

RESOLUTION NO. 3493, as AMENDED

A RESOLUTION of the Port Commission of the Port of Seattle (the "Port") Providing for the Amendment and Restatement of the Port's 457 Deferred Compensation Plan and Trust that was Adopted and has been Restated Pursuant to Resolution Nos. 2592, 2839, 2898, 2935, and 3029, As Amended.

WHEREAS, under the authority of Chapter 99, Laws of 1973 of the State of Washington (RCW 41.04.250) and Port Commission Resolution No. 2592 approved August 15, 1975, the Port adopted a voluntary deferred compensation plan for the benefit of its employees (the "1975 Plan"), related joinder agreement, and initial administrative guidelines; and

WHEREAS, in order to comply with proposed Treasury Department regulations, the amended and restated plan was adopted by Port Commission Resolution No. 2839 on December 8, 1981 (the "1981 Plan"); and whereas, in order to comply with final Treasury Department regulations, the amended and restated plan was adopted by Port Commission Resolution No. 2898 on June 14, 1983 (the "1983 Plan"), which authorized the Committee to submit the Plan to the Internal Revenue Service and to make any amendments required to comply with current or additional regulations that may be published from time to time by the Treasury Department; and

WHEREAS, after the Internal Revenue Service responded on June 21, 1984 calling for a restatement of the Plan, and after the Administrative Committee voted to amend the Plan to provide for plan-to-plan transfers (a change beyond the Committee's power to approve), the amended and restated plan was adopted by Port Commission No. 2935 (the "1984 Plan"); and

WHEREAS, the Port created the "1988 Plan" by amending the 1984 Plan to include a new definition of Administrative Committee (which would add a sixth committee member, change the title of another member, redescribe salaried employee representation, and provide a tie-breaker in the case of any matter submitted to a vote of the Committee) and formally incorporate minor language changes required by the Internal Revenue Service recognized by the Committee in April, 1985; and

WHEREAS, the Port now wishes to create the "2003 Plan" by amending the 1988 Plan to incorporate provisions made available by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and to include a new definition of Administrative Committee (which would designate the Deputy Chief Executive Officer as Chair of the Committee); and

WHEREAS, the Administrative Committee and legal counsel have determined that the change in Committee definition is beyond the power granted to the Administrative Committee by Port Commission Resolution No. 3029, As Amended;

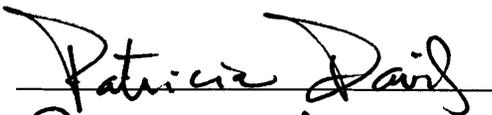
BE IT RESOLVED by the Port Commission of the Port of Seattle as follows:

Section 1. The 2003 Plan attached hereto as Exhibit A is hereby adopted as amended.

Section 2. The Administrative Committee is hereby authorized and directed to make any amendment to the 2003 Plan as further required or allowed by the Internal Revenue Service in order for it to comply with current or additional regulations or rules that may be published from time to time by the Treasury Department for section 457 of the Code.

Section 3. The Administrative Committee is authorized and directed to do all acts not expressly provided for in this Resolution and Exhibit A hereto that are reasonably necessary and required to implement and administer the 2003 Plan, provided, however, that all such acts shall be in accordance with all the applicable provisions of federal and state law and regulations from time to time as interpreted by legal counsel.

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 26th day of November, 2002, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

	BOB EDWARDS
	PATRICIA DAVIS
	PAIGE MILLER
	LAWRENCE T MOLLOY
	CLARE NORDQUIST

Port Commissioners

457 DEFERRED COMPENSATION PLAN AND TRUST DOCUMENT

IRC 457, State and Local Government, Deferred Compensation

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NOTE: For further information, call (206) 728-3299.

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ATTACHMENT: RESOLUTION NO. 3493, AS AMENDED

THE PORT OF SEATTLE DEFERRED COMPENSATION PLAN AND TRUST

Section 1. Introduction and Purpose of Plan.

