CITY OF ALTAMONTE SPRINGS
COMMISSION AGENDA
APRIL 19, 2016

7:00 P.M. REGULAR MEETING
INVOCATION
PLEDGE OF ALLEGIANCE
APPROVAL OF MINUTES OF REGULAR MEETING OF APRIL 5, 2016
INFORMAL COMMUNICATIONS FROM THE FLOOR

1.	**PUBLIC HEARING** **2nd READING**		**Ordinance 1691-16** - Amending City Code to replace transportation impact fees with mobility fees
2.	**PUBLIC HEARING** **2nd READING**		**Ordinance 1692-16** – Land Development Code Amendment to repeal concurrency for transportation and establish a Mobility Management Program
3.	**PUBLIC HEARING** **2nd READING**		**Ordinance 1695-16** - Amendment of the Police Officer's Pension Plan
4.	**PUBLIC HEARING**		**Resolution 1316** - Establishment of the Police Officer's Special Benefits Plan
5.	**FINANCE ITEMS**	**A.**	**AFIRST- Altamonte to Apopka Reclaimed Water Transmission change order numbers 1, 2, 3, and 4** - Approve change order with Aecom Technical Services, Inc. in the amount of $187,389.00
		B.	City surplus equipment and machinery
		C.	**RFP 16-018-BK- Professional Engineering Services- Potable Reuse Demonstration Pilot –** Approve RFP 16-018-BK Evaluation Committee's Ranking, authorize staff to negotiate a contract with the top ranked firm, Carollo Engineers, Inc., and authorize the Mayor to execute the final negotiated contract.

Persons with disabilities needing assistance in participating in any of these proceedings should contact the City Clerk Department ADA Coordinator 48 hours in advance of the meeting at 407-571-8122 (Voice) or 407-571-8126 (TDD).

Persons are advised if they wish to appeal any decision made at the hearing/meetings, they will need to ensure that a verbatim record of the proceedings is made which includes the testimony evidence upon which the appeal is to be based, per Chapter 286.0105, Laws of Florida. The City of Altamonte Springs does not provide this verbatim record.

REGULAR MEETING OF THE CITY COMMISSION

APRIL 5, 2016

Pursuant to due notice, a regular meeting of the Commission of the City of Altamonte Springs, Seminole County, was held at 225 Newburyport Avenue, in said City on April 5, 2016 at 7:00 p.m.

PRESENT WERE: Mayor Bates, Commissioners Batman, Hussey, Reece, and Wolfram

ALSO PRESENT WERE:

Mark Debord	-	Finance Director for Frank Martz, City Manager
Skip Fowler	-	City Attorney
Erin O'Donnell	-	City Clerk

The meeting was called to order by Mayor Bates at 7:00 p.m.

INVOCATION:

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

Motion: Moved by Commissioner Wolfram, seconded by Commissioner Reece, to approve the minutes of the Workshop and regular Commission Meeting of March 15, 2016 as presented. Motion carried unanimously.

INFORMAL COMMUNICATION FROM THE FLOOR: None

1. PUBLIC HEARING
1ST READING

Ordinance 1691-16 - Amending City Code to replace transportation impact fees with mobility fees

Mr. Jonathan Paul of Nue Urban Concepts, a consultant for the City approached the Commission to give them a background of the mobility fee program. The City will be doing away with impact fees and will now asses a mobility fee which will either be lower or at the same cost to developers currently. The costs assessed will be used to fund sidewalks and other pedestrian items that will complement the plan and encourage better transportation in the City.

No other members of the public appeared before the Commission. The attorney read the title of the Ordinance into the record.

Motion: Moved by Commissioner Hussey, seconded by Commissioner Wolfram to pass Ordinance 1691-16 on first reading and set second reading for April 19, 2016. Commissioner Batman – yes; Commissioner Hussey – yes; Commissioner Reece – yes; Commissioner Wolfram – yes; Mayor Bates – yes. Motion carried 5-0.

2. PUBLIC HEARING 1ST READING — **Ordinance 1692-16** – Land Development Code Amendment to repeal concurrency for transportation and establish a Mobility Management Program

Mr. Tim Wilson, Director of Mobility, discussed the history of concurrency and the effects of the new Mobility Management Program. He added that this plan will help protect large scale projects coming into the Town as well as clean up language currently in the Land Development Code to make it consistent with not only this ordinance, but the sister ordinance previously passed on first reading.

No other members of the public appeared before the Commission. The attorney read the title of the Ordinance into the record.

Motion: Moved by Commissioner Wolfram, seconded by Commissioner Batman to pass Ordinance 1692-16 on first reading and set second reading for April 19, 2016. Commissioner Batman – yes; Commissioner Hussey – yes; Commissioner Reece – yes; Commissioner Wolfram – yes; Mayor Bates – yes. Motion carried 5-0.

3. REQUEST FOR APPROVAL — Cost-Share Agreement between the St. John's River Water Management District and the City of Altamonte Springs

Motion: Moved by Commissioner Hussey, seconded by Commissioner Wolfram to approve the cost-share agreement. Motion carried unanimously.

4. REQUEST FOR APPROVAL — Waive Formal Solicitation and Approve Single Source-Sanitary Force Main Assessments

Motion: Moved by Commissioner Hussey, seconded by Commissioner Wolfram to waive the formal solicitation process. Motion carried unanimously.

5. REQUEST FOR APPROVAL — Waive Formal Solicitation and Approve Single Source-Xylem Flygt AC Series Pumps, Parts, and Service

Motion: Moved by Commissioner Hussey, seconded by Commissioner Wolfram to waive the formal solicitation process. Motion carried unanimously.

6. **REQUEST FOR APPROVAL** Orienta Avenue Improvements – Right of Way Purchase (Parcel 101 & 102)

Motion: Moved by Commissioner Reece, seconded by Commissioner Batman to approve the right of way purchase. Motion carried unanimously.

7. **REQUEST FOR APPROVAL** Orienta Avenue Improvements – Right of Way Purchase (Parcel 103)

Motion: Moved by Commissioner Wolfram, seconded by Commissioner Hussey to approve the right of way purchase. Motion carried unanimously.

8. **REQUEST FOR APPROVAL** Orienta Avenue Improvements – Right of Way Purchase (Parcel 107 & 108)

Motion: Moved by Commissioner Wolfram, seconded by Commissioner Hussey to approve the right of way purchase. Motion carried unanimously.

9. **FINANCE ITEMS** **AFIRST Reuse Augmentation Facility and AFIRST Stormwater Pump Station & Forcemain Improvements, Contract ITB14-021-** Approve Contract Change Order No. 3 with Wharton-Smith, Inc. in the amount of $60,031.31

Motion: Moved by Commissioner Reece, seconded by Commissioner Hussey to approve the finance item. Motion carried unanimously.

INFORMAL COMMUNICATION FROM THE FLOOR: None

REPORTS:

CITY ATTORNEY- None

CITY CLERK- None

CITY MANAGER

Mr. Debord asked the Commission to make a motion on a recent Charter amendment passed in November. In Article V, Section 5.01 of the City's Charter, the residency requirement for the City Manager can be waived at the will of the Commission. Mr. Debord asked if the Commission to make a motion to waive the requirement for current City Manager, Frank Martz.

Motion: Moved by Commissioner Hussey, seconded by Commissioner Reece to waive the residency requirement for City Manager Frank Martz. Motion carried unanimously.

COMMISSIONER BATMAN
Reported that the celebration of the 70th Anniversary of the Altamonte Springs Women's Club will be held the following day at Westmonte Park. He added that invitations had be sent to them all inviting them to attend their meeting and luncheon.

COMMISSIONER REECE
Asked if Mayor Bates could pass on her congratulations to the Women's Club since she will be unable to attend. Mayor Bates responded in the affirmative.

COMMISSIONER HUSSEY
Noted that while he was away recently from his home for a vacation, he had the Altamonte Springs Police Department dispatched due to a burglary alarm. He wanted to formally congratulate them on an excellent response time and thankfully, it was a false alarm.

COMMISSIONER WOLFRAM- None

MAYOR BATES- None

The meeting adjourned at 7:20 p.m.

ATTEST:

MAYOR

CITY CLERK

Meeting Date: April 19, 2016

From: _____
Tim Wilson, Director of Mobility

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: Ordinance No. 1691-16 (2nd reading) - amending City Code to replace transportation impact fees with mobility fees.

SUMMARY EXPLANATION & BACKGROUND:

The proposed amendment replaces City transportation impact fees with City mobility fees. The ordinance modifies Chapter 25 of the City Code of Ordinances to include a new article for mobility fees and the proposed mobility fee schedule. The ordinance references the technical analysis prepared by NUE Urban Concepts dated May, 2015. The ordinance also establishes the methodology to calculate mobility fees, amends the standards and requirements for developer contribution credits, outlines the process for alternative fee calculations, proposes new credit criteria to reduce the mobility fee for off-site improvements, and provides other miscellaneous changes to establish a mobility fee in the City. The effective date of the Ordinance is June 1, 2016.

The proposed mobility fee rates are either the same amount or less than the existing transportation impact fee rates for similar uses. The mobility fee has a lower rate for new development located in the City's activity centers or the transit oriented area that surrounds SunRail furthering City economic development and multi-modal transportation policies outlined in **City Plan 2030**.

The City Commission held a workshop on March 15, 2016 to review and discuss the proposed mobility fee program and the draft mobility fee schedule. Since the meeting, the mobility fee schedule has been updated and is included in the ordinance.

FISCAL INFORMATION: Not applicable

RECOMMENDED ACTION: PASS AND ADOPT Ordinance No. 1691-16 on second and final reading.

Initiated by: Tim Wilson, Growth Management

ORDINANCE 1691-16

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF ALTAMONTE SPRINGS, FLORIDA, RELATING TO IMPACT FEES AND MOBILITY FEES, AMENDING THE ALTAMONTE SPRINGS CODE OF ORDINANCES, CHAPTER 25, "IMPACT FEES," BY RENAMING SAME TO "IMPACT FEES AND MOBILITY FEES"; BY RESTRUCTURING SAID CHAPTER INTO ARTICLES AND SEQUENTIALLY RENUMBERING SECTIONS AS NECESSARY; BY ADOPTING ARTICLE I, "IN GENERAL," SETTING FORTH GENERAL PROVISIONS FOR IMPACT AND MOBILITY FEES, DEFINITIONS, PURPOSE, FINDINGS, AND RULES OF CONSTRUCTION; BY ADOPTING ARTICLE II, "IMPACT FEES," PLACING CURRENT CHAPTER 25 INTO ARTICLE II, CORRECTING SCRIVENOR'S ERRORS AND REPEALING SCHEDULE 4, "TRANSPORTATION SERVICES IMPACT FEE SCHEDULE" IN ITS ENTIRETY; BY ADOPTING ARTICLE III, "MOBILITY FEES", IMPOSING A MOBILITY FEE AND SETTING FORTH CALCULATIONS FOR SAME, REGULATIONS FOR SAME AND ADOPTING NEW SCHEDULE 4, "MOBILITY FEE SCHEDULE"; BY ADOPTING ARTICLE IV, "MISCELLANEOUS PROVISIONS," SETTING FORTH THE PROCESS FOR REVIEW OF ALTERNATIVE FEE CALCULATIONS, CREDITS, VESTED RIGHTS, EXEMPTIONS, EFFECT ON LAND DEVELOPMENT REGULATIONS, REQUIREMENT FOR ANNUAL REPORTING, PENALTIES FOR VIOLATION, COUNTY WEST COLLECTOR ROAD IMPACT FEE COLLECTIONS, AND AFFORDABLE HOUSING PROVISIONS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, Pursuant to Article VIII, Section (2)(b) of the Florida Constitution and Chapter 166, Florida Statutes, the City of Altamonte Springs has broad home rule powers to adopt ordinances to provide for and operate transportation systems,

including roadways, transit facilities, and bicycle/pedestrian facilities within the City; and

WHEREAS, the City of Altamonte Springs currently has a long established road impact fee system, set forth in Ordinance 877-86, as amended, which has been one part of an overall growth management program as set forth in the City of Altamonte Springs Comprehensive Plan; and

WHEREAS, the road impact fee system is principally focused on vehicular mobility, whereas a mobility fee system takes a comprehensive view on the provision of mobility through walking, biking, transit and motor vehicles; and

WHEREAS, the mobility fee system focuses on person miles of travel, which includes walking, biking, transit and motor vehicular trips, generated by new development and the resulting impact on multi-modal capacity and accordingly requires the expenditure of revenue derived under that system to be used on multi-modal improvement projects that increase multi-modal capacity; and

WHEREAS, the mobility fee system includes, but is not limited to, considerations of the impact of person miles of travel generated by new development on multi-modal capacity as well as considerations of the impact of new development on overall mobility within the community; and

WHEREAS, Altamonte Springs is experiencing growth and new development that necessitates the expansion of transportation facilities for a variety of modes to meet the demands of new development and redevelopment including adequate and efficient mobility and multi-modal corridors along with different mobility options; and

WHEREAS, imposition of a mobility fee requiring future growth to contribute its fair share of the cost of growth-necessitated transportation facilities is necessary and reasonably related to the public health, safety, and welfare of the people of the City; provided that the mobility fee does not exceed the actual amount necessary to offset the demand on transportation facilities generated by new development; and

WHEREAS, Section 163.3180, Florida Statutes, encourages local governments to develop tools and techniques including adoption of long-term strategies to facilitate development patterns that support multi-modal solutions, adoption of an area wide level of service not dependent on any single road segment function, and establishing multi-modal level of service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide adequate level of mobility; and

WHEREAS, Section 163.3180, Florida Statutes, further encourages local governments to adopt an alternative mobility funding system; and

WHEREAS, City Plan 2030, the Altamonte Springs Comprehensive Plan, in its

multi modal transportation element sets out goals to develop and maintain a safe, convenient, efficient transportation system which: recognizes present need; reflects the Future Land Use Plan and the plans of adjacent jurisdictions; provides for an affordable balance of alternative transportation modes; provides for safe, efficient intermodal transportation linkages; and respects the integrity of environmentally sensitive areas and wildlife habitat; and

WHEREAS, the City Commission finds that this ordinance supports and furthers Goal 2-1 of the multi-modal transportation element of the Comprehensive Plan which is "TO INTEGRATE THE MULTI-MODALTRANSPORTATION SYSTEM WITH THE FUTURE LAND USE ELEMENT, THE FUTURE LAND USE MAP, AND THE LAND DEVELOPMENT CODE TO GUIDE DEVELOPMENT TYPES, DENSITIES AND INTENSITIES, AND SITE DESIGN THAT SUPPORTS AND ENHANCES THE CITY'S MULTI-MODAL TRANSPORTATION SYSTEM AND THE CITY'S MOBILITY GOALS"; and

WHEREAS, the mobility fees imposed hereby (1) are in compliance with the "dual rational nexus test" developed under Florida case law, (2) meet the "essential nexus" and "rough proportionality" requirements established by the United States Supreme Court in Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994), (3) are consistent with the requirements set forth in Section163.3180, Florida Statutes, and (4) are consistent with and being imposed in accordance with Section 163.31801, Florida Statutes; and

WHEREAS, the City Commission has determined that the proposed Ordinance adopting a mobility fee will help to preserve and enhance the rational nexus between the need for multi-modal travel demands generated by new development in Altamonte Springs and the mobility fees imposed on that development; and

WHEREAS, establishment of a city-wide mobility fee district to regulate mobility fee expenditures is the best method of ensuring that the multi-modal transportation facilities funded by mobility fees have the rational nexus and benefit to the development for which the mobility fees were paid; and

WHEREAS, mobility fees collected will be deposited in the mobility fee fund for the city-wide mobility fee district and expended for the purposes set forth herein; and

WHEREAS, mobility fees imposed hereunder achieve the goals, objectives and policies of the Comprehensive Plan and utilize the tools and techniques encouraged by Section 163.3180, Florida Statutes; and

WHEREAS, Altamonte Springs developed a fee technical report dated May 2015 that provided the technical analysis to determine the mobility fee and constitutes a proper factual predicate for imposition and expenditure of the mobility fees; and

WHEREAS, the City Commission has determined that the proposed Ordinance adopting a mobility fee will help to preserve and enhance the rational nexus between the need for multi-modal travel demands generated by new development in the City and the mobility fees imposed on that development; and

WHEREAS, the City Commission has determined, based upon project development time frames which are often delayed depending upon economic realities, to authorize the refund of collected impact or mobility fees after ten (10) years; and

WHEREAS, the City Commission has included a provision providing for credit for prior payments for a specific project for city transportation impact fees or capacity reservation fees related to transportation concurrency; and

WHEREAS, the mobility fee is intended to replace the road impact fee system and development assessed a mobility fee shall not be assessed a road impact fee; and

WHEREAS, the City Commission has noticed, advertised, scheduled and held a public hearing in compliance with Florida Statutes on this proposed Ordinance; and

WHEREAS, the City Commission has determined that it is advisable and in the public interest to adopt and implement the proposed Mobility Fee Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALTAMONTE SPRINGS, FLORIDA:

SECTION ONE: Chapter 25, "Impact Fees," of the Altamonte Springs Code of Ordinances is hereby renamed "Impact Fees and Mobility Fees," restructured into Articles as set forth herein, renumbered sequentially as necessary, and amended to read as follows:

Article I. IN GENERAL.

Sec. 25-1. Short title; authority and applicability.

(a) This chapter shall be known and may be cited as Altamonte Springs Impact Fee and Mobility Fee Ordinance.

(b) The city commission has the authority to adopt this chapter pursuant to Article VIII of the 1968 Florida Constitution, and Chapters 163 and 166 of the Florida Statutes, and the Charter of the City of Altamonte Springs.

(c) Planning for new capital improvements needed to serve new growth and development that generate the need for additional improvements and the implementation of these plans through the comprehensive planning process, is a responsibility of the city under Section 163.3161 et seq., Florida Statutes, and is in the best interest of the health, safety and welfare of the citizens of the city.

Sec. 25-2. Intent and purpose.

(a) The city commission has determined and recognized through ~~adoption of~~ the ~~1991~~ Altamonte Springs Comprehensive Plan ~~entitled City Plan 2005~~ that new growth and development which the city will experience will necessitate ~~extensive~~ improvements to the ~~major road~~ multi-modal transportation network ~~system~~, expansions of its parks and recreation facilities, ~~new equipment for the collection of solid waste~~, and new capital assets for its police, fire and emergency medical services. In order to finance the necessary new capital improvements, several combined methods of financing shall be employed, one of which will impose a regulatory impact fee and mobility fee on new growth and development which does not exceed the reasonably anticipated costs of the capital expenditures required to service future growth and new development without degradation to existing service levels or below minimum acceptable service levels.

(b) Implementing a regulatory scheme that requires new development to pay ~~an~~ impact fees and mobility fees that do~~es~~ not exceed the reasonably anticipated capital costs incurred to serve new growth and development is the responsibility of the city in order to carry out the policy and intent of its comprehensive plan, as amended and adopted under Section 163.3161 et seq., Florida Statutes, and is in the best interest of the health, safety and welfare of the citizens of Altamonte Springs.

(c) The purpose of this chapter is to enable Altamonte Springs to allow growth and development to proceed in the city in compliance with the adopted comprehensive plan, and to regulate growth and development so as to require growth and development to share in the burdens of growth by paying for the reasonably anticipated capital costs attributable to future growth and development.

(d) It is not the purpose of this chapter to collect fees from growth and development in excess of the cost of the reasonably anticipated capital requirements needed to serve the new growth and development. The city commission hereby finds that this chapter has approached the problem of determining impact fees and mobility fees in a conservative and reasonable manner. This chapter will result in only partial recoupment of the capital expenditures attributable to future growth and new development. Impact fees and mobility fees will not be utilized to correct any existing deficiencies in any fashion whatsoever.

(e) Absent an impact fee or mobility fee agreement pursuant to section 25-15 (b) herein, or requirements associated with the Mobility Solutions report or study set forth in Article II, "Concurrency and Mobility Management," of the City's Land Development Code, ~~of this chapter~~ it shall be the policy of Altamonte Springs to collect the impact fees and mobility fees assessed by this chapter in lieu of any off-site improvements.

(f) The technical data, findings and conclusions herein are based on the most recent and localized data, including; Altamonte Springs ~~1991~~ Comprehensive Plan and its subsequent amendments, entitled City Plan ~~2005 and City Plan 2020~~; the Impact Fee Background Report, 1986 and its amendments dated May 1988 ~~and~~

~~on the Altamonte Springs Transportation Study, 1982; Altamonte Springs Transportation Study Update, 1986; Microtrips Transportation Planning Package developed by PRC Voorhees; the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual: ITE Trip Generation Notebook, 4th Edition, 1987, 5th Edition, 1991, 6th Edition, 1997, and 8th Edition, 2008;, 9th Edition, 2012; the 1993 Altamonte Springs Transportation Impact Fee Update dated May 1994,~~ and the Police Services Impact Fee Study dated September 2002, the Rate Study for Parks and Recreation Facilities dated May 1994, The City of Altamonte Springs Rate Analysis dated July 2002, ~~the City of Altamonte Springs Transportation Impact Fee Update dated June 1997, July 2002, and the City of Altamonte Springs Transportation Impact Fee Update dated March 2009~~, and the Altamonte Springs Mobility Fee Technical Report dated May 2015.

Sec. 25-3. Rules of construction.

For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply:

(a) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table or illustrative table, the text shall control.

(b) The word "shall" is always mandatory and not discretionary; and word "may" is permissive.

(c) Words used in the present tense shall include the future, and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(d) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(e) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either" . . . or", the conjunction shall be interpreted as follows:

1. "And" indicates that all the connected terms, conditions, provisions or events shall apply.

2. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

3. "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(f) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(g) Except as otherwise provided herein, all words and phrases shall have the same meaning as ascribed to them in the City Code.

(h) All references to statutes, ordinances, and other regulations shall be as they exist at the time of adoption of this chapter and as may be from time to time amended and/or renumbered or transferred.

(i) The City Commission may adopt by resolution an administrative policy manual to provide for administration, enforcement and construction of this chapter.

Sec. 25-4. Definitions.

The following terms in this chapter shall have the meanings specified herein.

(a) *Adopted definitions:* There is hereby adopted by reference those definitions and terms contained within the "Impact Fee Background Report," Altamonte Springs, Florida, 1986, and as amended, by Plantec Corporation, Jacksonville, Florida, and as further amended by Henderson, Young & Company for Parks and Recreation Facilities, dated May 1994 and Police Services Impact Fee Study dated September 2002 by Solin and Associates, Inc., Altamonte Springs, Florida, ~~and by Kimley Horn and Associates, Inc. for Transportation Impact Fee Update dated May 1994, and by the City of Altamonte Springs for the Transportation Impact Fee Update dated June 1997, July 2002, and March 2009,~~ and by NUE Urban Concepts, LLC, May 2015 for the Mobility Fee Technical Report to the extent same are not inconsistent with this chapter and the definitions provided herein. These studies are on file in the Growth Management Department of the City of Altamonte Springs.

(b) *Applicant:* The person who applies for a building permit.

(c) *Building permit:* An official document or certificate issued by the city authorizing the commencement of construction of any structure or portion of a structure.

(d) *Capital improvement:* Includes the planning of, design and engineering for, acquisition of land or equipment, relocation of utilities and the construction of improvements for ~~roads~~ multi-modal transportation and associated stormwater management facilities, parks and recreation~~, solid waste~~, fire and emergency medical services and police capital facilities. Improvements can also include site preparation, geotechnical analysis, mobilization, maintenance of traffic, floodplain and wetland compensation and mitigation and construction engineering and inspection services.

(e) *Community retail*: A single retail, bank, restaurant, pharmacy, entertainment or personal, professional or business service development that is between 10,000 and 100,000 gross square feet in size that does not include a vehicular drive-thru lane, window or service and is not otherwise specifically included in Schedule 4: Mobility Fees.

(f) *Development:* The carrying out of any building or mining operation, or the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. The words development and redevelopment are synonymous for the purposes of this definition. See Section 1.2.1, City Land Development Code for further examples of activities or uses constituting or involving development.

~~(e)~~(g) *Encumbered:* Committed in capital improvements program for a specified improvement on a specified time schedule not in excess of ~~five (5) years~~ ten (10) years or committed by contract or interlocal governmental agreement for improvement, construction or acquisition such that the city is obligated to expend the committed or encumbered funds.

~~(f)~~(h) *Gross square feet:* As referred to in the impact fee schedules and mobility fee schedule, ~~section 25.6~~, means a total gross square footage under roof, measured from the exterior faces of the exterior walls and any enclosed areas for outdoor seating and sales, display or storage, except for auto sales and industrial uses which shall be based upon all areas under roof.

~~(g)~~(i) *Impact fee or mobility fee component:* That portion of the impact fee or mobility fee attributable to either ~~transportation~~ mobility, parks and recreation~~, solid waste,~~ police or fire and emergency medical services all of which are components of the overall impact fee.

~~(h)~~(j) *Impact generating land development activity:* Is land development designed or intended to permit a use of the land which will contain more dwelling units or floor space than the then existing use of the land in a manner that increases the ~~generation of vehicular traffic~~ person miles of travel demand, increases the park user occasions, ~~increases the demand on the solid waste facilities,~~ increases the demand on library facilities, or increases the demand on police or fire and emergency medical service facilities.

(k) *Neighborhood retail*: A retail, bank, restaurant, pharmacy, entertainment or personal, professional or business service development that is less than 10,000 gross square feet in size that does not include a vehicular drive-thru lane, window or service and is not otherwise specifically included in Schedule 4: Mobility Fees.

~~(i)~~(l) *Off-site improvement:* Improvements located outside of the boundaries of the parcel proposed for development. Access improvements required to provide ingress and egress to the development parcel, which may include rights-of-way, easements, paving of adjacent or connecting roadways, turn lanes and deceleration/acceleration lanes, along with required traffic control devices, signage, and markings, and drainage and utilities, shall be considered on site improvements for the purposes of this chapter regardless of their actual location.

~~(j)~~(m) *Out parcels:* A small area of a larger development, typically located on corners or adjacent to an ingress and egress point; which area may be developed independently of the larger development and which development may be dissimilar in use or architectural style to the larger development.

(n) *Person mile of travel (PMT)*: The number of miles traveled by each person on a trip in order to account for all miles traveled by motor vehicle, transit, walking and/or bicycling.

(o) *Person trip:* A trip by one person by motor vehicle, transit, walking and/or bicycling.

(p) *Regional retail*: A retail, bank, pharmacy, entertainment or personal, professional or business service development that is greater than 100,000 gross square feet in

size that does not include a vehicular drive-thru lane, window or service and is not otherwise specifically included in Schedule 4: Mobility Fees.

(q) Restaurant, sit down: A free standing or out parcel restaurant establishment that prepares and serves food primarily for consumption on premise that does not have drive-thru or drive-in facilities.

(r) *Vehicle miles of travel (VMT)*: A unit to measure vehicle travel made by a private motor vehicle, such as an automobile, van, pickup truck, or motorcycle where each mile traveled is counted as one vehicle mile regardless of the number of persons in the vehicle.

~~(k) *Out parcel transportation impact fees:* When out parcels are developed, the transportation impact shall be calculated in the following fashion:~~

~~(1) If there is an integrated access with the larger development from which the outparcel was created and there is no drive-in facility, then the impact fees will be calculated using the rate of the larger development; provided, the uses are similar or are included within the uses of the larger development.~~

~~(2) If there is an integrated access with the larger development from which the outparcel was created and there is a drive-in facility, then the applicant may submit an alternative impact fee study demonstrating that the fees should be calculated as in (1) above.~~

~~(3) If there is no integrated access with the larger development from which the outparcel was created, then the impact fees shall be calculated without regard to the larger development.~~

~~(l) *Shopping centers:* A group of architecturally unified mixed retail uses of which nonretail uses shall not exceed twelve (12) per cent of the gross square feet of the center. Where uses generating higher automobile trip rates than retail (i.e.; restaurants, dry cleaners, financial institutions) exceed twelve (12) per cent, then additional transportation impact fees shall be due and payable. Any nonretail use shall pay such incremental increase in police impact fees as is applicable to the nonretail uses, not withstanding the fact that such use or uses may not exceed twelve (12) per cent of the gross square feet of the center.~~

Article II. IMPACT FEES.

Sec. 25-5. Adoption of impact fee study.

The city commission hereby adopts by reference the study entitled, "Impact Fee Background Report" dated July 1986, and its supplements dated May 1987, as prepared by Plantec Corporation, Jacksonville, Florida, ~~and by Transportation Consulting Group dated May 1994~~, by Henderson, Young & Company, Winter Park, Florida, and the studies entitled "Rate Study for Parks and Recreation Facilities" dated July 2002 and "Rate Study for Police Facilities", dated September 2002, prepared by Solin & Associates, Inc. ~~and the study entitled "Transportation Impact Fee Update", dated May 1994, as prepared by~~

~~Kimley-Horn and Associates, Inc., and the study entitled "City of Altamonte Springs Transportation Impact Fee Update", as prepared by the City of Altamonte Springs, dated June 1997, July 2002, and March 2009~~ , as they relate to the computation and allocation of the capital costs of new improvements to be borne by new users of such improvements.

Sec. 25-6. Impact fee imposed.

(a) There is hereby imposed upon all impact-generating land development activity as herein defined an impact fee due at the time of issuance of a building permit, and no building permit shall be issued until said impact fee shall have been paid except as otherwise herein provided. Impact fees are assessed at the impact fee rate in effect at the time the building permit is issued. The fee shall be determined in accordance with the following schedule. If the building permit is for less than the entire contemplated development, the fee shall be computed for the amount of development covered by the permit. The obligations for payment of impact fees shall run with the land. Impact fee collections and expenditures shall be accounted for and reported in separate accounting funds, which the finance department shall maintain.

(b) Any person who shall initiate any new impact-generating land development activity shall, except as otherwise provided for herein, pay an impact fee as set forth in the following schedules:

~~2002 UPDATE~~
SCHEDULE 1. PARKS AND RECREATION SERVICES*

Housing Type	Impact Fee (per dwelling unit)
Single-family	$302.09
Multifamily	259.15

*A city library fee of $90.74 is incorporated within the total fee.

SCHEDULE 2. POLICE SERVICES ~~NEW POLICE~~ IMPACT FEE ~~RATE~~ SCHEDULE — SCHEDULE 2

Land Use Classification	Fee Rates[1]	Measure[2]
Industrial/manufacturing/warehousing	$0.089	Per sq. ft.

Institutional	$0.336	Per sq. ft.
Office	$0.275	Per sq. ft.
Retail	$0.493	Per sq. ft.
Eating and drinking establishment	$2.21	Per sq. ft.
Lodging and special residential needs		
Adult living facility/nursing home	$58.24	Per bed
Hotel/motel	$148.51	Per guest room
Residential		
Single-family residential	$185.54	Per unit
Multiple-family residential	$168.20	Per unit

[1] Fee rate has been discounted by five per cent from the actual fee.

[2] Impact fee rate is multiplied by the total gross square feet, number of residential dwelling units, or number of beds, or number of guest rooms, as indicated by the development measure.

SCHEDULE 3. FIRE/RESCUE IMPACT FEE
~~Effective 1/1/2003~~
Residential

	Nonfire Sprinkler Protected	Fire Sprinkler Protected	
Single-family	$172.00	$129.00	Dwelling unit
Apartment	$172.00	$129.00	Dwelling unit
Condominium	$172.00	$129.00	Dwelling unit

Mobile home	$172.00	$129.00	Dwelling unit
Hotel	$313.00	$234.75	1,000 gross square feet
Motel	$313.00	$234.75	1,000 gross square feet

Commercial

	Nonfire Sprinkler Protected	Fire Sprinkler Protected	
Church	$684.00	$513.00	1,000 net square feet
Marina	320.00	240.00	1,000 net square feet
~~Raquet~~Racquet club	320.00	240.00	1,000 net square feet
Health spas	320.00	240.00	1,000 net square feet
Golf course clubhouse	320.00	240.00	1,000 net square feet
Restaurant, sit-down	320.00	240.00	1,000 net square feet
Restaurant, drive-in	320.00	240.00	1,000 net square feet
Hospital, room area	10.00	7.50	1,000 gross square feet

Hospital, treatment area	5.00	3.75	1,000 gross square feet
Nursing home, room area	10.00	7.50	1,000 gross square feet
Nursing home, treatment area	5.00	3.75	1,000 gross square feet
Day care	51.00	38.25	1,000 net square feet
Office	72.00	54.00	1,000 gross square feet
Bank/savings, walk-in	72.00	54.00	1,000 gross square feet
Bank/savings, drive-in	72.00	54.00	1,000 gross square feet
Retail/wholesale, <300,00 sq. ft.	160.00	120.00	1,000 gross square feet
Retail/wholesale, 300,000—400,000 sq. ft.	144.00	108.00	1,000 gross square feet
Retail/wholesale, >400,000 sq. ft.	130.00	97.50	1,000 gross square feet
Basic industry	13.00	9.75	1,000 gross square feet
Utility plants/substation	13.00	9.75	1,000 gross square feet.
Manufacturing	6.00	4.50	1,000 gross square feet

Warehousing/storage	6.00	4.50	1,000 gross square feet
Miniwarehouses	6.00	4.50	1,000 gross square feet
Concentrated assembly, 50+ persons	684.00	513.00	1,000 net square feet
Less concentrated assembly, 50+ persons	320.00	240.00	1,000 net square feet
Assembly, <50 persons, non-office/other	72.00	54.00	1,000 gross square feet

Note: Net usable square footage is based on netting out all nonpublic areas.

~~Schedule 4.; TRANSPORTATION SERVICES IMPACT FEE SCHEDULE~~

~~Effective October 1, 2009~~

#	LAND USE	TRIPS PER	IMPACT FEE RATE
~~1~~	~~Light Industrial/Manufacturing~~	~~1,000 gsf~~	~~$725.40~~
~~2~~	~~Storage Facilities~~	~~1,000 gsf~~	~~$260.19~~
~~3~~	~~Single-Family Residential~~	~~Dwelling Unit~~	~~$996.00~~
~~4~~	~~Multifamily Residential (includes condominiums and townhouses)~~	~~Dwelling Unit~~	~~$692.10~~
~~5~~	~~Adult Congregate Living Facility (includes retirement communities)~~	~~Dwelling Unit~~	~~$362.18~~
~~6~~	~~Hotel/Motel~~	~~Room~~	~~$928.35~~
~~7~~	~~Racquetball/Health Club~~	~~1,000 gsf~~	~~$3,427.19~~

~~8~~	~~House of Worship~~	~~1,000 gsf~~	~~$948.12~~
~~9~~	~~Child Care Center~~	~~1,000 gsf~~	~~$3,299.59~~
~~10~~	~~Hospital~~	~~1,000 gsf~~	~~$1,717.24~~
~~11~~	~~Office (nonmedical-related)~~		
	~~< 100,000~~	~~1,000 gsf~~	~~$1,381.08~~
	~~100,000—299,999~~	~~1,000 gsf~~	~~$1,176.05~~
	~~300,000—499,999~~	~~1,000 gsf~~	~~$1,001.20~~
	~~500,000—800,00~~	~~1,000 gsf~~	~~$895.05~~
	~~> 800,000~~	~~1,000 gsf~~	~~$852.37~~
~~12~~	~~Medical Office~~	~~1,000 gsf~~	~~$3,760.23~~
~~13~~	~~General Retail~~		
	~~< 50,000~~	~~1,000 gsf~~	~~$4,452.02~~
	~~50,000—99,999~~	~~1,000 gsf~~	~~$3,405.50~~
	~~100,000—299,999~~	~~1,000 gsf~~	~~$3,744.39~~
	~~300,000—499,999~~	~~1,000 gsf~~	~~$3,200.76~~
	~~500,000—999,999~~	~~1.000 gsf~~	~~$2,800.47~~
	~~> 1,000,000~~	~~1,000 gsf~~	~~$2,421.96~~
~~14~~	~~Sit Down Restaurant (no drive-through)~~	~~1,000 gsf~~	~~$6,881.23~~
~~15~~	~~Fast Food Restaurant (with drive-through)~~	~~1,000 gsf~~	~~$26,849.52~~
~~16~~	~~Supermarket~~	~~1,000 gsf~~	~~$7,980.47~~

~~17~~	~~Convenience Market/Gas Station~~	~~1,000 gsf~~	~~$27,281.80~~
~~18~~	~~Pharmacy/Drug Store~~	~~1,000 gsf~~	~~$4,312.37~~
~~19~~	~~Furniture Store~~	~~1,000 gsf~~	~~$500.29~~
~~20~~	~~Bank~~	~~1,000 gsf~~	~~$4,625.61~~
	~~gsf = gross square feet~~		

~~NOTE: Fees are assessed at the rate in effect at the time building permit [is issued]. An alternative impact fee calculation may be submitted for uses not shown on this schedule, pursuant to the provisions outlined in section 25-8 of the City's Code of Ordinances.~~

~~SCHEDULE 5 RESERVED~~ [2]

(c) Any developer who, prior to the effective date of this chapter, September 3, 1986, agreed as a condition of development approval to pay impact fees, shall be responsible for the payment of the fees under the terms of such agreement. Any portion of impact fees agreed to be paid pursuant to a prior agreement that are greater than the fees established in this chapter shall be refunded.

(d) In the event that an applicant for building permit contends that the land use for which the building permit is proposed is not within the above categories or fits within a different category from that determined by the ~~community~~ growth management department, then director of ~~community~~ growth management or his designee shall make a determination as to the appropriate land use designation. Such determination may be appealed to the city commission.

(e) Where new development involves the redevelopment of land such that existing impact generating development is removed or substantially altered the new development impact fees shall be computed on the additional or new impacts only. Impact fees shall be computed for the existing development and such sum shall then be subtracted from the impact fees calculated for the new development. It being the city's intent to collect impact fees for only that additional impact generated by redevelopment over and above the impact attributable to the existing redevelopment.

(f) Where sprinkler systems are voluntarily installed in buildings where not otherwise required by this Code, and/or where sprinkler systems are installed in accordance with the provisions of section 6.1.1.5, Land Development Code of the City of Altamonte Springs, a discount of twenty-five (25) per cent to the fire portion of the fire and rescue services impact fees is granted, and is so indicated on schedule 3 of subsection 25-6(b).

Article III. MOBILITY FEES.

Sec. 25-7. - Adoption of mobility fee study.

The City Commission hereby adopts by reference the study entitled, "Mobility Fee, Technical Analysis Study", dated May 2015, as prepared by NUE Urban Concepts, LLC, hereinafter "Mobility Fee Study". The study presents the technical analysis supporting the City of Altamonte Springs Mobility Fees consistent with City Plan 2030. The study is available in the City's Growth Management Department.

Sec. 25-8 - Mobility fee imposed.

(a) There is hereby imposed upon all impact-generating land development activity as herein defined a mobility fee due at the time of issuance of a building permit, and no building permit shall be issued until said mobility fee shall have been paid except as otherwise herein provided. Mobility fees are assessed at the mobility fee rate in effect at the time the building permit is issued. The fee shall be determined in accordance with the following schedule. If the building permit is for less than the entire contemplated development, the fee shall be computed for the amount of development covered by the permit. The obligations for payment of mobility fees shall run with the land. Mobility fee collections and expenditures shall be accounted for and reported in separate accounting funds, which the finance department shall maintain.

(b) Any developer, who, prior to the effective date for mobility fees, paid city transportation fees or capacity reservation fees shall have those amounts applied to the balance due for the current mobility fee for a not previously issued building permit.

(c) Any person who shall initiate any new impact-generating land development activity shall, except as otherwise provided for herein, pay a mobility fee as set forth in the following schedule:

Schedule 4. MOBILITY FEE SCHEDULE Category/Land Use Type	Mobility Fee	Activity Center Mobility Fee	Transit Oriented Area Mobility Fee
Residential Per Dwelling Unit			
Single Family Detached & Duplex	$996	$846	$697
Multi-Family Apartments & Condos	$692	$588	$485
Single Family Attached & Townhomes	$617	$524	$432
Mobile Home	$530	$450	$371
Active Adult / Continuing Care (55+ Age Restricted)	$335	$285	$242
Recreation per 1,000 sf			
Health/Fitness Club per 1000 sf	$706	$600	$494
Recreational Community Center per 1000 sf	$617	$524	$432

Institutional per 1,000 sf			
Private School (K-12)	$557	$473	$390
College ,University	$1,308	$1,112	$916
Place of Worship	$650	$553	$455
Day Care Center	$1,469	$1,248	$1,028
Office per 1,000 sf			
Less than 50,000 sf	$984	$836	$689
50,000 sf or Greater	$1,157	$984	$810
Medical Buildings per 1,000 sf			
Medical, Dental Offices	$2,366	$2,011	$1,656
Hospitals	$1,670	$1,419	$1,169
Nursing Home	$754	$641	$528
Industrial Buildings per 1,000 sf			
Warehousing, Manufacturing, Industrial	$455	$387	$319
Mini-Warehousing	$260	$221	182
General Commercial Retail per 1,000 sf			
Neighborhood Retail (10,000 sf or less)	$1,635	$1,390	$1,145
Community Retail (greater than 10,000 sf to 100,000 sf)	$2,450	$2,083	$1,715
Regional Retail (greater than 100,000 sf)	$3,684	$3,131	$2,579
Sit Down Restaurant	$4,005	$3,404	$2,893
Restaurant with Drive-Thru	$6,387	$5,429	$4,471
Car Sales	$3,205	$2,725	$2,244
Tire & Auto Repair	$1,520	$1,292	$1,064
Non-Residential per Unit of Measure			
Assisted Living per Room	$251	$213	$175
Hotel per Room	$899	$764	$629
Movie Theater per Seat	$212	$180	$149
Bank/Savings with Drive-Thru per Drive-Thru Lane	$3,070	$2,609	$2,149
Convenience Market & Gas per Fuel Position	$6,207	$5,276	$4,345
Quick Lube Vehicle Service per Bay	$882	$749	$617
Car Wash per manual self-serve Bay	$2,381	$2,024	$1,666

Note: The list of uses in schedule 4 is subject to compliance with permitted uses in the City's Land Development Code.

