATES CONFERENCE OF MAYORS

\_\_\_\_\_

Executive Director

Date

Date

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CITY

UNITED STATES CONFERENCE OF MAYORS

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Executive Director

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Date

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Date