1.1 Establishment of Plan. This Plan shall be known as the Port of Seattle's Deferred Compensation Plan and Trust (the "Plan") and is established under the authority of the Port Commission's Resolution Number 3493, As Amended, in accordance with Section 457 of the Internal Revenue Code and in accordance with the Treasury Department's regulations. This Plan constitutes an amendment and restatement of the Port of Seattle's Deferred Compensation Plan, which was approved and adopted by the Port Commission's Resolution Number 3029 on January 26, 1988.

1.2 Purpose of the Plan. The purpose of this Deferred Compensation Plan and Trust is to provide Deferred Compensation to Employees of the Port of Seattle. This Plan is intended to constitute an "eligible Deferred Compensation plan" within the meaning of Section 457 of the Internal Revenue Code.

The Plan and Trust are established and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Section 2. Definitions.

2.1 Definitions. Whenever used in the Plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided, and when the defined meaning is intended, the term is capitalized:

- a. "**Beneficiary**" means the person, persons, or legal entity, as designated by the Participant or provided for in accordance with Section 9.3 of the Plan, that is entitled to receive a Participant's undistributed benefits under the Plan.
- b. "**Code**" means the Internal Revenue Code.
- c. "**Committee**" means an administrative committee comprised of the Deputy Chief Executive Officer, Chief Financial Officer, Director of Accounting, Director of People Programs, Director of Labor Relations, (or successor positions and/or their designated representatives) and a salaried Employee and a wage Employee selected from time to time by the Chief Executive Officer of the Port of Seattle. Under guidelines developed by the Committee

in 1994, revised in 1997, the terms for the salaried and wage Employees are as follows:

1. **LENGTH OF SERVICE:** The representative will sign on for a five-year term, in addition to any "apprenticeship" served. The wage and salaried representatives' terms will be staggered.
2. **VESTED INTEREST:** Committee members shall have a "vested interest" in the success of the plan, meaning they have their own money in it.
3. **VOLUNTEERS:** Representatives shall voluntarily serve. They must clear their participation with their supervisor, in advance.
4. **REPRESENTATIVE:** Representatives must be interested in and able to be a voice for the Plan
5. **REPLACEMENTS:** Representatives will be recruited and recommended by the Committee to the Chief Executive Officer for appointment. Appointments are made by the Chief Executive Officer in accordance with the Plan. The recruitment process will include an "application/interview" process before the end of each term. Incumbent representatives may apply for a subsequent term. Potential replacements may also serve "an apprenticeship" as an alternative on the committee for a period of six months.

Pursuant to the Port Commission's Resolution Number 3493, the Committee shall administer the Plan and shall have full power and authority to adopt rules, regulations and ancillary forms which are necessary for the administration of the Plan, and to interpret, alter, amend or revoke any rules, regulations and ancillary forms so adopted; provided that, they are legally consistent with the provisions of the Plan, and apply the law and regulations as interpreted by legal counsel.

- d. "**Gross Compensation**" means salaries, wages and other forms of remuneration paid in a calendar year that is attributable to services performed by the Participant for the Employer that, notwithstanding this Plan, is includible in the Participant's taxable gross income.
- e. "**Deferred Compensation**" means that portion of the Participant's Compensation that the Participant and the Employer mutually agree to defer under the plan.
- f. "**Disability**" means a physical or mental condition that permanently prevents a Participant from satisfactorily performing his or her usual duties for the Employer.