(d) In the event that an applicant for building permit contends that the land use for which the building permit is proposed is not within the above categories or fits within a different category from that determined by the growth management department, then the director of growth management or his designee shall make a determination as to the appropriate land use designation, using the closest land use category in the Mobility Fee Study. Such determination may be appealed to the city manager.

Sec. 25-9. - Individual calculations of mobility fees

(a) The mobility fee shall be calculated using the land use categories in the Mobility Fee Schedule.

(b) In the event a project involves a land use not contemplated under the mobility fee land use categories adopted in Schedule 4, the growth management director or designee shall calculate the mobility fee utilizing the closest land use category in the Mobility Fee Study adopted in Sec.25-7.

(c) In the event of a development project that involves a mixed use project, the growth management director or designee shall calculate the mobility fee based on each separate mobility fee land use category included in the proposed mixed use project.

(d) The mobility fee will be calculated using the appropriate rate depending on the location of the development within the City. Separate rates apply for development within activity centers and transit oriented areas within the City. The location of activity centers shall be consistent with the adopted Comprehensive Plan. Transit oriented areas are those areas in and around the SunRail station also known as the Economic Development Opportunity (EDO) area or adjacent to other transit oriented areas as defined or depicted in the adopted Comprehensive Plan.

(e) The mobility fee for outdoor seating for restaurants will be calculated at the appropriate use category of retail, sit-down restaurant, or drive-thru restaurant as identified on Schedule 4 in Sec. 25-8, at a one-third rate of the mobility fee. The method of calculation will be the entire area of the outdoor seating with or without the use of a perimeter railing or other designated enclosure for the outdoor seating area.

(f) The mobility fee shall apply to building permits issued on or after June 1, 2016.

Sec. 25-10. - Changes of size and use

The mobility fee shall be imposed and calculated for the alteration, expansion or replacement of a building or dwelling unit that results in an increase in person miles of travel. Accessory buildings that do not result in an increase in person miles of travel will be exempt from the fee (e.g. detached garage, sheds, parking structures, covered parking). Additionally, the mobility fee will be imposed for any structure that is altered, expanded or replaced that results in an increase in person miles of travel over the existing land use.

(a) The mobility fee is calculated on the basis of the person miles of travel generated from the land use. If the PMT increases due to a change in size or use, the fee due shall be the incremental difference resulting from the alteration, expansion or replacement as determined by Schedule 4 Mobility Fee Schedule, less the fee that would be imposed under the applicable rate prior to the alteration, expansion or replacement.

(b) In the event that there is a change in use that results in a decrease in person miles of travel generated by the previously allowed use, the applicant shall not be entitled to a refund or credit.

Article IV. MISCELLANEOUS PROVISIONS

Sec. 25-~~7~~ 11. - Alternative ~~impact fee~~ and special impact fee and mobility fee calculations authorized.

In the event an applicant believes that the cost to mitigate the impact of the development ~~of improvements needed to serve his proposed development~~ is less than the fee established in this chapter, the applicant may request consideration of and submit a special impact fee or mobility fee or alternative impact fee or mobility fee calculation request, along with a review fee as determined by the city, and support materials to substantiate the request to the growth management director [or their designee] pursuant to the provisions of this section. If the growth management director or their designee finds that the data, information, assumptions, formulae and methodology used by the applicant to calculate the alternative impact fee or mobility fee or special impact fee or mobility fee satisfy the requirements of this chapter, the alternative impact fee or mobility fee or special impact fee or mobility fee shall be deemed the impact fee or mobility fee due and owing for the proposed development.

Sec. 25-~~8~~ 12. - Procedure for review of alternative impact fee or mobility fee and special impact fee or mobility fee calculations.

The growth management department is responsible for calculating impact fees and mobility fees in accordance with the provisions of this chapter. If an applicant believes project impacts are lower than justified by the findings of this chapter~~,~~ or believes the proposed use is incorrectly assigned as identified in the appropriate fee schedule, or that the assumptions that derive the fee are not applicable to a specific proposed use, an adjustment to the fees may be requested with an application and review fee. The adjustment of fees will be reviewed as either an alternative impact fee or mobility fee calculation or a special impact fee or mobility fee calculation, as determined by the growth management director based upon ~~traffic~~ the City's mobility system and/or other infrastructure project impacts. The process for reviewing alternative impact fee or mobility fee requests is listed below in section ~~25-8.1~~ 25-13. The process for special impact fee or mobility fee calculations for minor projects with significantly less impacts is found in section ~~25-8.2~~ 25-14.

Sec. 25-~~8.1~~ 13. - Alternative impact fee or mobility fee

(a) The alternative impact fee or mobility fee calculations shall be based on data, information, assumptions, formulae and methodology contained in this chapter and the studies referred to in sections 25-2(f) and 25-4~~5~~ herein, or independent sources, provided that:

(1) The independent source is (an) accepted standard source of transportation engineering or planning data or information; or

(2) The independent source is a local study carried out by a qualified planner or engineer pursuant to an accepted methodology of planning or engineering;

(3) Where different data, information, assumptions, formulae or methodology are employed such differences shall be specially identified and justified.

(b) An alternative impact fee or mobility fee calculation shall be undertaken through the submission of an application for review of an alternative ~~impact fee~~ or mobility fee calculation for the impact fee component for which an alternative impact fee or mobility fee calculation is requested. A developer shall submit such an application either within sixty (60) days after the issuance of the building permit or as otherwise agreed to in an impact fee or mobility fee agreement. The city may submit such an application for any proposed land development activity for which it concludes the nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to remedy than the amount of the fee that would be generated by the use of the fee schedules included in this chapter.

(c) Within twenty (20) days of receipt of an application for review of an alternative ~~impact fee~~ calculation, the growth management director or his designee, shall determine if the application is complete. If the growth management director or his designee, determines that the application is not complete, he shall send a written statement specifying the deficiencies to the person submitting the application. The application shall be deemed complete if no deficiencies are specified. The growth management director or his designee, shall take no further action on the application until it is deemed complete.

(d) When the growth management director or his designee, determines the application is complete, he shall review it and render a written decision in thirty (30) days on whether the fee should be modified, and if so, what the amount should be.

(e) If the growth management director or his designee, finds that the data, information, assumptions, formulae and methodology used by the applicant to compute the alternative impact fee calculation satisfies the requirements of this chapter, the fee determined in the alternative impact fee or mobility fee calculation shall be deemed the fee due and owing for the proposed land development activity. This adjustment in the fee shall be set forth in a fee agreement which shall be entered into pursuant to section 25-15~~9~~.

(f) A determination by the growth management director or his designee, that the alternative impact fee or mobility fee calculation does not satisfy the requirements of this section may be appealed to the city commission.

(g) The applicant shall be responsible for the costs that the city may incur to review the alternative fee data and methodology which may include consultant and legal costs. Payment will be due at time of the request for the alternative calculations.

(h) An applicant who submits a proposed alternative impact fee or mobility fee pursuant to this section and desires the issuance of a building permit prior to the resolution of the pending alternative impact fee or mobility fee shall pay the applicable fee prior to or at the time said applicant desires the building permit. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any rights. Any difference in the amount of fee after the determination of

the pending alternative impact fee or mobility fee shall be refunded to the applicant or owner.

Sec. 25-~~8.2~~. 14. - Special impact fee or mobility fee calculation.

An applicant may request a special impact fee or mobility fee calculation for smaller, less intense projects when data and information are presented that substantiates that a project has unique characteristics other than those upon which the impact fee or mobility fee calculation was based. It is the applicant's responsibility to submit adequate justification and support data to substantiate a lower impact to the growth management department director or his designee. The city may review the request and ask for additional information. The applicant is responsible for additional costs that the city may incur to review these special requests, including consultant and legal costs. Payment will be due at the time of request for the determination.

Sec. 25-~~9.~~ 15.- Presumptions, agreements and security requirements.

(a) The proposed development shall be presumed to generate the maximum impact generated by the most intensive use permitted under the applicable land development regulations such as the comprehensive plan or zoning regulations or under applicable deed or plat restrictions.

(b) In lieu of the payment of fees as calculated in sections 25-6, 25-8 or 25-13 of this chapter, any applicant may propose to enter into an impact fee or mobility fee ~~a fee~~ agreement with the city designed to establish just and equitable fees or their equivalent and standards of service appropriate to the circumstances of the specific development proposed. Such an agreement may include, but shall not be limited to, provisions which:

(1) Modify the presumption of maximum impact set forth in subsection (a) of this section and provide an impact fee or mobility fee which may differ from that set forth in section 25-6, 25-8 or 25-13 of this chapter by specifying the nature of the proposed development for purposes of computing actual impact, provided that the agreement shall establish legally enforceable means for ensuring that the impact will not exceed the impact generated by the agreed upon development;

(2) Permit the construction of specific improvements in lieu of or with a credit against the impact fees or mobility fees assessable and/or pursuant to a payback schedule, allow the developer to recover the actual cost of such improvements in excess of the amount which would have been assessed by this chapter as subsequent users of such improvements obtained building permits and pay impact fees or mobility fees.

(3) Permit a schedule and method for payment of the fees in a manner appropriate to the particular circumstances of the proposed development in lieu of the requirements for payment of the fees as set forth in section 25-6 or 25-9, provided that security is posted ensuring payment of the fees, in a form acceptable to the city attorney, which security may be in the form of a

cash bond, surety bond, irrevocable letter of credit, negotiable certificate of deposit or escrow account, or lien or mortgage on lands to be covered by the building permit.

(c) Any agreement proposed by an applicant pursuant to this subsection shall be presented to and approved by the city commission prior to the issuance of a building permit. Any such agreement may provide for execution by mortgages, lienholders or contract purchasers in addition to the landowner, and may permit any party to record such agreement in the official records of Seminole County. The city commission shall approve such an agreement only if it finds that the agreement will apportion the burden of expenditure for new facilities in a just and equitable manner, consistent with the principles set forth in Contractors & Buildings Association v. City of Dunedin, 329 So.2d 314 (Fla. 1976), Hollywood Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983), cert. denied, 440 So.2d 352 (Fla. 1983), and Home Builders and Contractors Association of Palm Beach County, Inc., v. Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1984), cert. denied 451 So.2d 848 (Fla. 1984).

Sec. 25-~~10~~ 16. - Credits.

(a) Credits applicable to both impact fees and mobility fees.

~~(a)~~(1) An applicant shall be entitled to a credit against any impact fee or mobility fee assessed pursuant to this chapter in an amount equal to the cost of off-site improvements or contributions of land, money or services for off-site improvements contributed or previously contributed, paid for or committed to by the applicant or his predecessor in interest as a condition of any development permit issued by Altamonte Springs for the same development or for excess capacity created by the applicant or his predecessor in interest where such excess capacity is provided at the request of the city and credit for same is agreed to by the city in advance of the creation of the excess capacity and provided for in an impact fee or mobility fee agreement. The cost of such improvements shall be based on the following criteria:

~~(1)~~ (i) The actual cost, or estimated cost of off-site improvements based on recent bid information of Altamonte Springs; and

~~(2)~~ (ii) The appraised fair market land value of the contributed parcel as of the date of building permit, agreement to contribute, or contribution, whichever is earlier, as determined by an M.A.I. appraiser selected and paid for by the applicant. In the event the growth management director or his designee disagrees with the appraised value, he may engage another appraiser and the value shall be an amount equal to the average of the two (2) appraisals. No credit should be granted pursuant to this section unless the cost of the improvements were paid for and the contributions made within the last five (5) years.

~~(3)~~ (iii) Any credit issued shall take into account as an offset to said credit an amount equal to the impact fee imposed by section 25-6 or

mobility fee imposed by section 25-8 for all building permits issued to date for the same development as if this chapter had been in effect at the time of issuance of said permits.

~~(b)~~ (2) Previous development permits or agreements wherein voluntary impact fees or mobility fees were specified and paid or obligated to be paid shall be binding as to any building permit already issued on land subject to the development permit. Improvements required by previous development permits shall not be given a credit unless they meet the requirements of subsection (a) above.

~~(c)~~ (3) Credit for contributions, payments, construction or dedications of an impact fee or mobility fee component (i.e., transportation, police, fire, etc.) shall not be transferable to another impact fee or mobility fee component. Credit shall be transferable only within a similar impact fee component (i.e., community and neighborhood parks, response time and ISO equipment) and between projects under the same or substantially the same ownership and ~~only within the existing or adjacent microzone or~~ within the same Activity Center area.

~~(d)~~ (4) The credit determination shall be made by the growth management director or his designee upon application and payment of a credit review fee as determined by the city. The applicant is responsible for additional costs that the city may incur to review these credit requests, including consultant and legal costs. The application shall include:

~~(1)~~ (i) A drawing and legal description of the contributed or to be contributed land or improvement.

~~(2)~~ (ii) An appraisal of the contributed or to be contributed land fixing value of the land as of the date of issuance of earliest building permit, actual contribution or agreement to contribute, whichever is earliest.

~~(3)~~ (iii) The actual cost, with appropriate documentation, or projected cost, with appropriate documentation, of any improvement contributed or to be constructed and contributed.

~~(e)~~ (5) If the application for credit is approved by the growth management director or his designee, a credit agreement shall be prepared and signed by the applicant and the city. It shall specifically outline the contribution, payment, construction or land dedication, the time by which it shall be completed, dedicated, or paid, and any extensions thereof, and the dollar credit the applicant shall receive for the contribution, payment, construction or land.

~~(f)~~ (6) A determination by the growth management director or his designee as to an application for credit may be appealed to the city commission.

(7) Credit for redevelopment of existing uses shall be based upon the closest applicable land use per the schedules in Sections 25-6 and 25-8. The time frame to use the redevelopment credits is five (5) years from the date of demolition to the date of the subsequent building or development permit.

(b) Mobility fee specific credits.

(1) Mobility fee specific credits are eligible for active projects that have made a contribution or improvements to transportation facilities beyond the minimum-required mobility performance standards set forth in City Land Development Code, Article II, Concurrency and Mobility Management, Division 4. Site access improvements for turn lanes, traffic signals at project entrances or immediately adjacent improvements are not eligible for any credit. If an additional mobility fee credit remains from the prior eligible transportation contribution, the remaining mobility fee credit shall be applied to the development occurring after the effective date of the mobility fee on a dollar for dollar basis.

(2) The amount of developer contribution credit to be applied to the mobility fee shall be determined according to the following standards of valuation:

(i) The value of conveyed land shall be based upon a written appraisal of fair market value by a qualified and professional appraiser and based upon comparable sales of similar property resulting from an arms-length transaction, if available;

(ii) The cost of anticipated construction of off-site improvements shall be based upon cost estimates certified by a professional engineer or registered planner, and such estimate shall be reviewed and approved by the City engineer. The City reserves the right to require the developer to competitively bid in accordance with the City Code, in which case the credit shall be limited to the actual cost or 100 percent of the lowest responsible bid amount, whichever is less. All bidders shall be qualified to construct the off-site improvements; and

(iii) Should the cost of the land conveyance and/or construction of the off-site improvements exceed the mobility fee due from the development project then the credit received by the applicant shall be limited to the mobility fee generated by the development project.

(3) Prior to issuance of a building permit, the applicant shall submit to the Growth Management Director, or designee, a proposed plan for the construction or conveyance of off-site improvements to the multi-modal network. The proposed plan shall include:

(i) A designation of the development project for which the plan is being submitted;

(ii) A list of contemplated off-site improvements to the multi-modal network;

(iii) A legal description of any land proposed to be donated and a written appraisal prepared in conformity with this section;

(iv) An estimate of proposed construction costs based on detailed unit costs that are less than one year old and sealed by a professional engineer; and

(v) A proposed time schedule for completion of the proposed plan.

(4) Upon receipt of the proposed plan, the Growth Management Director, or designee, shall review the application and the proposed plan to determine if it complies with this division. The Growth Management Director, or designee, shall render a decision 30 days following receipt of the proposed plan to grant or deny the credit. Failure to render a decision within 45 days shall be deemed a denial.

(5) If the request for credit is denied and the applicant wishes to appeal such denial, the applicant shall file a notice of appeal with the City Manager, within 30 days of the denial. The City Manager shall render a decision within 30 days of the notice of appeal. An applicant may appeal the City Manager's decision to the City Commission by filing a notice of appeal with the Growth Management Department within 30 days of the City Manager's determination. The City Commission shall hear the appeal at the next available meeting. The decision of the City Commission shall be considered final administrative action, and shall be subject to court review based only upon the record established at the hearing before the commission. An applicant shall have 30 days to appeal the City Commission determination to circuit court by writ of certiorari.

(6) If a proposed plan of conveyance or construction is approved for credit by the Growth Management Director or, upon appeal, by the City Manager or City Commission, the applicant or owner and the City shall enter into a credit agreement which shall provide for the timing of the action to be taken by the applicant and the obligations and responsibilities of the parties, including but not limited to:

(i) The timing of actions to be taken by the applicant and the obligations and responsibilities of the applicant, including, but not limited to, the construction standards and requirements to be complied with;

(ii) The obligations and responsibilities of the City, including, but not limited to, inspection of the project; and

(iii) The amount of credit as determined in accordance with subsection (2).

(7) All construction cost estimates shall be based upon and all construction plans and specifications shall be in conformity with the road construction standards of the City and any other jurisdiction having responsibility for the right-of-way and shall be approved by the City engineer prior to the commencement of construction.

(8) An applicant who submits a proposed plan pursuant to this section and desires the issuance of a building permit prior to the resolution of the pending credit shall pay the applicable mobility fee prior to or at the time said applicant desires the building permit. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights. Any difference in the amount of fee after the determination of the pending credit shall be refunded to the applicant or owner.

Sec. 25.-~~11~~17. - Vested rights.

(a) A developer or successor in interest of land which has received a development permit may petition the city commission for a vested rights determination which would exempt the petitioner from the provisions of this chapter. Such petition shall be evaluated by the city attorney's office and a recommendation thereon submitted to the city commission based on the following criteria:

(1) There exists a valid, unexpired governmental act authorizing the specific development for which a determination is sought; and

(2) Expenditures or obligations made or incurred in reliance upon the authorizing act that are reasonably equivalent to the fees required by this chapter; and

(3) That it would be inequitable to deny the petitioner the opportunity to complete the previously approved development under the conditions of approval by requiring the developer to comply with the requirements of this chapter. For the purposes of this paragraph, the following factors shall be considered in determining whether it would be inequitable to deny the petitioner the opportunity to complete the previously approved development:

(i) Whether the injury suffered by the petitioner outweighs the public cost of allowing the development to go forward without payment of the fee required by this chapter;

(ii) Whether the expenses or obligations were made or incurred subsequent to the imposition of impact fees by the City; and

(iii) Whether the operation of this chapter would create an onerous burden which would prevent the petitioner from making a reasonable return on his investment.

(b) If a previously approved development contained conditions respecting impacts, impact fees and their designated uses, or improvements, the developer, or its successor, may request a modification of such prior approvals in order to bring the approval conditions into consistency with this chapter. Any such modification of prior approvals and amendments to development permits so accomplished shall not be deemed a substantial change under the Altamonte Springs Planned Unit Development Regulations or a substantial deviation under Chapter 380 of the Florida Statutes.

Sec. 25~~12~~ 18. - Use of funds collected and return of unused funds.

(a) The impact fees or mobility fees collected by the city pursuant to this section shall be kept separate from other revenue of the city. The following trust fund accounts are hereby established:

(1) Police - One (1) general account for citywide assessments and expenditures;

~~(2) Solid waste—One (1) general account for citywide assessments;~~

(2) Mobility - One (1) general account for the city-wide mobility fee district for assessments and expenditures.

(3) Fire and EMS - Two (2) separate accounts for response time assessments and expenditures in the east and west sectors of the city and one (1) account for an ISO citywide assessment and expenditures;

(4) Parks and recreation - Four (4) separate accounts for neighborhood park facilities to be assessed and expended by city quadrant sections and one (1) account for a community park and special facilities citywide assessment and expenditure;

(5) Transportation - One (1) citywide account for arterial and collector roadway improvements as outlined in the CIP for citywide assessments and expenditures.

(b) No impact fees or mobility fees shall be expended on a particular capital improvement pursuant to this chapter unless or until the city commission identifies sources of funds for right-of-way acquisition, construction of improvements or acquisition of capital facilities needed to overcome existing service deficiencies for a particular capital improvement which deficiency is not attributable to new growth and development, so as to ensure that impact fees are not utilized to correct existing deficiencies.

(c) The funds collected by reason of the establishment of the impact fees or mobility fee in accordance with this chapter shall be used solely for the purpose of acquisition, expansion and development of the capital assets determined to be needed to serve new development to include the payment or repayment of loans the proceeds of which were used solely for the purpose of acquisition, expansion and development of the capital assets determined to be needed to serve new development.

(d) All funds shall be used exclusively for the capital assets for which they were collected and in a manner consistent with the principles set forth in Contractors & Builders Association v. City of Dunedin, 329 So.2d 314 (Fla. 1976), Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983) cert. denied, 440 So.2d 352 (Fla. 1983), and Home Builders and Contractors Association of Palm Beach County, Inc. v. Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 984), cert. denied, 451 So.2d 848 (Fla. 1984), and otherwise consistent with all requirements of the Constitution of the United States and the

State of Florida and all applicable laws. Said funds shall not be used to maintain or repair any existing facilities or to correct any existing deficiencies.

(e) Funds withdrawn from these accounts must be used solely in accordance with the provisions of this section. The disbursal of such funds shall require the approval of the city commission upon recommendation of the city manager.

(f) Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts. Funds may be pooled for investment provided all income derived from the fund's assets shall be deposited in the applicable trust account.

(g) The fees collected pursuant to this chapter shall be returned to the then present owner of the development if the fees have not been encumbered or spent by the end of the calendar quarter immediately following ~~six (6)~~ ten (10) years from the date the fees were received, or if the development for which the fees were paid was never begun.~~, in accordance with the following procedure:~~ For purposes of this section, fees collected shall be deemed to be encumbered or expended on a "first in-first out" basis , i.e. the first money placed in a fee fund shall deemed to be the first money expended or encumbered. The following procedure will apply for requests for eligible refunds:

(1) The then present owner must petition the city commission for the refund within one (1) year following the end of the calendar quarter immediately following ~~six (6)~~ ten (10) years from the date on which the fee was received.

(2) The petition must be submitted to the city manager and must contain:

(i) A notarized sworn statement that the petitioner is the current owner of the property or his authorized agent;

(ii) A copy of the dated receipt issued for payment of the fee or other competent evidence of payment;

(iii) A certificate of title or attorney's title opinion showing the petitioner to be the current owner of the property or his authorized agent;

(iv) A copy of the most recent ad valorem tax bill;

(v) A copy of the building permit or development agreement pursuant to which the impact fees were paid.

(3) Within sixty (60) days from the date of receipt of petition for refund, the city manager or his designee shall advise the petitioner and the city commission of the status of the fee requested for refund. For the purposes of determining whether fees have been spent or encumbered, the first money placed in a trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made in accordance with paragraph (c) above.

(4) When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following ten (10) ~~six (6)~~ years from the date of the fees were paid, the

money shall be returned with interest at the rate of five (5) ~~six (6)~~ percent per annum.

(5) When a refund is requested because construction was never begun, all development approvals shall have expired and the applicant shall execute an agreement acknowledging the expiration of development approval.

(6) A request for a refund of impact fees or mobility fees must be made one (1) year from the issuance of the building permit or six (6) months from the expiration of the permit whichever is later only if no development activity has started. The refund amount will be less ten (10) percent of the fees that were ultimately to have been paid, regardless of the amount actually paid. If the applicant does not apply within the time limits stated above, there will be no refund.

Sec. 25-~~13~~ 19. - Exemptions.

The following shall be exempted from payment of the impact fees or mobility fees to the extent there is no increase in impact associated with the property or use:

(a) Alterations or minor expansions of an existing structure where the use is not changed.

(b) The construction of the accessory buildings or structures.

(c) The replacement of a building or structure with a new building or structure of similar size and use.

(d) Alteration, expansion or replacement of an existing dwelling unit which does not increase the number of families for which such dwelling unit is arranged, designed or intended to accommodate for the purpose of providing living quarters.

~~(d)~~ (e) Development undertaken by the City of Altamonte Springs or Seminole County.

~~(e)~~ (f) Seminole County School Board projects.

~~(f)~~ (g) State and federal government projects.

Sec. 25-20. Effect on land development regulations.

(a) The payment of mobility fees does not ensure compliance with the City's land development regulations, including regulations relating to transportation corridor management, access management, substandard roads, secondary access, timing and phasing, and, where applicable, development of regional impact review. However, if such regulations require transportation mitigation for the same impacts addressed through the payment of mobility fees, such regulations shall be deemed to provide for mobility fee credit against mobility fees consistent with state and federal law and this Article.

(b) The listing of a land use in the mobility fee schedule is solely for purposes of establishing the applicable mobility fee for such use, and such listing does not mean that the land use is permitted or available under applicable zoning and comprehensive plan requirements. In addition, the listing of the land use in the mobility fee schedule shall not be considered evidence that the land use is appropriate in any land use classification or zoning district.

Sec. 25-21. Annual report.

The City shall comply with all audit requirements of Florida Statute. The City shall include in its annual Capital Improvements Update an accounting of projects funded by impact fees. The annual budget shall indicate impact fee and mobility fee revenues and expenditures.

Sec. 25-~~14~~22. - Review.

This chapter shall be reviewed by the city commission at least once every ~~two (2)~~ five (5) years unless a more frequent review is determined necessary by the city commission. The review and updates shall consider all factors utilized in the most recent computation of impact fees or mobility fees. However, in the event that a full reevaluation and updates are not complete within the required five (5) year period, the last adopted fee shall remain in effect until the reevaluation is complete. The purpose of this review is to analyze the effects of inflation on the actual costs of capital improvements, and to ensure that the fee charged new land development activity will not exceed its reasonably anticipated expansion costs for capital improvements necessitated solely by its presence.

Sec. 25-23. - Penalty.

Violations of this chapter shall constitute a misdemeanor of the second degree enforceable in accordance with section 1-14 of the City Code. Notwithstanding the criminal penalty provided for herein, the city may obtain an injunction or other legal or equitable relief in the circuit court against any person violating this chapter.

Sec. 25-24. - County West Collector District impact fees.

The Seminole County West Collector Road Impact Fees are hereby adopted and made a component part of the city impact fees imposed by section ~~24-6~~25-6 ~~supra~~. Administration of the West Collector District impact fees shall be conducted by Seminole County pursuant to the terms and provisions of the Seminole County Impact Fee Ordinance; provided, however, that developments having been determined to be vested and, therefore, exempt from the payment of county impact fees, shall pay said West Collector District impact fee unless said development has also been determined to be vested and exempt from the payment of city impact fees.

Seminole County has adopted Ordinance 07-34 that will allow for the sunsetting of County road impact fees on December 31 2021. The City will cease collecting or directing

applicants to obtain impact fee statements from the County after this date unless the County takes an action that will cause the County Road Impact Fees to sunset at an earlier date.

Sec. 25-~~17~~ 25. - Affordable housing.

(a) *Reduction in impact fees and mobility fees.* Where affordable housing is to be constructed as an infill project in the city, then the developer shall be entitled to a reduction in impact fees or mobility fees up to a maximum reduction of two thousand five hundred dollars ($2,500.00), upon approval by the city of the application for certification of the project. The reduction shall be applied prorata in proportion to each component of the impact fees upon presentation prior to building permit issuance by the developer to the growth management director of evidence showing that the developer has made payment of an amount up to two thousand five hundred dollars ($2,500.00) to a qualified nonprofit agency which agency has agreed that it will apply the money only for down payment assistance for persons qualifying as affordable housing candidates, and failing that, that it will pay the money over to the city.

(b) *Reduction in other development fees.* To the extent that the developer's payment to the qualified nonprofit agency for ~~downpayment~~down payment assistance exceeds the amount of impact fees due to the city for the project, then the developer shall be entitled to a reduction, first, of fees due to the water, sewer and drainage trust fund, and, second, if necessary, of fees due for building permit fees, so that the aggregate reduction of fees is equivalent to the amount of the developer's payment, up to a maximum of two thousand five hundred dollars ($2,500.00). In no event, shall the developer be entitled to a cash refund from the city.

(c) *Repayment to city.*

(1) In the event the developer payment is not applied for ~~downpayment~~down payment assistance to a person qualifying as an affordable housing candidate, such as where the home is sold to a nonqualified candidate, then the agency is at closing to pay the money over to the city.

(2) Further, in the event that, at any time during the next three (3) years following the initial closing, the home is sold to a person who is not a qualified affordable housing candidate or if the home is rented or otherwise not owner-occupied, then a sum equivalent to the city fees reduction granted is, contemporaneously with the occurrence of such event, due to be paid over to the city by the property owner. The developer at closing shall place a notice approved by the city on the title and cause same to be recorded in the Seminole County property records clearly stating this restrictive covenant in favor of the city for the full amount of fees reduction granted. The restriction shall be in effect for three (3) years from the date of closing.

(d) *Definitions.* The following terms in this section shall have the meanings specified herein:

(1) *Affordable housing* means that the housing is being purchased by an affordable housing candidate whose annual gross household income does not exceed eighty (80) per cent of the median annual income for households within the metropolitan statistical area (MSA)(as of 1994, an annual gross income of thirty-two thousand dollars ($32,000.00) or less), with a maximum sales price of eighty thousand dollars ($80,000.00) two and one half (2.5) times the price of the median annual income.

(2) *Affordable housing candidate* means a person or persons whose annual gross household income does not exceed eighty (80) per cent of the median annual income for households within the MSA and who intend(s) to make primary residence in the affordable housing project.

(3) *Infill project* means a fee simple single-family residential development project located within the current city boundaries or county enclave surrounded by the city on at least two (2) sides where existing city services and facilities are located within three hundred (300) feet of the property boundaries and does not require off-site infrastructure improvements other than access modification or modifications to off-site drainage systems as part of the plan for development. Single-family residential properties or projects located within activity center boundaries are automatically classified as infill properties.

(4) *Qualified nonprofit agency* means an organization qualified by the IRS as a 501(c) (3) entity or a not for profit corporation, which receives prior written approval by the city and which agrees to apply developer payments only for ~~downpayment~~ down payment assistance for persons qualifying as affordable housing candidates within the city, or otherwise to pay the money over to the city.

SECTION TWO: Codification in Code. It is the intent of the City Commission that the provisions of this Ordinance shall become and be codified as a part of the City Code of Ordinances and that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions.

SECTION THREE: Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION FOUR: Severability. If any provisions of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION FIVE: Effective Date. This ordinance shall become effective June 1st, 2016.

PASSED AND ADOPTED THIS _____ DAY OF APRIL, 2016.

FIRST READING: _____

ADVERTISED: _____

SECOND READING: _____

_____

PAT BATES, MAYOR
City of Altamonte Springs, Florida

ATTEST:

_____

ERIN O'DONNELL, CITY CLERK

Approved as to form and legality
for use and reliance by the City
of Altamonte Springs, Florida

_____

JAMES A. FOWLER, ESQ.
CITY ATTORNEY

Meeting Date: April 19, 2016

From: _____
Tim Wilson, Director of Mobility

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: Ordinance No. 1692-16 (2nd reading) - Land Development Code Amendment to repeal concurrency for transportation and establish a Mobility Management Program.

SUMMARY EXPLANATION & BACKGROUND:

The proposed amendment modifies three articles of the City's Land Development Code by adding a Mobility Management Program in lieu of transportation concurrency. The amendment also revises the concurrency review process for potable water and sanitary sewer.

Article II, "Concurrency Management and Consistency Determination," will be amended and renamed "Concurrency, Mobility Management and Consistency Determination." Article IV "Site Plans" and Article V "Subdivision Regulations" will be amended to implement the revised concurrency process and mobility management program, as well as deleting requirements for fees within transportation concurrency exception areas, and adding a final plan approval schedule for development orders outside or inside activity centers. The effective date of the Ordinance is proposed for June 1, 2016.

At their March 9, 2016 meeting, the Planning Board recommended approval of the proposed amendment to the Land Development Code.

FISCAL INFORMATION: Not applicable

RECOMMENDED ACTION: PASS and ADOPT Ordinance No. 1692-16 on second and final reading.

Initiated by: Tim Wilson, Growth Management

ORDINANCE NO. 1692-16

AN ORDINANCE OF THE CITY OF ALTAMONTE SPRINGS, FLORIDA, AMENDING CHAPTER 28, "LAND DEVELOPMENT CODE," OF THE CITY CODE OF ORDINANCES, BY RENAMING ARTICLE II, "CONCURRENCY MANAGEMENT AND CONSISTENCY DETERMINATION," TO "CONCURRENCY AND MOBILITY MANAGEMENT", RESTRUCTURING THE ARTICLE INTO DIVISIONS, UPDATING THE CONCURRENCY MANAGEMENT PROGRAM TO REPEAL TRANSPORTATION CONCURRENCY, UPDATE THE POTABLE WATER AND SANITARY SEWER AND STORMWATER CONCURRENCY MANAGEMENT SYSTEMS AND EVALUATION PROVISIONS AND REQUIREMENTS, AND EXEMPT SOLID WASTE, PARKS AND RECREATION FROM CONCURRENCY MANAGEMENT EVALUATION; REPEALING THE TRANSPORTATION CONCURRENCY EXCEPTION AREA ("TCEA"), PROPORTIONATE SHARE AND TRANSPORTATION IMPACT FEE PROVISIONS AND ADOPTING AND IMPLEMENTING A MOBILITY MANAGEMENT PROGRAM TO ADDRESS IMPACTS TO MULTI-MODAL SYSTEMS; BY AMENDING ARTICLE IV, "SITE PLANS," TO REFERENCE THE MOBILITY MANAGEMENT SYSTEM AND MOBILITY FEES, REPEAL REFERENCES TO THE TCEA AND TRAFFIC IMPACT ANALYSES, CORRECT SCRIVENER'S ERRORS, CONSOLIDATE THE SITE PLAN REVIEW EXCEPTIONS AS TO WHICH APPLICATIONS REQUIRE PLANNING BOARD APPROVAL, UPDATE SITE PLAN APPROVALS AS TO TIME LIMITS, AND UPDATE SUFFICIENCY REVIEW FROM REQUIRED TO OPTIONAL; BY AMENDING ARTICLE V, "SUBDIVISION REGULATIONS," TO UPDATE TO INCORPORATE MOBILITY MANAGEMENT SYSTEM SUBMITTAL REQUIREMENTS AND REPEAL THE TRAFFIC IMPACT ANALYSIS SUBMITTAL REQUIREMENTS AND UPDATE SUFFICIENCY REVIEW FROM REQUIRED TO OPTIONAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Pursuant to Article VIII, Section (2)(b) of the Florida Constitution and Chapter 166, Florida Statutes, the City of Altamonte Springs has broad home rule powers to adopt ordinances to provide for and operate transportation systems, including roadways, transit facilities, and bicycle/pedestrian facilities within the City; and

WHEREAS, the City is replacing its road impact fee system with a mobility fee system; and

WHEREAS, the road impact fee system is principally focused on vehicular mobility, whereas a mobility fee system takes a comprehensive view on the provision of mobility through walking, biking, transit and motor vehicles; and

WHEREAS, the mobility fee system focuses on person miles of travel, which includes walking, biking, transit and motor vehicular trips generated by new development and redevelopment, and the resulting impact on multimodal capacity and, as such, requires the expenditure of revenue derived under that system to be used on multimodal improvement projects that increase multimodal capacity; and

WHEREAS, in conjunction with the implementation of the mobility fee system, the City Commission has determined that it is advisable to update the City Land Development Code in regard to transportation concurrency and adopt the mobility management system; and

WHEREAS, the mobility fee system includes, but is not limited to, considerations of the impact of person miles of travel generated by new development on multimodal capacity as well as considerations of the impact of new development and redevelopment on overall mobility within the community; and

WHEREAS, Section 163.3180, Florida Statutes, encourages local governments to (1) develop tools and techniques including (a) adoption of long-term strategies to facilitate development patterns that support multi-modal solutions, including urban design, and appropriate land use mixes, including intensity and density, (b) adoption of an area wide level of service not dependent on any single road segment function, and (c) establishing multi-modal level of service standards that rely primarily on non-vehicular modes of

transportation where existing or planned community design will provide adequate level of mobility; and (2) adopt an alternative mobility funding system that uses one or more of the foregoing tools and techniques; and

WHEREAS, the City of Altamonte Springs Comprehensive Plan encourages and supports the development and maintenance of a safe, convenient, efficient transportation system which recognizes present need, reflects the Future Land Use Plan and the plans of adjacent jurisdictions, provides for an affordable balance of alternative transportation modes, and provides for safe, efficient intermodal transportation linkages; and

WHEREAS, it is the intent of the City Commission to implement the goals, objectives, and policies adopted in the City Comprehensive Plan; and

WHEREAS, it is the intent of the City Commission that non-vehicular circulation and mass transit public facilities and services be available concurrent with the impacts of development and that traffic circulation and mass transit public facilities are provided in a manner consistent with the Comprehensive Plan and the mobility management system adopted herein; and

WHEREAS, it is the intent of the City Commission that final development orders and permits be issued in a manner which does not result in a reduction of any levels of service below the adopted level of service standards in the City Comprehensive Plan; and

WHEREAS, it is the intent of the City Commission to adopt a reasonable mobility management system in furtherance of the public benefit while at the same time ensuring that all property owners have a reasonable, beneficial, and economic use of their property and that no property is taken without just compensation; and

WHEREAS, not all development or development activity impacts are significant enough to cause the deterioration of the levels of service adopted in the City Comprehensive Plan. It is therefore further found that development generating less than 20 net new trips will not cause an unacceptable degradation of levels of service and as such remains consistent with the goals, objectives and policies of the City Comprehensive Plan and preserves individual property rights; and

WHEREAS, the City Commission of the City of Altamonte Springs finds it advisable to rename Article II, "Concurrency Management and Consistency Determination," to "Concurrency and Mobility Management," and restructure Article II into Divisions to reflect the adoption of the Mobility Management System in place of transportation concurrency, and the remaining concurrency and general provisions; and

WHEREAS, City Commission of the City of Altamonte Springs finds it advisable to amend Article IV, "Site Plans," to incorporate the Mobility Management System and mobility fees requirements, remove reference to the prior system of transportation concurrency, the Transportation Concurrency Exception Area, and update the site plan and approval process accordingly; and

WHEREAS, City Commission of the City of Altamonte Springs finds it advisable to amend Article V, "Subdivision Regulations," to incorporate the Mobility Management System requirements, remove reference to the prior system of transportation concurrency, and traffic impact analysis, and update the subdivision plan and approval process accordingly; and

WHEREAS, the requirements and standards of this ordinance are necessary for the health, safety and welfare of the citizens of the City of Altamonte Springs and the protection of the environment and natural resources of the City of Altamonte Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALTAMONTE SPRINGS, as follows:

SECTION ONE: City Code of Ordinances, Chapter 28, "Land Development Code," Article II., "Concurrency Management and Consistency Determination," is hereby renamed "Concurrency and Mobility Management," restructured into Divisions as set forth herein, and amended to read as follows:

ARTICLE II. – CONCURRENCY AND MOBILITY MANAGEMENT ~~AND CONSISTENCY DETERMINATION~~

DIVISION 1. GENERAL PROVISIONS

2.1.1 - Purpose and intent.

~~Pursuant to F.S. § 163.3177(10)(h), public facilities and services needed to support development shall be available concurrent with the impacts of such development. The Florida Administrative Rule implementing this statute, Rule 9J-5.0055, mandates the adoption of concurrency management systems by a local government to ensure that the level of service standards adopted through the comprehensive plan are maintained.~~ Concurrency is a finding that the public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impact of development. Pursuant to Florida Statutes, the facilities for which concurrency must be maintained are ~~These public facilities and services include~~ sanitary sewer, solid waste, drainage, potable water, parks and recreation, and public schools ~~and transportation facilities. The concurrency provisions of this article are~~ The concurrency management system in this article is designed to provide a systematic process for the review and evaluation of ~~all~~ proposed development for its impact on the above listed basic public facilities and services in order to meet the ~~requirements of~~ statutory concurrency requirements, comply with the comprehensive plan, and fulfill the city's agreements with the Seminole County School board for school concurrency. ~~The purpose of the proportionate fair-share option is to establish a method whereby the impacts of development on transportation facilities may be mitigated by the cooperative efforts of the public and private sectors, to be known as the proportionate fair-share program, as required by and in a manner consistent with F.S. § 163.3180(16). The Transportation Concurrency Exception Area (TCEA) was created to provide an exemption from transportation concurrency for development to reduce the adverse impact transportation concurrency may have on urban infill development and redevelopment. A proposed development located within the designated TCEA shall not be subject to the requirements of Rule 9J-5.0055(3)(c)1.-4., Florida Administrative Code, except as provided in this article.~~

Mobility is the provision of multiple opportunities or choices in travel within and to/from the city through a multi-modal transportation system. Mobility management provides an alternative to traditional transportation concurrency. The mobility management system in this article is designed to provide a systematic process for the review and evaluation of proposed development for its impact on multi-modal transportation systems, facilities and services. The hierarchy of modes as adopted by the city in the

comprehensive plan is walking, bicycling, transit (bus and rail), and private vehicles. The primary focus or overall mobility strategy is on the minimum provision of facilities for all modes and the connectivity based upon the mode hierarchy. Where facilities exist for all modes, the city will prioritize enhancing the quality of the facilities based upon the mode hierarchy.

2.1.2 - Definitions.

As used in this article, the following terms shall have the meanings indicated below:

Adequate access. Intersections serving development traffic operate with movements at a volume to capacity ratio (V/C) of 1.0, or better, based on methodologies described in the most recent edition of the Highway Capacity Manual (HCM) published by the Transportation Research Board. In addition, adequate storage lengths should be provided so that the queues in turning lanes do not block the through lanes.

Applicant. A person who applies to the city for a development order.

Capacity. Capacity refers to the ability or availability of a public service or facility to accommodate users, expressed in an appropriate unit of measure, for example, gallons per day per 1,000 sq.ft. or gallons per day per unit ~~such as gallons per day or peak hour traffic volumes~~.

Capacity available. Capacity which can be encumbered or reserved by or committed to future users of a public facility or service. For potable water, "capacity" refers to the availability of water in the city's potable water system within the limits of the state issued permits from the St. John's River Water Management District (SJRWMD) and the Florida Department of Environmental Protection (FDEP) and within the limits of the city's ability to pump and store the water for community use. With regard to the sewer system, "capacity" refers to the availability of capacity to treat influent and dispose of effluent in the city's regional water reclamation facility to the levels and volume limits established in the city's FDEP permit.

Capacity encumbered. ~~That c~~ Capacity for a project which is "flagged", "ear-marked", or "set aside" for a limited amount of time (while the project is under review).

Capacity reserved. ~~That c~~ Capacity which has dropped off the "capacity available" list and allocated to a particular project.

Certificate of capacity. The determination of sufficient potable water and sanitary sewer capacity ~~document~~ issued by the city indicating the quantity of public facilities that are available and reserved for the property described in the certificate, ~~including any limits~~ based on uses, densities, and intensities of the approved development of the property and containing an expiration date. Certificates of capacity are issued as part of the development order issued by the city.

Concurrency. Concurrency means adequate public facilities that meet the adopted level of service standard are or will be available no later than the impact of development.

Concurrency test. A comparison of the applicant's impact on public facilities to the capacity of public facilities that are, or will be, available no later than the impacts of development.

~~*De minimis.* A de minimis impact is one that will not affect more than 0.1 percent of the maximum volume of a facility at the adopted level of service. To qualify, a development may not exceed twice the existing density or intensity of the existing land use. If the land is vacant, the development must be less than one dwelling unit per acre, or a floor area ratio of 0.1 for nonresidential uses.~~

Development. Development has the meaning as set forth in F.S. § 380.04.

Development order. Any order, permit or other official action of the city granting, denying or granting with conditions an application for development.

Development trips. Synonymous with development traffic. The number of P.M. peak hour trips generated by the proposed development based upon the latest edition of the ITE Trip Generation Manual. If the appropriate rate is not provided in the ITE Trip Generation Manual, acceptable transportation planning practices, subject to city approval, shall be used to determine the development traffic. If a proposed development has a higher A.M. peak hour trip generation, the A.M. peak hour trips shall be used. (See also definition of net new development trips.)

Final development order. Final development order means:

(a) Development order for a development of regional impact (DRI)~~;~~.

(b) All permits (Group I~~,~~ and Group II ~~and other~~)~~;~~.

(c) Final site plan, including change of use.~~; and~~

(d) Combined preliminary/final site plan.

(e) Final plan and plat.

(f) Supplemental plan or similar plan type for utility service outside of city limits.

Final development orders authorize development to proceed.

Group permits. Group permits means:

(a) *Group I* shall mean single-family and duplex residences, new nonresidential ~~/~~ or multifamily (greater than duplexes), all other new construction, all commercial interiors, site work/infrastructure permit, demolition/house moving, foundation, additions (commercial, multifamily and all other nonresidential), changes of use which increase impacts on public facilities, and any other permits designated by the city from time to time as Group I permits;

(b) *Group II* shall mean arbor, signs ~~/~~ or billboards, trailer signs, fences, sheds, swimming pools/spas, boat docks/ramps, accessory signs, satellite dish, attention getting devices, tent permits, Christmas tree sales, open air sales, open air food sales, mechanical, plumbing, electrical, water meter, fire, single-family residential interior alterations, right-of-way utilization, dredge and fill, underground utility (public right-of-way or in easements), special event, fire sprinkler permit, special permits issued by the city manager or city commission, and any other permits designated by the city from time to time as Group II permits;

~~(c) *"Other"* shall mean right-of-way utilization, dredge and fill, underground utility (public right-of-way or in easements), special event, fire sprinkler permit, special permits issued by the city manager or city commission, and any other permits designated by the city from time to time as "other" permits.~~

Level of service standard. The number of units of capacity per unit of demand adopted by the city in the comprehensive plan.

Level of service review. A review of capacity for potable water, sanitary sewer, solid waste, stormwater drainage, and parks and recreation.

Mobility. The provision of multiple opportunities or choices in transportation modes for travel within and to/from the city through a multi-modal transportation system. The hierarchy of modes as adopted by the city in the comprehensive plan is walking, bicycling, transit (bus and rail), and private vehicles.

Mobility management program. The procedures and processes utilized by the city to assure that the necessary hierarchy of transportation multi-modal facilities to support a proposed development are available contemporaneously with the impacts of the development, and consistent with the city's comprehensive plan.

Net new development trips. Total P.M. peak hour trips for the proposed development less total P.M. peak hour trips for the existing development.

~~*One-year payment level.* The capacity reservation fee as set for a reservation time period of one year as illustrated in Table 2.~~

Preliminary development order. Granting of approval to move on to the next step in the process. With issuance of a preliminary development order there is no authorization to proceed with development unless other final development order approvals are obtained.

Public facilities. Public facilities means roads and streets, potable water, sanitary sewer, solid waste, drainage, public parks, public schools and mass transit. Not all public facilities are subject to a concurrency level of service review.

~~*RBC.* Regional business center.~~

Redevelopment credit. In a redevelopment project, the credit for the existing development trips.

~~*Transportation concurrency exception area (TCEA).* An area delineated within the city's adopted comprehensive plan where development is exempt from standard transportation concurrency requirements.~~

V/C ratio. Volume to Capacity (V/C) ratio is the traffic volume divided by the capacity of the roadway or intersection.

Vested. Having the right to develop or continue development notwithstanding the comprehensive plan.

2.1.3 - Preliminary and final development orders.

Development orders (D.O.) and development permits are designated preliminary or final under the development review process, as delineated below. Utility concurrency review requirements are addressed in division 3. Mobility solutions analysis requirements are addressed in division 4. Development order expiration periods are as provided in this code.

Type I. Preliminary development orders.

Type of Development Order	Utility Concurrency Review	Mobility Solutions Analysis	D.O Expiration Period
Variance	None	None	1 year
Development waiver	None	None	1 year
Abandonment	None	None	N/A

Type II. Preliminary development orders.

Type of Development Order	Utility Concurrency Review	Mobility Solutions Analysis*	D.O Expiration Period
Comprehensive plan amendment	City internal review	Level 1	N/A
Rezoning	City internal review	Level 1	N/A

Type III. Preliminary development orders.

Type of Development Order	Utility Concurrency Review	Mobility Solutions Analysis*	D.O Expiration Period
Conditional use	City internal review	Level 1	1 year
Master land use plan	Calculation tables on plan	Level 1	1 year
Preliminary site plan	Calculation tables on plan	Level 2	1 year
Preliminary subdivision development plan and plat	Calculation tables on plan	Level 2	1 year

Type IV. Final development orders.

Type of Development Order	Utility Concurrency Review	Mobility Solutions Analysis*	D.O Expiration Period
Development of regional impact	As specified in D.O.	As specified in D.O.	As specified in D.O.
Final site plan – outside activity centers	Calculation tables on plan	Level 2	1 year
Final site plan – inside activity centers	Calculation tables on plan	Level 2	2 years
Final subdivision development plan and plat	Calculation tables on plan	Level 2	N/A
All permits (Group I, Group II)	As per final site plan	As per final site plan	6 months

*Multi-modal solutions study required for projects exceeding 20 net new peak hour trips. Refer to division 4 of this article.

~~*(1) Preliminary development orders.*~~

~~a. Applicants seeking the following preliminary development orders do not submit a concurrency test and cannot reserve capacity:~~

~~1. Variance;.~~

~~2. Development waiver;.~~

~~3. Abandonment.~~

~~b. The city will conduct an internal concurrency test for applicants seeking the following preliminary development orders:~~

~~1. Comprehensive plan amendment;~~
~~2. Rezoning.~~

~~Capacity will be encumbered for the duration of the approval process for comprehensive plan amendments and rezoning. Applicants will have 90 calendar days to submit a complete development plan with a concurrency test for preliminary plan approval or the capacity encumbered for plan amendments and rezonings will be released.~~

~~c. Applicants for the following preliminary development orders must submit a complete application for a concurrency test and if the test is passed the applicant will receive capacity reservation for one year from the date of preliminary plan approval at no additional cost to the applicant.~~

~~1. Preliminary site plan/plat;~~
~~2. Preliminary subdivision plan/plat;~~
~~3. Master land use plan.~~

~~d. In no event will capacity reserved for preliminary development orders be transferred or applied to the capacity reservation for final development orders.~~

~~e. Extension for preliminary development order capacity reservation. Applicants seeking an extension for a preliminary development order must request the extension in writing and submit all required applications. If capacity is available and the extension is approved by the planning board then the applicant must pay a capacity reservation fee equal to the first term payment level (see Table 2), to receive an extension good for one year from the expiration date of the original preliminary development order. In no event shall the capacity reservation fees paid for preliminary development orders be refundable or creditable toward other fees. No more than one extension will be granted for each preliminary approval.~~

~~f. Re-approval of preliminary development orders. Applicants may submit an application for the re-approval of their preliminary plan~~

~~which will be treated as a new submittal and subject to all the requirements, policies and procedures existing at the time it is submitted (to include a concurrency test application). To qualify, the applicant must have exhausted all options as described in section 2.1.3(1)e. Such applications are not guaranteed approval.~~

~~*(2) Final development orders.*~~

~~a. Each applicant seeking one of the following final development orders, except as provided in section 2.1.8, shall be in possession of an unexpired preliminary development order, or if otherwise applicable, submit a complete concurrency test:~~

~~1. DRI.~~
~~2. All permits (Group I, Group II and other).~~
~~3. Final site plan/plat.~~
~~4. Final subdivision plan/ plat.~~

~~Applicants who receive approved final development orders shall within 90 calendar days of approval, pull all applicable building permits or pay the appropriate concurrency reservation fees in order to receive a certificate of capacity (see Table 2). If all building permits are not pulled or the capacity reservation fees are not paid within 90 calendar days of approval, then the final development order is null and void.~~

~~b. Extensions for final development orders. Applicants seeking extensions for final development orders must request the extension in writing and submit all required applications. Requests for extensions will require that plans be revised to conform to all current building and development code requirements. If the development order has not expired and the extension is approved by the development review committee the applicant must pay the applicable capacity reservation fee to receive an additional term of capacity reservation (see Table 2)~~

~~c. Extensions for final development orders for projects located in the RBC. Only one six-month extension can be approved by the development review committee for projects located in the RBC. Final development orders for projects that have not pulled all building permits and begun development within two years and six months inclusive of one extension, or for which building permits have expired are null and void.~~

~~Projects located in the RBC which will require more than two years to complete from the approval of the final development order must enter into a capacity reservation agreement concurrent with the approval of the preliminary development order.~~

~~d. Re-approval of final development orders. Applicants may submit an application for the re-approval of projects determined to be null and void. Projects determined to be null and void have no development rights, and to continue must get the entire plan re-approved subject to all requirements and procedures existing at the time of re-approval.~~

~~e. Expiration of capacity reservation. Should the applicant not receive all building permits or get an approved extension prior to the expiration of any capacity reservation term as described in Table 2, then the approval for the project is null and void.~~

~~Capacity reservation fees are not refundable. Capacity reservation fees paid for projects which are null and void shall be deemed to have been earned despite the fact that the applicant may not utilize the reserved capacity.~~

DIVISION 2. CONCURRENCY MANAGEMENT SYSTEM

~~2.1.4~~ 2.2.1 Concurrency ~~test~~ requirements.

The city shall determine, prior to the issuance of development orders, whether or not there is sufficient capacity of certain public facilities to meet the standards for level of service for existing development and the impacts of proposed development concurrent with the proposed development. No final development order shall be issued by the city unless a determination that sufficient capacity exists has been made.

2.2.2 Potable water and sanitary sewer concurrency.

2.2.2.1 *Concurrency test.*

(~~1~~a) *Test ~~submittal~~ requirement.* The city shall perform a concurrency test ~~for each development application,~~ except as provided in

section ~~2.1.6.~~ 2.2.2.4, for potable water and sanitary sewer capacity for the following types of development applications:

(1) Preliminary development orders:
   a. Preliminary site plan.
   b. Preliminary development plan and plat.
   c. PUD master land use plan.

(2) Final development orders:
   a. Final site plan, including change of use.
   b. Combined preliminary/final site plan.
   c. Final development plan and plat.
   d. Supplemental plan or similar plan type for utility service outside of the city limits.
   e. Permits (Group I and Group II).

The ~~growth management~~ public works department shall be responsible for conducting all concurrency tests as required by this ~~article~~ division. Concurrency tests shall be ~~initiated upon receipt of a concurrency test form provided by the city, accompanied by the appropriate application fee~~ performed as part of the development application review process.

(~~2~~b) ~~*Time frame for test*~~ *Test application submittal.* ~~A completed concurrency test application must be submitted a minimum of five working days but not more than 60 days prior to preliminary plan submittal. Development plans will not be accepted without the submittal of a complete concurrency test.~~ Applicants shall submit for concurrency tests by providing, on the underlying development plans, fully completed potable water and sanitary sewer capacity calculation tables for the existing uses and proposed uses, in a format as provided by the city. Development applications will not be accepted that do not include the fully completed tables.

(~~3~~c) *Test application review.* Each concurrency test application will be reviewed on a first-come, first-served basis as part of the underlying development plan application plan review. As each application is reviewed, capacity that is available will be encumbered (i.e., "temporarily set-aside") until the final disposition of the development application. If the application is

denied or expires, the temporarily set-aside capacity returns to the pool of available capacity.

(4d) *Projects using non-city services and facilities.* For development that requires one or more public facilities providers other than the city, ~~such as public schools,~~ the city shall condition the issuance of any final development order for the same parcel on the availability of such public facilities. The city may enter into an agreement with each public or private entity that provides public facilities in the city to establish a responsibility to the city and the provider of public facilities in providing data for, or conducting a concurrency test.

(~~5~~e) *Passing the test.* If the available capacity of public facilities is equal to or greater than the project's needed capacity (e.g., the capacity required to maintain the level of service standard for the impact of the development), the concurrency test is passed and capacity is encumbered while the underlying development project application is under review.

(~~6~~f) *Failing the test.* If the available capacity of public facilities is less than the project's needed capacity (e.g., the capacity required to maintain the level of service standard for the impact of the development), the concurrency test is failed and the applicant shall select one of the following options:

~~a.~~(1) Accept a 15-calendar day encumbrance of available public facilities, and within the same 15-day period, amend the application to balance it with available capacity; or

~~b.~~(2) Accept a 30-calendar day encumbrance of available public facilities, and within the same 30-day period, arrange to provide the public facilities needed for the project that are not otherwise available; or

~~c.~~(3) Reapply after six months following the denial of a concurrency application; or

~~d.~~(4) Appeal the denial of the concurrency application, pursuant to the provisions of section ~~2.1.12~~ 2.2.2.5.

(~~7~~g) *Test abandonment.* If no option under subsection (f) ~~(6)~~ above, is exercised by the applicant, then the concurrency application shall be deemed abandoned and all rights to review a reservation shall be waived. Once a concurrency test is passed, if the underlying development application expires before the issuance of a development order the concurrency application shall also expire and any capacity reservation shall end, and no development order shall be issued.

2.2.2.2 *Concurrency approval.*

(a) *Capacity reservation.* Upon city approval of the underlying development project application and issuance of the either a preliminary development order or final development order, capacity shall become reserved. The determination that such capacity is available shall apply only to specific uses, densities and intensities included in the development plan. Any change in the density, intensity, or land use that requires additional public facilities or capacity is subject to review and approval or denial by the city.

(b) *Certificate of capacity.* The final development order shall serve as the certificate of capacity. The underlying development plan will specifically identify any necessary off-site infrastructure or facility improvements that are needed to support the project, whether or not the needed facility is public or private. Each applicant seeking a development permit shall be in possession of an unexpired final development order containing a certificate of capacity, unless the permit type is exempted from concurrency by this division.

(c) *Capacity reservation timeframe.* The determination that such capacity is available shall be valid for a period of time determined as follows:

(1) For the same period of time as the underlying development order, including any extension of the underlying development order. The validity of the determination of capacity shall be extended with extensions to the development order, or extended from preliminary development orders to subsequent final development orders

for the project, provided that each extension or subsequent development order is obtained prior to the expiration of the preceding development order. Extensions shall be pursuant to the requirements contained in article IV, site plans.

(2) If the underlying development order does not have an expiration date, the capacity shall be valid for a period not to exceed one year. The city and the applicant may designate a different time period for the capacity determination to be valid, provided that the period of time is explicitly set forth in a binding developer's agreement.

(d) *Expiration of capacity reservation.* Should the development order expire or the applicant not receive all building permits prior to the expiration of the development order, the capacity reservation shall be null and void for the unbuilt portions of the project.

(e) *Re-approval of capacity reservation.* Applicants may submit an application for the re-approval of projects determined to be null and void. Projects determined to be null and void have no development rights, and must get the entire plan re-approved, including concurrency review and approval, subject to all requirements and procedures existing at the time of re-approval.

2.2.2.3 *Potable water and sanitary sewer capacity.*

(a) *Capacity accounts.* Capacity accounts for potable water and sanitary sewer will be established to allow capacity to be transferred to various categories in the application process.

(b) *Potable water and sanitary sewer plant capacity analysis by city.* In performing the concurrency evaluation for potable water and sanitary sewer, the city shall determine whether a proposed development can be accommodated within the existing or planned capacity of the city's potable water plants and city's regional water reclamation facility. In determining available capacity, an estimate of the capacity required by the proposed project shall be established through the information provided to the city on calculation tables contained on the underlying development plan

that calculate the proposed potable water and sanitary sewer flows.

(c) *Potable water and sanitary sewer calculations.*

(1) Potable water and sanitary sewer facilities serve the entire city and shall achieve and maintain the adopted level of standard on a city-wide basis. No development order shall be issued in any part of the city if the level of service standards are not achieved and maintained throughout the city.

(2) For purposes of level of service, capacity for potable water and sanitary sewer shall be calculated by land use in accordance with the comprehensive plan level of service standards as summarized in the following table:

Table 2.1
Capacity for Water and Sewer

Land Uses	Average Daily Flow
Commercial	175 GPD per 1,000 sq. ft.
Office	150 GPD per 1,000 sq. ft.
Industrial	25 GPD per 1,000 sq. ft.
Hotel/Motel	175 GPD per room
Single Family Residential	300 GPD per unit
Multifamily Residential	135 GPD per unit
Public Education Facilities	15 GPD per student and instructor

(3) Since restaurants require additional water capacity they are considered a specialty use and shall be calculated in accordance with the following table:

Table 2.2
Capacity for Food Service Specialty Use

Specialty Use – Food Service	Average Daily Flow
Restaurant – using reusable service articles and operating 16 hours or less per day	40 GPD per seat
Restaurant – using reusable service articles and operating more than 16 hours per day	60 GPD per seat
Restaurant - using single service articles only and operating 16 hours or less per day	20 GPD per seat
Restaurant – using single service articles only and operating more than 16 hours per day	35 GPD per seat
Bar and cocktail lounge (add per pool table or video game)	20 GPD per seat (15 GPD per table or game)
Drive-in restaurant	50 GPD per car space
Carry out only, including caterers: 1. floor space calculation ± 2. employee calculation	1.50 GPD per 100 sq. ft. ± 8 GPD per employee per 8 hour shift

(4) Uses not covered by land use or specialty use calculations, as indicated above, shall be evaluated on an individual basis, as needed.

(5) For potable water, the city shall determine if the capacity from the city's potable water plants, less the capacity which is encumbered or reserved, can be provided under the existing or planned plant capacities and pumping abilities as well as permitted limits established by state issued consumptive use permits (CUPs) for water withdrawal from the Floridan Aquifer.

(6) For sanitary sewer, the city shall determine if the capacity from the city's regional water reclamation facility, less the capacity which is encumbered or reserved, can be provided while remaining within the state issued Florida department of environmental protection (FDEP) permit limits or existing sewer capacity in the city's regional water reclamation facility.

(7) In no event shall the city determine concurrency for a greater amount of potable water or sanitary sewer capacity than is needed for the development proposed in the concurrency application.

(d) Capacity or availability restrictions.

(1) Force majeure. The factors affecting available potable water or sanitary sewer capacity or availability may, in some instances, lie outside of the city's control. The city's adoption of this division relating to the manner in which the city will make its best attempt to allocate water or sewer capacity or availability does not create a duty in the city to provide water or sewer service to the public or to any individual regardless of whether a water or sewer certificate of capacity has been issued. Certificates of capacity issued by the city shall not be a guarantee that water and/or sewer will be available to serve the proposed project. Capacity is allocated and guaranteed to a project with all of the following:

a. A city building permit has been issued;

b. All utility connection fees for the project have been paid; and

c. All regulatory permits applicable to the project pertaining to potable water and sanitary sewer extensions and service have been obtained.

(2) Local system upgrades and improvements. Nothing pertaining to the level of service review or adequate capacity process shall be construed as an exemption to a project from

making local main line extensions, upgrades, or other system improvements as required to meet the needs of the project which are typically identified through the development review committee plan review process.

(e) *Transfer of reserved capacity.* Reserved potable water or sanitary sewer capacity shall not be sold or transferred to property not included in the legal description provided by the applicant in the development application used for the concurrency test. The applicant may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation by application to the city. At no time may capacity be sold or transferred to another party or entity to real property not described in the original application.

(f) *Use of reserved capacity.* When a valid building permit is issued for a project possessing a certificate of capacity, the certificate of capacity shall continue to reserve the capacity unless the building permit lapses or expires without the issuance of a certificate of occupancy. Once the proposed development is constructed and an occupancy permit is issued, the capacity is considered used. In the event of a phased project with multiple building permits, capacity shall be considered used as an occupancy permit is issued for each phase. Under no circumstances shall capacity remain reserved longer than the final development order and approval issued to the project.

2.2.2.4 *Exemptions from concurrency test.*

(a) The following development orders and permits are exempt from a city concurrency test, and may commence development without applying for concurrency review:

(1) Single-family and duplex residences on lots which were platted prior to October 1, 1992.

(2) Any addition to a residence.

(3) Accessory structure to a residence.

(4) Attached or detached guest house to a residence.

(5) Interior completion of a shell-only structure for uses with same or less intensity as identified on an approved site plan.

(6) Interior renovations or alterations with equal or less impact on public facilities.

(7) Change of use(s) which is determined by the city to cause less impacts on public facilities than the existing use.

(8) Business tax receipt approvals for a change in tenant space similar to the previous business tenant in that space with equal or less impact on public facilities.

(9) Replacement structure for the same use and capacity except for a nonconforming use in accordance with land development code provisions on nonconforming uses.

(10) Storage addition to a nonresidential use.

(11) Public utility and service structures.

(12) Accessory use to an existing use or structure which is determined by the city to cause no added impacts on public facilities.

(13) Accessory parking for passenger vehicles when intended for a permitted adjacent commercial use.

(14) All Group II permits.

(15) Temporary construction trailers.

(16) Wells and septic tanks.

(17) Driveway or resurfacing, parking lot paving and similar paving projects (i.e., loading docks).

(18) Reroofing of structures.

(19) Demolitions.

(20) Minor plats that do not increase density or intensity.

(2) In order to monitor the cumulative effect on public facility capacity, an internal concurrency test shall be performed by the city for development that is determined to be vested. Such projects will be able to continue in the development review process regardless of the results of their concurrency test.

2.2.2.5 *Appeals.*

(a) An applicant may appeal a failed concurrency test on three grounds:

(1) A technical error.

(2) The applicant provided alternative data or mitigation plan that was rejected by the city.

(3) Unwarranted delay in review that allowed capacity to be given to another applicant.

(b) The appeal of failed concurrency test shall be requested in writing within 15 calendar days of the date of failed concurrency test to the city engineer. A recommendation will be formulated by the city engineer with regard to the appeal and transmitted to the city manager within 30 calendar days of the receipt of request for appeal. A final decision will be made by the city manager within 15 calendar days upon receipt of the staff recommendation. Appeal of a failed concurrency test by the city manager shall be made by filing proceedings in the Circuit Court of Seminole County, Florida, within 30 calendar days of the denial by the city manager.

(c) If an applicant is denied a development order on concurrency grounds, they may not resubmit the same, or similar, application for a period of six months from the date the application was denied, or during the pendency of any appeal or court review of the city manager's decision as set forth above. If the applicant makes material or significant reductions to the densities and intensities of use in the application, it may be resubmitted at any time.

2.2.4 Solid waste adequate capacity.

The city's concurrency management system does not require an evaluation of solid waste at the individual project level. Commercial properties are required to contract with a city approved franchise hauler for waste and recycling collection and disposal.

2.2.5 Stormwater adequate capacity.

Except as otherwise provided by city code, Ssormwater concurrency is addressed by the requirement that the project meet city requirements for pre-development versus post development stormwater runoff volumes.

2.2.6 Parks and recreation adequate capacity.

The city's concurrency management system does not require an evaluation of parks and recreation at the individual project level.

2.2.7 Level of service standards for required services and facilities.

The adopted level of service standards for those public facilities for which concurrency is required shall be as established in the capital improvement element of the city's comprehensive plan.

DIVISION 3. SCHOOL CONCURRENCY

~~2.1.5~~ 2.3.1 School concurrency process.

(~~1~~a) General provisions. As of 2008 public schools became a part of concurrency as designated in F.S. § 163.3180. The city does not operate public schools and an agreement was entered into with the Seminole County School Board whereby the city shall rely upon the Seminole County School Board to determine school concurrency. School concurrency shall follow the process outlined below:

~~a.~~(1) No site plan, final subdivision, or functional equivalent for new residential development shall be approved by the city, unless the residential development is exempt from these requirements as provided in subsection c. below, or until a school capacity availability letter determination (SCALD) has

been issued by the school board to the local government indicating that adequate school facilities exist.

~~b.~~(2) The city may condition the approval of the residential development to ensure that necessary school facilities are in place. This shall not limit the authority of a local government to deny a site plan, final subdivision or its functional equivalent, pursuant to its home rule regulatory powers.

~~c.~~(3) The following residential uses shall be considered exempt from the requirements of school concurrency:

~~1~~a. All residential lots of record at the time the school concurrency implementing ordinance becomes effective.

~~2~~b. Any new residential development that has a site plan approval, final subdivision or the functional equivalent for a site specific development approval prior to the commencement date of the school concurrency program.

~~3~~c. Any amendment to any previously approved residential development, which does not increase the number of dwelling units or change the type of dwelling units (single-family, multifamily, etc.).

~~4~~d. Any age-restricted community with no permanent residents under the age of 18. An age-restricted community shall be subject to a restrictive covenant on all residential units limiting the age of permanent residents to 18 years and older.

~~d.~~(4) Upon request to the school board by a developer submitting a land development application with a residential component, the school board shall issue a determination as to whether or not a development, lot or unit is exempt from the requirements of school concurrency and submit a copy of the determination to the city within ten days.

(~~2~~b) *School concurrency application review.*

~~a.~~(1) Any developer submitting a development permit application (such as site plan or final subdivision) with a residential component that is not exempt under subsection ~~(1)(c)~~ (a)(3) above, is subject to school concurrency and shall prepare and submit a school impact analysis (SIA) to the Seminole County School Board for review.

~~b.~~(2) The SIA shall indicate the location of the development, the number of dwelling units by unit type (single-family detached, single-family attached, multifamily, apartments), a phasing schedule (if applicable), and age restrictions for occupancy (if any). The school board concurrency test shall follow the following steps:

~~1~~a. *Test submittal.* The developer shall submit a SIA to the school board with a copy to the city. The completed SIA must be submitted a minimum of five working days but not more than 30 days prior to development application submittal to the city. The school board shall perform a sufficiency review on the SIA application. An incomplete SIA application will be returned to the owner/developer without processing. The school board will have 20 working days to determine sufficiency and complete the test review. The school board may charge the applicant a nonrefundable application fee payable to the school board to meet the cost of review in accordance with Florida Statutes.

~~2~~b. T*est review.* Each SIA application will be reviewed in the order in which it is received by the school board.

~~3~~c. *Passing the test.* If the available capacity of public schools for each type within the CSA [or contiguous CSAs as provided for below] containing the proposed project is equal to or greater than the proposed project's needed capacity, the concurrency test is passed. The school board will issue a school capacity availability letter of determination (SCALD) identifying

the school capacity available to serve the proposed project and that said capacity has been encumbered for the proposed project for a period of one year.

~~4~~d. *Failing the test.* If the available capacity of public schools for any type within the CSA (or contiguous CSAs) containing the proposed project is less than the proposed project's needed capacity, the concurrency test is failed. The school board will issue a school capacity availability letter of determination (SCALD) and inform the developer. If capacity is not available the school board will advise the developer of the following options:

~~a~~1. Accept a 30-day encumbrance of available school capacity, and within the same 30-day period, amend the development application to balance it with the available capacity; or

~~b~~2. Accept a 60-day encumbrance of available school capacity, and within the same 60-day period, negotiate with the school board and the city on a proportionate share mitigation plan; or

~~c~~3. Appeal the results of the failed test pursuant to the provisions in subsection (5) below; or

~~d~~4. Withdraw the SIA application.

~~5~~e. *Test abandonment.* If no option under subsection ~~(2) b.4.~~ (b)(2)d. above, is exercised by the developer within 45 days, then the application shall be deemed abandoned.

(~~3~~c) School concurrency approval. Issuance of a SCALD by the school board identifying that adequate capacity exists indicates only that school facilities are currently available, and capacity for the proposed development has been encumbered. Capacity will not be reserved until the city issues a development approval.

~~a.~~ (1) A local government shall not issue a development approval for a residential development until receiving confirmation of

available school capacity in the form of a SCALD from the school board. The development approval shall include a reference to the findings of the SCALD indicating that the project meets school concurrency.

~~b.~~ (2) The city shall notify the school board within ten working days of any official change in the validity (status) of a development approval for a residential development.

~~c.~~ (3) The city shall not issue a building permit or its functional equivalent for a nonexempt residential development until receiving confirmation of available school capacity from the school board in the form of a SCALD. Once the local government has issued a final development approval, school concurrency for the residential development shall be valid for the life of the final development approval.

(~~4~~ d) *Reserved capacity.* School capacity will be reserved when there is a final disposition of the development application by the city. If the city approves the development application by means of a development approval, or its equivalent, the school board shall move the school capacity from encumbered status to reserved status for the proposed project. When the city issues a development approval for a residential project it shall notify the school board within ten working days. The duration for which capacity is reserved shall be subject to the city's Land Development Code, but shall not exceed two years from the date of approval or the issuance of a building permit, whichever comes first. If the building permit once issued expires under the development regulations of the city, the project will lose ~~it's~~ its reserved capacity. Should a development approval for a residential development expire, the city shall notify the school board.

(~~5~~ e) *Appeal process.* A person substantially affected by a school board's adequate capacity determination made as a part of the school concurrency process may appeal such determination through the process provided in F.S. Ch. 120.

~~**2.1.6 - Proportionate fair-share transportation mitigation program.**~~

~~*(1) General requirements.*~~

~~a. The proportionate fair-share (PFS) transportation mitigation program shall only apply to developments in Altamonte Springs that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the city concurrency management system (CMS), including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations.~~

~~b. An applicant may choose to satisfy the transportation concurrency requirements of the city by making a proportionate fair-share contribution, pursuant to the following requirements:~~

~~1. A determination by the city that the proposed development is consistent with the comprehensive plan and applicable land development regulations; and~~

~~2. A determination by the city that the five-year schedule of capital improvements in the city capital improvement element (CIE) or county capital improvement program (CIP) or FDOT work program includes a transportation improvement(s) that, upon completion, will satisfy the requirements of the city transportation CMS. The provisions of subsection 2.1.6(1)c. may apply, at the discretion of the city, if a project or projects needed to satisfy concurrency are not presently contained within the city CIE, county CIP or FDOT work program.~~

~~c. The city may choose to allow an applicant to satisfy transportation concurrency through the proportionate fair-share program by contributing to an improvement that, upon completion, will satisfy the requirements of the city transportation CMS, but is not contained in the five-year schedule of capital improvements in the city CIE, county CIP or FDOT work program where one of the following applies:~~

~~1. The city adopts, by resolution or otherwise, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE no later than the next regularly scheduled update. To qualify~~

~~for consideration under this section, the proposed improvement must be reviewed by the city engineer or his designee and be determined to be financially feasible, to be consistent with the comprehensive plan, and to be in compliance with the provisions of this Code.~~

~~2. The county adopts, by resolution or otherwise, a commitment to add the improvement to the five-year schedule of capital improvements in their CIP no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the county engineer or his designee and be determined to be financially feasible and the city must determine that the improvement is consistent with the city's comprehensive plan and in compliance with the provisions of this Code.~~

~~3. The FDOT accepts a proportionate fair-share payment (as demonstrated by an executed agreement between the developer, the FDOT and the city) and the city determines the improvement is consistent with the city's comprehensive plan and in compliance with the provisions of this Code.~~

~~4. If the funds allocated for the five-year schedule of capital improvements in the city CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the city may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the city, in consultation with the agency maintaining the facility, significantly benefit the impacted transportation system.~~

~~The improvement or improvements funded by the proportionate fair-share payment must be adopted into the five-year capital improvements schedule of the maintaining agency receiving the payment at their next annual capital improvements update.~~

~~d. Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the improved facility's maintaining agency.~~

~~*(2) Intergovernmental coordination.*~~

~~a. Pursuant to policies in the intergovernmental coordination element of the city comprehensive plan the city shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the city; an interlocal agreement may be established with other affected jurisdictions for this purpose.~~

~~b. In addition to the city and the applicant, proportionate fair-share agreements may include other maintaining agencies, including, but not limited to, Seminole County, FDOT and LYNX. Proportionate fair-share payments for non-Altamonte Springs facilities shall be made to the appropriate maintaining agency.~~

~~*(3) Application process.*~~

~~a. Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of subsection 2.1.6(1).~~

~~b. Prior to submitting an application for a proportionate fair-share agreement, a preapplication meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is maintained by another party (e.g., Seminole County or FDOT) they will be notified and invited to participate in the pre-application meeting.~~

~~c. Eligible applicants shall submit an application to the city that, at a minimum, includes the following:~~

~~1. Name, address and phone number of owner(s), developer and agent;~~

~~2. Copy of completed concurrency application and traffic impact analysis (TIA) (if a TIA was required);~~

~~3. Copy of the concurrency test results form; and,~~

~~4. Description of requested proportionate fair-share mitigation method(s), including documentation of improvement cost estimates prepared, signed, and sealed by a registered professional engineer.~~

~~d. The concurrency administrator shall review the application and certify that the application is sufficient and complete within 14 calendar days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the proportionate fair-share transportation mitigation program as indicated in subsection 2.1.6(1), then the applicant will be notified in writing of the reasons for such deficiencies within 14 calendar days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 calendar days of receipt of the written notification, then the application will be deemed abandoned. The growth management director, or their designee, in their discretion, may grant an extension of time not to exceed 60 calendar days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.~~

~~e. Proposed proportionate fair-share mitigation for development impacts to facilities on the FDOT strategic intermodal system (SIS) (as determined by a city-approved traffic impact analysis) requires the concurrence of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.~~

~~f. When a proportionate fair-share application is deemed sufficient, complete, and eligible, the applicant shall be~~

~~advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the city or the applicant with direction from the city and delivered to the appropriate maintaining parties (e.g., the county, FDOT or LYNX) for review, no later than 60 calendar days from the date at which the applicant received the notification of a sufficient application and no fewer than 14 calendar days prior to the commission meeting when the agreement will be considered.~~

~~g. The city shall notify the applicant regarding the date of the commission meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the commission.~~

~~*(4) Determining proportionate fair-share obligation.*~~

~~a. Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.~~

~~b. A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.~~

~~c. The methodology used to calculate an applicant's proportionate fair-share obligation shall be as follows:~~

~~"The cumulative number of p.m. peak hour peak direction trips from the proposed development expected to reach roadways during p.m. peak hour from the complete build out of a stage or phase being approved, divided by the change in the peak hour peak direction maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS".~~

~~Proportionate Fair-Share~~	=	~~[(Development Trips;sub\sub;)/(SV Increase;sub\sub;)] × Cost;sub\sub;]~~
~~Where:~~		
~~Development Trips;sub\sub;~~	=	~~Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS~~
~~SV Increase;sub\sub;~~	=	~~Service volume increase provided by the eligible improvement to roadway segment "i" per section 2.1.6(1)~~
~~Cost;sub\sub;~~	=	~~Adjusted cost of the improvement to segment "i". Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred~~

~~d. For the purposes of determining proportionate fair-share obligations, the city shall determine improvement costs based upon the actual cost of the improvement as obtained from the city CIE, the county's CIP or the FDOT work program. Where such information is not available, improvement cost shall be determined using a generally accepted engineering method approved by the city engineer or their designee with concurrence from the maintaining agency.~~

~~e. If the city has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.~~

~~f. If the city has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the nonsite-related right-of-way shall be based on the fair market value established by an independent appraisal approved by the city and at no expense to the city. The applicant shall supply a drawing and legal description of the land and title insurance for the land to the city at no expense to the city. If the estimated value of the right-of-way dedication proposed by the applicant is less than the city estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.~~

~~*(5) Impact fee credit for proportionate fair-share mitigation.*~~

~~a. Proportionate fair-share contributions to the city shall be applied as a credit against city impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the city's impact fee ordinance.~~

~~b. City impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. City impact fees owed by the applicant will be reduced per the proportionate fair-share agreement. If the applicant's proportionate fair-share obligation is less than the development's anticipated city road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining city impact fee amount to the city pursuant to the requirements of the city impact fee ordinance.~~

~~c. Major projects not included within the city's impact fee ordinance or created under subsections 2.1.6(1)c.1.—4., which can demonstrate a significant benefit to the impacted~~

~~transportation system may be eligible at the city's discretion for impact fee credits.~~

~~d. The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any city road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location.~~

~~*(6) Proportionate fair-share agreements.*~~

~~a. Upon city commission approval of a proportionate fair-share agreement (PFS agreement) the applicant shall receive a city certificate of concurrency approval. Should the applicant fail to receive final site plan approval within 12 months of the execution of the PFS agreement, then the PFS agreement shall be considered null and void, and the applicant shall be required to reapply if they elect to pursue their development.~~

~~b. Payment of the proportionate fair-share contribution is due in full within 90 calendar days of approval of the site plan or upon issuance of the building permit, whichever occurs first, and shall be nonrefundable. If the payment is submitted more than six months from the date of execution of the PFS agreement, then the proportionate fair-share cost may, at the city's discretion, be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to subsection 2.1.6(4) and adjusted accordingly.~~

~~c. All developer off-site improvements authorized under this section must be completed prior to issuance of a building permit, or as otherwise established in a binding agreement that is accompanied by a security instrument acceptable to the city attorney that is sufficient to ensure the completion of all required improvements within three years from the issuance of a building permit.~~

~~d. Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share~~

~~agreement must be completed prior to issuance of the final site plan approval or the final plat.~~

~~e. Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.~~

~~f. Applicants may submit a written request to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement.~~

~~g. The city may enter into proportionate fair-share agreements for selected improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.~~

~~h. Projects not pursued during the pendency of a valid site plan and/or building permit shall be entitled to a credit of 85 percent of funds paid where the city has not constructed or entered into an agreement with a third party to construct the identified improvement which credit shall be applied to the proportionate share requirement of subsequent project(s); where the identified improvement has been constructed or committed to be constructed no credit shall be given except to the extent a new project would require the same improvements and then not to exceed 85 percent previous payment.~~

~~*(7) Appropriation of fair-share revenues.*~~

~~a. Proportionate fair-share revenues received by the city shall be placed in the appropriate project account for funding of scheduled improvements in the city CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the city, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived.~~

~~b. In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction~~

~~may be applied toward the construction of another improvement within that same corridor or sector that would, in the opinion of the city, mitigate the impacts of development.~~

~~c. Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan, the city may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT transportation regional incentive program (TRIP). Such coordination shall be ratified by the city through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.~~

~~d. Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under subsection 2.1.6(4), the city shall reimburse the applicant for the excess contribution using one or more of the following methods:~~

~~1. An impact fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned and reassigned under the terms and conditions acceptable to the city.~~

~~2. The excess capacity may be reserved through the city's CMS and an account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fair-share payments from future applicants on the facility.~~

~~3. The city may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the city and the applicant.~~

~~4. Impact fee credits must be utilized within five years from the date of acceptance by the city and reserved express capacity must be utilized consistent with the~~

~~time limits for capacity reservations as set forth and identified in section 2.1.10~~

~~*(8) Cross jurisdictional impacts.* In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the city may enter into a cross jurisdictional impact agreement with one or more adjacent local governments, or the Florida Department of Transportation, to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall identify the methodology for addressing cross jurisdictional transportation impacts. The city shall notify the applicant if the applicant's transportation concurrency determination is subject to assessing cross jurisdictional impacts and the applicant shall be subject to the requirements of the applicable cross jurisdictional impact agreement.~~

DIVISION 4. MOBILITY MANAGEMENT

~~2.1.7~~ 2.4.1 ~~Transportation concurrency exception area~~ Mobility management program.