- g. **"Employee"** means anyone age 18 or older who performs personal services for the Port and receives paychecks through the Port's payroll system, to the extent allowed by State law. This definition includes temporary and part-time employees such as interns and emergency hires. This definition excludes independent contractors, such as persons rendering professional services on a fee, retainer, or contract basis.
- h. **"Employer"** means the Port of Seattle.
- i. **"Includible Compensation"** means the portion of the Participant's compensation that is includible in the taxable year in his or her gross income. It does not, for instance, include compensation that is excludable from gross income under Code Section 457(a) (relating to amounts deferred under this Plan), Section 403(b) (relating to employer contributions for annuity contracts), Section 105(d) (relating to certain disability payments) Section 125 (relating to cafeteria plans), or Section 911 (relating to foreign earned income). Compensation is taken into account at its fair market value if paid in other than money, and it is determined without regard to community property laws.
- j. **"Investment Options"** means the standard investment vehicles provided to participants by any Third Party Administrator. They do not include any investment options made available through a self-directed brokerage account.
- k. **"Normal Retirement Age"** means any age selected by the Participant within the range of ages generally ending no later than 70-1/2 and beginning no earlier than the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits under the Employer's basic pension plan covering that Participant. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the catch-up limitation of Section 5.3 hereunder.

If a Participant continues employment after attaining age 70-1/2, not having previously elected a Normal Retirement Age for purposes of utilizing the catch-up limitation of Section 5.3 hereunder, the Participant may select an alternate Normal Retirement Age that is not later than the mandatory retirement age, if any, established by the Employer or the age at which the Participant incurs a Termination of Service if the Employer has no mandatory retirement age.

- l. **"Participant"** means any Employee of the Employer whose salary or wage is paid directly by the Employer and who fulfills the eligibility and enrollment requirements of Section 5 of the Plan.

- m. "**Pay Period**" means a regular accounting period established by the Port of Seattle for measuring and paying compensation earned by Employees.
- n. "**Plan**" means the Port of Seattle's Deferred Compensation Plan and Trust as set forth herein and as it may be amended from time to time.
- o. "**Plan Administrator**" means Port of Seattle People Programs staff with the responsibilities as defined in Section 3.2 below.
- p. "**Termination of Service**" means the severance of the Participant's employment with the Employer. A Participant shall be deemed to have severed his employment with the Employer for purposes of the Plan when, in accordance with established practices of the Employer, the employment relationship is considered to have actually terminated.
- q. "**Unforeseeable Emergency**" means a severe financial hardship to the participant resulting from a sudden or unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

2.2 Gender and Number. Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

Section 3. Responsibilities

3.1 Administrative Committee. The Administrative Committee has the fiduciary responsibility for the Port's voluntary deferred compensation program. The Committee's primary mission is to provide Port employees with a comprehensive, soundly-managed deferred compensation program with a variety of fixed and variable Investment Options. The Committee will monitor the program often enough, and make changes as needed, to assure that the selected providers/administrators communicate the program thoroughly to all Port employees; maintain competitive rates of return on Investment Options; have fees related to Investment Options and services that are competitive; maintain high credit quality according to acceptable standards; understand fully and operate within IRS Code Section 457 regulations; provide complete and accurate disclosure information to current and potential participants; and provide accurate and timely statements to all participants on an agreed upon schedule.

3.2 Plan Administrator. Port of Seattle People Programs staff is responsible for serving as Plan administrator and providing liaison services between and support to the Administrative Committee, Participants, and Third Party Administrators.

3.3 Third Party Administrators. The company or companies contracted to provide Investment Options, record keeping services, educational and enrollment services, and/or any other type of services in support of the plan are responsible for:

- a. providing a broad range of Investment Options representing fixed and variable classes which are diversified as to investment objective, style and risk level; providing annual evaluations of fund performance using standard fund evaluation tools (e.g. Morningstar, returns, Sharpe Ratio); providing recommendations on when to add or delete Investment Options;
- b. providing timely, accurate quarterly statements with comparative statistics to Participants; providing Employer reports and analytical data; providing an annual plan review;
- c. supporting the Plan in complying with Federal regulations;
- d. providing accurate and appropriate counsel to participants during all phases of their participation – enrollment, accumulation, and distribution.