The city hereby establishes a mobility management program for purposes of assessing and establishing multi-modal solutions to impacts on the pedestrian, bicycle, transit and vehicular systems caused by development.

2.4.1.1~~(1)~~ *General requirements.* In order to address the impacts on the multi-modal systems caused by development, the mobility management program shall apply to all developments within the city of Altamonte Springs to achieve the city's mobility performance standards and determine the need for multi-modal improvements that would support the development proposal.

~~a. *General requirements.* The transportation concurrency exception area (TCEA) mitigation program shall only apply to developments in Altamonte Springs that are within the designated TCEA as adopted in the city's comprehensive plan. Proposed development on property located within the TCEA is exempt from normal transportation concurrency and shall follow the criteria below. Note this exemption is for transportation only and the~~

~~development must still meet concurrency for the remaining services.~~

2.4.1.2~~(2)~~ *Mobility requirements* ~~*Development performance standards.*~~ The mobility requirements listed in table 2.3 are hereby established as the minimum number of mobility performance standards to be provided by a proposed development project.

~~a. Within the boundaries of the TCEA, development or redevelopment projects are required to meet the following development performance criteria based on the development's total net new daily trip generation and proportionate impact on adjacent roadways:~~

Table 2.3
Mobility Requirements
~~**Criteria Level Designation**~~

~~**Criteria Level**~~	**Net New P.M. Peak Hour Development Trips** ~~**Average Daily Trip Generation**~~	**Mobility Requirements** ~~**Required Number of Standards**~~
~~Level 1~~	21 to 39 ~~Less than 50~~	At least one mobility performance standard. ~~If a standard from the enhancement group is selected, at least two standards are required.~~
~~Level 2~~	40 to 199 ~~50 to 400~~	At least two mobility performance standards. No more than one standard can be selected from the enhancement group ~~or from the innovation group~~.
~~Level 3~~	200 to 499 ~~400 to 1,999~~	At least three mobility performance standards. No more than ~~one~~ two standards can be selected from the enhancement group ~~or from the innovation group~~.

~~Level 4~~	500 to 999 ~~Greater than 2,000 but less than 5,000~~	At least four mobility performance standards. No more than two standards can be selected from the enhancement group~~, and no more than one standard can be selected from the innovation group~~.
~~Level 5~~	1,000 or greater ~~Greater than 5,000—9,999~~	At least five mobility performance standards~~, and meet a. or b. below:~~ ~~a. Be on an existing transit route.~~ ~~b. Provide funding for a new transit route.~~ No more than two standards can be selected from the enhancement group.
~~Level 6~~	~~Greater than 10,000 or 50 or more employees~~	~~At least six standards. Transportation Demand Management (TDM) plan is required. No more than two standards can be selected from the Enhancement Group.~~

~~b. The choice of standards shall be subject to the final approval of the city during the site plan review process. The standards chosen shall relate to the specific site and transportation conditions where the development is located. The developer may choose to provide one or more standards off-site with the city's approval. In recognition of the varying costs associated with the standards, the city shall have the discretion to count some individual standards, based on cost estimates provided by the developer and verified by the city, as meeting multiple standards. In certain situations The selected standards may need to be incorporated into a developer's agreement.~~

2.4.1.3 *Mobility performance standards.* The mobility performance standards listed in table 2.4 are hereby established for the operational group and enhancement group.

Table 2.4
Mobility Performance Standards by Group

Operational Group *	
Number	**Performance Standard**
1	Installation of a new traffic signal. ~~Business operations are not conducted in the peak hour and/or will not generate traffic during the peak hour.~~
2	Intersection improvements, which may include pavement, curbing, sidewalks, crossings, and similar types of improvements. ~~Construction of bus turn-out facilities.~~
3	Modifications to existing full intersections or signals to improve roadway operation and safety, which may include pedestrian countdown signals, crosswalks, ADA improvements, and similar types of modifications. ~~Use of joint driveways and/or cross-access to reduce curb cuts.~~
4	Improvements to portions of intersections, which may include provide countdown pedestrian signals, no turn on red notifications, and similar types of improvements. ~~Intersection and/or signalization modifications to improve roadway operation and safety.~~
5	Joint-use driveways. ~~Intersection and/or signalization modifications to improve transit operations and safety.~~
6	Transit operation contributions for City transit pilot projects or City approved transit services. ~~Addition of dedicated turn lanes onto and out of the development.~~
7	Other multimodal operational improvements comparable to the above operational standards that mitigate the impacts of the project and enhance the city's mobility management program.
~~**Capacity Group**~~	
~~**Number**~~	~~**Performance Standard**~~

~~1~~	~~Payments to the city which will either increase existing transit service frequency or add additional transit service. (Lynx or local transit circulator such as the proposed Flex Bus.)~~
~~2~~	~~Construction of new public sidewalks along all street frontages where they do not currently exist (minimum of 5 feet wide). Construction of new road facilities that provide alternate routes to reduce congestion.~~
~~3~~	~~Addition of lanes on existing road facilities, where acceptable to the city and/or FDOT, as relevant.~~
~~4~~	~~Provision of transit pass programs provided to residents and/or employees of the development. The transit passes must be negotiated as part of an agreement (state roadway) with Lynx or the city.~~
~~5~~	~~Other acceptable roadway, pedestrian, or bicycle improvements as mutually agreed to by the city and owner/developer.~~
Enhancement Group	
Number	**Performance Standard**
1	Payment for transit shelters (on-site or off-site) if immediately adjacent to a planned or future transit route. ~~Construction of new public sidewalks along all street frontages where they do not currently exist.~~
2	Payment for transit shelters (on-site or off-site) if immediately adjacent to a transit stop on an existing transit route. ~~Payment for bus passenger shelters built by city shelter vendor.~~
3	Widening of existing public sidewalks to increase pedestrian mobility and safety.
4	Funding of streetscaping ~~/landscaping (~~including pedestrian-scale lighting, where relevant~~,)~~ on public right-of-ways or medians, as acceptable to ~~coordinated with~~ the city.

5	Provision of shading and protection from the weather through architectural elements such as arcades over a majority of the pedestrian system. ~~awnings or canopies over public sidewalk areas to promote pedestrian traffic and provide protection from the weather so that walking is encouraged. The awning or canopy shall provide pedestrian shading for a significant length of the public sidewalk in front of the proposed or existing building. (subject to LDC provisions)~~
6	Provision of lockers and shower facilities for employees. ~~Clustering and design of the development for maximum density, or use of maximum FAR, at the site which preserves open space and reduces the need for development of vacant lands, enhances multi-modal opportunities, and provides transit-oriented densities or intensities.~~
7	Design and installation of wayfinding signage for pedestrians, bicyclists, or transit riders where ~~acceptable and~~ approved by the city.
~~8~~	~~Provision of additional bicycle parking facilities located in the TCEA area.~~
~~9~~	~~Deeding of land for the addition and construction of bicycle lanes.~~
~~**Innovation Group**~~	
~~**Number**~~	~~**Performance Standard**~~
~~1~~	~~An innovative transportation-related modification or standard submitted by the developer where acceptable to and approved by the city.~~
~~2~~	~~Provision of ride sharing or van pooling programs.~~
~~3~~	~~Participation in a transportation demand management (TDM) program that provides funding or incentives for transportation modes other than the single occupant vehicle. Such demand management programs shall provide annual reports of operations to the city indicating successes in reducing single occupant vehicle trips.~~

*In the event operational improvements are not appropriate, as determined by the city, enhancement group improvements can be substituted for operational group standards.

(a) The choice of mobility performance standards for each mode of transportation shall be subject to ~~the~~ final approval by the city during the site plan review process. The standards chosen shall relate to the specific site and transportation conditions where the development is located. The developer may choose to provide one or more standards off-site with the city's approval. The city may authorize provision of one or more standards to satisfy the requirements for transportation facilities that are not directly impacted by the proposed development but are deemed priorities of the city's multi-modal transportation system and contribute to the city's overall mobility strategy. In recognition of the varying costs associated with the standards, the city shall have the discretion to count some individual standards, based on cost estimates provided by the developer and verified by the city, as meeting multiple standards. The selected standards shall be indicated on the site plan and incorporated into a developer's agreement. The mobility performance standards used for a project shall not also be considered toward development bonuses for the same project.

~~c. A transportation impact analysis is required for any project that generates more than 50 net new p.m. peak hour trips.~~

~~d. Projects that generate more than 9,000 net new average daily trips (ADT) will be required to perform a traffic analysis of the roadways and shall determine any impact to I-4 and the interchange with SR 436. The specific methodology will be established by the city in consultation with FDOT. Once the traffic impact analysis is prepared, a copy will be provided to the city and FDOT for review and comment for final determination of any needed roadway improvements, proportionate share contribution, or other mitigation options. The owner/developer may recommend improvements to FDOT roadways within the TCEA or within one mile of the boundaries of the TCEA to be eligible for mitigation. In addition, the project will receive a determined discount from any~~

~~off-site trips for participation in the regional or local transit, TDM, and other nonsingle automobile occupancy performance standards listed above. Any discounts and subsequent performance standards will be evaluated in an effort to ensure all impacts are fully mitigated.~~

~~e~~ (b) For any redevelopment project, only the net new development trips are subject to the appropriate performance criteria. Example: Redevelopment of existing site generating 100 P.M. peak hour trips to a new project generating 125 P.M. peak hour trips would be responsible for 25 new development trips. ~~Redevelopment of 100,000 square feet retail (at 40 trips 1,000 square feet = 4,000 ADT redevelopment credit). New project is 5,000 ADT. The project will be meeting level 3 performance standards (401—1,999 daily trip generation).~~

~~f~~ (c) Though the importance of each mobility performance standard ~~cannot be disputed~~ is clear, the level of financial investment does vary by group. ~~Consequently, the number of standards which must be met by small developments (less than 50 daily trips) is increased by one if the enhancement group is selected. In this case, an additional performance standard is added to ensure some level of equity when selecting performance standards. Also,~~ Therefore, limitations are placed on the number of mobility performance standard selections from the enhancement group ~~and the innovation group~~ to promote operational, capacity related and innovative improvements.

~~g. Additionally, any development consisting of, or occupying a facility with provisions for 50 or more employees is required to participate in a transportation demand management (TDM) program. The TDM program must be outlined in writing to the City of Altamonte Springs not longer than 30 calendar days from certificate of occupancy.~~

2.4.1.4 *Mobility solutions report requirements.*

The city hereby establishes two levels of mobility solutions analyses (level 1 and level 2) for all new construction in the city unless

exempted as stated within this division. The city shall require a mobility solutions report to identify needed improvements.

(a) General requirements:

(1) A completed application shall be provided to the city using the mobility management application form along with payment of the administrative application fee.

(2) A level 1 or level 2 mobility solutions study is required for all applications that exceed 20 net new P.M. peak hour trips. (Refer to subsection 2.4.1.3(b) for redevelopment net new trip calculation). This standard is based on a typical signalized intersection cycle length of 180 seconds, which means a project generating 20 new trips per hour will add approximately one vehicle to the roadway network per cycle length.

(3) A level 1 mobility solutions study providing a multi-modal transportation evaluation shall be conducted for applications for conditional uses, rezonings, master land use plans and comprehensive plan amendments.

(4) A level 2 mobility solutions study shall be conducted for site plans and development plans and plat.

(b) Common methodology for level 1 and level 2 mobility analysis:

(1) The mobility solutions study shall be conducted by a registered professional engineer licensed in the state of Florida with a specialty in traffic engineering and transportation.

(2) The study area of review shall be calculated based on the net new AM or PM peak hour trips, whichever is higher, times 10 feet. (In addition, the study area shall include the closest major intersection serving the development, even if it is beyond the calculated study area.) For example, the study area for a development generating 200 net new peak hour trips will be 2,000 feet, or 0.38 miles. The distance shall be measured from the project boundary along roadways.

(3) A project generating 40 or less net new P.M peak hour trips will not be required to analyze State Road 436 or State Road 434.

(4) The mobility solutions study shall include an analysis of the four (4) modes of transportation in the city (i.e., walking, biking, transit, and roads) within the designated study area. Projects or applications must meet the requirements consistent with the mobility requirements set forth in table 2.3. The list of performance standards is set forth in table 2.4.

(5) The project's transportation engineer shall schedule and attend a methodology meeting with the city prior to conducting the mobility solutions study. The purpose of the methodology meeting is to discuss the overall methodology for the study, confirm the study area, identify assumptions, and discuss additional topics and issues that may need to be addressed in the study. The methodology meeting shall be scheduled at least 30 days prior to the first plan submittal to the city. Refer to the city's developer's guide for forms and procedures relating to the mobility solutions study process.

(6) The mobility solutions study shall identify existing sidewalks, existing transit stops and routes immediately adjacent or within the study area; and location of exiting bike lanes, bikeways and bike trails within the study area. Maps of existing sidewalks, sidewalk gaps needing new sidewalks, existing bicycle facilities, needed bicycle facilities, existing transit stops and routes, and major intersections are available from the city and should be used as the basis for the study.

(7) The details of the mobility performance standards shall be set forth in the mobility solutions report and replicated in the notes and the design incorporated in the development plan or site plan (if applicable). Design details for bus shelter, bike racks, pedestrian system design elements and other site amenities will be incorporated in the subsequent development plan or site plan application.

(8) When assessing adequate access, if an existing intersection operates with a V/C greater than 1.0 for one or more movements without the development traffic, intersection improvements will be required to reduce the V/C with development traffic to a V/C that is equal, or lower than, conditions without the development traffic. Similarly, the queues in turning lanes should operate no worse than conditions without the development traffic. In addition, turning lanes of adequate length are provided at development access points as determined necessary by the city, and appropriate traffic control is provided.

(c) Level 1 mobility analysis:

(1) The level 1 mobility solutions report shall document when there is a deficiency in the four (4) transportation modes within the study area. Deficiencies for walking, biking and transit shall be based on existing gaps and/or lack of transit service, stops or stations. Roadway deficiencies shall be based on the latest available peak hour directional volumes and the generalized peak hour directional volumes (i.e., service volumes by level of service) published in the latest FDOT Quality/Level of Service Handbook as described in the city developer's guide.

(2) Level 1 mobility solutions reports shall describe and document the evaluation of the multi-modal transportation needs and potential improvements within the study area. Actual improvements are not required until actual development and the completion of a level 2 mobility solutions study. Level 1 mobility solutions reports shall include maps and graphics that describe existing, planned and recommended improvements for the four (4) modes of transportation. Specific description and location of each possible improvement shall be provided in the report.

(3) The recommendations and conclusions in the Level 1 mobility solutions report shall list and describe the need for any transportation improvements and description of the improvement. The information will be used as a baseline for

multi-modal transportation improvements that can occur with a subsequent development plan or site plan application.

(d) Level 2 mobility analysis:

1. The Level 2 mobility solutions report shall document any deficiencies in the four (4) transportation modes within the study area. Deficiencies for walking, biking and transit shall be based on existing gaps and/or lack of transit service, stops or stations. Roadway and intersection deficiencies shall be based on peak hour traffic counts and highway capacity manual analysis methodologies as described in the city developer's guide.

2. The level 2 mobility solutions report shall provide a specific detailed evaluation of the multi-modal transportation improvements within the study area and include maps and graphics as necessary that describe both existing and planned improvements of the four (4) modes of transportation. Maps of existing sidewalks, sidewalk gaps needing new sidewalks, existing bicycle facilities, needed bicycle facilities, existing and proposed transit stops and routes, and major intersections shall be included. Specific description and location of each mobility performance standard improvement shall be provided in the report. The information and specifics will be incorporated into the development plans or site plans for the subject property, improvements on adjacent property owned by the same owner, or improvements immediately adjacent to the subject property.

3. On-site improvements that provide enhanced mobility performance are eligible to meet mobility performance standards requirements. The details of the mobility performance standards shall be set forth in the report and replicated in the notes and the design incorporated in the development plan or site plan. Design details for bus shelter, bike racks, pedestrian crossing design elements and other site amenities will be also be incorporated in the development or site plan package. The use of city-approved

details will be provided unless a city design detail does not exist.

4. The recommendations in the report shall set forth the timing of the mobility performance standards by transportation service mode. The information will be used to identify multi-modal transportation improvements that can occur within the timeframe proposed for the development application.

2.4.1.5 *Developer contribution credits.*

(a) Upon mutual agreement between an applicant and the city, off-site improvements to the multimodal transportation system that are consistent with the city's comprehensive plan or other adopted planning studies or documents may be constructed. Where such off-site improvements are undertaken as part of a development project, a credit may be granted against the mobility fee imposed pursuant to chapter 25, "Impact and Mobility Fees," of the city code of ordinances, under the standards and conditions set forth in chapter 25 for mobility fee credit.

(b) In addition to off-site improvements, on-site improvements or improvements immediately adjacent to the subject property that provide operational or enhancement upgrades beyond the minimum-required performance standards set forth in table 2.4 may also be eligible for mobility fee credit.

(c) Mobility fee credits will be considered for the actual installation of an improvement with the construction of a development project. Commitments for future improvements will not be eligible for credit from the payment of mobility fees.

(d) Commitments for future improvements not eligible for credit against mobility fees will be addressed through a developer's agreement. The developer's agreement shall detail and itemize the future improvement, cost contribution, shall set forth that payment of the contribution shall be required at the time the improvement can occur, and shall set forth any sunset provisions of the future improvement commitment.

2.4.1.6 *Exemptions from mobility solution reports.*

(a) Any building permit that is authorized through a valid final development order, such as an active final site plan approval.

(b) Single-family and duplex residences.

(c) Townhome, villa, duplex or other residential structure not to exceed two units on an existing platted lot.

(d) Any accessory structure with a residential or commercial property. This includes, sheds, storage buildings, covered or structured parking, equipment buildings or other structure that do generate any transportation impact.

(e) Change of use(s) which is determined by the city to cause less impacts on public facilities than the existing use.

(f) Business tax receipt approvals for a change in tenant space similar to the previous business tenant in that space with equal or less impact on public facilities.

(g) Public utility and service structures.

(h) All Group II permits.

~~*(3)Determining TCEA mitigation obligation.*~~

~~a. TCEA mitigation for development impacts may also include, without limitation, separately or collectively, private funds, contributions of land and construction and contribution of facilities.~~

~~b. A development shall not be required to pay more than its proportionate share.~~

~~c. The methodology used to calculate an applicant's TCEA mitigation obligation shall be required to meet the following development performance criteria based on the development's (including all phases) trip generation and proportionate impact on adjacent roadways. The developer may sign a development~~

~~agreement or contract with the City of Altamonte Springs for the provision of the required standards. The choice of standards shall be subject to final approval by the growth management director during the site plan approval process. The standards chosen shall relate to the particular site and transportation conditions where the development is located. The developer may choose to provide one or more standards off-site with the growth management director's approval. In recognition of the varying costs associated with the standards, the city shall have the discretion to count some individual standards, based on cost estimates provided by the developer and verified by the city, as meeting multiple standards.~~

~~d. For the purposes of determining TCEA obligations, the city shall determine costs based upon the best available information. Where such information is not available, costs shall be determined using a generally accepted method approved by the growth management director or their designee with concurrence from the other affected agencies.~~

~~e. If the city has accepted a mitigation standard proposed by the applicant, then the value of the standard shall be determined using one of the methods provided in this section.~~

~~f. If the city has accepted right-of-way dedication for the TCEA mitigation payment, credit for the dedication shall be based upon subsection 2.1.6(4)f.~~

~~(4) *Reserved.*~~

~~(5) *Impact fee credit for TCEA mitigation.*~~

~~a. TCEA roadway mitigation contributions to the city shall be applied as a credit against city impact fees to the extent that all or a portion of the TCEA mitigation is used to address the same capital infrastructure improvements contemplated by the city's impact fee ordinance.~~

~~b. City impact fee credits for the TCEA roadway contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. City impact fees owed by the applicant will be reduced per the mitigation agreement. If the applicant's TCEA roadway mitigation obligation is less than the development's anticipated city road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining city impact fee amount to the city pursuant to the requirements of the city impact fee ordinance.~~

~~c. Major roadway projects not included within the city's impact fee ordinance or created under subsections 2.1.6(1)c.1—4 which can demonstrate a significant benefit to the impacted transportation system may be eligible at the city's discretion for impact fee credits.~~

~~d. The TCEA obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any city road impact fee credit based upon TCEA roadway mitigation contributions for a proposed development cannot be transferred to any other location.~~

~~(6) *TCEA mitigation agreements.*~~

~~a. Upon city commission approval of a TCEA agreement (TCEA agreement) the applicant shall receive a city certificate of concurrency exception approval. Should the applicant fail to receive final site plan approval within 12 months of the execution of the TCEA agreement, then the TCEA agreement shall be considered null and void, and the applicant shall be required to reapply if they elect to pursue their development.~~

~~b. Payment of the TCEA contribution is due in full within 90 calendar days of approval of the site plan or upon issuance of the building permit, whichever occurs first, and shall be nonrefundable.~~

~~c. Projects not pursued during the pendency of a valid site plan and/or building permit shall be entitled to a credit of 85 percent of funds paid where the city has not implemented or entered into an agreement with a third party to implement the identified mitigation project which credit shall be applied to the TCEA requirement of subsequent project(s); where the identified improvement has been implemented or committed to be implemented no credit shall be given except to the extent a new project would require the same improvements and then not to exceed 85 percent previous payment.~~

~~d. All developer off-site improvements authorized under this section must be completed prior to issuance of a certificate of occupancy, or as otherwise established in a binding agreement that is accompanied by a security instrument acceptable to the city attorney that is sufficient to ensure the completion of all required improvements within three years from the issuance of a building permit.~~

~~e. Dedication of necessary right-of-way for facility improvements pursuant to a TCEA agreement must be completed prior to issuance of the final site plan approval or the final plat.~~

~~f. Any requested change to a development project subsequent to a development order may be subject to additional TCEA contributions to the extent the change would generate additional traffic that would require mitigation.~~

~~g. Applicants may submit a written request to withdraw from the TCEA agreement at any time prior to the execution of the agreement.~~

~~h. The city may enter into TCEA agreements for selected projects to facilitate collaboration among multiple applicants on improvements to a shared transportation facility, program or service.~~

~~(7) *Appropriation of fair-share revenues.*~~

~~a. TCEA mitigation revenues received by the city shall be placed in the appropriate project account for funding of projects, programs or strategies in the city's transportation element or CIE, or as otherwise established in the terms of the TCEA agreement. At the discretion of the city.~~

~~b. In the event a scheduled project or program is removed from the transportation element or CIE, then the revenues collected for its implementation may be applied toward another project or program that would, in the opinion of the city, mitigate the impacts of development.~~

~~c. Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan, the city may coordinate with other impacted jurisdictions and agencies to apply TCEA contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT transportation regional incentive program (TRIP). Such coordination shall be ratified by the city through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.~~

~~(8) *Cross jurisdictional impacts.* In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development, the city may enter into a cross jurisdictional impact agreement with one or more adjacent local governments, or the Florida Department of Transportation, to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall identify the methodology for addressing cross jurisdictional transportation impacts. The city shall notify the applicant if the applicant's TCEA mitigation is subject to assessing cross jurisdictional impacts and the applicant shall be subject to~~

~~the requirements of the applicable cross jurisdictional impact agreement.~~

2. 4.1.7 *Fees.*

(a) The city shall establish review fees for the review of transportation mobility solution reports for traffic and multi-modal impacts associated with a specific project application.

(b) The applicant shall be responsible for any consultant or legal expenses that the city incurs for methodology meetings, consultation, review and processing of the materials provided by the applicant.

DIVISION 5. STATUS OF CAPACITY RESERVATIONS, CERTIFICATES, AND AGREEMENTS

Prior to the adoption of Ordinance No. 1692-16, final development order approval timeframes were intertwined with a capacity reservation process that included certificates of capacity, capacity reservation payments, and capacity reservation agreements. This division addresses the status of such prior reservations under the current mobility management regulations.

(a) *Capacity reservation payments.*

(1) Under the city's previous transportation and utility concurrency management system, applicants who received approved final development orders were, within 90 calendar days of approval, to have obtained all applicable building permits or pay a capacity reservation fee in order to receive a certificate of capacity and vest the final development order approval. The capacity reservation payment vested the approval for a one-year term outside of activity centers, and a two-year term inside of activity centers. Capacity reservation payments were credited toward the project's city transportation impact fees at the time permits were obtained. Potable water and sanitary sewer capacity was also reserved, but no additional reservation payment was required.

(2) Under the city's revised concurrency management and mobility management systems, no mobility capacity reservation is necessary and potable water and sanitary sewer capacity is reserved when the underlying development project application is approved. No capacity reservation payments are required. The development order will vest the project approval for the duration of the development order. The mobility fees, utility connection fees, and impact fees are due with the issuance of the building permit(s) for the project.

(3) Prior payments of capacity reservation fees will continue to vest development approvals for the duration of the associated capacity reservation term. Capacity reservation fees previously paid are eligible to be credited toward the mobility fees for projects with active site plan or final development plan approvals. Capacity reservation fees paid for projects which are null and void shall be deemed to have been earned despite the fact that the applicant may not utilize the reserved capacity.

(b) *Certificates of capacity.*

(1) Under the city's previous transportation and utility concurrency management system, the city issued a certificate of capacity upon an owner/developer's payment of a capacity reservation fee. An owner/developer was to have been in the possession of a valid unexpired certificate of capacity in order to vest the final development order approval and be eligible for building permits. The development order did not result in a right to develop without a current and valid certificate of capacity.

(2) Under the city's revised concurrency management and mobility management systems, a certificate of capacity is required for potable water and sanitary sewer capacity. The certificate of capacity is incorporated within the development order prepared by the City for the underlying development project application. The owner/developer is in

possession of a certificate of capacity by virtue of issuance of the development order.

(c) *Capacity reservation agreements.*

(1) Under the city's previous transportation and utility concurrency management system, capacity reservation agreements were used for projects that had multiple phases that extended beyond the standard capacity reservation time limits, which affected the vesting of the development order.

(2) Under the city's revised concurrency management and mobility management systems, existing capacity reservation agreements shall continue to be recognized and enable development approvals to extend beyond the standard approval timeframes pursuant to the terms of the agreement, provided all of the obligations and requirements of the agreement continue to be satisfied.

(3) Should a capacity reservation agreement expire, be terminated, or if its terms and conditions are otherwise in breach, the development approvals associated with said capacity reservation shall expire, the capacity reserved shall be released, and the capacity reservation fee forfeited.

~~**2.1.8 Exemptions for concurrency test.**~~

~~(1) The following development orders and permits are exempt from this article, and may commence development without applying for concurrency review:~~

~~a. Any addition to a residence;~~

~~b. Interior completion of a shell-only structure for uses with same or less intensity as identified on an approved site plan;~~

~~c. Interior renovations with equal or less impact on public facilities;~~

~~d. Accessory structure to a residence;~~

~~e. Storage addition to a nonresidential use;~~

~~f. Replacement structure except for a nonconforming use in accordance with land development code provisions on nonconforming uses;~~

~~g. Temporary construction trailers;~~

~~h. Wells and septic tanks;~~

~~i. Driveway or resurfacing, parking lot paving and similar paving projects (i.e., loading docks);~~

~~j. Reroofing of structures;~~

~~k. Demolitions;~~

~~l. Occupational license for a change in tenant space similar to the previous business tenant in that space with equal or less impact on public facilities;~~

~~m. Single-family and duplex residences on lots which were platted prior to October 1, 1992, provided that:~~

~~(1) All such exemptions expire on October 1, 1997; and~~

~~(2) Must be accounted for during the once per year cumulative draw down;~~

~~n. The following conditional use category items:~~

~~(1) Public utility and service structures;~~

~~(2) Attached or detached guest house to a residence;~~

~~(3) Accessory parking for passenger vehicles when intended for a permitted adjacent commercial use;~~

~~(4) All Group II permits;~~

~~o. Change of use(s) which is determined by the city to cause less impacts on public facilities than the existing use;~~

~~p. Accessory use to an existing use/structure which is determined by the city to cause no added impacts on public facilities;~~

~~q. Minor plats that do not increase density or intensity;~~

~~r. Development that creates "de minimis" impact on public facilities.~~

~~(2) In order to monitor the cumulative effect on public facility capacity, an internal concurrency test shall be performed by the city for the~~

~~following development orders that will be able to continue in the development review process. regardless of the results of their concurrency test:~~

~~a. Single-family and duplex residences on lots which were platted prior to October 1, 1992, which receive exemptions from the requirements of this article pursuant to subsection (1)m. above. Such exemptions expire on October 1, 1997.~~

~~b. Development that is determined to be vested.~~

~~(3) Development within the designated transportation concurrency exception area may be exempt from transportation concurrency but still must submit concurrency management application for the remaining facilities. Exemption from concurrency does not necessarily exempt any development from conducting a traffic impact analysis.~~

~~2.1.9 Level of service standards for required services and facilities.~~

~~The adopted level of service standards for those public facilities for which concurrency is required shall be as established in the city's comprehensive plan under the following cited policies:~~

~~*2.1.7.1 Potable water:*~~

~~Policy 10-1.1.4~~

~~*2.1.7.2 Sanitary sewer:*~~

~~Policy 10-1.1.5~~

~~*2.1.7.3. Solid waste collection:*~~

~~Policy 10-1.1.3~~

~~*2.1.7.4. Parks and recreation:*~~

~~Policy 10-1.1.7~~

~~*2.1.7.5. Drainage:*~~

~~Policy 10-1.1.6~~

~~*2.1.7.6. Roads:*~~

~~Policy 10-1.1.2~~

~~*2.1.7.7. Public schools:*~~

~~Policy 10-1.1.8~~

~~**2.1.10 Capacity reservation procedures.**~~

~~(1) Final development orders that pass the concurrency test shall obtain "reserved status" upon payment of a capacity reservation fee at the appropriate payment level (see Table 2).~~

~~(2) The city has specific time limits for most types of development orders, and the capacity certificate will be valid for the same period of time as the underlying development order. Time limits on capacity development reservations are as follows:~~

~~**TIME LIMITS ON CAPACITY RESERVATIONS FOR CONCURRENCY**~~

~~**Type of Development Order (D.O.)**~~	~~**D.O. Reservation Period**~~
~~**Preliminary D.O.**~~	
~~1. Variance~~	~~NA~~
~~2. Development Waivers~~	~~NA~~
~~3. Abandonment~~	~~NA~~
~~4. Plan Amendment~~	~~NA~~
~~5. Rezoning~~	~~NA~~
~~6. Preliminary Site Plan~~	~~1 year~~
~~7. Preliminary Master Plan~~	~~1 year~~
~~8. Preliminary Plan and Plat~~	~~1 year~~
~~**Final D.O.**~~	
~~1. DRI~~	~~as specified in D.O.~~
~~2. All Permits (Group I, Group II and Other)~~	~~6 months~~

~~3. Final Site Plan Without infrastructure (see Table 2)~~	~~1 to 2 years~~
~~4. East Town, West Town and Gateway Activity Center projects without Infrastructure (see Table 2)~~	~~2 years~~
~~5. Regional Business Center (see Table 2)~~	~~2 years~~
~~6. Final Plan and Plat~~	~~same as Final Site Plan~~
~~7. Single-Family (excluding minor plats)~~	~~1 or 2 years~~
~~8. Final site plans not in the RBC with installed infrastructure can receive up to an additional 4 years.~~	

~~(3) The city hereby adopts a concurrency management/concurrency reservation application program in five steps as described in Table 1 and as outlined below.~~

~~a. In Step 1, upon payment of the concurrency test application fee, the city will conduct a concurrency test which will be good for 60 calendar days. Utilizing this step will allow an applicant up to 60 calendar days to submit plans. Capacity is determined for maximum or specified uses, densities and intensities.~~

~~b. Step 2 begins when a formal application for either a preliminary or, if applicable, a final site plan is submitted to the city, along with the application review fee. In Step 2, the project is placed in the "encumbered" status once a formal application for site plan is submitted and under review.~~

~~c. Step 3 covers preliminary plan approval, which is valid for one year.~~

~~d. Step 4 covers final plan approval. The applicant must pull all building permits or pay the reservation fees within 90 calendar days after final approval or the approval becomes null and void. Upon payment of the reservation fees, the final development order and certificate of capacity are issued. In Step 4, the applicant has the payment options as listed in Table 2.~~

~~e. In Step 5 the building permit is submitted for review and approval. Once the building permit has been pulled, the concurrency process is complete for that project.~~

~~(4) No final development approvals/orders may exceed three terms (See Table 2), without installing infrastructure (this does not include review of plans).~~

~~(5) Final development orders/projects that have installed infrastructure (not less than sewer, potable and reclaimed water, streets and drainage) can obtain additional time for development capacity by paying the additional capacity reservation fees as outlined in Table 2. Total time to reserve capacity for final development orders shall not exceed seven terms, without an agreement as outlined in subsection (6) below.~~

~~(6) Projects which will require more than seven terms from the final site plan approval date to be completed must enter into a capacity reservation agreement with the city during the final site plan approval process.~~

~~(7) Concurrency determination analysis will only have to be done once, if not more than 60 calendar days lapses between the test and the submittal of the completed plan application.~~

~~(8) Projects can obtain site work permits for new construction without obtaining building permits. Site work permits will not vest the project or be considered to expand or extend the capacity reservation.~~

~~(9) The city will specifically identify in its conditions of approval any necessary off-site infrastructure or facility improvements that are needed to support the project, whether or not the needed facility is public or private.~~

~~2.1.11 Fees.~~

~~(1) The city shall establish by resolution fees for concurrency testing, both formal and informal, for inquiries which require substantially the same research as a full-scale concurrency test, for time required to review alternative demand data which an applicant~~

~~may provide, as well as any traffic studies or mitigation plans which an applicant requests be reviewed as part of a concurrency test, administrative costs for extending capacity reservation time limits resulting from the approval of an extension of a development order, and for capacity reservations. The capacity reservation fee payment schedule for projects with and without installed infrastructure and/or building permits is contained in Table 2 below.~~

~~(2) Payment of first-term capacity reservation fees is due within 90 calendar days after final development order approval. If payment is not received within 90 calendar days (or a building permit is not pulled), approval is null and void. The city is not responsible for notifying applicants of the expiration of each term.~~

~~(3) Capacity reservation fees are not refundable. Capacity reservation fees paid for projects which expire or become null and void are not creditable or refundable. Capacity reservation fees are considered earned at the time they are received despite the fact that the applicant may not utilize the reserved capacity.~~

~~(4) Vested projects and concurrency exempt projects do not pay capacity reservation fees. Vested projects in possession of a final development order will be able to obtain permits without any reservation prepayment of development fees.~~

~~(5) The capacity reservation fees are only for city development/transportation impact fees and are not for any other fees assessed by Seminole County for roads and schools or other state or federal fees attached to the issuance of a building permit or development payment.~~

~~(6) Preliminary development orders with concurrency tests receive one year of capacity reservation at no cost to the applicant.~~

~~(7) For final development orders in the RBC, the capacity reservation fee for a six-month extension is equal to the first-term payment level (Table 2). Fees paid for extensions in the RBC are not creditable toward any other fees.~~

~~2.1.12 - Appeals.~~

~~(1) An applicant may appeal a failed concurrency test on three grounds:~~

~~a. A technical error;~~

~~b. The applicant provided alternative data or a traffic mitigation plan that was rejected by the city;~~

~~c. Unwarranted delay in review that allowed capacity to be given to another applicant.~~

~~(2) The appeal of failed concurrency test shall be requested in writing within 15 calendar days of the date of failed concurrency test to the growth management department. A recommendation will be formulated by the growth management department with regard to the appeal and transmitted to the city manager within 30 calendar days of the receipt of request for appeal. A final decision will be made by the city manager within 15 calendar days upon receipt of the staff recommendation. Appeal of a failed concurrency test by the city manager shall be made by filing proceedings in the Circuit Court of Seminole County, Florida, within 30 calendar days of the denial by the city manager.~~

~~(3) If an applicant is denied a development order on concurrency grounds, they may not resubmit the same application for a period of six months from the date the application was denied. If the applicant makes material or significant reductions to the densities and intensities of use in the application, it may be resubmitted at any time.~~

~~TABLE 1~~
~~CONCURRENCY MANAGEMENT PROGRAM STEPS~~

~~Step 1~~	~~Developer submits the Concurrency Management Application with appropriate fees. If capacity is available it is encumbered for 60 calendar days. Applicant either submits site plans or pays capacity reservation fees within 60 calendar days, otherwise test results are void.~~

~~**Step 2**~~	~~Developer submits Formal Application for Preliminary and/or Final Site Plan with appropriate application fee.~~
~~**Step 3**~~	~~With Preliminary Plan Approval encumbered capacity is reserved for applicant at no cost for 1 Year.~~
~~**Step 4**~~	~~After Final Plan Approval, Capacity Reservation Fee Payment is due within 90 calendar days after final Approval. See Table 2 for payment terms. Final Development Order Issued and Certificate of Capacity Issued.~~
~~**Optional Step 4**~~	~~Upon final plan approval go directly to STEP 5. If all building permits are pulled within 90 calendar days after final approval, CAPACITY RESERVATION DOES NOT APPLY.~~
~~**Step 5**~~	~~Developer pulls Building Permit. All development fees, Impact fees, connection fees, and Seminole County fees are due.~~

~~NOTES:~~

~~1. Payment is due within 90 calendar days after final approval; if not received, approval is null and void.~~

~~**TABLE 2**~~
~~**CAPACITY RESERVATION FEE PAYMENT SCHEDULE**~~

	~~Nonresidential Uses Outside Activity Centers~~		~~All Residential Outside Activity Centers~~		~~East Town, West Town & Gateway Activity Center Projects~~		~~Regional Business Center Projects~~	
~~Term~~	~~Year~~	~~Fees~~	~~Year~~	~~Fees~~	~~Year~~	~~Fees~~	~~Year~~	~~Fees~~
~~First Term~~	~~1~~	~~10%[1]~~	~~1~~	~~15%[1]~~	~~2~~	~~10%[1]~~	~~2~~	~~10%[1], [3]~~
~~Each Additional Term [2]~~	~~1~~	~~7.5%[1]~~	~~1~~	~~15%[1]~~	~~2~~	~~7.5%[1]~~	~~N/A[3]~~	~~N/A[3]~~

~~**TERM LIMITS AND REQUIREMENTS:** A maximum of three terms can be reserved without installing required project infrastructure. With installed infrastructure and approval a maximum of seven terms can be reserved.~~

~~**TABLE 2 FOOTNOTES:**~~

~~1. Fees are equal to a percentage of a project's city transportation impact fees.~~

~~2. Payment for each additional term shall be received prior to the expiration of the capacity reservation or the approval is null and void, and all previous payments are considered to be earned despite the fact that the owner/developer may not utilize the reserved capacity.~~

~~3. Time limits in the RBC beyond two years are determined by the execution of a capacity reservation agreement. (See article IV, sections 4.2.6 through 4.2.7.)~~

~~4. Excluding minor subdivisions.~~

~~Capacity reservation fees for active projects with final development orders shall be credited toward the current city development/impact fees, when building permits are issued.~~

~~Payment for the first term capacity reservation fee shall be received by the city within 90 calendar days after final approval; otherwise, approval is null and void.~~

SECTION TWO: City Code of Ordinances, Chapter 28, "Land Development Code," Article IV., "Site Plans," is hereby amended to read as follows:

ARTICLE IV. SITE PLANS

DIVISION 1. GENERAL PROVISIONS

4.1.1 Purpose and intent.

The public health, safety, comfort and welfare require the harmonious, orderly, and progressive development of the land within the corporate limits of

the City of Altamonte Springs. Once land has been developed, the correction of defects is costly and difficult. Substantial public responsibility is created by each new development, involving the maintenance of streets and drainage facilities, and the provision of additional public services. As the general welfare, health, safety and convenience of the community are thereby directly affected by the use of land, it is in the direct interest of the public that developments be conceived, designed and developed in accordance with sound rules and proper minimum standards. Consideration shall be given in the review of site plan applications to the character of an area and the availability of public facilities to ensure the compatibility and coordination of land uses and facilities within a given geographic unit and to ensure the following:

(a) The establishment of standards for site design which will encourage the development of sound and stable areas within the corporate limits of the City of Altamonte Springs.

(b) Installation to prescribed standards by the land developer of those required improvements which should not become a charge on the citizens and taxpayers of already existing areas.

(c) The adequate and efficient supply of utilities, streets and services to new land developments.

(d) The prevention of haphazard, premature or scattered land development.

(e) The prevention of traffic hazards and congestion which result from narrow or poorly aligned streets and from excessive ingress and egress points along major traffic arteries, and the provision of safe and convenient pedestrian, bicycle, transit, and vehicular ~~traffic~~ circulation~~, both vehicular and pedestrian,~~ in new land development.

(f) Safety from fire, panic and other dangers, to promote health and the general welfare.

(g) Protection from flooding hazards and ensure proper water management.

(h) The design of energy-efficient developments and structures.

(i) The provision of public open spaces in new land developments through the dedication or reservation of land for recreational, educational and other public purposes.

(j) Coordination of new nonresidential development with existing development and both existing and proposed public improvements.

(k) The maintenance of minimum standards for visual, design and aesthetic development of properties in the city.

(l) Coordination of land development in accordance with orderly physical patterns and general plans and policies adopted by the city commission, in particular, the city comprehensive land use plan of the City of Altamonte Springs.

(m) Protection of the natural and scenic resources of the city, including surface waters and groundwater recharge areas.