3.4 Participants. Determining the appropriateness of participating in deferred compensation rests entirely with the Participants. Investment decisions are the full responsibility of Participants and their Beneficiaries. Although the Administrative Committee monitors the Investment Options that are being made available, Participants are responsible for deciding which, if any, of the available choices are the most appropriate for their supplemental retirement savings needs. Self-directed brokerage account options are not monitored by the Administrative Committee.

Section 4. Investment Policy

The Committee shall establish in a separate document a “Statement of Investment Policy.” This Statement shall define the Plan’s investment objectives; define the roles of those responsible for the Plan’s investments; describe the criteria and procedures for selecting Investment Options and investment managers; establish investment procedures, measurement standards and monitoring procedures; and describe ways to address Investment Options and investment managers that fail to satisfy established objectives.

Section 5. Participation in the Plan.

5.1 Eligibility. Any Employee as described and limited in Section 2 who has completed one calendar month of employment with the Employer is eligible to participate.

5.2 Enrollment. An eligible Employee as defined in Section 2 may become a Participant by agreeing to a deferral of his or her Includible Compensation. The deferral will commence with the Pay Period of the first month following the enrollment.

5.3 Maximum Deferral. The total amount of Deferred Compensation during any calendar year for each Participant shall not exceed the limits provided by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). These limits are outlined below.

- a. The “normal” deferral limit is 100% of Includible Compensation not to exceed \$11,000 in 2002, \$12,000 in 2003, \$13,000 in 2004, \$14,000 in 2005, and \$15,000 in 2006. Future increases will be indexed in \$500 increments.
- b. The “age 50+ catch-up” limit allows Participants who are age 50 or older at any time during the calendar year to defer an amount in addition to the normal limits outlined above. The additional deferral amount is \$1,000 in 2002, \$2,000 in 2003, \$3,000 in 2004, \$4,000 in 2005, and \$5,000 in 2006. Future increases will be indexed in \$500 increments.
- c. The “Normal Retirement Age catch-up” provides that, for one or more of the Participant’s last three taxable years ending before the Participant attains Normal Retirement Age, the Participant may defer additional amounts to catch up on deferrals that may not have been made earlier in the Participant’s career. Provided the Participant has sufficient under-utilized deferrals, the plan ceiling is twice the dollar amount in effect under paragraph (a) of this section.

For example, if a Participant could have deferred \$50,000 over several years but actually deferred only \$10,000, he has \$40,000 in under-utilized deferrals. If he is eligible to retire in 2006, he may defer a maximum \$24,000 in 2003, \$26,000 in 2004, and \$28,000 in 2005.

- d. The Administrative Committee may establish a minimum allowable deferral amount for the reasonable administration of the Plan.

5.4 Modifications to Amount Deferred. The Employer shall adjust the Participant's compensation, on a Pay Period basis, by the Deferred Compensation amount indicated by the Participant's election to defer. That amount, subject to the limits of Section 5.3, may be increased or decreased only by proper application to the Plan Administrator. The change shall take effect the first Pay Period of the month following receipt and approval of the application by the Plan Administrator. Only one modification (other than a revocation of participation as provided in Section 5.5) may be made each calendar month.

5.5 Revocation of Deferral. Any Participant may revoke his or her election to have Includible Compensation deferred by so notifying the Plan Administrator. The Participant's full compensation on a nondeferred basis will then be restored as soon as possible but not later than the Pay Period occurring thirty (30) days after the receipt of the notice by the Plan Administrator; however, the Participant's benefits under the Plan shall be paid only as provided in Section 9 herein.

5.6 Duration of Election to Defer Compensation. Once an election to have Includible Compensation deferred has been made by the Participant, the election shall continue in effect until the Participant's Termination of Service, unless the Participant modifies the amount in accordance with Section 5.4, or revokes the election in accordance with Section 5.5. The deferral will automatically cease when a Participant's Includible Compensation during a Pay Period is less than the amount to be deferred. Once the deferral is stopped, the earliest that the Participant may reinstate his or her deferral is the first Pay Period of the month which is six full months following the last month during which there was a deferral of such Participant's Includible Compensation under this Plan; provided that, if the deferral ceased because of insufficient Includible Compensation on account of an approved medical leave of absence, reinstatement will be allowed when employment is resumed by such Participant.