4.1.2 Applicability.

The procedures contained in this article are applicable to all projects which involve the construction of any facility other than one single-family dwelling or major appurtenances thereto (e.g. private swimming pool, yard, fence, etc.), or two, or less duplex units in a subdivision where a certificate of subdivision completion ~~for the subdivision~~ has been issued by the city ~~engineer~~. Specifically excluded is the construction of "subdivision improvements" as provided for in article V of ~~the regulations~~ this code. Included are projects involving land development (other than subdivisions) without structures such as parking lots. Also included are projects which involve the alteration or conversion of existing structures or the change of use of a structure where the site and/or structure does not meet the current criteria of this ~~regulation~~ code. See sections 4.2.2.4.1 and 4.2.2.4.2 of this article for specific exceptions to the standard review process. Changes in use shall be evaluated by the development review committee as to the need for a complete site plan review, and possible modifications, based on the nature of the change in use or occupancy, and the need for compliance with current regulations. The provisions of this Code, where appropriate, are to be applied to both on-site and off-site development. This document shall be the governing document for such development. Where there are conflicts and discrepancies with other city policies, ordinances or regulations, the more restrictive requirements shall govern.

DIVISION 2. GENERAL PROCEDURES FOR SECURING APPROVAL OF PRELIMINARY AND FINAL SITE PLANS

4.2.1 Pre-application conference.

It is required that the applicant schedule a pre-application meeting with the development review committee to discuss the proposed development. It is required that the applicant meet with the development review committee no less than two weeks prior to submitting formal application for the ~~preliminary~~ site plan. The purpose of this conference is to review the feasibility of the proposed development and any potential development bonuses, waivers or variances~~. Also~~, concurrency procedures, and mobility management requirements ~~are reviewed~~. The applicant must complete an application form and submit a boundary survey or concept plan illustrating surrounding properties, existing improvements and a written description of the proposal. The applicant must also provide documentation of any prior approvals and indicate the need for any variances, development waivers or development bonuses.

Note: A methodology meeting must be scheduled between the traffic engineer and the city planning staff prior to beginning any required mobility solutions study ~~traffic impact analysis (TIA) report including TIAs for projects within the transportation concurrency exception area (TCEA).~~

4.2.2 Application procedure.

4.2.2.1 *General.* A preliminary site plan approved by the planning board~~, or development review committee as appropriate under the terms of this article,~~ is required prior to the review and approval of the final site plan. However, for applications ~~with~~ eligible for a combined preliminary/final plan, the preliminary plan will be approved concurrently with the final plan by the development review committee. It shall be unlawful for any person to construct, erect, or alter a building or structure or to develop, change, or improve land for which a ~~preliminary~~ site plan is required except in accordance with an approved final site plan.

To facilitate the development and design of the preliminary site plan and final site plan, refer to the Altamonte Springs Developer's Guide in addition to the requirements set forth in the land development code.

4.2.2.2 *Development review procedures.* All preliminary site plans shall be reviewed by the development review committee to determine that the preliminary site plan application is complete and shall make recommendations to the planning board who shall either approve, approve with conditions or deny the application based on the intent and criteria set forth in the land development code and developer's guide. The preliminary site plan review encompasses the review of development bonuses, and multi-phased projects with or without bonuses. Additionally, a consistency determination shall be completed for conformance to technical requirements, comprehensive plan policies, and activity center design guidelines or standards. ~~the Central Business District Urban Design Plan, the West Town Center Design Guidelines, the Gateway Center Design Guidelines and Standards, and the TCEA performance criteria.~~ In a multi-phased project, all phases must be addressed on a preliminary site plan. The preliminary site plan shall also include all land under single, corporation, firm, partnership or association ownership that has an interest in the proposed development.

4.2.2.3 *Planning board procedures.* Based upon their review of the information presented by the applicant, the recommendations of the development review committee, and in consideration of the express purpose and intent and criteria set forth in the comprehensive plan and land development regulations of the city, the planning board will either approve, approve subject to stated conditions, or deny the preliminary site plan. Where planning board either denies or approves with conditions they shall enter specific findings of fact delineating their reasons, therefore.

4.2.2.4.1 *Site plan review exceptions.* The following site plans shall be exempt from planning board review and reviewed only by the development review committee provided that they fully conform to all existing city regulations:

(a) Inside the Regional Business Center, projects which generate up to 2,000 average daily trips (ADT's), but do not exceed 100,000 square feet gross, do not require planning board approval.

(b) Outside the Regional Business Center, projects which generate up to 1,000 average daily trips (ADT's), but do not exceed 60,000 square feet gross, do not require planning board approval.

(c) For purposes of this section, square footage shall be based upon gross square feet. Average daily trips shall be based upon the latest edition of

the Institute of Transportation Engineers' Trip Generation Manual, and shall be verified through the applicant's traffic impact analysis. All thresholds are cumulative, and shall include all phases or previously approved or constructed portions of a project. Multiple-family project thresholds shall be measured by ADT's.

(d) The following site plans shall always require planning board approval regardless of the threshold level:

(1) Fast-food restaurants with drive-through window(s).

(2) Convenience stores, with or without fuel sales.

(3) Automobile service stations, with or without convenience stores.

(4) ~~Automobile service stations with convenience stores.~~

~~(5) Convenience stores with automobile service stations.~~

~~(6)~~ Adult entertainment.

(~~7~~ 5) Any project proposing waivers, variances, or development bonuses greater than 15 percent.

~~(8) Any project proposing a waiver or variance greater than 15 percent.~~

(e) All residential subdivisions shall be required to have a site plan and plat approved by the planning board and the development review committee.

(f) The growth management director shall have the authority to direct any preliminary site plan to planning board for review and approval, regardless of the threshold exceptions stated herein. The director's decision shall be based upon his/her assessment of the project's potential for negative impacts upon nearby properties or public facilities, the need for protection of the public interest by formal planning board review of the project, and/or the existence of particular circumstances associated with a project or an application.

(g) The city manager shall have the authority to review and modify the threshold levels by an amount not to exceed the permitted floor area

ratio for the site's zoning district as such levels are applied to a particular project should the city determine that such higher or lower threshold as to planning board review is appropriate.

(h) The planning board shall hear and decide appeals of administrative determinations regarding the project. Such administrative determinations include, but are not limited to, administrative denial of an application, conditions associated with administrative approval of an application, or administrative interpretation associated with the processing of the application.

(i) Nonresidential subdivision plats associated with site plans exempt from planning board review under the guidelines established in section 4.2.2.4.1 shall also be exempt from planning board review and reviewed only by the development review committee provided that the plat fully conforms to all existing city regulations. All subdivision plats must be approved by the city commission pursuant to section 5.2.5

4.2.2.4.2 *Building addition exceptions.* The following projects shall be exempt from planning board review, and reviewed only by the development review committee provided that they fully conform to all existing city regulations:

(a) Building additions and/or modifications and/or revisions to approved site plans while under construction which do not increase the gross square footage or number of dwelling units of a building.

(b) Additions to existing nonresidential and multifamily residential projects that cumulatively, do not exceed the thresholds listed below:

(1) Inside the Regional Business Center, projects which generate up to 2,000 average daily trips (ADT's), but do not exceed 100,000 square feet gross.

(2) Outside the Regional Business Center projects which generate up to 1,000 average daily trips (ADT's), but do not exceed 60,000 square feet gross.

(3) Multiple-family project thresholds shall be measured by ADT's.

(4) Building additions that would cause the cumulative development intensity to exceed the above thresholds, and that are larger than 1,000 square feet gross, shall be required to have preliminary site plan approved by the planning board and the final site plan approved by the development review committee.

(c) The following land uses shall always require planning board approval for proposed additions greater than 1,000 square feet, regardless of the threshold level:

(1) Fast-food restaurants with drive-through window(s).

(2) Convenience stores, with or without fuel sales.

(3) Automobile service stations, with or without convenience stores.

(4) ~~Automobile service stations with convenience stores.~~

~~(5) Convenience stores with automobile service stations.~~

~~(6)~~ Adult entertainment.

(~~7~~5) Any project proposing waivers variances, or development bonuses greater than 15 percent.

~~(8) Any project proposing a waiver or variance greater than 15 percent.~~

(d) All residential projects shall be required to have a site plan and plat approved by the planning board and the development review committee.

4.2.2.5 *Building permit process.* No building permit shall be issued by the city until a final site plan has been approved by the development review committee, or the planning board or city commission if on appeal. No work of any nature shall commence on the property until a ~~building~~ permit has been issued~~, except with the express approval of the development review committee or planning board as appropriate, or the city commission, if on appeal~~. Projects can obtain site improvement permits for new construction without obtaining building permits. Site work permits will not vest the project or be considered to expand or extend the capacity reservation.

4.2.2.6 *Development requirement.* Upon site plan approval and issuance of a building permit, the development shall be built and used in strict accordance with the approved site plan and these regulations.

4.2.3 Fees.

Application fees for site plan review, as adopted from time to time by resolution of the city commission, must be paid to the city at the time the submittal ~~are~~ is made to the growth management department.

Impact fees, mobility fees, and utility connection fees will be assessed and shall be paid prior to the issuance of a building permit. Impact fees ~~will be assessed~~ and mobility fees are pursuant to chapter 25 of the city code of ordinances. Utility connection fees are pursuant to chapter 26 of the city code of ordinances. ~~for the following services and facilities: Transportation (including roadways within the TCEA), police and parks and recreation. Amounts are based upon the adopted schedule, presented in Ordinance No. 1469-02.~~

4.2.4 Preliminary or final site plan revisions.

4.2.4.1 *Revisions of the preliminary site plan.* Any major or substantial change from the planning board approved preliminary plan which affects the intent and character of the development, or changes in approved development bonuses shall be reviewed and approved by the planning board upon receipt of the recommendation of the development review committee. Minor changes which do not affect the intent or character of the development may be approved by the development review committee.

4.2.4.2 *Revisions of the final site plan.* Changes to the approved final site plan shall be accomplished according to the approval procedures contained in this article. Any major or substantial change to the final site plan ~~that is approved by the development review committee~~ which affects the intent and character of the development as was approved by the planning board~~,~~ may be cause for reapproval of the entire site plan by the planning board. Minor changes which do not affect the intent or character of the development may be approved by the development review committee through a site plan revision application.

4.2.5 Time limit on approval.

4.2.5.1 *Preliminary site plan.* The approval of the preliminary site plan ~~(inside and outside activity centers)~~ approved by the planning board shall be determined as a condition of approval, but shall not exceed one year.

(a) *Extension of the preliminary site plan.* The preliminary site plan may be extended upon application to the planning board for an additional period not to exceed one year ~~and consistent with concurrency procedures and capacity reservation fee schedules contained in article II. Additionally, a~~ A consistency determination shall be completed for conformance to technical requirements and comprehensive plan policies.

4.2.5.2 *Final site plan.* The developer must submit the final site plan application as per the land development code and developer's guide prior to the expiration date of the preliminary site plan, but in no case will that exceed two years inclusive of one extension. Additionally, the developer must obtain approval of the final site plan within two years of the date of approval of the preliminary site plan, or within three years if a one-year extension for the preliminary plan was granted, or the preliminary plan approval and the final plan application shall both expire. The final site plan shall be approved by the development review committee (DRC) and shall be valid for one term ~~(one or two years), consistent with concurrency procedures~~. Where substantial construction has not begun within the first term, or where substantial progress has not been made during any six-month period following commencement of construction, the site plan shall be re-evaluated by the appropriate bodies to determine whether the site plan should be extended or expired.

(a) Final site plan approval term. The maximum length of time a final development order shall be valid is three terms, which includes the original term of approval and two extension terms, provided the extension applications are approved by the city. One term of final site plan approval shall be equal to the following durations:

Location	Length of a Term	First Term	Second Term	Third Term
Outside activity centers	1 Year	Year 1	Year 2	Year 3
Inside activity centers	2 Years	Years 1-2	Years 3-4	Years 5-6

(~~a~~ b) Extension of the final site plan. ~~A written request~~ An application must be submitted to extend the final site plan along with required ~~applications,~~ fees and plans. ~~If the final site plan extension is approved by the development review committee, the applicant must pay the applicable capacity reservation. For the specific fee schedule, refer to article II.~~ The DRC shall complete a consistency determination for conformance to technical requirements and comprehensive plan policies. No more than two extensions to a final site plan approval may be approved.

~~(b)~~ ~~For projects in the RBC the development review committee may grant only one, six-month extension of the final site plan with appropriate documentation of the causes of the construction delay. Lot clearing and grading, road construction, drainage improvements and landscaping shall not constitute development activity for purposes of this section. For more information on the six-month extension see article II.~~

~~(c)~~ ~~Development orders for projects in the RBC for which building permits have not been pulled and development activity begun within two years (two years and six months with approved extension) of final site plan approval are null and void, have no development rights, and to continue must have the entire plan reapproved subject to all requirements and procedures existing at the time of reapproval.~~

~~(d)~~(c) Projects located in ~~the RBC~~ activity centers which are multi-phased and not designed to be completed at one time, and which will require more than three terms ~~two years~~ to complete from the approval of the final development order may ~~must~~ enter into ~~a capacity reservation~~ an agreement with the city specifying the terms and conditions under which development order is maintained in an extended active state for the project. Such an agreement and its terms shall be discretionary to the city and shall be required concurrent with the approval of the ~~preliminary~~ final development order. If the agreement is not executed within 90 days of the date of approval of the final development order, all approvals shall expire.

(1) ~~*Note:*~~ Lot clearing and grading, road construction, drainage improvements and landscaping shall not constitute development activity for purposes of this section.

(2) The agreement shall specify, at a minimum:

~~**4.2.6 Securing approval of site plan within the Regional Business Center (RBC).**~~

~~The following are additional requirements when the project is within the Regional Business Center (RBC) and multi-phased:~~

~~4.2.6.1 Where the project is multi-phased, i.e., not designed to be completed at one time, then at the time of preliminary plan approval the developer shall enter into a capacity phasing agreement specifying the terms and conditions under which development capacity is reserved or committed to the project. The agreement shall be executed within 90 days of preliminary plan approval and shall specify:~~

~~(a.)~~ The time period for the terms of the overall project and each phase ~~capacity reservation~~, not to exceed a total of ~~15~~ 10 years and a maximum of five years per phase.

~~(b.)~~ The required activity that must take place within each phase so as to maintain ~~continue~~ the ~~capacity reservation~~ development order for subsequent phases. Required activity can include, but is not limited to, the amount of development required, the provision of mobility performance standards, and the satisfaction of conditions of approval.

~~(c.)~~ Provisions for adjustments of phase lengths and required activity to address the comprehensive plan requirements and other factors beyond the control of the developer.

~~(d.)~~ An extended approval fee equal to 15% of the project mobility fee, per term, in order to maintain the extended duration of the project's capacity reservation, mobility solutions authorization, and site plan approval. ~~A reservation fee equal to a percentage~~

~~of the transportation impact fee times the square feet and/or number of dwelling units for permitted use without bonuses, plus 25 percent of the requested bonus percentage as a requirement for capacity reservation(s) when in the Regional Business Center (RBC)~~. The payment of the fee shall be as described in the following chart:

Term	Years	Percentage of Mobility Fee	Term Authorization
Term 1	Years 1-2	0%	Original
Term 2	Years 3-4	0%	Extension
Term 3	Years 5-6	0%	Extension
Term 4	Years 7-8	20%	Agreement
Term 5	Years 9-10	20%	Agreement

Extended approval fees shall be credited toward the project mobility fees at the time of permit issuance. Failure of the applicant to pay the extended approval fee for the required terms shall render the final development order void. Extended approval fees are not refundable. Fees paid for projects which are null and void shall be deemed to have been earned despite the fact that the applicant may not utilize the reserved capacity, mobility solutions authorizations, and final development order.

~~(e.)~~ Project infrastructure shall be installed within the first three terms after approval of the final development order (not less than potable water, sanitary sewer, reclaimed water, streets, sidewalks, and drainage). ~~Preliminary plans within the Regional Business Center may be approved and are subject to the same time limits and requirements as a preliminary plan approved and allocated capacity and to guidelines as adopted from time to time by the planning board.~~

(3) The applicant shall be responsible for the city's legal expenses in the preparation of the agreement.

(d) Capacity reservation agreements executed prior to the adoption of the mobility management system in Ordinance No. 1692-16 shall continue to be recognized and enable development approvals to extend beyond the standard approval timeframes pursuant to the terms of the agreement, provided all of the obligations and requirements of the agreement continue to be satisfied.

~~**4.2.7 Requirements for fees for projects within the transportation concurrency exception area (TCEA).**~~

~~4.2.7.2 *TCEA fee.* The cost of the TCEA fee is for the administration of the program and includes monitoring, analysis, and reporting requirements within the TCEA as required by comprehensive plan policies. The cost is calculated at $4.44 per vehicle trip. Said fee shall be collected only within the TCEA as established by Ordinance 1579-07, as amended. A map of the TCEA boundaries is available in the offices of the growth management department. A TCEA fee shall be collected at the time of building permit issuance and which fee shall be calculated in accordance with the following schedule:~~

~~**Transportation Concurrency Exception Area Fee**~~

~~Land Use Classification~~	~~Trip Rate per Land Use~~	~~Measurement per~~	~~Cost per Trip Factor~~	~~Final Fee Rate (per Measure)~~
~~Multifamily~~	~~6.128~~	~~Unit~~	~~$4.44~~	~~$27.21~~
~~Hotel~~	~~8.92~~	~~Room~~	~~$4.44~~	~~$39.60~~
~~Office~~	~~7.45~~	~~1,000 square feet~~	~~$4.44~~	~~$33.08~~
~~Retail~~	~~31.59~~	~~1,000 square feet~~	~~$4.44~~	~~$140.26~~

4.2.~~8~~ 6 Development review.

4.2.~~8~~6.1 *Sufficiency review.* Prior to a formal application being submitted for a ~~preliminary~~ site plan ~~or final site plan~~, the applicant ~~must~~ may elect to submit a plan and support documents for a sufficiency review one week prior to the first ~~formal~~ application submittal. ~~The application for preliminary or final site plan will not be accepted until the sufficiency review is passed.~~ The ~~plan~~

applicant's materials will be reviewed by city staff for compliance with preliminary site plan submittal requirements as set forth in the land development code and developer's guide to help the applicant identify deficient or missing items before the formal application submittal. ~~If the plan does not meet these requirements or is so incorrectly presented and fails to meet basic criteria of the Code herein, that plan will be rejected on that basis and plan resubmittal will not be accepted until the first Monday of the following month.~~

4.2.~~8~~6.2 *Development review for the preliminary site plan.*

(a) Upon acceptance of the formal application, the plan will be reviewed by the development review committee. Upon completion of the first review, the applicant is required to meet with the DRC to review the project and receive a nonbinding determination of plan approval or denial.

(1) If the application passes its development review committee review, the DRC shall inform the applicant in writing of the review comments to be addressed prior to final submission of preliminary site plans for transmittal to the planning board. Final submissions of preliminary site plans will require 11 sets of plans (or the number as determined to be adequate by the DRC chairperson).

(2) If the application does not pass its development review committee review, the DRC shall inform the applicant in writing of the review comments to be addressed prior to resubmittal of the preliminary site plan for DRC re-review. Plan resubmittal shall be made on the first Monday of the following month at which time a resubmittal fee will be required.

(3) If the development review committee determines that the plan or support materials do not meet the minimum land development code requirements, are so incorrectly or incompletely presented that they fail to demonstrate that they meet basic criteria of the Code herein, or the applicant is determined to be nonresponsive to the DRC review comments, the application will be rejected on that basis and plan resubmittal will not be accepted until the first Monday of the following month at which time a new processing fee ~~and application~~ will be required.

(b) Any preliminary site plan application not resubmitted within 60 calendar days of review shall be considered expired.

(c) Fees. Application fees for preliminary site plan and resubmittals for re-review, as adopted from time to time by resolution of the city commission, must be paid to the city, at the time the submittal ~~are~~ is made to the growth management department.

4.2.~~8~~6.3 *Development review for the final site plan.*

(a) Upon acceptance of the formal application, the plan will be reviewed by the development review committee. Upon completion of the first review, the applicant is required to meet with the DRC to review the project and receive a determination of plan approval or denial.

(b) The development review committee shall inform the applicant in writing of the review comments to be addressed prior to resubmittal of the final site plans.

(c) Upon resubmittal of the final site plan the DRC will approve or deny the application. If approved, the DRC will prepare a ~~report for approval~~ final development order.

(d) If the final site plan application is denied by the DRC, the applicant must resubmit the final site plan for DRC review.

(e) Any ~~combined preliminary/~~final site plan application not resubmitted within 60 calendar days of review shall be considered expired.

(f) During the review process, if the development review committee determines that the plan or support materials do not meet the minimum land development code requirements, are so incorrectly or incompletely presented that they fail to demonstrate that they meet basic criteria of the Code herein, or the applicant is determined to be nonresponsive to the DRC review comments, the application will be rejected on that basis and plan resubmittal will not be accepted until the next application submittal deadline at which time a new processing fee ~~and application~~ will be required.

(g) Fees. Application fees for final site plan, as adopted from time to time by resolution of the city commission, must be paid to the city, at the time the submittal are made to the growth management department.

4.2.~~8~~6.4 *Combining the preliminary and final plan for development review.*

(a) Submission of a combined preliminary site plan and final site plan~~s~~ is ~~an option available to applicants~~ the submittal process when the site plan is exempt from planning board approval by this article. The submission shall meet all the plan content and information requirements specified for both the preliminary site plan and final site plan submission.

(b) Upon acceptance of the formal application, the plan will be reviewed by the development review committee. Upon completion of the first review, the applicant is required to meet with the DRC to review the project and receive a determination of plan approval or denial.

(c) Upon resubmittal of the site plan the DRC will approve or deny the application. If approved, the DRC will prepare a ~~report for approval~~ final development order.

(d) If the combined preliminary/final site plan application is denied by the DRC, the applicant must resubmit the combined preliminary/final site plan for DRC review.

(e) Any combined preliminary/final site plan application not resubmitted within 60 calendar days of review shall be considered expired.

(f) During the review process, if the development review committee determines that the plan or support materials do not meet the minimum land development code requirements, are so incorrectly or incompletely presented that they fail to demonstrate that they meet basic criteria of the Code herein, or the applicant is determined to be nonresponsive to the DRC review comments, the application will be rejected on that basis and plan resubmittal will not be accepted until the next application submittal deadline at which time a new processing fee ~~and application~~ will be required.

(g) Fees. Application fees for submittal of a combined preliminary and final site plan, as adopted from time to time by resolution of the city

commission, must be paid to the city, at the time the submittals are made to the growth management department.

Note: Refer to the developer's guide for additional information on preliminary and final site plan review.

DIVISION 3. REQUIRED SUBMITTALS

4.3.1 Qualification of engineer.

Preliminary site plans and final site plans or any portion thereof involving engineering shall be certified and prepared by and/or under the direct supervision of a professional engineer, qualified by training and experience in the specific technical field involved and registered or licensed to practice that profession in the State of Florida.

4.3.2 Required submittals for the preliminary site plan.

(a) A preliminary site plan submitted to the growth management department shall contain the following exhibits (refer also to the preliminary and final plan review checklist in the developer's guide for specifications regarding submittal items and required plan sheet content):

(1) The evidence of unified control of the proposed site.

(2) A vicinity map showing the location of the proposed site, relationship to surrounding streets and thoroughfares, existing zoning on the site and surrounding areas, existing land use on the site and surrounding areas within 500 feet.

(3) A boundary survey ~~and legal description~~ of the property shall be required. An ALTA/ACSM land title survey, which shall be required for final site plan submittal, is preferred and may be submitted with the preliminary plan submittal or may be deferred until final plan submittal.

(4) A topographic survey including flood-prone delineations. The most recent USGS topographical survey and USGS flood-prone mapping may be utilized.

(5) A soils survey, which may be based on the most recent Seminole County Soils Survey, drawn to the same scale as the preliminary site plan, clearly identifying all soil types especially those which are apparently not suitable for buildings or major structures due to soils limitations.

(6) A plan with topography which clearly identifies proposed land uses, open space, and the proposed location of streets and thoroughfares, parking, recreation areas and other major facilities. Proposed access points and design transportation improvements including transit stop locations, pedestrian and bike paths.

(7) A table showing acreage and square feet for each category of land use including roads, open space and recreation, and a table of proposed maximum and average, gross and net residential densities for residential land uses and floor area ratios (FAR) as required.

(8) A proposed utility service concept plan, including sanitary sewers, storm drainage, potable water supply and water supplies for fire protection, including a definitive statement regarding the disposal of sewage effluent and stormwater drainage.

(9) A statement indicating that legal instruments will be created providing for the management of common areas and facilities.

(10) An analysis of the impact of the proposed site on ~~roads,~~ schools, utilities and other public facilities and services.

(11) ~~Traffic impact analysis (TIA):~~Mobility solutions report:

a. The developer shall have a qualified traffic engineer prepare and provide the city with a ~~traffic impact analysis~~ mobility solutions report, ~~including projects within the TCEA,~~ for review and approval~~.~~ in accordance with the requirements outlined in article II, division 4. A ~~traffic impact analysis~~ mobility solutions report may not be required if determined by the ~~growth management director~~ mobility director and~~/or~~ the city engineer that the proposed development will not have ~~a traffic~~ an impact which justifies such analysis.

b. Applicants shall follow the mobility solutions standards and guidelines provided in the city's developer's guide. ~~The growth management department keeps TIA guidelines on file for projects located inside and outside of the TCEA.~~ The analysis of ~~traffic~~ mobility impacts will provide an evaluation of on-site and off-site impacts and recommended improvements made necessary by the development, shall be based upon the city's mobility level of service standards and mobility performance standards. ~~the following findings and appropriate methodologies utilized in determining the findings for projects located outside of the TCEA:~~

~~1. Total projected average weekday trip ends for the site in question;~~

~~2. Design capacity of the access road(s);~~

~~3. Average projected peak-hour (including time of day) trip projections for the site in question;~~

~~4. Analysis of projected on- and off-site traffic patterns, i.e., turning movements;~~

~~5. Projected percentage of truck traffic;~~

~~6. Recommended improvements made necessary by the development;~~

~~7. Other related information as required by the city engineer.~~

c. The mobility performance standards required to mitigate impacts to the multi-modal system as documented in the mobility solutions report and accepted by the city shall be incorporated into the site plan in tabular form and include a description of the required construction improvements. ~~For projects located within the TCEA, the analysis of traffic impacts will be based on the city's TCEA traffic impact guidelines and shall also be required to meet the following performance criteria as described in subsection 2.1.7(2).~~

(12) A preliminary site plan description in sufficient detail to determine the general intent with respect to the following:

a. The general purpose and character of the proposed development including parking breakdown if applicable.

b. Land use by acreage, square feet and densities.

c. Structural concepts, including height and anticipated building type.

d. Major landscaping concepts with sufficient detail to demonstrate the minimum code requirements for landscaping will be met.

e. Recreation and open spaces.

f. Facilities commitments.

g. Housing types, price ranges and staging.

h. Phasing plan for multi-phased projects.

i. For projects with proposed development bonuses, list bonus request and categories offered with a brief description. A description of development bonuses can be found in division 46

(13) All projects shall include architectural elevation drawings, with colors and materials noted, with the site plan.

(14) All sites within any activity center shall submit an overall sign plan for the development.

(15) A statement, on the plan, requesting any development waivers or variances together with the required application forms and fees.

(16) Applicants shall submit for concurrency tests by providing, on the site plan, fully completed potable water and sanitary sewer capacity calculation tables for the existing uses and proposed uses, in a format as provided by the city. Site plan applications will not be accepted that do not include the fully completed tables.

4.3.3 Required submittals for final site plan.

4.3.3.1 *Requirements for approval of the final site plan.* Review of the submittal shall not begin, nor will the application be placed on the development review committee agenda, until the application has been determined to be complete. ~~A sufficiency review of the final site plan must be completed prior to formal application submittal.~~ An approved preliminary site plan is required for projects within the city limits prior to submittal of the final site plan (see division 2 and section 4.3.2 of this article for preliminary site plan requirements). The following shall be submitted unless waived by the DRC chairperson or development review committee (refer also to the preliminary and final plan review checklist in the developer's guide for specifications regarding submittal items and required plan sheet content):

4.3.3.1.1 Current ALTA/ACSM land title survey. A current ALTA/ACSM land title survey shall be included with the final site plan submittal as a supplement to the required engineering/architectural plans.

4.3.3.1.2 General development and proposed improvements: A final site plan submitted to the growth management department shall contain the following information (refer also to the preliminary and final plan review checklist in the developer's guide for specifications regarding submittal items and required plan sheet content): ~~On a set of engineering/architectural plans (24 inches by 36 inches maximum size) which are to be submitted, in duplicate copies as specified elsewhere in this document, to the growth management department the following information will be stated:~~

(a) *General information:*

(1) Name of project;

(2) Statement of intended use of site;

(3) Legal description of the property and size of parcel in acres and square feet;

(4) Name, address and telephone number of the owner or owners of record;

(5) Name, address and telephone number of the applicant and firm which he represents;

(6) Name, address, signature and registration of the professionals preparing the plan;

(7) Date, north arrow and scale, number of sheets; the scale (not smaller than one inch to 50 feet) shall be designated and, where appropriate, the same scale should be used in drawing the site plan rather than varying the scale;

(8) Vicinity map, showing relationship of proposed development to the surrounding streets and thoroughfares, shall be at a scale of not less than one inch equals 2,000 feet;

(9) Linear dimensions of the site and proposed building;

(10) Existing topography with a minimum of one-foot contour intervals for the proposed site. All elevations shall be referenced to United States Geological Survey Datum;

(11) Finished grading elevation;

(12) All existing and proposed building restriction lines (i.e., highway setback lines, easements, covenants, rights-of-way and building setback lines, even if more restrictive than those specified by the zoning regulations);

(13) Any formal commitments, including, but not limited to contributions to offset public facilities impacts;

(14) Density calculations for building, paving and landscaping areas;

(15) Parking calculations;

(16) Project address;

(17) Legal description of site;

(18) Adjacent municipal jurisdiction, zoning and business;

(19) All existing proposed uses;

(20) An overall sign plan including the location, size and height dimensions and arrangement, shall be required for all projects within an activity center ~~(Central Business District, East and West Town Centers, and the Gateway Center)~~;

(21) A land use cover analysis which includes, at a minimum, a determination of whether the site contains wetlands as defined in article I~~1~~.

(b) *Building and structures:*

(1) Intended use;

(2) Number of stories;

(3) Height of building;

(4) Number of dwelling units and density for multifamily site plans;

(5) Projected number of employees and number of company vehicles kept at site;

(6) For restaurants, entertainment or similar establishments, show number of seats and occupancy load;

(7) Square footage for proposed development gross square footage, nonstorage area, square footage of each story, gross square frontage of sales area, etc.;

(8) Photograph or sketch of proposed sign(s);

(9) Type of construction;

(c) *Streets, sidewalks, driveways, parking areas and loading spaces:*

(1) Engineering plans and specifications for streets, sidewalks, parking areas and driveways;

(2) All parking spaces designated;

(3) Number of parking spaces;

(4) Number and location of handicapped spaces;

(5) Number and designation of loading spaces;

(6) Number of square feet of paved parking and driveway area;

(7) Surface materials of driveways;

(8) Cross section of proposed street improvements;

(9) Fire lanes;

(10) Location of proposed driveway(s) and median cut(s);

(11) Internal traffic circulation plan, including directional arrows and signs to direct traffic flow;

(12) Location of traffic-control signs and signalization devices;

(13) Location of sidewalks (including connections to adjacent properties and sidewalk network);

(14) Coordination of walkways, bikeways, driveways, etc., with facilities in adjacent developments;

(15) All proposed streets and alleys;

(16) Extension or construction of service roads and on-site access must be shown where applicable;

(17) Mass transportation. A note on the plan shall acknowledge that the city has adopted policies in the comprehensive plan that requires mass transportation designs and improvements. All private developments will include provisions for participating in a mass transit or shuttle-bus system as part of the development review process consistent with the multi-modal transportation element. The city will require all private developments to participate through the execution of a developer's agreement regarding all costs associated with the appropriate mass transit system.

(d) *Drainage.* Engineering plans and specifications for collection and treatment of storm drainage, including a description of the preservation of any natural features, such as, lakes and streams or other natural features.

(e) *Dredge and fill.* If any dredging or filling operation is intended in development of the area, the developer's engineer shall consult with the city engineer to ensure conformity with dredge and fill requirements.

(f) *Soils.*

(1) A soil classification map as an overlay for comparison with proposed development activities shall be provided and indicate soil classifications of the site plan as identified by the United States Department of Agriculture Soil Conservation Service in the Seminole County Soil Survey and Soil Survey Supplement. An applicant may challenge this designation by securing competent expert evaluation, at the applicant's own expense, demonstrating that the identified soils are not classified correctly. If said determination is concurred in by the city engineer, the soils shall be correctly identified for the purpose of this Code.

(2) Soil analysis by a qualified soil engineer shall be furnished upon request of the city engineer.

(g) *Erosion control.* Provisions for the adequate control of erosion and sediment, indicating the location and description of the methods to be utilized during and after all phases of clearing, grading and construction.

(h) *Limits of floodplain.* Indicate flood elevation for 100-year flood on the site plan as established by the Federal Flood Insurance Administration and as supplemented by the United States Geological Survey Map of Flood Prone Areas. The actual acreage above and below the 100-year flood elevation, plus that area below the antecedent water level shall be listed numerically.

(i) *Proposed water, reclaimed water and sewer facilities.* Plans of proposed water, reclaimed water and sewer facilities shall be prepared in accordance with the requirements listed in article VII, Utilities.

(j) *Solid waste.* Location(s) and access provisions for refuse service, including pad, screening, fencing and landscaping.

(k) *Landscaping, arbor, recreation and open space:*

(1) Landscaping plan, irrigation system plan and provision for maintenance, including size, type and location of all landscaping, screens, walls, fences and buffers;

(2) Tree removal and replacement table, if applicable;

(3) Recreation and open space areas, if applicable;

(4) Existing tree survey;

(5) Arbor requirements.

(l) *Irrigation systems.* All irrigation systems will be installed in such a manner to facilitate conversion to the reclaimed water system and will be reconnected from the potable water system to the reclaimed water system within 90 days after the reclaimed water system is made available to the property. In instances where the owner has installed an irrigation pump and well within three years of the reclaimed water system being made available, the owner may obtain from the city commission approval to delay the connection to the reclaimed water system, so as to provide a certain time over which to depreciate the cost thereof.

(m) *Mobility performance standards.* The mobility performance standards required to mitigate impacts to the multi-modal system as documented in the mobility solutions report and accepted by the city shall be incorporated into the site plan in tabular form. The plan set shall also incorporate construction improvements of the mobility performance standards that are on-site or immediately adjacent to the project. ~~When a development tract consists of three or more aggregated parcels, a replat of the tract shall be required.~~

(n) *City control traverse.* When a site plan requires a survey of five or more acres, the survey shall be tied to the city control traverse and meet the standards set out in subsection 5.3.2.2(g~~f~~).

(o) *Easement dedications.* All easement dedications shall include sketches.

(p) *Potable water and sanitary sewer concurrency.* Applicants shall submit for concurrency tests by providing, on the site plan, fully completed potable water and sanitary sewer capacity calculation tables for the existing uses and proposed uses, in a format as provided by the city. Site plan applications will not be accepted that do not include the fully completed tables.

~~4.3.3.2 *Requirements for approval of a combined preliminary site plan and final site plan.* An application for approval of a combined preliminary and final site plan shall meet the content requirements for both preliminary site plans and final site plans as specified in this article.~~

4.3.3.1.3 ~~4.3.4~~ Existing improvements (on-site, adjacent to site and within any adjacent public rights-of-way).

(a) Driveways and median cuts within 150 feet of the site in both directions on both sides of street to include pavement markings and signage;

(b) Sidewalks, streets, alleys and easements (note widths and type);

(c) Drainage systems to include natural and structural (size and materials, invert elevation);

(d) Size and location of nearest water mains, valves and fire hydrants (if valves off plan, dimension to location);

(e) Size and location of valves and fire hydrants for reclaimed water mains;

(f) Sanitary sewer systems (size, invert elevation, etc., to be included)[if access, structures (manholes) are off plan, dimension to location];

(g) Gas, power and telephone lines, where applicable.

4.3.3.1.4 ~~4.3.5~~ *Other materials.* Any additional data, maps, plans or statements, as may be required, which are commensurate with the intent and purpose of this code.

4.3.4 Required submittals combined preliminary/final site plan.

An application for approval of a combined preliminary and final site plan shall meet the content requirements for both preliminary site plans and final site plans as specified in this article.

4.3.5 Plat requirement.

When a development tract consists of three or more aggregated parcels, a plat or replat of the tract shall be required.

4.3.6 Developer's agreement.

If determined necessary by the city to secure the future performance of any conditions imposed by the city or representations made by the developer, an executed developer's agreement in a form acceptable to the city may be required. In such an event, the developer shall be required to pay all costs involved in the preparation and recording of such agreement. All developer's agreements required by the city as a consequence of development approval shall be executed by the owner/developer and provided to the city, in a form acceptable to the city attorney, within 90 calendar days of the date of final site plan approval, and prior to building permit issuance. Failure by the owner/developer to execute such agreements and provide the agreement support materials and payments, including all costs involved in the preparation of the agreement, to include without limitation the city's attorney and consultant fees, within 90 days of plan approval will render all approvals and capacity reservation fee agreements null and void.

4.3.7 Plat and/or site plan requirements.

If a parcel is to be subdivided, a preliminary plat must accompany the preliminary site plan for planning board approval or development review committee approval, as applicable by the requirements of this article. The preliminary plat must be in accordance with the procedure outlined in article V, Subdivision regulations. Upon approval of the preliminary site plan and preliminary plat, an application for final site plan and plat must be submitted for approval by the development review committee. The final site plan and plat

must comply with all regulations of the land development code and the developer's guide for all areas including single-family residential multifamily residential, commercial, industrial, recreational, or any other area where structures or roads are to be constructed, or major terrain alternations are to be made. After review and final approval by the designated officials of the final subdivision plan (single-family only) or site plan, the owner/developer may request building permits for the approved section.

Note: Single-family residential subdivision plans must adhere to additional requirements set forth in article V of the land development code.

4.3.8 Additional required submittal only where facilities are dedicated to the public.

Where facilities are to be dedicated to the city, the approval of the site plan shall, be made contingent upon certificate of adequacy of the required submittal by the city engineer and/or city attorney, as appropriate. For appropriate forms for facilities to be dedicated to the public, refer to article XVI.

4.3.9 Deposits and fees for city costs.

In situations where an application, project, or legal agreement is expected to generate additional costs for the city to process or review, such as but not necessarily limited to attorney fees, consultant fees, reproduction fees or delivery fees, the city shall have the right to require the owner/developer to provide a deposit for such city expenses. The need for and amount of such a deposit shall be at the reasonable determination of the growth management director, and which deposit shall be replenished as necessary to ensure full payment to the city. In cases of late payment, nonpayment or insufficient deposit amount, the city shall have the right to suspend processing application reviews, issue stop work orders, or otherwise suspend project processing activity. During such suspension, all normal resubmittal and application expiration deadlines shall continue to apply.

DIVISION 4. ENFORCEMENT PROVISIONS

4.4.1 General.

Within the jurisdiction of these regulations, no site plan development shall be approved, nor shall any building permit or certificate of occupancy be issued,

unless such development meets all the requirements of these regulations and has been approved in accordance with the requirements as herein provided.

4.4.2 Required improvements.

The city commission shall enforce the improvement bond by resort to legal and equitable remedies if required improvements have not been satisfactorily installed within one calendar year after the site plan is approved, unless extended by the board for cause and provided the surety consents to the extension.

4.4.3 Applicability.

The owners and successors of property developed under an approved site plan shall not remove, destroy, modify, subvert or render inoperable, through act or omission, any of the improvements, designs, standards or conditions required either directly or indirectly by these regulations.

4.4.4 Site maintenance obligation.

The owner and successors shall not remove, destroy, modify, subvert or render inoperable through act or omission any of the improvements, designs, standards or conditions required either directly or indirectly by these regulations.

4.4.5 Violation.

It shall be a violation of this article for any person to construct, open, modify or dedicate any street, driveway, sanitary sewer, water main or drainage structure without first having obtained site plan approval and otherwise having complied with the provisions of these regulations.

4.4.6 Developer's agreement obligation.

Upon completion of construction, it shall be a violation of this article for any person to have failed to construct or maintain any improvement required by an approved site plan, or to have failed to install or maintain any improvement required by a developer's agreement or other city legal agreement. It shall also be a violation of this article to~~, or otherwise~~ fail to comply with the requirements and obligations contained within a developer's agreement or other city legal agreement unless otherwise agreed to by the city.

4.4.7 Penalties for violations.

(a) Any person, whether as owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Code, or permits any such violation to continue, or otherwise fails to comply with the requirements of this Code or of any plan or statement submitted and approved under the provisions of this Code, shall be guilty of an ordinance violation and subject to prosecution. Upon conviction such person shall be fined not more than $500.00 or imprisoned for not more than 60 days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. At the option of the city, any violation may be processed through the city's code enforcement board as an alternative to prosecution under this section.

(b) Nothing herein contained shall prevent the city from taking such lawful action, including, but not limited to, resorting to equitable action, as is necessary to prevent or remedy any violation.

SECTION THREE: City Code of Ordinances, Chapter 28, "Land Development Code," Article V., "Subdivision Regulations," is hereby amended as follows:

ARTICLE V. SUBDIVISION REGULATIONS

* * *

DIVISION 2. PROCEDURES FOR SECURING APPROVAL OF SUBDIVISION PLANS

* * *

5.2.2.6 Time limit on approval. A final subdivision plan and plat, including all areas included in the preliminary subdivision plan and plat, shall be submitted within one year after the preliminary subdivision plan and plat approval or the approval of the preliminary subdivision plan and plat shall lapse. The final subdivision plan and plat shall be approved by the development review committee ~~and shall be valid for one term (one or two years), consistent with concurrency procedures~~. A single extension, not to exceed one year~~, and consistent with concurrency procedures and capacity reservation fee schedules contained in article II,~~ may be considered by the planning board upon written

request by the applicant prior to the expiration date of the preliminary plan and plat, showing cause for such an extension. When a subdivision is being developed in phases, final subdivision plans and plats are to be submitted within time frames established at the time of approval of the preliminary subdivision plan and plat, unless further extensions are granted by the planning board following written application. Extension approvals do not exempt the developer from plan and plat revisions that may be deemed necessary by the city to conform to all current building, development and platting code requirements. When plan and plat revisions are deemed necessary, revision fees may be waived by the development manager.

* * *

5.2.8 Time limit on approval.

A final subdivision plan and plat, including all areas included in the preliminary development ~~subdivision~~ plan ~~and plat~~, shall be submitted within one year after the preliminary development ~~site or subdivision~~ plan approval or the approval of the preliminary development ~~subdivision~~ plan ~~and plat~~ shall lapse. When a subdivision is being developed in phases, final development ~~subdivision~~ plans and plats are to be submitted within time frames established at the time of approval of the preliminary subdivision plan ~~and plat~~, unless further extensions are granted by the planning board following written application. Final subdivision plan and plat approval by the development review committee (DRC) shall be in accordance with article II, concurrency and mobility management ~~Concurrency management and consistency determination~~. The following criteria apply to extensions.

(a) Extensions are not necessary for subdivisions with a recorded plat or an active site work permit.

(b) Extension requests must be submitted 60 days prior to the expiration date, and show just cause for such an extension.

(c) Not more than one, one-year extension may be considered by the development review committee, upon written request by the applicant.

(d) Any major or substantial change to the final plan and plat from the planning board approved preliminary plan and plat which affects the intent and character of the development, may require re-approval of the entire plan and plat by the planning board.

(e) Extension approvals do not exempt the developer from plan and plat revisions that may be deemed necessary by the city to conform to all current building, development and platting code requirements. When plan and plat revisions are deemed necessary, revision fees may be waived by the development manager.

* * *

DIVISION 3. REQUIRED SUBMITTALS

* * *

5.3.2 Required submittals for preliminary subdivision plan and plat.

* * *

5.3.2.3 *Additional required submittals.*

5.3.2.3.1 Mobility solutions report ~~Traffic impact analsyis~~:

(a) The developer shall prepare, or have prepared, and provide the city with the mobility solutions report in accordance with the requirements outlined in article II, division 4. A mobility solutions report may not be required if determined by the mobility director and ~~a traffic impact analysis unless determined to be unnecessary by~~ the city engineer that the proposed development will not have an ~~a traffic~~ impact which justifies such analysis.

(b) The ~~traffic impact analysis~~ mobility solutions report shall be based on the submittals required for final plat review.

(c) Applicants shall follow the mobility solutions standards and guidelines provided in the city's developer's guide. The analysis of mobility impacts will provide an evaluation of on-site and off-site impacts and recommended improvements made necessary by the development, shall be based upon the city's mobility level of service standards and mobility performance standards. ~~The analysis of traffic impacts will provide the following findings and appropriate methodologies utilized in determining the findings:~~

~~(1) Total average projected average daily trips for the site in question;~~

~~(2) Design capacity of the accessed road(s);~~

~~(3) Average projected peak-hour (including time of day) trip projections for the site in question;~~

~~(4) Analysis of projected on- and off-site traffic patterns, i.e., turning movements;~~

~~(5) Projected percentage of truck traffic;~~

~~(6) Recommended improvements made necessary by the development;~~

~~(7) Other related information as required by the city engineer.~~

(d) The mobility performance standards required to mitigate impacts to the multi-modal system as documented in the mobility solutions report and accepted by the city shall be incorporated into the plan in tabular form and include a description of the required construction improvements. ~~The traffic impact analysis shall be prepared by a qualified traffic engineer approved by the city.~~

* * *

5.3.2.3.10 *Potable water and sanitary sewer concurrency.* Applicants shall submit for concurrency tests by providing, on the plan, fully completed potable water and sanitary sewer capacity calculation tables for the existing uses and proposed uses, in a format as provided by the city. Applications will not be accepted that do not include the fully completed tables.

* * *

5.3.3 Required submittals for final subdivision plan and plat.

* * *

5.3.3.3.1 Performance bond. Whether facilities are to be conveyed or dedicated to the city or are to remain private, the approval of the plat shall be subject to the subdivider guaranteeing the installation and maintenance of storm drainage facilities, bulkheads, street improvements, water mains, sewer lines and/or other required improvements.

Prior to the city's issuance of a construction or site permit, a performance bond shall be posted by the subdivider. The bond must be executed by a corporate surety company authorized to do business in the State of Florida, that is satisfactory to the city, and shall be payable to the City of Altamonte Springs. The bond shall be in the amount of 110 percent of the construction costs, including landfill. Costs for construction shall be estimated by the applicant's engineer, or a copy of the contracts shall be provided. The amount of the performance bond must be approved as adequate by the city engineer. Bonding requirements may be met by the following, but not limited to:

(a) Bond executed by approved surety company;

(b) Escrow agreement and performance bond with escrow deposit in the form of a cashier's check or certified check;

(c) Other, as approved by the city commission, which may include developer-lender-city agreement for providing public improvements, assignments of interest-bearing certificate of deposit or irrevocable letters of credit.

Refer to the city developer's guide for ~~article XVII,~~ ~~S~~standard forms.

Unless a performance bond has been previously posted, the plat cannot be recorded until the certificate of completion and maintenance bond are approved and accepted by the city. In lieu of performance bonding, improvements may be installed following final plat approval and preceding final plat recording subject to the approval of the city engineer.

* * *

5.3.3.3.6 *Mobility solutions report* ~~Reserved~~.

(a) A mobility solutions report in accordance with the requirements outlined in article II, division 4. A mobility solutions report may not be required if determined by the mobility director and the city engineer that the proposed development will not have an impact which justifies such analysis.

(b) The mobility solutions report shall be based on the submittals required for final plat review.

(c) Applicants shall follow the mobility solutions standards and guidelines provided in the city's developer's guide. The analysis of mobility impacts will provide an evaluation of on-site and off-site impacts and recommended improvements made necessary by the development, shall be based upon the city's mobility level of service standards and mobility performance standards.

(d) The mobility performance standards required to mitigate impacts to the multi-modal system as documented in the mobility solutions report and accepted by the city shall be incorporated into the plan in tabular form and include a description of the required construction improvements.

* * *

5.3.3.3.9 *Potable water and sanitary sewer concurrency.* Applicants shall submit for concurrency tests by providing, on the plan, fully completed potable water and sanitary sewer capacity calculation tables for the existing uses and proposed uses, in a format as provided by the city. Applications will not be accepted that do not include the fully completed tables.

SECTION FOUR: Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION FIVE. Severability. If any provisions of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION SIX. Effective Date. This ordinance shall become effective on June 1, 2016.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2016.

FIRST READING: _____

ADVERTISED: _____

SECOND READING: _____

_____
PAT BATES, MAYOR
Of the City of Altamonte Springs, Florida

ATTEST:

_____

ERIN O'DONNELL, CITY CLERK

Approved as to form and legality
for use and reliance by the City
of Altamonte Springs, Florida

JAMES A. FOWLER, ESQ.
CITY ATTORNEY

Municipal Planning Board Staff Report

City of Altamonte Springs
Growth Management Department

APPLICATION INFORMATION

DATE OF HEARING:	March 9, 2016
PROJECT NAME:	Mobility Management Ordinance - Amending the Land Development Code to repeal concurrency for transportation and establish a Mobility Management Program
ORDINANCE NO.:	1692-16
REQUEST FOR:	Recommendation to the City Commission for approval
PUBLIC HEARING:	Yes
GROWTH MANAGEMENT DEPT. PROJECT NUMBER:	15-20000003
APPLICANT:	City of Altamonte Springs

STAFF EVALUATION AND FINDINGS

1. PROPOSAL.

This proposed ordinance amends three articles of the City's Land Development Code (LDC) to implement a Mobility Management Program in lieu of transportation concurrency. The amendment also revises the concurrency review process for potable water and sanitary sewer, provides. The following Articles will be amended: Article II, "Concurrency Management and Consistency Determination," will be amended and renamed to "Concurrency, Mobility Management and Consistency Determination". Article IV "Site Plans" and Article V "Subdivision Regulations" will be amended to implement the revised concurrency process and mobility management program, as well as to delete requirements for fees within the transportation concurrency exception area (TCEA), and add final plan approval terms (time periods) for final development orders outside or inside activity centers.

2. MATERIALS INCLUDED FOR REFERENCE.

Proposed Ordinance No. 1692-16 is included in the board package envelope for reference.

3. BACKGROUND.

The City established a concurrency management system in 1992 consistent with state growth management laws. In 2013, the state adopted an alternative to transportation concurrency to use mobility plans and mobility fees as an equitable way to mitigate transportation impacts for new development. Part of the change in the law was due to recognition that transportation concurrency, which requires that needed transportation road capacity to support development be available within a specific time period, did not have the desired effect on new growth. What resulted was substantial urban sprawl in non-urban areas at the expense of existing urban areas that have available infrastructure to support new growth.

The City has utilized an innovative approach to transportation planning since the 1980's and has incorporated a multi-modal approach to providing transportation facilities in the City. This approach uses mobility in the context of moving people through the use of different modes of transportation (walking, bicycling, transit, and roadways), and not just vehicles moving people.

The City had also established a transportation concurrency exception area (TCEA) that was initially adopted, in part, with the City's Downtown Development of Regional Impact and then was expanded into the comprehensive plan. The 2013 legislative changes by the state have allowed the City to consider updating our approach for transportation concurrency. We want to continue to use the multi-modal approach to transportation facilities that includes walking, bicycling, transit, and roadways with a mobility fee that provides a funding mechanism for improvements for each of the four transportation modes. City transportation impact fees will be replaced with mobility fees. This modification is proposed in the separate ordinance to the City Code of Ordinances that will be presented to the City Commission at the same time as this Ordinance 1692-16.

4. PROPOSED AMENDMENTS

A. Article II - The proposed changes to Article II will update the title, delete the transportation concurrency program criteria and regulations, and be replaced with the proposed mobility management program. The program will include two (2) key features that new development or redevelopment proposals will need to meet. These include conducting a mobility solution study and preparing mobility solutions report depending on the type of the development application or size of the proposed project. The mobility solutions study will analyze the four modes of transportation: the pedestrian system, the bicycle system, transit systems, and the roadway system to determine needed improvements to each of the modes. The number of required mobility performance standards will be determined by the impact of the development proposal on each of the modes. The type of mobility performance standards will be identified as part of the application and incorporated into the design of a project. The mobility performance standards identify either operational type standards or

enhancement type standards through a menu of specific standards. The mobility performance standards selected by the applicant and agreed upon by the City will be incorporated in both tabular form and into necessary design details on the site plan.

There is a new Division 5 in Article II entitled Status of Capacity Reservations, Certificates and Agreements. The information in this division is intended for existing projects with active approvals in the possession of certificates of capacity, capacity reservation payments, and capacity reservation agreements. The information in this division indicates the comparison of the current concurrency system with respect to capacity payments, length of time the payments to vest the project with the proposed mobility fee. Current active projects will receive credit for prior payments against the payment of mobility fees which will be due at building permit. No early payment of mobility fees is proposed under the new mobility management system.

B. Article IV - The proposed changes to Article IV update the regulations and information associated with site plan applications for mobility solutions reports and data for potable water and sanitary sewer capacity, and establish new City wide approval terms (time that an approval is valid). The approval timeframes were previously part of the concurrency provisions in Article II. The changes also delete the requirements specific to the Regional Business Center (RBC) and the requirements to pay fees by land use within the transportation concurrency exception area (TCEA).

C. Article V - The proposed changes to Article V remove references to transportation concurrency and identify required subdivision development plan submittal information specific to mobility solutions reports and data for potable water and sanitary sewer data concurrency.

Other minor modifications and changes are incorporated throughout the ordinance for administrative clarity and consistency.

The following main topics are either added or deleted in each Article.

Article II Deletions

- Sec. 2.1.6 Proportionate fair share mitigation program
- Sec. 2.1.7 Transportation concurrency exception area
- Sec. 2.1.10 Capacity reservation procedures
- Sec 2.1.11 Fees (Capacity Reservation)

Article II Additions

- Sec. 2.4.1 Mobility management
- Division 5 Status of capacity reservations ,certificates, and agreements

Article IV Deletions

- Sec. 4.2.6 Securing approval of site plans within the Regional Business Center
- Sec. 4.2.7 Requirements for fees for projects within the transportation concurrency exception area (TCEA)

Article IV Additions

- Sec. 4.2.5.2 (a) Final site plan [approval terms]

Article V Additions

- Sec. 5.2.2.6 Time limit on approval

Article II is reorganized to contain the following divisions: (1) general provisions, (2) concurrency management system, (3) school concurrency, (4) mobility management and (5) status of capacity reservation, certificates and agreements.

Other changes to the existing text include modifying and adding definitions, updating the remaining concurrency requirements for potable water and sanitary sewer, updating mobility performance standards, and identifying the number of mobility requirements by net new peak hour trip generation.

Article IV and Article V are revised to be consistent with the changes in Article II that remove requirements and fees associated with transportation concurrency, identify approval terms for final site plans throughout the City, provide submittal requirements and incorporate other modifications consistent with development applications and development orders.

5. NEXT STEPS.

This ordinance and the recommendation of the Planning Board will be presented to the City Commission at two public hearings. Those public hearings are tentatively scheduled for April 5, 2016 and April 19, 2016.

RECOMMENDATION

The Growth Management Department requests the Planning Board recommend **APPROVAL** of proposed Ordinance No. 1692-16.

ADVISEMENTS

General Advisements

Persons are advised that if they decide to appeal any decision made at this meeting, they will need a record of the proceedings and for such purposes, they will need to ensure that a verbatim record of the proceeding
s is made, which record includes the testimony and evidence upon which the appeal is to be based. The City of Altamonte Springs does not provide this verbatim record. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk Department ADA Coordinator at least 48 hours in advance of the meeting at (407) 571-8121(Voice) or (407) 571-8126 (TDD).

This report was prepared by the Altamonte Springs Growth Management Department (407) 571-8150.

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Municipal Planning Board

City of Altamonte Springs
Growth Management Department

Meeting Minutes

March 9, 2016

6:30 P.M.
REGULAR MEETING

Board members present: David Konstan, Chairman; Lucius Cushman, Vice-Chairman; Bob O'Malley; Charlie Wallace; and Robert Licato.

Board member(s) absent: Paul Marczak

Staff present: John Sember, Director of Growth Management; Tim Wilson, Director of Mobility; Cathleen Craft, Chief Planner; Katlyn Maillo, Development Specialist; Alisha Maraviglia, Senior Planner; Marsha Segal-George, Assistant City Attorney; Jonathan Paul, City Consultant; Jackie Rivera, Staff Assistant; and Shay Torres, Recording Secretary.

REGULAR MEETING

The Chairman called the meeting of the Planning Board to order at 6:30 p.m.

1. ANNOUNCEMENTS

a) **Introductions** – The Chairman introduced the Board Members and Staff.

b) **Votes Required** – The affirmative vote of four members of the Planning Board is necessary for any item.

c) **Document Submittal** – The Chairman read the following statement into the record:

Any documents being submitted or displayed for Board review will become the property of the City and made a part of the application's official case file. Pursuant to State of Florida public records law, said documents become public record and are subject to public review. Submitted documents are not returnable. Should you need copies for your records, direct your requests to the Board Secretary.

2. PRELIMINARY BUSINESS

a) **Approval of Minutes** – November 11, 2015

Motion made to approve minutes for November 11, 2015 Planning Board Meeting made by Lucius Cushman, seconded by Robert Licato. Motion carried unanimously (5-0).

b) **Disclosure of Conflicts of Interest** – None

3. PUBLIC HEARINGS

a) **Project Name:** **CODE AMENDMENT - MOBILITY MANAGEMENT PROGRAM (ORDINANCE 1692-16)**

Project Number: 15-20000003
Project Type: Land Development Code Amendment

Subject Property Address (es):
Location: CITY WIDE
Applicant: City of Altamonte Springs

Mr. John Sember stated this is a public hearing and showed proof of publication.

Mr. Tim Wilson stated this is a staff initiated amendment. The proposed ordinance will add the new mobility management program information in the City's Land Development Code and replace transportation and concurrency. The City has been doing concurrency since the early 90's which was mandated by the state in the old Growth Management laws. However, as late as 2013 the state amended the laws. It now allows alternative mechanisms for local governments to put alternative means for concurrency through a mobility management and mobility fee program.

Mr. Wilson explained the three sections of the Land Development Code that will be amended.

- Article II, currently titled Concurrency Management and Consistency Determination, will now be renamed Concurrency Mobility Management and Consistency Determination.

- Article IV, which deals with site plans includes revisions related to time frames for development orders and development fees associated with transportation and concurrency that were required, but now won't be required.

- Article V, which deals with the subdivision regulations, has information on concurrency that will now be amended to support the mobility management program.

Mr. Wilson stated that, in Article II, the ordinance modifies the current Transportation Currency Program section to insert the Mobility Management Program, which has several components. The Ordinance removes a lot of the existing transportation concurrency information with respect to how it works for proportionate fair share. Local governments had to have a mechanism to mitigate improvements to help meet concurrency. We had specifically created a Transportation Concurrency Exception Area. Back when concurrency was in place there was a mechanism on the books that allowed local governments to create these exemption zones and the City had that initially through the downtown DRI. When the city updated the Comp Plan in 2010, it was expanded to be for the entire City or a substantial portion of the City.

Mr. Bob Licato asked, what is meant by concurrency.

Mr. Wilson outlined transportation concurrency according to the statue, concurrency exception areas, new mobility management program advantages over the existing program and processes, fees and credits.

Mr. Wilson summarized that we are replacing transportation concurrency and bringing in a new program that is called mobility management, and at the same time updating some of the requirements that are no longer needed. In addition, we retooled fee payments that are no longer needed, along with creating a different framework from what we have today. The changes match our current practice in our activity centers by having more incentives for development in designated areas throughout the City.

Mr. Wilson stated this Ordinance will need to go the City Commission, and is designated to go forward in April. At the same time, the commission will consider an ordinance to replace transportation impact fees with mobility fees. Since 1986 the City has collected transportation impact fees, even before we did concurrency. We've generally updated those every five years.

Mr. Wilson stated there is an insertion on page fifty-two to make sure we've captured all the new text in the Ordinance.

Mr. Bob O'Malley asked, can the mobility fee be used for the City's contribution to Uber.

Mr. Wilson responded, no, not the way we have that pilot configured as announced last Friday. Since it is a pilot program, it's already pre-funded through other sources. If it becomes permanent then we will decide how we want to fund it.

Mr. Bob Licato asked, does this Ordinance include any projects already on the way or already going on and does it change what they're doing.

Mr. Wilson responded, yes and no. We have a variety of funding sources that we use to pay for projects and we still have monies in the City's transportation impact fee fund that would have to be expended. There is a possibility we can use money on an intersection that's already in the impact fee fund and contribute money out of the mobility fee fund to the extent that that project is in both lists. We do have a specific list of projects that are identified in the plan for the mobility fee, so it's not a consumption based fee, it's a specific project list based fee.

Mr. David Konstan asked, so you're saying yes or no.

Mr. Wilson responded, that he is saying no because most of the projects we have planned are already covered under some other existing funding source. We don't have any current projects in the City's budget predicated on us spending these dollars in this year's City budget. We are talking about future projects starting maybe next year, but nothing that's currently planned for this year.

Mr. Lucius Cushman asked, if fees have been paid for projects that are in the process, will credits be applied.

Mr. Wilson responded, yes, thank you for calling attention to that. When we change from old to new we get into a crossover situations. We have people that have paid dollars under the concurrency management reservation fees, and there is a section that gives recognition to those projects and those dollars are going to be credited, so it becomes an accounting issue for us. You can have a project that started and paid under impact fees and now they are going to have to pay a mobility fee, but they may have prepaid a capacity reservation. Typically it is 10% of the fee, whatever dollars they paid will be a credit off the balance of

what the mobility fee would be.

Mr. David Konstan asked, are you saying the fee can change on existing projects that are on the way, even though they have paid the impact fees.

Mr. Wilson responded, it is based on the timing of permits. The fee is in effect at timing of permit. Your approved project is not locked in under the impact fee program. If you have 100 lots and you built 50 homes, you will have 50 that paid under the impact fee. After June 1st, which is the proposed effective date, you would pay the mobility fee on the next 50 homes. The fee structure is actually less, but there are some cases, depending where you are located, for example, if you're doing a single family project outside an activity center, it will be about $15-20 more.

Mr. Robert Licato asked, are commercial projects included in this.

Mr. Wilson responded, yes, we have a fee schedule that breaks it down by types of uses and size of projects.

Mr. David Konstan asked, what action do you require from this Board.

Mr. Wilson responded, we need a motion to recommend approval to the City Commission on Ordinance 1692-16, as presented, or as you would consider making any recommended changes.

Mr. Lucius Cushman referred to Orange County, when there was a moratorium on sewer, people could come in under their Ordinance and tie up capacity as long as every six months they redid their building permits and showed a little bit of activity. They could keep going for 15 years and tie up all the sewer capacity, how will this be prevented from happening in the future.

Mr. Wilson responded, the utility capacity is the water plant or sewer plant capacity. Our sewer plant, which also does reclaimed water down on Keller Road, has sufficient plant capacity to handle twice as much as what we are flowing to the plant. If we are down to our last million gallons, we would protect that remaining capacity. We currently have plenty of plant capacity. If they start a building, or not, and keep their plans active, along with getting an inspection every six months we reserve that capacity for that property.

Mr. Lucius Cushman stated I know this is an exciting time to move forward and there are some plans for the downtown business district with all the units coming in that are proposed for adult living. It would be a shame to have people

come into the central business district and have a recession of some sort by having them tie up all the capacity so somebody that wants to do a single family house would have a problem.

Mr. Wilson responded your point is very well taken. Most of the projects get into issues with their infrastructure, not the plant capacity. It is the developers cost to improve or extend the line to support their project. If we need a deposit fee for the utility capacity, there's a process we already have incorporated. This program is for transportation, not for utilities. You get your approval and once your approval is good, it's for a designated period of time depending on location. As long as you keep that approval active, it's still approved. The project approval will expire if you don't do the things to keep it active.

Mr. Robert Licato asked, are you saying they can go on indefinitely.

Mr. Wilson responded, no, we define the time limits. There are some extensions and terms; when you get to term four there are pre-payments.

Discussion continued between Mr. Lucius Cushman, Mr. Wilson, Mr. Sember and Ms. Marsha Segal-George on plant capacity and time limits, impact fees, potable water and sanitary calculations, and the City's analysis.

Mr. Lucius Cushman asked, how is it related with what the DOT capacity is for roadway and what the City's mobility standards are, how does that interact. Will the DOT accept less bus traffic, bicycle traffic, walking, trollies, etc. and will they take that into consideration when looking at capacity on the roadway.

Mr. Wilson responded, those decisions are now local government decisions when they retooled the growth management laws. DOT does not have the statutory authority over level of service on state roads that they once had. It is up to the local government. A City can continue to allow level service D or E. The City already has a service level "E" on SR 436, but that doesn't mean we don't do responsible planning for other means of transportation, whether planning or mobility. We are still looking at intersections to make sure they function and operate. We are just diversifying; it's just smart planning. We are not going to continue to widen SR 436, it's not a wise investment. We also are going to work with DOT, Metroplan, Lynx and the other agencies to look at SR 436 from a corridor standpoint. There is designated funding for that either through sales tax or state funding. It will be through a multi-model approach. It didn't make sense for us to continue to be scorekeeping level of service on SR 436 when we have other planning studies and engineering solutions that are going to make level of service moot.

The Chairman closed the public hearing and asked for a motion.

Motion made to recommend approval of the proposed changes to Ordinance 1962-16 by Robert Licato, seconded by Lucius Cushman. Motion carried unanimously (5-0).

4. **FINAL SITE PLANS** – None

5. **OTHER BUSINESS** – None

6. **TENTATIVE AGENDA** – Mr. Sember stated that we have two items on the tentative agenda for the April 13, 2016 Planning Board agenda.

7. **ADJOURNMENT** – Meeting was adjourned at 7:19 p.m.

Meeting Date: April 19, 2016

From: _____
Mark B. DeBord, Finance Director

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: Amendment of the Police Officers' Pension Plan

SUMMARY EXPLANATION & BACKGROUND: Recent changes to the Florida Statutes governing police pension plans have necessitated amendments to the City's Plan. We are taking this opportunity to make certain other amendments to improve the Plan. These changes address:

- Adding a special benefits defined contribution component, the "Share Plan"
- Increasing survivor benefits for officers killed in the line of duty
- Adding a benefit option to allow partial lump sum distribution
- Adding additional administrative budgeting and reporting requirements
- Extending the term of Board Trustees from 2 to 4 years
- Making membership optional for the Police Chief
- Expanding the list of offenses which can cause a member to lose pension rights
- Deleting unnecessary and outdated language
- Various administrative corrections.

A detailed report on these proposed changes are included with this memo. Please review the report for more details on these proposed changes.

At the regular meeting of January 5, 2016, the City Commission passed Ordinance Number 1695-15 on first reading and left the second meeting open pending a response on the proposed changes from the Florida Division of Retirement. We have received a positive response on the proposals and are now prepared to move ahead with second and final reading of the ordinance.

FISCAL INFORMATION: We anticipate these changes will add $23,000 annually to the budget.

RECOMMENDED ACTIONS: Move to adopt Ordinance Number 1695-16 on second and final reading.

Initiated by: Mark DeBord

ORDINANCE NO. 1695-16

AN ORDINANCE OF THE CITY OF ALTAMONTE SPRINGS FLORIDA REVISING THE CODE OF THE CITY OF ALTAMONTE SPRINGS FLORIDA BY REVISING CHAPTER 2 "ADMINISTRATION", ARTICLE II "RETIREMENT", DIVISION 4. "POLICE OFFICERS' PENSION PLAN" TO PROVIDE FOR ADDITIONAL RETIREMENT BENEFITS; TO INCREASE BENEFITS TO SURVIVING SPOUSES OF POLICE OFFICERS KILLED IN THE LINE OF DUTY; TO PROVIDE FOR THE USE OF PREMIUM TAX REVENUES; TO PROVIDE FOR AN EXTENSION OF THE TERM OF THE TRUSTEES; TO PROVIDE MEMBERSHIP IS OPTIONAL FOR THE POLICE CHIEF; TO PROVIDE FOR AN EXPANDED LIST OF OFFENSES THAT COULD CAUSE A LOSS OF PENSION RIGHTS; AND TO UPDATE AND CORRECT TERMS AND VARIOUS REPORTING AND BUDGETING PROVISIONS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the State of Florida, through Chapter 185, Florida Statutes created a revenue-sharing process whereby participating municipalities can receive a portion of the state excise tax on insurance premiums paid on policies covering property within the municipality, for the purpose of providing funding for the municipal police officers' pension fund, and,

WHEREAS, pursuant to Chapter 185, Florida Statutes, the City Commission adopted Resolution Number 914 creating the City of Altamonte Springs Police Officers' and Firefighters' Pension Plan, and,

WHEREAS, the City Commission of the City of Altamonte Springs and the Board of County Commissioners of Seminole County entered into an interlocal agreement effective October 1, 2002, merging the City Fire Department into the County Fire Department, and,

WHEREAS, the City Commission of the City of Altamonte Springs adopted Ordinance No. 1483-03 effective July 1, 2003, re-designating the "City of Altamonte Springs Police Officers' and Firefighters' Pension Plan" as the "City of Altamonte Springs Police Officers' Pension Plan", and,

WHEREAS, It is the desire of the City Commission of the City of Altamonte Springs to utilize a portion of the additional funds from the State to provide increased retirement benefits for the police officers, and for surviving spouses of police officers killed in the line of duty, and,

WHEREAS, various terms and provisions of the current Pension Plan need to be revised, corrected and updated, and,

WHEREAS, the City Commission of the City of Altamonte Springs desires to make certain changes and amendments to the City of Altamonte Springs Police Officers' Pension Plan;

NOW THEREFORE, BE IT BY THE CITY COMMISSION OF THE CITY OF ALTAMONTE SPRINGS, FLORIDA, AS FOLLOWS:

Section One. The Code of Ordinances of the City of Altamonte Springs, Chapter 2, "Administration", Article II, "Retirement", Division 4, "Police Officers' Pension Plan", is hereby amended as set forth in the attached document, which is incorporated for reference herein.

Section Two. All other ordinances, resolutions or parts thereof in conflict with the provisions if this Ordinance are, to the extent of such conflict, hereby repealed.

Section Three. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section Four. This Ordinance shall become effective immediately upon passage.

Passed and Adopted this ___ day of _____, 2016.

First Reading _____

Advertised _____

Second Reading _____

_____
PATRICIA BATES, MAYOR
City of Altamonte Springs, Florida

ATTEST:

_____
Erin O'Donnell, City Clerk

APPROVED AS TO FORM AND LEGALITY FOR USE AND
RELIANCE BY THE CITY OF ALTAMONTE SPRINGS, FLORIDA

_____
James A. Fowler, City Attorney
City of Altamonte Springs, Florida

MEMORANDUM

To: The Mayor and City Commission

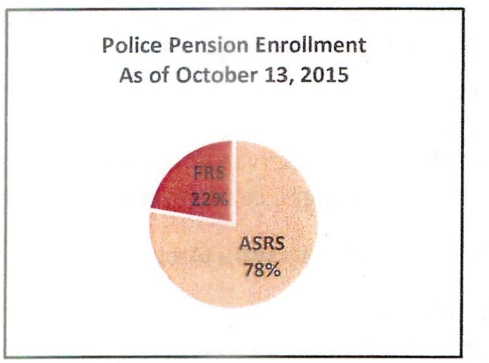
From: Mark DeBord, Finance Director

Re: Police Pension Plan Amendments

Date: December 2, 2015

In 1996 the City elected to leave the Florida Retirement System (FRS) and establish the *Altamonte Springs Retirement System* (ASRS). This decision continues to pay benefits. Since inception the ASRS plans have saved the City $378,000 over what would have been the pension expense had the City remained in the FRS. Additionally, in 2008 the Florida Legislature amended FRS benefits raising minimum retirement ages and cutting benefits to future retirees. Today, for new employees, the City's plans offer better benefits than FRS at less costs. We are very pleased with the success of our pension programs.

All full-time police officers hired on or after January 1, 1996 are in *Altamonte Springs Police Officers Defined Benefit Pension Plan,* one of the several pension plans offered by the ASRS. Police officers hired prior to January 1, 1996 remain in the FRS.



Of the current 99 officers on the payroll, 77 of them are in the Altamonte Springs Police Officers' Pension Plan. The balance of officers (22) are in the Florida Retirement System. Half of the 22 officers in FRS are in the Drop program. They will all retire within the next 5 years. The rest will probably retire within the next 5 to 10 years. Thus we expect all officers will be in the City's pension plan within 5 to 10 years.

The Altamonte Springs Police Officers' Pension Plan was last updated in 2003. Since that time the Florida Legislature has passed several bills which affect pension plans. We are proposing a number of plan amendments which, if adopted, will bring the City's plan up to date.

Share Plan

The most recent, and arguably, most significant legislative change involves the use of premium tax revenues. Most municipal police pension plans in Florida are funded, in part, by a tax on premiums paid by policyholders for casualty insurance. Our Plan is no exception. Premium tax revenues accounted for 12% ($310,000) of the $2.6 million in total funding for 2014.

The 1999 Florida Legislature substantially amended Chapter 185 of the Florida Statutes, the law governing police pension plans. One of the most controversial parts of this amendment hovered around the introduction of the terms "extra benefits" and "additional premium tax revenues". Extra benefits are described as benefits in addition to or greater than those provided to general employees. Additional premium tax revenues are described as revenues received that exceed the amount received for calendar year 1997. Cities, employee groups, and the Florida Division of Retirement have been arguing about the application of these two terms for the past 15 years. In fact, the Division of Retirement reversed its' positon on this issue about three years ago. Confusion reigned supreme.

After many attempts over the years to address this issue legislatively, the 2015 Florida Legislature finally passed Senate Bill 172 which did, in fact, provide what we all hope is a final remedy to this issue. No one is completely happy with this final fix but I think we'll all learn to live with it.

Under SB 172 premium tax revenues received by the City up to the amount received in calendar year 2012 will be used to fund existing plan benefits. In the future, any amounts received in excess of the amount received in calendar year 2012 must be divided equally. Half will go towards funding the existing benefits. The other half will be used to fund "special benefits" for plan Members. Special benefits means an individual investment account for each Member. The money in the account is available to the Member upon termination of employment with the City. The Member can take the money in the account with them. This special benefit is in addition to the existing benefits provided by the pension plan. We have named this special benefits component the new "Share Plan".

Survivor Benefits for Officers Killed in the Line of Duty

This is not a legislative mandate but a change we believe provides an important "peace of mind" benefit to our police officers. With this change we will increase the monthly pension benefit available to the surviving spouse of an officer killed in the line of duty from 50% to 75% of the deceased officer's monthly compensation. We have increased the age from 18 to 24 of surviving children receiving a benefit. We have added beneficiaries to include a parent or grandparent, or any other person age 24 or older for whom the Member is the legal guardian provided that the Member was providing more than one-half of that potential beneficiaries' financial support at the Member's time of death. The effect of this additional benefit on the City's annual pension contribution is small (about $23K annually), but the effect on survivors is large. Let us hope we never have occasion to exercise this benefit.

Optional Partial Lump Sum Distribution

We have added a lump sum distribution to the list of retirement benefit options. Under this lump sum option Members, upon reaching their normal retirement date, can choose to receive up to 25% of the actuarial balance of their pension account in cash at their retirement date. Their subsequent monthly payment will be reduced to reflect the fact that they received a portion of their pension benefit up front. Unlike a Drop option, the lump sum option does not require mandatory requirement. The Member can choose this as an option at retirement whenever that might be. We think this is a much better and clearly more flexible option than Drop.

Annual Budget and Financial Reporting

The Plan is audited annually with the results of the audit included in the City's Comprehensive Annual Financial Report. The proposed amendments include an additional requirement for the Board of Trustees to adopt an annual budget for administrative expenses and to provide an annual report on administrative expenses at the end of the year.

Board Member Terms

The proposed amendments include extending the terms of the five Board of Trustee members from two to four years. This should provide greater continuity for the Board.

Police Chief Optional Membership

The proposed amendments include a provision allowing the Police Chief to choose not to participate in the Plan. Often candidate's under consideration from outside the City police department have already retired from another agency. Placing these individuals in the City's plan, where it takes 25 years of service to receive full retirement benefits, is of little value to the candidate. Allowing them to not participate in the Plan provides the City the opportunity to offer some other pension arrangement like the investment plan which may be a more enticing benefit to the candidate. This allows the City greater flexibility when selecting a new Police Chief.

Forfeiture of Pension

It is possible for a Police Officer to lose his or her right to a pension. Currently, a Member forfeits all rights and benefits under the Plan if he or she, prior to retirement, is convicted of:

- Embezzlement of public funds
- Theft from employer
- Bribery, misuse of public funds
- Defrauding the City of the right to receive faithful performance from the Officer

We have amended the Plan to add the following additional offenses reflecting changes in legislation:

- Lewd or lascivious offenses committed upon, or in the presence of, persons less than 16 years of age
- Sexual battery against a victim younger than 18 years of age
- Fraud
- Strikes

It is also possible for a Member's beneficiary to lose rights to a Member's pension if the beneficiary is convicted of killing the Member.

Other Changes

The proposed amendments include a number of other changes, corrections, deletions, and additions which are important for the continuity of the Plan but which, when taken individually or as a whole, have no measurable effect on the Plan nor its' Members.

Attached is a schedule listing each proposed change along with a brief explanation. Also attached is a copy of the amended Plan document. Added language is underlined <u>like this</u>. Deleted language is overstruck ~~like this~~. In both cases we have highlighted the changes in yellow like this.

Financial Impact

We had our independent actuary study the plan changes and prepare a Statement of Actuarial Impact to provide a measurement of the costs of the various changes. A copy of this statement is attached. According to the actuary the changes to the plan have no actuarial impact, with the exception of the change to survivor benefits available for officers killed in the line of duty. This change adds about $23,000 to annual pension costs. The share plan is created but is funded entirely with premium taxes with no obligation to the City for funding.

Police Officers' Pension Plan Ordinance
2015 Proposed Amendments – By Section

Item	Page	Section	Explanation
1	6	2-42.01 (3)	**Actuarial Equivalent**. Revised definition updating the referenced mortality table from 1983 to 2014.
2	6	2-42.01 (4)	**Average Final Compensation**. Administrative change to replace the phrase "prior to" with the word "before".
3	6	2-42.01 (10)	**Compensation or Salary**. Added telephone allowance to the list of compensation exclusions.
4	7	2-42.01 (11)	**Creditable Service or Credited Service**. Expanded and clarified conditions under which a Member may leave or take with them their Accumulated Contribution upon termination.
5	9	2-42.01 (12)	**Death in the Line of Duty**. Added a definition for death in the line of duty.
6	9	2-42.01 (13)	**Defined Contribution Plan.** Added a definition for the newly created defined contribution component of the Plan.
7	10	2-42.01 (15)	**Division.** Added a definition for the Florida Division of Retirement.
8	10	2-42.01 (19)	**Joint Annuitant**. Clarified the definition of joint annuitant.
9	11	2-42.01 (24)	**Police Department.** Added a definition for Police Department.
10	11	2-42.01 (25)	**Police Officer**. Clarified language describing a Police Officer.
11	11	2-42.01 (27)	**Retirement**. Clarified the definition of retirement.
12	11	2-42.01 (28)	**Special Benefits.** Added a definition for special benefits.
13	11	2-42.02 (3)	**Police Chief**. Added a membership exclusion option for the Police Chief.
14	12	2-42.03 (2)	**Board Member Terms**. Extended terms for board members for 2 to 4 years.
15	12	2-42.03 (4)	**Board Meetings**. Added quarterly board meeting requirement.
16	15	2-42.04 (6)	**Annual Administrative Expense Budget.** Added a requirement for adoption of an annual Plan administrative expense budget.
17	15	2-42.04 (7)	**Annual Administrative Expense Report.** Added a requirement for annual expense reporting.
18	16	2-42.04 (8) (b)	**Investment Policy**. Added requirement for board to adopt a written investment policy.
19	17	2-42.04 (8)(c)(6)	**Real Estate Investments**. Expanded the description and limitation on investment in real estate.
20	17	2-42.04 (8)(d)	**Equity Investments**. Defined limitation on investments in equities as being market values; increased limitation on investments in equities from 65% to 70%.; placed a limit of 25% on foreign securities.
21	17	2-42.04 (8)(e)	**Real Estate Investment Limitation**. Expanded limitation on real estate investment from 10% to not more than 15% (at market value) of portfolio.
22	19	2-42.05 (2)	**State Contributions**. Refined definition of state contributions to be consistent with Chapter 185, FS.
23	19	2-42.05 (3)	**City Contributions.** Refined definition of city contributions to be consistent with Chapter 185, FS.

Police Officers' Pension Plan Ordinance
2015 Proposed Amendments – By Section

Item	Page	Section	Explanation
24	20	2-42.06 (2)	**Normal Retirement Benefit Payments – Life Plus 10 (Option 1).** Added "Life Plus 10 (Option 1)" to title to clearly identify option 1.
25	21	2-42.06 (3)	**Normal Retirement Benefit Payments**. Deleted definition for Normal Retirement Benefit Payments as being redundant.
26	22	2-42.06 (5)	**Early Retirement Benefit Payments**. Minor administrative corrections.
27	22	2-42.07	**Share Plan**. New section creating Share Plan.
28	23	2-42.08 (1)(a)	**Death in the Line of Duty**. Increased minimum death in line of duty spouse survivor benefits from 50% to 75% of monthly salary.
29	23	2-42.08 (1)(b)	**Average Monthly Compensation**. Defined for purpose of death in line of duty benefit calculation.
30	23	2-42.08 (1)(c)	**Death in Line of Duty Benefits for Children of Surviving Spouses who Dies.** Raised age for benefits to surviving children from 18 to 24.
31	23	2-42.08 (1)(d)	**Death in Line of Duty Benefits for Children with No Surviving Spouse.** Raised age for benefits to surviving children from 18 to 24.
32	24	2-42.08 (1)(e)	**Death in Line of Duty Benefits for Survivors Other Than Spouse and Children.** Added dependent parents, grandparents or other dependent person aged 24 or older to survivors entitled to benefits.
33	24	2-42.08 (2)(b)	**Death Other Than in the Line of Duty.** Revised to reference "joint annuitant", a defined term, in lieu of existing language.
34	25	2-42.09 (2)(d)	**Conditions Disqualifying Disability Benefits.** Revised "any branch of the Armed Forces" to "any armed forces".
35	25	2-42.09 (2)(e)	**Condition Disqualifying Disability Benefits.** Revised exclusions for injury or disease sustained after employment.
36	26	2-42.09 (2)(i)	**Condition Disqualifying Disability Benefits.** Added intentional, self-inflicted injury to list of disqualifying events.
37	26	2-42.09 (3)	**In Line of Duty Presumptions.** Revised to add meningococcal meningitis, or hepatitis and eliminate hardening of the arteries or certain communicable diseases consistent with florid statutes.
38	29	2-42.10 (4)	**Separation from Service: Refund of Accumulated Contributions Benefit Forfeiture.** Added language forfeiting benefits for members receiving a refund of accumulated contributions.
39	31	2-42.11 (1)(c)	**Optional Forms of Benefits: Partial Lump Sum.** Added partial lump sum as a benefit option. Retiring members can receive a portion of their benefit in an initial lump sum with the balance paid as an annuity.
40	31	2-42.11 (7)	**Optional Forms of Benefits: Lump Sum.** Expanded language to allow a single lump sum benefit payment if monthly retirement

Police Officers' Pension Plan Ordinance
2015 Proposed Amendments – By Section

Item	Page	Section	Explanation
			income is less than $100 of if single-sum value of accrued retirement benefit is less than $2,500.
41	32	2-42.13 (2)	**Failure to Designate a Beneficiary.** Added language specifying benefit payment made is full discharge of all obligations.
42	32	2-42.13 (3)	**Divorce.** Added provision for divorce pursuant to Sec. 732.703, F.S.
43	34	2-42.16	**Board Attorney and Professionals.** Refined the description of actuary to be consistent with Florida Statutes.
44	35	2-42.17 (5)	**Maximum Pension: $10,000 Limit.** Deleted this provision.
45	35	2-42.17 (6)	**Member in Defined Contribution Plan.** Deleted this provision as it is not applicable after January 1, 2000.
46	36	2-42.17 (6)	**Additional Limitation on Pension Benefits.** Deleted language relating to restrictions existing prior to 1980.
47	38	2-42.19	**Repeal or Termination of Plan:** Replaced existing language which is inconsistent with Florida Statutes.
48	40	2-42.22 (1)(g)	**Forfeiture of Pension: Conviction of Specified Offenses.** Deleted false, misleading or fraudulent statements to obtain a public pension and added certain felonies against children.
49	40	2-42.22 (2)	**Forfeiture of Pension: Fraud.** Added language to include fraud committed to obtain pension benefits.
50	40	2-42.22 (3)	**Forfeiture of Pension: Strikes.** Added language to include strikes by public employees.
51	40	2-42.22 (4)	**Forfeiture of Pension: Beneficiary Forfeiture of Benefits.** Added language prohibiting benefit payments to a beneficiary convicted of killing a member.
52	41	2-42.22 (7)	**Forfeiture of Pension: Withholding of Benefits.** Added language allowing withholding of benefits pending resolution of charges against a member or beneficiary which could result in forfeiture of benefits.