5.7 Deemed IRAs. Effective January 1, 2003, employers may add Traditional or Roth IRA accounts inside the 457 Deferred Compensation Plan. IRA assets must be separately accounted for and are subject to all IRA Code provisions. Upon issuance of regulations for Deemed IRAs from the Internal Revenue Service, the Committee shall consider and may add such IRAs to the Port's Plan.

5.8 Qualified Military Service. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with Code § 414(u).

Section 6. Financial Hardship Withdrawal.

A distribution of all or a portion of the Participant's deferred amounts shall be permitted in the event the Participant experiences emergency needs. Emergency needs involve only circumstances of sudden and unexpected illness or accident of the Participant or a dependent, loss of property due to casualty, or other similar extraordinary or unforeseeable circumstance arising as a result of events beyond the control of the Participant that would cause severe financial hardship to the Participant if withdrawal were not permitted.

Any Participant desiring a distribution by reason of emergency needs must apply to the Committee and demonstrate that the circumstances being experienced were not under the Participant's control and constitute a real emergency that is likely to cause the Participant great financial hardship. The Committee shall have the authority to require such medical or other evidence as it may need to determine the necessity for the Participant's withdrawal request. Distributions will not be made to the extent that such hardship may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

If an application is approved, the distribution shall be limited to an amount sufficient only to meet the emergency.

Following a withdrawal of funds under this section, a Participant's Compensation will be thereupon restored to its full level and such Participant may not reinstate his or her deferral earlier than six months after the effective date of the withdrawal.

Section 7. Loans

Loans may be made from the Plan if they are for the exclusive purpose of benefiting the Participant or their Beneficiary. The loan must bear a reasonable rate of interest, have a fixed repayment schedule, and have repayment safeguards to which a prudent lender would adhere. The Committee shall establish and maintain separate procedures that will apply to loans.

Section 8. Investment of Deferred Compensation.

8.1 Individual Accounts. The Employer shall cause an individual account to be maintained with respect to each Participant that reflects the value of the respective investment or investments. Each Participant shall receive periodic reports showing the then-current value of his or her individual account. Deferred Compensation will be reduced by administrative, investment, or other reasonable fees, in such amounts and at such times as deemed necessary by the Employer for the maintenance of the Plan.

The benefits paid to a Participant or Beneficiary under the Plan shall be equal to the value of payments receivable by the Employer under the type of investment or investments reflected in the respective Participant's or Beneficiary's individual account. In no event shall the Employer's liability to pay benefits exceed the value of payments under the type of investment or investments reflected in the individual account, and the Employer shall not be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under the Plan.

8.2 Investment. For the purpose of measuring and satisfying its obligations to provide benefits under this Plan, the Employer may invest the amounts of Compensation deferred by each Participant in investment mediums as specified from time to time by the Participant from among the choices permitted by the Committee. Any such investments shall be held in trust for Participants. The Committee shall be the custodian of any investment contracts and shall take the steps necessary to provide a place of safekeeping for them. Nothing in this Section shall require the Employer to invest Deferred Compensation in any particular form of investment, nor will it limit its selection of investment media.

8.3 No Rights Until Distribution. No Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer, or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable; nor shall any unpaid benefits be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, or divorce, except to the extent otherwise required by law. See Section 9.8, Domestic Relations Orders.

Section 9. Distribution of Benefits.

9.1 Distribution Events. Benefits under the Plan will be distributed in accordance with Section 9.2 after one of the following events occurs:

- a. Termination of Service,
- b. Determination of hardship by the Committee under Section 6,
- c. The employee elects distribution of a De Minimus Account as provided under Section 9.9,
- d. Approval of a loan as provided under Section 7, or
- e. Minimum distributions are required. Minimum distributions must commence no later than April 1 of the calendar year following the calendar year the Participant attains age 70-1/2, or separates from service, whichever is later.