Actuarial Concepts
Management Advisors
Benefits Specialists

November 25, 2015

Mr. Mark B. Debord
Finance Director
City of Altamonte Springs
225 Newburyport Avenue
Altamonte Springs, Florida 32701

Dear Mark:

CITY OF ALTAMONTE SPRINGS POLICE OFFICERS' PENSION PLAN
ACTUARIAL IMPACT STATEMENT FOR PENSION PLAN AMENDMENTS

Attached is a Statement of Actuarial Impact relating to proposed pension plan amendments for the City of Altamonte Springs Police Officers' Pension Plan.

The City of Altamonte Springs has retained Actuarial Concepts to perform the actuarial analysis and prepare this impact statement. This Statement of Actuarial Impact was prepared and completed by us or under our direct supervision, and we acknowledge responsibility for the results. To the best of our knowledge the results are complete and accurate, and in our opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. The use of the results of the Statement of Actuarial Impact for financial or administrative purposes, other than to estimate the impact of the indicated plan amendments, is not recommended without an advance review by Actuarial Concepts of the appropriateness of such application.

After review, the enclosed Statement should be signed by an authorized representative and sent to the State, along with a copy of the proposed Ordinance, in the usual manner.

Members of our staff are available to discuss this Statement of Actuarial Impact and its related issues.

Sincerely,

Michael Tierney

Michael J. Tierney

2950 Halcyon Lane, Suite 402, Jacksonville, FL 32223
Phone: (904) 262-3020, Fax: (904) 268-3374
E-mail: ac@actuarialconcepts.com

CITY OF ALTAMONTE SPRINGS
POLICE OFFICERS' PENSION PLAN

Statement of Actuarial Impact

Proposed Plan Amendments

The City is considering adoption of an Ordinance amending the City of Altamonte Springs Police Officers' Pension Plan. The proposed Ordinance contains the following changes in plan provisions that differ from those that served as the basis of the latest actuarial review of the Plan as of October 1, 2015. The Statement of Actuarial Impact measures the impact on the Plan of making the proposed changes as described below:

Death In-Line-of-Duty

The surviving spouse of any Member killed in the line of duty may elect to receive a monthly pension equal to 75% of the Average Monthly Compensation being received by the Member at the time of death. The current provision provided 50%.

The proposed Ordinance made other changes to the Plan but they did not affect the benefits. Thus, there was no actuarial impact for those changes. A share plan was created but the funding was from premium taxes and there are no obligations to the City for funding.

The impact of implementing the changes outlined above is based on the latest actuarial review of the Plan (October 1, 2015). Results are as follows:

CITY OF ALTAMONTE SPRINGS
POLICE OFFICERS' PENSION PLAN
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	10/1/15 Valuation (1)	10/1/15 Study (2)	Net Changes (3) = (2) - (1)
1. Member Data			
(a) Active Members	79	79	Same
(b) Active Members Over NRA (included above)	-	-	Same
(c) Pending Retirees	-	-	Same
(d) Retirees, Beneficiaries and Disableds	1	1	Same
(e) Vested Terminated and Limited Members	13	13	Same
(b) Total Anticipated Payroll for Next 12 Months	$ 4,742,636	$ 4,742,636	Same
(c) Actuarial Present Value (APV) of Future Valuation Payroll	38,812,508	38,812,508	Same
(h) Total Annual Benefit Payments	177,744	177,744	Same
2. Assets			
(a) Market Value	12,903,155	12,903,155	Same
(b) Actuarial Value	12,903,155	12,903,155	Same
3. Liabilities			
(a) APV of Future Benefits			
(1) Active Members			
–Retirement	17,711,745	17,711,745	Same
–Withdrawal	2,801,388	2,801,388	Same
–Disability	1,444,740	1,444,740	Same
–Death	264,326	443,466	179,140
–Refund of Contributions	10,276	10,276	Same
–Total	$ 22,232,475	$ 22,411,615	179,140
(2) Active Members Over NRA (included above)	-	-	Same
(2) DROP Retirees	-	-	Same
(3) Retirees and Beneficiaries	533,354	533,354	Same
(4) Disabled Members	Incl Above	Incl Above	Same
(5) Vested Terminated and Limited Members	552,453	552,453	Same
(6) Total	$ 23,318,282	$ 23,497,422	179,140
(b) APV of Vested Accrued Benefits	7,734,339	7,734,339	Same
(c) APV of All Accrued Benefits	10,385,328	10,693,404	308,076
(b) Actuarial Accrued Liability (AAL)	15,898,338	15,949,901	51,563
(c) Unfunded AAL (UAAL)	2,995,183	3,046,746	51,563
4. Contribution Requirements* for Year Ended	09/30/15	09/30/15	
(a) Plan Normal Cost**	956,620	973,719	17,099
(b) Amortization Payment	432,227	437,846	5,618
(c) Total Plan Requirements*	$ 1,388,847	$ 1,411,565	22,717
(d) Estimated Member Contributions	47,426	47,426	Same
(e) Est. Chapter 185 Contributions	321,481	321,481	Same
(f) Total City Requirements*	1,019,940	1,042,658	22,717
(h) Total City Requirement Adjusted to End of Year***	1,060,459	1,084,078	23,619
5. Percent of payroll			
(a) Plan Normal Cost**	20.17%	20.53%	0.36%
(b) Amortization Payment	9.11%	9.23%	0.12%
(c) Total Plan Requirements*	29.28%	29.76%	0.48%
(d) Estimated Member Contributions	1.00%	1.00%	Same
(e) Est. Chapter 185 Contributions	6.78%	6.78%	Same
(f) Total City Requirements*	21.50%	21.98%	0.48%

* Assumed payable monthly starting October 1, 2015.

** Includes expense normal cost.

*** Includes interest adjustments at the valuation interest rate on amounts to end of year.

This Statement of Actuarial Impact has been prepared pursuant to Chapter 112, Section 112.63(3) of Florida Statutes, and in our opinion, the proposed changes are in compliance with Part VII, Chapter 112, Florida Statutes, and Section 14, Article X, of the State Constitution.

Date: November 25, 2015 By: Michael Tierney

Michael J. Tierney
ASA, MAAA, FCA, EA #14-01337

The proposed changes, as described above, to the best of our knowledge and belief, are in compliance with Part VII, Chapter 112, Florida Statutes, and Section 14, Article X, of the State Constitution.

Date: _____ By: _____

Plan Representative

THE CODE OF ORDINANCES OF THE CITY OF ALTAMONTE SPRINGS

CHAPTER 2. ADMINISTRATION

ARTICLE II. RETIREMENT

* * *

DIVISION 4. POLICE OFFICERS' PENSION PLAN

Proposed Amendments to the Plan

January 6, 2016

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SECTION 2-42.01 DEFINITIONS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

1. **Accumulated Contributions** means a Member's own contributions without interest. For those Members who purchase Credited Service with interest or at no cost to the Plan, only that portion of any payment representing the amount attributable to Member contributions based on the applicable Member contribution rate, shall be included in Accumulated Contributions.

2. **Act** means the Employee Retirement Income Security Act of 1974 (P.L. 93-406) and any regulations issued hereunder by the Department of Labor and the Internal Revenue Service, as that Statute and those regulations shall be amended.

3. **Actuarial Equivalent** means a benefit or amount of equal value based upon the RP 2014 fully generational Group Annuity Mortality Table unisex 50/50 using projection scale MP2014 and an interest rate of seven and one-half percent (7.5%) ~~based upon the 1983 Group Annuity Mortality Table and an interest rate of eight percent (8%) per annum~~.

4. **Average Final Compensation** means one-twelfth (1/12) of the average annual compensation of the five (5) best years of the last ten (10) years of Creditable Service before ~~prior to~~ Retirement, termination, or death. A year shall be twelve (12) consecutive months. (185.02(2), FS)

5. **Beneficiary** means the person or persons entitled to receive benefits hereunder at the death of a Member who has or have been designated in writing by the Member and such written designation having been filed with the Board. If no such designation is in effect, or if no person so designated is living at the time of death of the Member, the Beneficiary shall be the estate of the Member.

6. **Board** means the Board of Trustees, which shall administer and manage the Plan herein provided and serve as trustees of the Fund.

7. **City** means City of Altamonte Springs, Florida.

8. **City Commission** means the City Commission of the City of Altamonte Springs, Florida, as further defined in Section 3.01, Article III of the Charter of the City of Altamonte Springs, Florida.

9. **Code** means the Internal Revenue Code of 1986, as amended from time to time.

10. **Compensation or Salary** means:
    a. The total cash remuneration including, "overtime" for up to 300 hours per year, paid by the City to a Police Officer for services rendered to the City, but excluding lump sum payments for

accrued vacation or sick leave, clothing, meal, mileage, telephone, or vehicle allowances and excluding any payments for extra duty or a special detail work performed on behalf of a second party employer. (185.02(4), FS)

b. For any person who first becomes a Member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code Section 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of $150,000 shall be adjusted by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code Section 401(a)(17)(B). (185.02(6)(c), FS)

c. The Member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the rules of the Internal Revenue Service Code shall be deemed to be the compensation or salary the Member would have received if he were not participating in such program and shall be treated as compensation for retirement purposes. (185.02(6)(b), FS)

11. **Creditable Service or Credited Service** means the aggregate number of years and fractional parts of years of service as a Police Officer with Member contributions, qualified military service, qualified leave-of-absence without pay credit, qualified suspension without pay credit and qualified worker's compensation credit, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Police Officer subject to the following conditions: (185.02(7), FS)

a. A Member may voluntarily leave his or her Accumulated Contribution ~~contribution~~ in the Fund for ~~a period of~~ five (5) years after leaving the employ of the Police Department pending the possibility of being reemployed as a Police Officer, without losing credit for the time that he or she was a Member of the Plan. Alternatively, a Member who has left the employ of the Police Department may elect to have his or her Accumulated Contribution returned upon submitting a written request to the Board. If the Member who left the employ of the Police Department ~~should not be~~ is not reemployed as a Police Officer within five (5) years, then the Accumulated Contribution ~~will~~ shall be returned without interest ~~upon his or her written request~~. (185.02(7)(b), FS)

b. No Member will receive credit for years or fractional parts of years of service for which he or she has withdrawn his or her contributions to the Fund unless the Member repays into the Fund the amount ~~he has~~ withdrawn, plus interest as determined by the Board ~~at the rate of six percent (6%) per annum~~, within 90 days after his or her reemployment. (185.02(7)(a), FS)

c. "Qualified Military Service" In determining the creditable service of any Member, credit for up to 5 years of time spent in the military service of the Armed Forces of the United States shall qualify to be added to the years of actual service, if: (185.02(7)(d), FS)

1. The Member is in the active employ of the City as a Police Officer prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States,

2. The Member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act, and

3. The Member returns to his or her employment as a Police Officer of the City within one year from the date of his or her release from such active service.

d. "Qualified Leave-of-Absence Without Pay Credit" Creditable service can include up to two years of authorized leaves of absence if:

1. The Member has completed at least 10 years of creditable service, excluding periods of leave of absence, and;

2. The leave of absence is authorized, in writing, by the City and approved by the Board, and;

3. The Member returns to active employment with the City in a regularly established position as a Police Officer immediately upon termination of the leave of absence for at least 30 days, except that a Member who retires on disability while on a medical leave of absence shall not be required to return to employment, and;

4. The Member pays into the Trust Fund the total required employer contributions plus the total required employee contributions based on the Member's total monthly compensation in effect for the pay period immediately preceding the period of authorized leave of absence, prorated for said period of authorized leave of absence, plus interest on such contributions, compounded annually on October 1st, at the then actuarially assumed interest earnings rate.

e. "Qualified Suspension Without Pay Credit" Any Member who is not retired and who is, has been, or shall be, suspended from employment by the City and reinstated without compensation shall receive retirement service credit for the period of time from the date of the suspension to the date of reinstatement, provided:

1. The creditable service claimed for the period of suspension does not exceed two years;

2. The Member returns to active employment with the City in a regularly established position as a Police Officer for at least 30 days, and;

3. The Member pays into the Trust Fund the total required employer contributions plus the total required employee contributions based on the Member's total monthly compensation in effect for the pay period immediately preceding the period of suspension, prorated for said period of suspension, plus interest on such contributions, compounded annually on October 1st, at the then actuarially assumed interest earnings rate.

f. "Qualified Worker's Compensation Period Credit" A Member who has been eligible or becomes eligible to receive worker's compensation payments for an injury of illness occurring during his or her employment by the City as a Police Officer shall, upon return to active employment by the City as a Police Officer for 30 days or, upon approval for disability retirement under the provisions of this Plan, receive full retirement credit for the period prior to return to active employment or disability retirement for which worker's compensation payments were received. However, no Member may receive retirement credit for any such period occurring after the earlier of the date maximum medical improvement has been attained as defined in s. 440.02(8), Florida Statutes, the date termination has occurred, or for more than two years, whichever comes first. The City shall make the required retirement contributions based on the Member's rate of monthly compensation immediately prior to his or her receiving worker's compensation payments for retirement credit received by the Member.

g. Credited service shall be provided only for service as a Police Officer, for qualified military service, for qualified leave-of-absence without pay credit, for qualified suspension without pay credit and for qualified worker's compensation credit, as defined herein, and shall not include any other type of service.

12. **Death in the Line of Duty** means death arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. The Board of Trustees may require such proof as the Board deems necessary as to the time, date, and cause of death, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

13. **Defined Contribution Plan** means the component of the Plan to which deposits, if any, are made to provide special benefits to police officers. Such component is an element of the Plan and exists in conjunction with the defined benefit component. The retirement benefits, if any, of the defined contribution plan shall be provided through individual member accounts in accordance with the applicable provisions of the Internal Revenue Code and related regulations and are limited to the

contributions, if any, made into each member's account and the actual accumulated earnings, net of expenses, earned on the member's account. (185.02(9))

14. **Disbursing Agent** means an agent designated by the Board to disburse Plan funds.

15. **Division** means the Division of Retirement of the Florida Department of Management Services. (185.02(10))

16. **Effective Date** means December 5, 1995, the date on which this Plan became effective.

17. **Enrolled Actuary** means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries. (185.02(14), FS)

18. **Fund** means the Altamonte Springs Police Officers' Pension Trust Fund established herein as part of the Plan.

19. **Joint Annuitant** ~~Pensioner~~ means a person designated, upon written request to the Board of Trustees and subject to approval by the Board of Trustees, by the Member to receive with the Member a retirement income of a modified monthly amount, payable to the Member during the joint lifetime of the Member and the joint pensioner person, and following the death of either of them, 100 percent, 75 percent, 66 2/3 percent, or, 50 percent of such monthly amount, as designated by the Member at retirement, payable to the survivor for the lifetime of the survivor. No further benefits shall be paid following the death of the survivor.

20. **Member** means an actively employed Police Officer who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the Plan adopted by City ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to Members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

21. **Monthly Retirement Benefit** means an amount equal to three percent (3%) of Average Final Compensation for each year of Creditable Service.

22. **Plan** means the City of Altamonte Springs Police Officers' Pension Plan as contained herein and all amendments thereto.

23. **Plan Year** means the period of time beginning October 1 and ending on the following September 30, both dates inclusive.

24. **Police Department** means the Altamonte Springs Police Department.

25. **Police Officer** means an actively employed full-time person, employed by the City, including his or her initial probationary employment period, who is certified as a Police officer as a condition of employment in accordance with the provisions of §943.1395, Florida Statutes, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of the State of Florida. The term ~~This definition~~ includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers or auxiliary law enforcement officers as those terms ~~the same~~ are defined in s. 943.10~~(6) and (8)~~, Florida Statutes~~, respectively~~. (185.02(16), FS)

26. **Retiree** means a Member who has entered Retirement Status. (185.02(18), FS)

27. **Retirement** means a Member's separation from City employment as a police officer with immediate eligibility for ~~immediate receipt of~~ benefits under the Plan. (185.02(19), FS)

28. **Special Benefits** means benefits provided in a defined contribution plan for police officers. (185.02(21))

29. **Spouse** means the lawful wife or husband of a Member or Retiree at the time benefits become payable.

30. **Vested or Vesting** means the guarantee that a member is eligible to receive a future retirement benefit upon the completion of the required years of creditable service even though the member may have terminated covered employment before reaching normal or early retirement date. Any Member who completes six (6) years of creditable service in a covered position shall be considered vested. Being vested does not entitle a member to a disability benefit except as provided herein.

SECTION 2-42.02 MEMBERSHIP

1. **Conditions**. All Police Officers who become Police Officers on or after January 1, 1996, shall become Members of this Plan as a condition of employment.

2. **Beneficiaries**. Each Police Officer shall complete a form prescribed by the Board providing for the designation of a Beneficiary or Beneficiaries.

3. **Police Chief**. The Police Chief, upon being appointed Police Chief, may elect not to participate in the Plan. (185.02(16), FS)

SECTION 2-42.03 BOARD OF TRUSTEES

The sole and exclusive administration of and responsibility for the proper operation of the Plan and for making effective the provisions of this ordinance are hereby vested in a Board of Trustees. However, the Board is not empowered to amend the provisions of this Plan. (185.05(1), FS)

1. **Composition of the Board**. The Board of Trustees is hereby designated as the plan administrator. The Board of Trustees shall consist of five (5) Trustees, two of whom, the Resident Trustees, unless otherwise prohibited by law, shall be legal residents of the City, who shall be appointed by the City Commission, and two of whom, the Member Trustees, shall be Members of the Plan elected by a majority of the Members of the Plan. The fifth Trustee shall be chosen by a majority of the previous four Trustees as provided for herein, and such person's name shall be submitted to the City Commission. Upon receipt of the fifth person's name, the Altamonte Springs City Commission shall, as a ministerial duty, appoint such person to the Board of Trustees as its fifth Trustee. The Fifth Trustee shall have the same rights as each of the other four Trustees appointed or elected as herein provided. (185.05(1)(a), FS)

2. **Term**. Each Resident Trustee shall serve as Trustee for a period of ~~two (2)~~ four (4) years, unless he or she sooner vacates the office or is sooner replaced by the City Commission at whose pleasure he or she shall serve. Each Member Trustee shall serve as Trustee for a period of ~~two (2)~~ four (4) years, unless he or she sooner leaves the employment of the City as a Police Officer or otherwise vacates his or her office as Trustee, whereupon a successor shall be chosen in the same manner as the departing Trustee. The Fifth Trustee shall serve a ~~two (2)~~ four (4) year term. For all Trustees the ~~two (2)~~ four (4) year term of office begins on January 1st and ends on December 31st. Each Trustee may succeed himself or herself in office. The Board shall establish and administer the nominating and election procedures for each election of Member Trustees. The Board shall meet at least quarterly each year. The Board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description. (185.05(1)(a), FS)

3. **Chairman and Secretary**. The Trustees shall, by a majority vote, elect from their number a Chairman and a Secretary. The Chairman shall preside at all meetings of the Board. The Secretary of the Board shall keep a complete minute book of the actions, proceedings, or hearings of the Board. In the absence of the Chairman, the Secretary shall preside at meetings of the Board. The Trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law. (185.05(2); 185.06(3), FS)

4. **Board Meetings**. The Board shall meet at least quarterly each year. (185.05(3), FS)

5. **Voting**. Any and all acts and decisions shall be effectuated by a vote of a majority of the members of the Board. Each Trustee shall be entitled to one vote on the Board. Three (3) affirmative votes

shall be necessary for any decision by the Trustees at any meeting of the Board. A Trustee shall have the right to abstain from voting as the result of a conflict of interest provided that Trustee complies with the provisions of Section 112.3143, Florida Statutes. No Trustee shall take part in any action in connection with his or her own participation in the Plan, and no unfair discrimination shall be shown to any individual employee participating in the Plan. (see 185.06(2), FS)

6. **Forfeiture of Office.** Resident Trustees serve at the pleasure of the City Commission. Member Trustees shall be employees of the City. Trustees convicted of a felony shall forfeit their office.

7. **Professional Services.** The Board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the Plan. The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the Plan shall be paid from the Fund at such rates and in such amounts as the Board shall agree. (see 185.06(6), FS)

8. **Duties and Responsibilities.** The duties and responsibilities of the Board shall include, but not necessarily be limited to, the following: (185.06(4), FS)

   a. To construe the provisions of the Plan and determine all questions arising there under;

   b. To prepare, or cause to be prepared, all reports or studies required by law;

   c. To determine all questions relating to eligibility and membership, and request for alternate qualified retirement income payment options;

   d. To determine and certify the amount of all retirement allowances or other benefits hereunder;

   e. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Plan;

   f. To distribute to Members, at regular intervals, information concerning the Plan;

   g. To receive and process all applications for benefits;

   h. To authorize all payments whatsoever from the Fund, and to designate a disbursing agent and hereafter notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the Plan and Fund;

   i. To keep, or cause to be kept, a record of all persons receiving retirement payments under the provisions of the Plan, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record shall be kept a list of all Police Officers who

have been or are Members of the Plan. The record shall show the name, address, and time of employment of such Members and when he or she ceases to be employed by the City. (185.06(3))

j. To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the Plan; (185.06(5), FS)

k. To bring and defend lawsuits of every kind, nature and description, the prevailing party to be entitled to recover costs and reasonable attorney's fees thereof; and (185.05(5), FS)

l. To keep, or cause to be kept, in convenient form, data as shall be necessary for an actuarial valuation of the Plan and for checking the actual experience of the Trust Fund.

m. To perform such other duties as may be required to prudently administer the Plan.

SECTION 2-42.04 FINANCES AND FUND MANAGEMENT

1. **Trust Fund Established.** As part of the Plan, there is hereby established the Altamonte Springs Police Officers' Pension Trust Fund, into which shall be deposited all of the contributions, all accretions by way of interest and dividends on investments, bank deposits or otherwise and all assets or other sources of income now or hereinafter authorized by law whatsoever attributable to the Plan. (185.03(1), FS)

2. **Custody and Supervision of the Trust Fund.** The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board. Payment of benefits and disbursements from the Fund shall be made by the disbursing agent upon authorization from the Board.

3. **Deposits.** All funds and securities of the Plan may be deposited by the Board with the Finance Director of the City, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the City. However, any funds and securities so deposited with the Finance Director of the City shall be kept in a separate fund by the Finance Director or clearly identified as such funds and securities of the Plan. In lieu thereof, the Board shall deposit the funds and securities of the Plan in a qualified public depository as defined in §280.02, Florida Statutes, which depository with regard to such funds and securities shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes. In order to fulfill its investment responsibilities as set forth herein, the Board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the Board, in the investment of all Fund assets. (185.06(6), FS)

4. **Commingling of Assets**. All funds and securities of the Plan may be commingled in the Fund, provided that accurate records are maintained at all times reflecting the financial composition of the Fund, including accurate current accounts and entries as regards the following:

   a. Current amounts of Accumulated Contributions of Members on both an individual and aggregate account basis, and

   b. Receipts and disbursements, and

   c. Benefit payments, and

   d. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the City, and

   e. All interest, dividends and gains (or losses) whatsoever, and

   f. Such other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.

5. **Annual Audit Required**. An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the City showing a detailed listing of assets, the methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets, as well as other items normally included in a certified audit.

6. **Annual Administrative Expense Budget Required**. The Board shall adopt and operate under an administrative expense budget for each fiscal year, provide a copy of the budget to the City and make available a copy of the budget to Plan members before the beginning of the fiscal year. If the Board amends the administrative expense budget, the Board must provide a copy of the amended budget to the City and make available a copy of the amended budget to Plan members. (185.05(8)(a)2, FS)

7. **Annual Administrative Expense Report Required**. The Board shall provide a detailed accounting report of its administrative expenses for each fiscal year to the City and to the Division and shall make the report available to each member of the Plan. Administrative expenses are expenses related to legal counsel, actuary, plan administrator, and all other consultants, and all travel and other expenses paid to or on behalf of members of the Board or anyone else on behalf of the Plan. (185.05(8)(a)1, FS)

8. **Investment Powers and Authority.** The Board shall have the following investment powers and authority:

   a. The Board shall be vested with full legal title to said Fund, subject, however, and in any event to the authority and power of the City Commission to amend or terminate this Fund, provided that no amendment or Fund termination shall ever result in the use of any assets of this Fund except for the payment of regular expenses and benefits under this Plan, except as otherwise provided herein. All contributions from time to time paid into the Fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its agent in the Fund and the Board shall not be required to segregate or invest separately any portion of the Fund.

   b. The Board shall adopt a written investment policy consistent with this ordinance, and all other state and federal laws, rules and regulations. All monies paid into or held in the Fund shall be invested and reinvested and the investment of all or any part of such funds shall be in conformance with the aforementioned written investment policy.

   c. All monies paid into or held in the Fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be limited to: (185.06(1)(b), FS)

      1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the Members in the Fund shall be entitled under the provisions of this Plan and pay the initial and subsequent premium thereon, subject to the provisions of Chapter 185, Florida Statutes. (185.06(1)(a), FS)

      2. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund. (185.06(1)(b)1., FS)

      3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States. (185.06(1)(b)2., FS)

      4. Bonds issued by the State of Israel. (185.06(1)(b)3., FS)

      5. Bonds, stocks, commingled funds administered by National or State Banks or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the corporation is listed on any one or more national stock exchanges or on

the National Market System of the NASDAQ Stock Market and, in the case of bonds, and holds a rating in one of the three highest classifications by a major rating service, and if such investments are made in a commingled fund administered by a state or national bank, then the rating or of each issue in the commingled fund shall hold a rating within the top three (3) rating classifications or a major rating service and no foreign investments shall be permitted in the commingled fund or otherwise. (185.06(4)(a), FS)

6. Real estate. The overall objective of the real estate portfolio is to add diversification, another stable income stream and the possibility of enhanced returns to the overall portfolio. Real estate investments may be made via private equity real estate investment vehicles, real estate investment trusts (REIT's), and exchange traded funds (ETF's). Direct investment in real estate is prohibited.

d. The Board shall not invest more than five percent (5%) at market value of its assets in the common stock, capital stock, or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent (5%) at market value of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at market value ~~at cost~~ exceed seventy percent (70%) ~~sixty-five percent (65%)~~ of the assets of the Fund. The Board may invest up to twenty-five percent (25%) of plan assets in foreign securities on a market value basis. Foreign investments bay be purchased via mutual fund, collective trust, American Depository Receipts (ADR's) or ordinaries. (185.06(1)(b)(4)(b), FS)

e. The Board shall not invest more than ~~ten percent (10%) at cost~~ fifteen percent (15%), at market value, of its assets in real estate and there shall be no investment in a limited partnership or trust.

f. The Board may retain in cash and keep unproductive income of such amount of the Fund as it may deem advisable, having regard for the cash requirements of the Plan.

g. The Board may cause any investment in securities held by it to be registered in or transferred into its name as Trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the Fund.

h. The Board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee

with the Trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the Fund which it may deem to be to the best interest of the Fund to exercise.

i. The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

j. Where any action which the Board is required to take of any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as Trustee under this ordinance can reasonably be taken or performed only after receipt by it from a Member, the City, or any other entity, of specific information, certification, direction or instructions, the Board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

k. Any overpayments or under payments from the Fund to a Member or Beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the Board in such a manner that the Actuarial Equivalent of the benefit to which the Member or Beneficiary was correctly entitled to, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Under payments shall be made up from the Fund in a prudent manner.

l. The Board shall sustain no liability whatsoever for the sufficiency of the Fund to meet the payments and benefits herein provided for.

m. In any application to or proceeding or action in the courts, only the Board shall be a necessary party, and no Member or other person having an interest in the Fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

n. Any of the foregoing powers and functions reposed in the Board may be performed or carried out by the Board through duly authorized agents, provided that the Board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said Fund shall always remain in the Board.

9. **Independent Investment Review Required**. At least once every three years the Board shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money managers, report same to the Board, and make recommendations to the Board regarding selection of money managers for the next investment term. For the purpose

of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum: (see 185.06(5), FS)

a. Provides his or her services on a flat fee basis;

b. Is not associated, in any manner, with the money manager for the pension fund;

c. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be net of fees; and

d. Has three of more years of experience working in the public sector.

10. **Fiscal Year**. The fiscal year shall be that period of time beginning on October 1 and ending on the following September 30, both dates inclusive.

SECTION 2-42.05 CONTRIBUTIONS

1. **Member Contributions**.
   a. **Amount**. Each Member of the Plan shall be required to make regular contributions to the Fund in the amount of one percent (1%) of his or her Salary. Member contributions withheld by the City on behalf of the Member shall be deposited with the Board immediately after each pay period. The contributions made by each Member to the Fund shall be designated as employer contributions pursuant to §414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Member's gross income for Federal Income Tax purposes. For all other purposes of the Plan, such contributions shall be considered to be Member contributions. (see 185.07(1)(b); 185.07(2)(a), FS)

   b. **Additional Contributions**. Member contributions may be increased by majority consent of active Members of the Plan to provide greater benefits. Such greater benefits shall be funded solely from said additional Member contributions and are not, and shall not become, obligations of the City. (see 185.07(2)(b), FS)

   c. **Method**. Such contributions shall be made by payroll deduction.

2. **State Contributions**. All monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for Police Officers of the City, to include, without limitation, revenues derived from the state excise tax on casualty insurance premiums ~~premium tax income~~ per Chapter 185 ~~175~~, Florida Statutes, and as enacted by Sec. 23.26, City of Altamonte Springs Code of Ordinances, shall be deposited in the Trust Fund immediately and under no circumstances more than five (5) days after receipt by the City. (185.11, FS) Chapter 185

premium tax revenues shall be allocated to the Share Plan as provided in section 2-42.07, and all premium tax revenues not allocated to the Share Plan shall be used to as described herein. The unfunded actuarial liability of the Plan for the plan year beginning October 1, 2015, shall be reduced by $484,251.00, which reflects one-half of the accumulated unallocated premium tax revenues retained by the Plan on September 30, 2014 (one-half of $968,502.00). Effective for the plan year beginning October 1, 2015 and each plan year thereafter, the first $291,186.00 in premium tax revenues plus one-half of the premium tax revenues received during the preceding plan year in excess of $291,186.00 (if any) shall be used to reduce the City's required contributions to the Plan. The remaining one-half of the annual premium tax revenues received in excess of $291,186.00 shall be allocated to the Share Plan pursuant to Section 2-42.07(5)(b).

3. **City Contributions**. So long as this Plan is in effect, the City shall make periodic, but not less than quarterly, contributions to the Fund in an amount equal to the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation ~~as provided in~~ conducted under part VII of Chapter 112, Florida Statutes, after taking into account the amounts described in subsections (1), (2), & (4) of Section 2-42.05.

4. **Other**. Private donations, gifts, bequests, devises, fines and forfeitures and all accretions by way of interest or dividends on deposits or otherwise shall be deposited to the Fund.

SECTION 2-42.06 BENEFIT AMOUNTS AND ELIGIBILITY FOR BENEFITS

1. **Normal Retirement Date**. A Member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age fifty-five (55) and the completion of six (6) or more years of Creditable Service as a Police Officer or the completion of twenty-five (25) years of Creditable Service, regardless of age. A Member may retire on his or her normal retirement date or on the first day of any month thereafter, and each Member shall become 100% vested in his or her accrued benefit on the Member's normal retirement date. Normal retirement under the Plan is Retirement from employment with the City on or after normal retirement date. (185.16(a), FS)

2. **Normal Retirement Benefit – Life Plus 10 (Option 1).** A Member retiring hereunder on or after his or her normal retirement date shall receive a monthly retirement benefit which shall commence on the first day of the month next following his or her Retirement and be continued thereafter during Member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. In the event of a retired Member's death prior to the payment of one hundred twenty (120) monthly payments, the balance of same shall be paid to the beneficiary (or beneficiaries) as designated by the retired Member, or if no beneficiary is designated, to the estate of the Member, provided that in such case, the Board may direct that the commuted value of the

remaining monthly income payments be paid in a lump sum, and same shall operate as a complete discharge of all obligations under the Plan. (185.16(3), FS)

~~(3) **Normal Retirement Benefit Payments**. The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the Member's normal retirement date, or on the first day of the month coincident with or next following the Member's actual retirement, if later, and the last payment will be the payment due next preceding the Member's death; except that, in the event the Member dies after retirement but before receiving retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the Member for the balance of the 10 year period, or, if no beneficiary is designated, to the estate of the Member as provided in s. 2-42.12 of this ordinance.~~

3. **Early Retirement Date**. A Member may retire on his or her early retirement date which shall be the first day of any month coincident with or next following the completion of six (6) years of Credited Service. Early retirement under the Plan is Retirement from employment with the City on or after the early retirement date and prior to the normal retirement date. (185.16(4), FS)

4. **Early Retirement Benefit**. A Member retiring hereunder on his or her early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows: (185.16(4), FS)

   a. A deferred monthly retirement benefit which shall commence on what would have been his or her normal retirement date had he or she continued employment as a Police Officer and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his or her normal retirement date except that Credited Service and Average Final Compensation shall be determined as of his or her early retirement date; or

   b. An immediate monthly retirement benefit which shall commence on his or her early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (a) above, reduced by one quarter of one percent (.25%) for each month by which the commencement of benefits precedes the date which would have been the Member's normal retirement date had he or she continued employment as a Police Officer. (185.16(4)(b), FS)

5. **Early Retirement Benefit Payments**. The monthly retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the Member's early retirement date, or on the first day of the month coincident with or next following the Member's actual retirement, if later, and the last payment will be the payment due next preceding the retired Member's death; except that, in the event the Member dies before receiving

retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the Member for the balance of the 10 year period, or, if no beneficiary is designated, to the estate of the Member as provided herein ~~in s. 2-42.12 of this ordinance~~. (185.16(4)(c), FS)

SECTION 2-42.07 USE OF PREMIUM TAX REVENUES – SHARE PLAN

1. **Use of Annual Premium Tax Revenues**. All premium tax revenues received pursuant to Chapter 185, Florida Statutes shall become a component of the pension system and shall be used as set forth in this section and in section 2-42.05.

2. **Establishment of Share Plan.** In accordance with Florida Statutes section 185.35(6), there is hereby established a defined contribution plan component ("Share Plan") to provide benefits for police officers, as set forth in this section. The Share Plan shall be funded solely and entirely by Chapter 185 premium tax monies that are allocated to the Share Plan pursuant to this section. The Share Plan shall consist of a governmental profit sharing plan and trust established by resolution of the City Commission.

3. **Eligible Share Plan Participants.** Eligible Share Plan participants shall be all members actively employed as of the end of a plan year.

4. **Individual Share Accounts**. An individual share account shall be created for each eligible Share Plan participant. The plan administrator shall maintain appropriate records showing the share account balance of each participant. Once funds have been credited to participant share accounts, not less than annually a statement shall be provided to each participant setting forth each participant's share account balance as of the end of the reporting period.

5. **Share Account Funding**. Chapter 185 premium tax revenues shall be allocated to the Share Plan, and credited to participant share accounts as follows:

   a. *Initial Allocation*. The total initial amount to be allocated to the Share Plan shall be $484,251.00, which reflects one-half of the accumulated unallocated premium tax revenues retained by the Plan on September 30, 2014 (one-half of $968,502.00). No later than March 31, 2016, the share account of each eligible Share Plan participant actively employed on March 31, 2016, shall be credited as follows. Each eligible participant shall receive one share for each month of credited service, earned from date of hire through September 30, 2015. The total number of shares thus determined shall be divided into the initial amount of premium tax revenues to be allocated ($484,251.00) to derive the value of each share.

b. *Annual Allocation*. On October 1, 2015 and each October 1 thereafter, one-half of the Chapter 185 premium tax revenues received during the preceding plan year in excess of $291,186.00 (if any), less the expenses of administering the share plan for the preceding plan year, shall be allocated to the Share Plan. The share account of each eligible participant shall be credited with an equal share of the annual allocation amount.

SECTION ~~2-42.07~~ 2-42.08 PRE-RETIREMENT DEATH BENEFITS

Notwithstanding any other provision in this Plan to the contrary, pre-retirement death benefits shall be as provided below:

1. **Death In-Line-of-Duty**

a. The surviving spouse of any Member killed in the line of duty may elect to receive a monthly pension equal to seventy five percent (75%) of the Average Monthly Compensation ~~one-half of the monthly salary~~ being received by the Member at the time of death for the rest of the surviving spouse's lifetime. or, if the Member was vested, such surviving spouse may elect to receive a ~~benefit as provided in subparagraph (2)(b) herein.~~ monthly benefit computed based on the assumption that the Member retired on the date of death and elected the one hundred percent (100%) joint and survivor optional form of benefit. The benefit shall be calculated as for normal retirement based on the deceased Member's Credited Service and Average Final Compensation as of the date of his or her death but not reduced as for early retirement. Benefits provided by this paragraph shall supersede any other distribution that may have been provided by the Member's designation of beneficiary.

b. For the purposes of this subparagraph Average Monthly Compensation means one-twelfth (1/12) of total Compensation for the twelve complete months of Credited Service preceding the deceased Member's date of death. In the event the deceased Member had completed less than twelve (12) months credited service at the time of death, Average Monthly Compensation means total Compensation for all complete months prior to the deceased Member's date of death divided by the total number of complete months of credited service.

c. If the surviving spouse of a Member killed in the line of duty dies, the monthly payments which would have been payable to such surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such Member's natural or adopted child or children under 24 ~~18~~ years of age and unmarried until the 24th ~~18th~~ birthday of the youngest child. Payments shall cease in the event of the death of all surviving eligible children.

d. If a Member killed in the line of duty leaves no surviving spouse but is survived by a natural or adopted child or children under 24 ~~18~~ years of age, the benefits provided by subparagraph (1), normally payable to a surviving spouse, shall be paid for the use and benefit of such Member's child or children under 24 ~~18~~ years of age and unmarried until the 24th ~~18th~~ birthday of the youngest child. . Payments shall cease in the event of the death of all surviving eligible children.

e. If a Member killed in the line of duty leaves no surviving spouse nor children but is survived by a parent or grandparent, or a person age 24 or older for whom the Member is the legal guardian, provided that such parent, grandparent, or other person is financially dependent for no less than one-half of his or her support from the member at the time of the death of such Member, as determined by the Board, the benefits provided by subparagraph (1), normally payable to a surviving spouse, shall be paid for the use and benefit of such Member's a parent or grandparent, or a person age 24 or older for whom the member is the legal guardian, provided that such parent, grandparent, or other person is financially dependent for no less than one-half of his or her support from the member at the time of the death of such member. Payments shall cease upon the death of the recipient or recipients.

f. Notwithstanding any other provision of law to the contrary, the surviving spouse of any Member killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries. (see 185.21(1), FS)

2. Death Other Than In-Line-of-Duty

a. **Prior to Vesting.** The Beneficiary of a deceased Member who was not receiving monthly benefits or who was not yet vested shall receive a refund of one-hundred percent (100%) of the Member's Accumulated Contributions, without interest. (see 185.21(1), FS)

b. **Deceased Members Vested or Eligible for Retirement**

1. A Beneficiary, who qualifies as a joint annuitant ~~is the spouse, dependent child, or any person who is receiving at least fifty percent (50%) of his or her support from the Member~~, of any Member, who dies prior to Retirement and who, at the date of his or her death was vested, shall be entitled to a ~~immediate or deferred~~ monthly benefit computed based on the assumption that the Member retired on the date of death and elected the one hundred percent (100%) joint and survivor optional form of benefit. The benefit shall be calculated as for normal retirement based on the deceased Member's Credited Service and Average Final Compensation as of the date of his or her death and reduced as for early retirement, if applicable, or,

2. A Beneficiary who qualifies as a joint annuitant may receive the benefits otherwise payable to the Member at what would have been his or her early or normal retirement date as provided in herein, or,

3. A Beneficiary may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased Member's Accumulated Contributions. (see 185.21(1), FS)

3. **Exclusions from Calculations.** Death benefits provided pursuant to s. 112.19, F.S. or any other state or federal law shall not be included in the calculation of death or retirement benefits provided in this ordinance.