9.2 Election of Method of Distribution. Distributions must be made primarily for the benefit of Participants, and any schedule selected by the Participant for payments of benefits must be such that benefits payable to a Beneficiary are not more than incidental within the meaning of Code Section 401(a)(9)(G). See Section 9.4 for time limits on payments to Beneficiaries.

9.3 Designation of Beneficiary. A Participant may designate a Beneficiary or Beneficiaries who will receive the balance of the Participant's benefits in the event of his or her death in accordance with the following:

- a. A designation of a Beneficiary shall be effective when received by the Plan Administrator and made on a form approved by the Committee for that purpose which has been signed by the Participant.
- b. No Beneficiary shall have any rights under this Plan until the death of the Participant. A Participant may, at any time, change his or her Beneficiary(ies) in accordance with Section 9.3(a).
- c. Participants may designate a contingent Beneficiary if, for instance, the primary Beneficiary does not survive the Participant. No designation may be made for a contingent Beneficiary as a successor Beneficiary where the primary Beneficiary dies after having commenced to receive distributions.
- d. If more than one Beneficiary is named in either category, benefits will be paid according to the following rules:
 1. Beneficiaries can be designated to share equally or to receive specific percentages.

2. If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.
- e. A person, estate, or other legal entity may be designated as a Beneficiary.
- f. If a Beneficiary has not been designated, or a designation is ineffective due to the death of any and all Beneficiaries prior to the death of the Participant, or the designation is ineffective for any reason, the estate of the Participant shall be the Beneficiary.
- g. Upon the death of the Participant, any Beneficiary entitled under the provisions of this section to the deceased Participant's benefits shall become a "vested Beneficiary" and have all the rights of the Participant with the exception of making any deferrals.
- h. In the event of a conflict between the provisions of this Section and the terms of an annuity distribution that has commenced under Section 9.2, the latter shall prevail.

9.4 Distributions to Beneficiaries

- a. If a Participant dies after payments have commenced, his Beneficiary or Beneficiaries shall be entitled to payments, if any, determined by the settlement option agreed to in writing by the Participant and the administrator, provided, however, that the method of distribution to the Beneficiary shall be at least as rapid as that payable to the Participant on the date of his death.
- b. If the Participant dies before he commences benefits under the plan, the timing and manner of payment to the Beneficiary depends upon the identity of the Beneficiary. If the beneficiary is the surviving spouse of the Participant, distributions must commence on or before the later of: (1) December 31 of the calendar year immediately following the calendar year in which the Participant dies, or (2) December 31 of the calendar year in which the Participant would have attained age 70-1/2. Such distributions must be made not less frequently than annually over a period not to exceed the life expectancy of the surviving spouse.

If the Beneficiary is not the surviving spouse of the Participant, two options are available. (1) Under the five-year rule, the entire amount of the Participant's account balance must be distributed by December 31 of the calendar year that contains the fifth anniversary of the Participant's death. (2) Under the life expectancy rule, the Beneficiary must take at

least a minimum distribution by December 31 of the year following the year of death. Distributions must be made at least annually and for a period not exceeding their life expectancy.

9.5 Plan-to-Plan Transfers. If a Participant separates from service, all amounts previously deferred may at the election of the Participant and upon notice to the Plan Administrator, be rolled over to any other tax-deferred plan if the plan receiving the amounts provides for the acceptance of such amounts. Any amounts so transferred will be subject to any administrative, transfer, or other fees charged on account of such transfer, and the Port shall not be liable for any such fees.

9.6 Acceptance of Plan-to-Plan Transfers. This Plan shall accept rollovers from any other tax-deferred plan. Rolled-over funds will be accounted for separately and will retain their original plan's tax characteristics (e.g. 401, 403 and IRA plans are subject to a 10% early withdrawal penalty if funds are received before age 59-1/2). The Employer shall not be liable in any manner for any administrative, transfer, or other fees that may be charged on account of such transfer.

9.7 Purchase of Service Credit. Funds may be transferred to a defined benefit governmental retirement plan in order to purchase past service credit.

9.8 Domestic Relations Orders.

- a. To the extent required under a final judgment, decree, or order made pursuant to a state domestic relations law, herein referred to as a Qualified Domestic Relations Order (QDRO), which is duly filed upon the Employer, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the spouse, former spouse or child, and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the spouse, former spouse or child making the investment selection.
- b. The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse or child pursuant to this section. No amount will be paid or set aside unless the Employer, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the Employer from any claim with respect to such amounts in any case in which the Employer has been notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant's Account for a spouse, former spouse or child, and the Participant fails to obtain an order of the court in

the proceeding relieving the Employer from the obligation to comply with the QDRO.

- c. The Employer shall not be obligated to comply with any judgment, decree or order that attempts to require the Plan to violate any Plan provision or any provision of Section 457 of the Internal Revenue Code. Neither the Employer nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a Participant's benefits under the plan unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer, its agents or assigns to incur such expense, the amount of the expense may be charged against the Participant's account and thereby reduce Employer's obligation to pay benefits to the Participant.

In the course of any proceeding relating to divorce, separation, or child support, the Employer, its agents and assigns shall be authorized to disclose information relating to the Participant's individual account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse or child), or to a court.

9.9 De Minimus Accounts. Notwithstanding the foregoing provisions of this Article, the Participant may elect to receive or the Employer may distribute, without the consent of the Participant, the Participant's entire account if all of the following conditions are met:

- a. The value of a Participant's account does not exceed \$5,000;
- b. No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of distribution; and
- c. There has been no prior distribution under the Plan to the Participant pursuant to this Section.

Section 10. Miscellaneous.

10.1 Payments to Minors and Incompetents. If the Committee shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor, or, as adjudicated by a Court of Law, is mentally incompetent to receive such benefit and to give a valid release therefore and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian of the person or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Committee may authorize payment of such benefit to such other person or institution, including a custodian under any State Gifts to Minors Act (who shall be an adult, a guardian of the minor or a trust company), or to a Court of Law for distribution pursuant to that Court's order, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

10.2 Missing Persons. If the Committee is unable, after any benefit becomes due under the Plan to any person, to authorize payment because the identity or whereabouts of such person cannot be ascertained, and after notice by certified mail has been sent to the last known address of such person, the Committee may direct that such benefit and all other benefits with respect to such person be paid to a Court of Law for distribution pursuant to that Court's order.

10.3 Headings and Subheadings. The headings and subheadings in the Plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

10.4 Severability. If any provision of the Plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby.

10.5 Days and Dates. Whenever a time limit is expressed in terms of a number of days, they shall be consecutive calendar days, including weekends and holidays, provided however, that if the last day of a period of days would occur on a weekend or a holiday recognized by the State of Washington, the last day of the period shall be the next business day following.

10.6 Amendment of Plan. The Employer shall have the right to amend this Plan, at any time and from time to time, in whole or in part; provided that, the amounts credited to the individual account of each Participant or Beneficiary shall not be reduced by the amendment. This Plan shall automatically conform to provisions adopted by Congress amending section 457 of the Internal Revenue Code.

10.7 Termination of Plan. Although the Employer has established this Plan with a bona fide intention and expectation that it will maintain the Plan indefinitely, nevertheless the Employer is not and shall not be under any obligation or liability whatsoever to maintain the Plan. The Employer may terminate or discontinue the Plan in whole or in part at any time without any liability whatsoever for such termination or discontinuance. Deferred Compensation shall thereupon cease. After Plan termination, the individual account of each Participant or Beneficiary shall be distributed in accordance with the provisions in Section 9 above.

10.8 Applicable law. This Plan shall be construed, administered and governed in all respects under and by the laws of the State of Washington and the Code.