SECTION 2-42.09 ~~2-42.08~~ DISABILITY

Any Member having eight (8) or more years of credited service and becoming totally and permanently disabled, or a Member who becomes totally and permanently disabled in the line of duty, regardless of length of service, may retire from the service of the City under the Plan if he or she becomes totally and permanently disabled as defined in subsection (1) by reason of any cause other than that set out in subsection (2). Such retirement shall herein be referred to as disability retirement. Terminated vested persons are not eligible for disability benefits. (185.18(1), FS)

1. **Disability Determination.** A Member will be considered totally disabled if, in the opinion of the Board, he or she is wholly prevented from rendering useful and efficient service as a Police Officer, and a Member will be considered permanently disabled, if in the opinion of the Board, such Member is likely to remain so disabled continuously and permanently from a cause other than specified in subsection (2). (185.18(2), FS)

2. **Conditions Disqualifying Disability Benefits.** Each Member who is claiming disability benefits shall establish, to the satisfaction of the Board, that such disability is not the result of:

   a. Excessive and habitual use of any drugs, intoxicants or narcotics; (185.18(3)(a), FS)

   b. Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections; (185.18(3)(b), FS)

   c. Injury or disease sustained while committing a crime; (185.18(3)(b), FS)

   d. Injury or disease sustained while serving in any ~~branch of the Armed Forces~~ armed forces; (185.18(3)(c), FS)

   e. Injury or disease sustained after his or her employment ~~as a Police Officer~~ with the City ~~of Altamonte Springs~~ shall have terminated; (185.18(3)(d), FS)

   f. Willful, wanton or intentional misconduct or gross negligence of the Member or false, misleading or fraudulent statements made to obtain retirement benefits;

   g. Injury or disease sustained by the Member while working for anyone other than the City and arising out of such employment.

h. A condition pre-existing the Police Officer's membership in the Plan. No Member shall be entitled to a disability pension, whether in line of duty or not in line of duty, because of or due to the aggravation of a specific injury, impairment or other medical condition pre-existing at the time of membership in the Plan, provided that such pre-existing condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability pension to a Member who, after membership in the Plan, suffers an injury, impairment or other medical condition different from some other injury, impairment, or other medical condition existing at or prior to said membership.

i. Intentional, self-inflicted injury.

3. **In-Line of Duty Presumptions**. Any condition or impairment of health of a Member caused by tuberculosis, hypertension, heart disease, meningococcal meningitis, or hepatitis, ~~hardening of the arteries or certain communicable diseases specified in Section 112.181, Florida Statues~~, resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided that such Member shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section shall be applicable to all Members only with reference to pension and retirement benefits under this Plan. The provisions of Section 112.181, Florida Statutes, as amended from time to time, are incorporated by reference herein for any conditions that are diagnosed on or after January 1, 1996.

4. **Disability Benefits In-Line of Duty**. The benefit payable to any Member who is determined to be totally and permanently disabled, as described herein, which disability, in the opinion of the Board, was directly caused by the performance of his or her duty as a Police Officer is the monthly income payable for 10 years certain and life for which his or her monthly benefit shall be the monthly retirement benefit, but in any event the minimum amount paid to the Member shall be not less than sixty-five percent (65%) of his or her average final compensation as of the Member's disability retirement date. In the event the Member has received less than five years of annual compensation as of the date of disability, the Average Final Compensation shall be the Member's total compensation from date the Member first entered the Plan through the date of disability, divided by the number of months therein represented. (185.18(5), FS)

5. **Disability Benefits Not-in-Line of Duty**. The benefit payable to any actively employed Member with eight (8) years or more Credited Service who shall become totally and permanently disabled, as described herein, which disability, in the opinion of the Board, is not directly caused by the performance of his or her duties and as a Police Officer shall, be entitled to the accrued normal retirement benefit, but shall be not less than twenty-five percent (25%) of the Member's average final compensation as of the Member's disability retirement date. (185.18(5), FS)

6. **Medical Examination Requirement.** (see 185.18(14), FS)
   a. A Member shall not become eligible for disability benefits until and unless he or she undergoes a medical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the Board for that purpose. The Board shall not select the Member's treating physician or surgeon for this purpose except in an unusual case where the Board determines that it would be reasonable and prudent to do so.

   b. Any Retiree receiving disability benefits under provisions of this ordinance may be periodically re-examined by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the Board, to determine if such disability has ceased to exist. If the Board finds that the Retiree is no longer permanently and totally disabled to the extent that he or she is unable to render useful and efficient service as a Police Officer, the Board shall recommend to the City that the Retiree be returned to performance of duty as a Police Officer, and the Retiree so returned shall enjoy the same rights that Member had at the time he or she was placed upon pension. In the event the Retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, he or she shall forfeit the right to his or her pension.

   c. The cost of the medical examination and/or re-examination of the Member claiming or the Retiree receiving disability benefits shall be borne by the Fund. All other reasonable costs as determined by the Board incident to the medical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the Fund.

   d. If the Retiree recovers from disability and reenters the service of the City as a Police Officer, his or her service will be deemed to have been continuous, but the period beginning with the first month for which he or she received a disability retirement income payment and ending with the date he or she reentered the service of the City will not be considered as Credited Service for the purposes of the Plan.

   e. The Board shall have the power and authority to make the final decisions regarding all disability claims.

7. **Disability Payments.** The monthly benefit to which a Member is entitled in the event of the Member's disability retirement shall be payable on the first day of the first month after the Board determines such entitlement. However, the monthly retirement income shall be payable as of the date the Board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

a. If the Retiree recovers from the disability prior to his or her normal retirement date, the payment due next preceding the date of such recovery, or

b. If the Retiree dies without recovering from disability or attains his or her normal retirement date while still disabled, the payment due next preceding his or her death or the 120th monthly payment, whichever is later.

8. **Workers' Compensation.** When a Member is receiving a disability pension and workers' compensation benefits pursuant to Florida Statute Chapter 440, for the same disability, and the total monthly benefits received from both exceed 100% of the Members average monthly wage, as defined in Chapter 440, Florida Statutes, excluding overtime, the disability pension benefit shall be reduced so that the total monthly amount received by the Member does not exceed 100% of such Salary. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) Years Certain by dividing the lump sum amount by 83.9692. In no event, however, shall a Member's disability pension benefit be less than sixty-five percent (65%) of average final compensation for in-line-of-duty disability, and twenty-five percent (25%) of average final compensation for not in-line-of-duty disability.

SECTION 2-42.10 ~~2-42.09~~ SEPARATION FROM SERVICE

If a Member terminates his or her employment with the City, either voluntarily or by discharge, and is not eligible for any other benefits under this Plan, the Member shall be entitled to the following:

1. **Not Vested.** If the Member has less than six (6) years Credited Service upon termination, the Member shall be entitled to a refund of his or her Accumulated Contributions, without interest, less any benefits paid to him or her, or the Member may leave his or her contributions deposited with the Fund. (185.19(1), FS)

2. **Vested.** If the Member has six (6) or more years of Credited Service upon termination and elects to leave his or her accrued contributions in the Fund, such Member upon attaining age 50 years or more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her, or upon attaining age 55 years, the Member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal retirement and based upon the Member's Credited Service, Average Final Compensation and the benefit accrual rate as of the date of termination. If the Member does not withdraw his or her Accumulated Contributions and does not survive to his or her otherwise normal retirement date, his or her designated Beneficiary shall be entitled to a benefit as provided herein for a deceased Member, in accordance with Section 2-17.07, Pre-Retirement Death. (185.19(2), FS)

3. **Termination with Continued Employment.** Any vested Member of the Plan whose position is terminated, for whatever reason, but who remains employed by the City in some other capacity,

shall have all retirement benefits accrued up to the date of such termination under this Plan preserved, provided he or she does not elect to withdraw his or her Accumulated Contributions from this Plan. Such accrued retirement benefits shall be payable at his or her otherwise early (reduced as for early retirement) or normal retirement date hereunder, or later, in accordance with the provisions of this Plan; provided further, however, that benefits shall not be payable under this Plan during any period of continued employment by the City.

4. **Refund of Accumulated Contributions Benefit Forfeiture.** Upon termination of employment a Member, upon request, shall be entitled to a refund of his or her Accumulated Contributions, without interest, less any benefits paid to him or her, or the Member may leave his or her contributions deposited with the Fund. A Member receiving a refund of Accumulated Contributions loses all vested rights and is not entitled to any benefits under the Plan.

SECTION 2-42.11 ~~2-42.10~~ OPTIONAL FORMS OF BENEFITS

1. **Benefit Options**. In lieu of the amount and form of retirement income payable in the event of normal, early, or disability retirement as specified herein (Option 1 - 10 years certain and life thereafter), a Member, upon written request to the Board, and subject to approval by the Board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options: (185.161(1)(a), FS)

   a. Life Only (Option 2). A retirement income of a larger monthly amount payable to the Member for his or her lifetime only. (185.161(1)(a)1., FS)

   b. Joint Annuitant (Option 3). A retirement income of a modified monthly amount, payable to the Member during the joint lifetime of the Member and a joint annuitant ~~pensioner~~ designated by the Member and following the death of either of them, 100%, 75%, 66 2/3% or 50% of such monthly amount payable to the survivor payable for the lifetime of the survivor. Except where the Member's joint annuitant ~~pensioner~~ is his or her Spouse, the present value of payments to the Member shall not be less than fifty percent (50%) of the total present value of payments to the Member and his or her joint annuitant ~~pensioner~~. (185.161(1)(a)2., FS)

   c. Partial Lump Sum (Option 4). A partial lump sum and a reduced retirement income payable in accordance with the benefit option form selected. (185.161(1)(a)3., FS)

      1. A lump sum equal to a percentage of the actuarial present value of the Option 1 monthly annuity plus a reduced Option 1 annuity determined as one hundred percent (100%) less the chosen lump sum percentage. The lump sum percentage may range from ten percent (10%) to twenty five (25%) in five (5) percentage point increments.

2. The reduced remaining annuity payable under the Option 1 form may be converted to an Option 2 or Option 3 annuity in accordance with the Plan rules.

2. **Designation of Joint Annuitant ~~Pensioner~~.** The Member, upon electing any option of this Section, will designate the joint annuitant ~~pensioner~~ or Beneficiary (or Beneficiaries) to receive the benefit, if any, payable under the Plan in the event of Member's death, and will have the power to change such designation from time to time, in writing to the Board~~, by notarized notice~~, but any such change shall be deemed a new election and will be subject to approval by the Board. Such designation will name a joint annuitant ~~pensioner~~ or one or more primary Beneficiaries where applicable. If a Member has elected an option with a joint annuitant ~~pensioner~~ or Beneficiary and the Member's retirement income benefits have commenced, the Member may thereafter change his or her designated Beneficiary at any time, but may only change his or her joint annuitant ~~pensioner~~ if the joint annuitant ~~pensioner~~ is alive at the time of the change; provided however, in no event may a Member change his or her designated joint annuitant ~~pensioner~~ more than twice. (185.161(2)(b), FS)

3. **Change in Joint Annuitant ~~Pensioner~~ .** The consent of a Member's or Retiree's joint annuitant ~~pensioner~~ or Beneficiary to any such change shall not be required. The rights of all previously-designated Beneficiaries to receive benefits under the Plan shall thereupon cease. (185.161(2)(b), FS)

4. **Adjustments to Monthly Benefits.** Upon change of a Member's or Retiree's Beneficiary or joint annuitant ~~pensioner~~ in accordance with this section, the Board shall adjust the Member's or Retiree's monthly benefit by application of actuarial calculations to insure that the benefit paid is the Actuarial Equivalent of the Retiree's then-current benefit. Any such Member or Retiree shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously-paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the Board and on completion will be filed with the Board. In the event that no designated Beneficiary survives the Member or Retiree, such benefits as are payable in the event of the death of the Member or Retiree subsequent to his or her Retirement shall be paid as provided in Section ~~2-42.12~~ 2-42.13. (185.161(1)(b), FS)

5. **Limitations to Retirement Income Payments.** Retirement income payments shall be made under the option elected in accordance with the provisions of this Section and shall be subject to the following limitations: (185.161(2), FS)

   a. If a Member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 2-42.08 ~~2-42.07~~. (see 185.161(2)(a), FS)

   b. If the designated Beneficiary (or Beneficiaries) or joint annuitant ~~pensioner~~ dies before the Member's Retirement under the Plan, the option elected will be canceled automatically and a

retirement income of the normal form and amount will be payable to the Member upon his or her Retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this Section or a new Beneficiary is designated by the Member prior to his or her Retirement. (185.161(2)(b), FS)

c. If both the Retiree and the Beneficiary or Beneficiaries designated by the Member or Retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (1), the Board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section 2-42.12 . (185.161(2)(c), FS)

d. If a Member continues employment beyond his or her normal retirement date and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this Section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a Beneficiary (or Beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred. (185.161(2)(d), FS)

6. **Option Election Final.** A Retiree may not change his or her retirement option after the date of cashing or depositing his or her first retirement check. (185.161(3), FS)

7. **Lump Sum Payment.** Notwithstanding anything herein to the contrary, the Board in its discretion may elect to make a lump sum payment to a Member or a Member's Beneficiary in the event that the monthly retirement income payable to any person entitled to benefits hereunder is less than $100 or if the single-sum value of the accrued retirement income is less than $2,500 as of the date of termination of service, whichever is applicable ~~total commuted value of the remaining monthly income payments to be paid do not exceed Two Thousand Five Hundred Dollars ($2,500)~~. Any such payment made to any person pursuant to the power and discretion conferred upon the Board by the preceding sentence shall operate as a complete discharge of all obligations under the Plan with regard to such Member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons. (185.191, FS)

SECTION 2-42.12 ~~2-42.11~~ COST-OF-LIVING INCREASES

Each October 1 following the commencement of receipt of monthly benefit payments, Retirees, and Beneficiaries and joint annuitant ~~pensioner~~ of Deceased Members, and vested terminated persons who are receiving monthly benefit payments shall receive a three percent (3%) increase in the monthly benefit payment, based on the immediately preceding September monthly benefit payment.

SECTION 2-42.13 ~~2-42.12~~ BENEFICIARIES

1. **Beneficiary Designation**. Each Member or Retiree may, on a form provided for that purpose, signed and filed with the Board, designate a Beneficiary (or Beneficiaries) named sequentially or jointly, to receive the benefit, if any, which may be payable in the event of his or her death. Each designation may be revoked or changed by such Member or Retiree by signing and filing with the Board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under the Plan shall cease. (185.162(1), FS)

2. **Failure to Designate Beneficiary**. If a deceased Member or Retiree failed to name a Beneficiary in the manner prescribed in subsection (1), or if the Beneficiary (or Beneficiaries) named by a deceased Member or Retiree predeceased the Member or Retiree, the death benefit, if any, which may be payable under the Plan with respect to such deceased Member or Retiree, shall be paid to the estate of the Member or Retiree and in the discretion of the Board may be paid in a lump sum equivalent to the commuted value of the remaining monthly income payments. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the Plan with regard to such deceased Police Officer and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder. (185.162(2), FS)

3. **Divorce**. A designation made by a Member naming a former spouse as beneficiary for the payment of benefits, if any, which may be payable in the event of the death of the Member prior to retirement is void as of the time the decedent's marriage was judicially dissolved or declared invalid by court order prior to the decedent's death, if the designation was made prior to the dissolution or court order. The decedent's interest in the asset shall pass as if the decedent's former spouse predeceased the decedent and subject to the provisions of Chapter 732, F.S. as may be amended from time to time. (732.703, FS)

SECTION 2-42.14 ~~2-42.13~~ CLAIMS PROCEDURES

1. **Establishment of Administrative Procedures**. The Board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("Claimant"), including Members, Retirees, Beneficiaries, or any person affected by a decision of the Board.

2. **Board Powers in Claims Procedures**. The Board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the Board's claims procedures. The Claimant may request in writing the issuance of subpoenas by the Board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

SECTION 2-42.15 ~~2-42.14~~ REPORTS TO DIVISION OF RETIREMENT

1. **Annual Reports**. Each year and no later than March 15th, the Chairman of the Board shall file a report with the Division of Retirement containing the following:

   a. A certified copy of each and every instrument constituting or evidencing the Plan.

   b. An independent audit by a certified public accountant for the most recent Plan year showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year.

   c. A certified statement listing the investments of the Plan and a description of the methods used in valuing the investments.

   d. A statistical exhibit showing the number of Police Officers on the force of the City, the number included in the Plan, the number of Police Officers ineligible, classified according to the reasons for their being ineligible, and the number of disabled and retired Members and their Beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

   e. A certified statement describing the methods, factors, and actuarial assumptions used in determining the cost.

   f. A certified statement by an enrolled actuary showing the results of the latest actuarial evaluation of the Plan and a copy of the detailed worksheets showing the computations used in arriving at the results.

   g. A statement of the amount the City has contributed to the Fund for the preceding plan year, and the amount the City will contribute to the Fund for the current plan year.

2. **Periodic Actuarial Valuation Required**. In addition to the reports provided under paragraph (1), an actuarial valuation of the retirement plan will be made at least once every 3 years, as provided in s. 112.63, F.S. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

   a. The assets shall be valued as provided in s. 112.625(7), F.S.

   b. The cost of the actuarial valuation must be paid by the Trust Fund.

c. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of the valuation. If any benefits are insured with a commercial insurance company, the report must include as statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of the premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

SECTION 2-42.16 ~~2-42.15~~ BOARD ATTORNEY AND PROFESSIONALS

The Board may employ, at the Plan's expense independent legal counsel, an independent enrolled actuary as defined in s. 185.02, Florida Statutes, and such independent professional, technical, or other advisers as it deems necessary. ~~at the Plan's expense for the purposes contained herein, together with such other professional, technical, or other advisors as the Board deems necessary.~~ The Board may, at its option, at the Plan's expense, employ the City's attorney, actuary, or other professional, technical, or other advisors, under terms and conditions acceptable to the Board. (185.06(6), FS)

SECTION 2-42.17 ~~2-42.16~~ MAXIMUM PENSION

1. **Basic Limitation.** Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a Member under this Plan shall not exceed ninety thousand dollars ($90,000.00). For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, so that such benefits are the Actuarial Equivalent, as defined below, of a straight life annuity. For purposes of this Section, actuarial equivalent shall be determined using the 1983 group annuity mortality table and an interest rate of 5%.

2. **Participation in Other Defined Benefit Plans.** The limitation of this Section with respect to any Member who at any time has been a Member in any other defined benefit plan (as defined in §414(j) of the Code) maintained by the City shall apply as if the total benefits payable under all defined benefit plans in which the Member has been a member were payable from one plan.

3. **Adjustments in Limitations.**
   a. In the event the Member's retirement benefits become payable before age sixty-two (62), the maximum pension limitation prescribed by this Section shall be reduced to provide the actuarial equivalent of such limit otherwise payable at age sixty-two (62), but not less than seventy five thousand dollars ($75,000.00), if the benefit begins at or after age fifty-five (55).

   b. In the event the Member's retirement benefit becomes payable before age fifty-five (55), the maximum pension limitation prescribed by this Section shall be reduced from age fifty-five (55) to provide the actuarial equivalent of such limit otherwise payable at age 55. A Member with

at least fifteen (15) years of Credited Service may not have the benefit reduced below fifty thousand dollars ($50,000.00) by operation of this Section.

c. For a "qualified participant" as defined in Section 415(b)(2)(H) of the Internal Revenue Code, the provisions of paragraphs (a) and (b) above shall not apply.

d. If the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether these benefits meet the limitations set forth in subsection (1) of this section, such benefits benefit shall be adjusted so that they are actuarially equivalent to the benefits, beginning at age sixty-five (65).

4. **Less Than 6 Years of Service**. The maximum retirement benefits payable under this Section to any Member who has completed less than six (6) years of credited service with the City shall be the amount determined under subsection (1) of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of credited service and the denominator of which is six (6). The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Section 2-42.08 ~~2-42.09~~ or pre-retirement death benefits paid pursuant to Section 2-42.07 ~~2-42.08~~.

5. ~~**$10,000 Limit**. Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limitations set forth in this Section if the benefits payable, with respect to such Member under this Plan and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars ($10,000.00) for the applicable plan year and for any prior plan year and the City has not at any time maintained a qualified defined contribution plan in which the Member participated~~.

6. ~~**Member in Defined Contribution Plan**. In any case where a Member under this Plan is also a member in a "Defined Contribution Plan" as defined in §414(i) of the Code, maintained by the City, the sum of the "Defined Benefit Plan Fraction" and the "Defined Contribution Plan Fraction" (both as defined in §415(e) of the Code) shall not, subject to the restrictions and exceptions contained in §2004 of the Employee Retirement Income Security Act of 1974, as amended, exceed 1.0. This limitation shall not apply to years beginning on or after January 1, 2000~~.

5. ~~7.~~ **Reduction of Benefits**. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and

thereafter in such priority as shall be established by the board and plan administrator for such other plans; provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and plan administrator of all other plans covering such Member.

6. ~~8.~~ **Additional Limitation on Pension Benefits**. Notwithstanding anything herein to the contrary:

   a. The normal retirement benefit or pension payable to a Retiree ~~who becomes a Member of the Plan and who has not previously participated in such Plan, on or after January 1, 1980~~, shall not exceed one hundred percent (100%) of his Average Final Compensation; provided that such limitation shall not apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments. ~~The normal retirement benefit or pension payable to a retiree who became a Member of this plan prior to January 1, 1980 shall not exceed one hundred percent (100%) of average final compensation; provided that the benefit payable to such Member shall not be less than two percent (2%) of average final compensation for each year of credited service~~.

   b. No Member of the Plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

SECTION 2-42.18 ~~2-42.17~~ MISCELLANEOUS PROVISIONS

1. **Interest of Members in Plan**. At no time prior to the satisfaction of all liabilities under the Plan with respect to Retirees and Members and their Spouses or Beneficiaries, shall any part of the corpus or income of the Fund be used for or diverted to any purpose other than for their exclusive benefit.

2. **No Reduction of Accrued Benefits**. No amendment or ordinance shall be adopted by the City Commission which shall have the effect of reducing the then vested accrued benefits of Members or a Member's Beneficiaries.

3. **Qualification of Plan**. It is intended that the Plan will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the Plan may be made retroactively, if necessary or appropriate, to qualify or maintain the Plan as a Plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued there under.

4. **Use of Forfeitures**. Forfeitures arising from terminations of service of Members shall serve only to reduce future City contributions.

SECTION 2-42.19 ~~2-42.18~~ REPEAL OR TERMINATION OF PLAN

The city may terminate the plan at any time, in which event the provisions of section 185.37, F.S. shall be followed.

~~1. **Modifications, Amendments, Termination Allowed**. This ordinance establishing the Plan and Fund, and subsequent ordinances pertaining to said Plan and Fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the Member or Beneficiary shall not be affected thereby, except to the extent that the assets of the Fund may be determined to be inadequate.~~

~~2. **Continued Board Administration**. If this ordinance shall be repealed, or if contributions to the Plan are discontinued, the Board shall continue to administer the Plan in accordance with the provisions of this ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said Members. In the event of repeal, or if contributions to the Plan are discontinued, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the Plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.~~

~~3. **Allocation of Assets**. The following shall be the order of priority for purposes of allocating the assets of the Plan as of the date of repeal of this ordinance, or if contributions to the Plan are discontinued with the date of such discontinuation being determined by the Board.~~

~~a. Apportionment shall first be made in respect of each Retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) Member, and each Member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the Actuarial Equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~b. If there be any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each Member in the service of the City of such date who is vested and who is not entitled to an apportionment under paragraph (a), in the~~

~~amount required to provide the Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), based on the Credited Service and Average Final compensation as of such date, and each vested former Member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~c. If there be any asset value after the apportionments under paragraphs (a) and (b), apportionment shall be made in respect of each Member in the service of the City on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to Member's Accumulated Contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~d. If there be any asset value remaining after the apportionments under paragraphs (a), (b), and (c), apportionment shall lastly be made in respect of each Member included in paragraph (c) above to the extent of the Actuarial Equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph (c), based on the Credited Service and Average Final Compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~e. In the event that there be asset value remaining after the full apportionment specified in paragraphs (a), (b), (c), and (d), such excess shall be returned to the City, less return of the State's contributions to the State, provided that, if the excess is less than the total contributions made by the City and the State to the date of termination such excess shall be divided proportionately to the total contributions made by the City and the State.~~

~~4. **Alternative Asset Allocation**. The allocation of the Fund provided for in this subsection may, as decided by the Board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The Fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Board may direct. The Fund may be continued in existence for the purposes of subsequent distributions.~~

~~5. **First Ten Years**. If, at any time during the first ten (10) years after the effective date of the ordinance originally establishing this Plan, the Plan shall be terminated or the full current costs of the Plan shall not have been met, anything in the Plan to the contrary notwithstanding, City contributions which may be used for the benefit of any one of the twenty-five (25) highest paid Members on the effective date, whose anticipated annual retirement allowance provided by the City's contributions at Member's normal retirement date would exceed $1,500, shall not exceed the greater of either a) $20,000, or b) an amount computed by multiplying the smaller of $10,000 or twenty percent (20%) of such Member's average annual earnings during his last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the Plan under the Code, this paragraph shall be ineffective without the necessity of further amendment of this ordinance.~~

~~5. 6. **Allocation to City**. After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the City.~~

SECTION 2-42.20 ~~2-42.19~~ EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the Accumulated Contributions and the cash securities in the Fund created under this ordinance are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

SECTION 2-42.21 ~~2-42.20~~ PENSION VALIDITY

The Board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The Board is empowered to purge the pension rolls or change the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or under payments shall be corrected and paid in a reasonable manner determined by the Board.

SECTION 2-42.22 ~~2-42.21~~ FORFEITURE OF PENSION

1. **Conviction of Specified Offenses.** Any Member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted

commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this Plan, except for the return of his or her Accumulated Contributions, as of the date of termination. Specific offenses are as follows.

a. The committing, aiding or abetting of an embezzlement of public funds;

b. The committing, aiding or abetting of any theft by a public officer or employee from employer;

c. Bribery in connection with the employment of a public officer or employee;

d. Any felony specified in Chapter 838, Florida Statutes, except ss. 838.15 and 838.16.

e. The committing of an impeachable offense.

f. The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he or she acts or in which he or she is employed, of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or herself or for some other person through use or attempted use of the power, rights, privileges, duties or position of his or her public office or employment position.

g. ~~The committing of false, misleading or fraudulent statements to obtain public retirement benefits~~. The committing on or after October 1, 2008, of any felony defined in section 800.04, Florida Statutes, against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

2. **Fraud**. Any Member or Beneficiary who is convicted of willfully and knowingly making, or causing to be made, or to assisting, conspiring with, or urging another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withholding or concealing material information to obtain a benefit available under the Plan may, in the discretion of the Board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the Plan. For purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. (see 185.185, FS)

3. **Strikes**. Any Member who, prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or who has been found guilty by such court of violating any state law prohibiting strikes by public employee, shall forfeit all rights

and benefits under this chapter, except the return of his or her accumulated contributions, without interest, as of the date of the conviction.

4. **Beneficiary Forfeiture of Benefits**. Any beneficiary who by a verdict of a jury or by the court trying the case without a jury is found guilty, or who has entered a plea of guilty or nolo contendere, of unlawfully and intentionally killing or procuring the death of the Member forfeits all rights to the deceased Member's benefits under this Plan, and the benefits will be paid as if such beneficiary had predeceased the decedent.

5. ~~2.~~ **Conviction Defined**. Conviction shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

6. ~~3.~~ **Court Defined**. Court shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the Board shall hold a hearing on which notice shall be given to the Member whose benefits are being considered for forfeiture. Said Member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the Member shall be afforded a full opportunity to present his or her case against forfeiture.

7. **Withholding of Benefits**. Benefits will not be paid pending final resolution of such charges against a Member or Beneficiary if the resolution of such charges could require the forfeiture of benefits as provided in this section.

8. 4. **Return of Benefits**. Any Member who has received benefits from the Plan in excess of his or her Accumulated Contributions after Member's rights were forfeited shall be required to pay back to the Fund the amount of benefits received in excess of his or her Accumulated Contributions. The Board may implement all legal action necessary to recover such funds.

SECTION 2-42.23 ~~2-42.22~~ PLAN AMENDMENTS

Neither this ordinance nor this Plan may be amended without the approval of the City Commission. No amendments shall be formally proposed unless the proposed amendments contain an actuarial estimate of the costs involved. Copies of any proposed plan amendment and actuarial impact statement of the proposed plan amendment shall be furnished to the division prior to the last public hearing thereon. Such statement shall also indicate whether the proposed plan amendment is in compliance with s. 14, Art. X of the State Constitution and those provisions of chapter 112, F.S., which are not expressly provided in this ordinance.

SECTION 2-42.24 ~~2-42.23~~ INDEMNIFICATION

1. **Indemnification of Board.** The Board shall obtain insurance sufficient to protect, defend and hold harmless the members of the Board from all personal liability for damages and costs, including court costs and attorney's fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as Members of the Board.

2. **Board Felonies, Malfeasance and Misfeasance.** This Section shall not apply nor shall the City be responsible in any manner to defend or pay for claims arising out of acts or omissions of Members of the Board which constitute felonies or gross malfeasance or gross misfeasance in office.

SECTION 2-42.25 ~~2-42.24~~ DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS

1. **General.** This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

2. **Definitions.**
   a. **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income.

   b. **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

   c. **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse is a distributee with regard to the interest of the Spouse.

d. **Direct Rollover**: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

History: The Plan was originally established by the City Commission with the adoption of Resolution No. 914 on December 5, 1995, with an effective date of January 1, 1996. The Plan has subsequently been amended by:

1. adoption of Resolution No. 945 on August 20, 1996,
2. adoption of Ordinance No. 1352-99 on January 4, 2000,
3. adoption of Ordinance No. 1406-01 on April 3, 2001,
4. adoption of Ordinance No. 1463-02 on September 26, 2002,
5. adoption of Ordinance No. 1483-03 on July 1, 2003.

Meeting Date: April 19, 2016

From: _____
Mark B. DeBord, Finance Director

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: Establishment of the Police Officers' Special Benefits Pension Plan

SUMMARY EXPLANATION & BACKGROUND: Most municipal police pension plans in Florida are funded, in part, by a tax on premiums paid by policyholders for casualty insurance. Our Plan is no exception. Premium tax revenues accounted for 12% ($310,000) of the $2.6 million in total funding for 2014.

The 2015 Florida Legislature passed Senate Bill 172 which provided a substantial change in how cities are to use revenues from premium taxes. With this change premium tax revenues received by the City up to the amount received in calendar year 2012 will be used to fund plan benefits in the existing pension plan.

In the future, any amounts received in excess of the amount received in calendar year 2012 must be divided equally. Half will go towards funding the existing benefits. The other half will be used to fund "special benefits" for plan Members. Special benefits means an individual investment account for each Member. The money in the account is available to the Member upon termination of employment with the City. The Member can take the money in the account with them.

This special benefit is in addition to the existing benefits provided by the pension plan. We have named this special benefits component the new "Share Plan".

The attached resolution and supporting documents, if adopted, will establish a Special Benefits Plan as described above.

FISCAL INFORMATION: Funding for the Special Benefits Plan comes only from the premium tax revenues and do not create a liability for the City.

RECOMMENDED ACTIONS: Move to adopt Resolution 1316.

Initiated by: Mark DeBord

RESOLUTION NO. 1316

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ALTAMONTE SPRINGS, FLORIDA, ESTABLISHING THE ALTAMONTE SPRINGS POLICE OFFICERS' SPECIAL BENEFITS PLAN, A PROFIT-SHARING PLAN AND TRUST.

PLAN NUMBER 10-8945

WHEREAS, the City of Altamonte Springs, Florida (the "Employer") has employees rendering valuable services as police officers; and

WHEREAS, the establishment of a profit-sharing retirement plan benefits police officers by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the Employer desires that its profit-sharing retirement plan be administered by ICMA-RC and that the funds held in such plan be invested in the VantageTrust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans:

NOW THEREFORE BE IT RESOLVED that the Employer hereby establishes a profit-sharing retirement plan (the "Plan") in the form of the ICMA Retirement Corporation Governmental Profit-Sharing Plan & Trust, pursuant to the specific provisions of the Adoption Agreement (executed copy attached hereto). The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that the Employer hereby executes the Declaration of Trust of VantageTrust, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the VantageTrust.

BE IT FURTHER RESOLVED that the Employer hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in the VantageTrust; and

BE IT FURTHER resolved that the City Finance Director shall be the coordinator for the Plan; shall receive reports, notices, etc., from the ICMA Retirement Corporation or the VantageTrust; shall cast, on behalf of the Employer, any required votes under the VantageTrust; may delegate any administrative duties relating to the Plan to appropriate departments; and

BE IT FURTHER RESOLVED that the Employer hereby authorizes the City Manager to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the Plan.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2016.

_____

MAYOR of the City of Altamonte Springs, Florida

ATTEST:

_____

CITY CLERK

ICMA RETIREMENT CORPORATION

GOVERNMENTAL PROFIT-SHARING PLAN & TRUST ADOPTION AGREEMENT

ICMARC

Building Retirement Security

ICMA RETIREMENT CORPORATION
GOVERNMENTAL PROFIT-SHARING PLAN & TRUST
ADOPTION AGREEMENT

Plan Number 108495

The Employer hereby establishes a Profit Sharing Plan and Trust to be known as The City of Altamonte Springs, Florida Police Share Plan (the "Plan") in the form of the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust.

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

☐ Yes ☑ No

If yes, please specify the name of the defined contribution profit sharing plan which this Plan hereby amends and restates:

This is a new plan covering Police Officers

I. Employer: The City of Altamonte Springs

II. Effective Dates

☐ 1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: _____

(Note: An alternate effective date can be no earlier than January 1, 2007.)

☑ 2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified: 10/1/2015

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

(Note provision and effective date.)

III. Plan Year will mean:

☐ The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.05(h) of the Plan.)

☑ The twelve (12) consecutive month period commencing on 10/1 and each anniversary thereof.

IV. Normal Retirement Age shall be age 60 **(not to exceed age 65).**

V. ELIGIBILITY REQUIREMENTS

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

   ___ All Employees
   ___ All Full Time Employees
   ___ Salaried Employees
   ___ Non union Employees
   ___ Management Employees
   ___ Public Safety Employees
   ___ General Employees
   ✓ Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) Police Officers per FS 185

   The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. Note: As stated in Sections 4.08 and 4.09, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) N/A.

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

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

VI. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (Choose all that apply):

   Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chosen, please complete section C.)

   ☐ A. Fixed Employer Contributions. The Employer shall contribute on behalf of each Participant _____% of Earnings or $_____ for the Plan Year (subject to the limitations of Article V of the Plan). Mandatory Participant Contributions:

   ☐ are required ☐ are not required

   to be eligible for this Employer Contribution.

☐ B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

☐ Yes ☐ No

Employee Opt-In Mandatory Contributions. To the extent that mandatory Participant contributions are not required by the Plan, each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

☐ Yes ☐ No

Contribution Schedule.

(i) _____% of Earnings,
(ii) $ _____ , or
(iii) a whole percentage of Earnings between the range of _____ *(insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%))*, as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick Up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions.[1]

☐ Yes ☐ No ***("Yes" is the default provision under the Plan if no selection is made.***

☐ C. Election Window. (Complete if Option B is selected.)
Newly eligible Employees shall be provided an election window of _____ days *(no more than 60 calendar days)* from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

☑ **Discretionary Employer Contributions**

The Employer will determine the amount of Employer contributions to be made to the Plan for each Plan Year. ~~The amount of Employer contributions to be allocated to the Account of each Participant will be based on the ratio for the Plan Year that such Participant's Earnings bears to the Earnings of all Participants eligible for such contributions.~~
The amount of Employer contributions to be allocated to the Account of each Participant will consist of an initial contribution and a subsequent annual contribution. The initial contribution will be based on the ratio of the eligible members years of service to the total years of service for all eligible members as of September 30, 2015. Subsequent annual contributions will be one equal share for each eligible member, as further described in Section 2-42.07, "Use of Premium Tax revenues - Share Plan", of Division 4, "Police Officers' Pension Plan", Article II, "Retirement", Chapter 2, "Administration", of the Code of Ordinances of the City of Altamonte Springs.

[1] *Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings, however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).*

☐ **Fixed Employer Match of Voluntary After-Tax Participant Contributions.**

The Employer shall contribute on behalf of each Participant ___% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed _____ % of Earnings or $ _____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

☐ **Variable Employer Match of Voluntary After-Tax Participant Contributions.**

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

_____% of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____% of Earnings or $ _____);

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

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed _____ $ or _____% of Earnings, whichever is ___ more or ___ less.

2. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.06 and Article V of the Plan:

   ☐ Yes ☑ No ***("No" is the default provision under the Plan if no selection is made.)***

3. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

   _____

4. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

   _____

5. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

   A. Plan contributions will be made based on differential wage payments:

   ☐ Yes ☑ No ***("Yes" is the default provision under the Plan if no selection is made.)***

   If yes is selected, this is effective beginning January 1, 2009 <u>unless</u> another later effective date is filled in here

   _____.

B. Participants who die or become disabled will receive Plan contributions with respect to such service:

☐ Yes ☑ No (***"No" is the default provision under the Plan if no selection is made.)***

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007 unless another later effective date is filled in here

_____.

VII. CASH OR DEFERRED ARRANGEMENT UNDER SECTION 401(k)

1. This Plan will include a cash or deferred arrangement allowing for Elective Deferrals under section 401(k) of the Code:[2]

☐ Yes ☑ No (***"No" is the default provision under the Plan if no selection is made.)***

(If "no" is selected, skip to section VIII.)

Each Participant may elect to make Elective Deferrals, not to exceed ___ % of Earnings for the Plan Year, subject to the limitations of Article V of the Plan.

The provisions of the cash or deferred arrangement (the "401(k) feature") may be made effective as of the first day of the Plan Year in which the 401(k) feature is adopted. However, under no circumstances may a salary reduction agreement or other deferral mechanism be adopted retroactively.

2. The Employer will match Elective Deferrals:

☐ Yes ☑ No ***("No" is the default provision under the Plan if no selection is made.)***

The Employer will contribute as follows (choose one, if applicable):

☐ **Employer Percentage Match of Elective Deferrals.**

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

___% of the Elective Deferrals made on behalf of the Participant for the Plan Year (not including Elective Deferrals exceeding ____% of Earnings or $ _____);

PLUS _____ % of the Elective Deferrals made on behalf of the Participant for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate ____% of Earnings or $ _____).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed $ _____ or ____% of Earnings, whichever is ___ more or ___ less.

[2] *Under current law, the cash or deferred arrangement option under section 401(k) of the Code is not available to an employer that is a State or local government or political subdivision thereof, or any agency or instrumentality thereof, unless that employer established a cash or deferred arrangement on or before May 6, 1986.*

☐ **Employer Dollar Match of Elective Deferrals.**

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

$ _____ for each _____ % of Earnings or $ ____ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year (not including Elective Deferrals exceeding ____% of Earnings or $ _____);

PLUS $ _____ for each % of Earnings or $ _____ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate ____ % of Earnings or $ _____).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed $ _____ or _____% of Earnings, whichever is ____ more or ____ less.

3. The Employer will permit Elective Deferrals and Catch-up Contributions elections to be made during the annual election window of _____ days (at least 30 calendar days). The election window will run from _____ to _____ (insert annual time frame for the election window or multiple time periods) and will not apply retroactively.

4. **Roth Provisions**. As provided in Section 20.03, Participants are permitted to make Roth Elective Deferrals from Compensation in the amount or percentage specified in a salary reduction agreement:

☐ Yes ☑ No ***("No" is the default provision under the Plan if no selection is made.)***

VIII. EARNINGS

Earnings, as defined under Section 2.10 of the Plan, shall include:

1. Overtime

☐ Yes ☑ No

2. Bonuses

☐ Yes ☑ No

3. Other Pay (specifically describe any other types of pay to be included below)

Earnings are not applicable for the purpose of determining contributions.

IX. ROLLOVER PROVISIONS

1. The Employer will permit rollover contributions in accordance with Section 4.13 of the Plan:

☑ Yes ☐ No ***("Yes" is the default provision under the Plan if no selection is made.)***

2. The Plan will accept a direct rollover contribution to a Designated Roth Account as permitted in Section 20.05(b) ***(401(k) plans with Roth feature only)***:

☐ Yes ☑ No ***("Yes" is the default provision under the Plan if no selection is made.)***

3. The Plan will allow In-Plan Roth Conversions as provided in Section 20.06 ***(401(k) plans with Roth feature only)***:

☐ Yes ☑ No ***("Yes" is the default provision under the Plan if no selection is made.)***

4. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.

   ☐ Effective Date is _____.

   (Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

X. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.04 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.04(a) through (e) of the Plan will apply, unless another method has been indicated below.

   ☐ Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. The Limitation Year is the following 12 consecutive month period:
   10/1 - 9/30

3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007.

   _____

   (The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

XI. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. *(For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)*

Period of Service Completed	Percent Vested
Zero	0 %
One	15 %
Two	30 %
Three	45 %
Four	60 %
Five	75 %
Six	100 %
Seven	100 %
Eight	100 %
Nine	100 %
Ten	100 %

XII. WITHDRAWALS AND LOANS

1. Qualified reservist distributions are available under the plan ***(401(k) plans only)***:

   ☐ Yes ☐ No ***("Yes" is the default provision under the Plan if no selection is made.)***

2. In-service distributions are permitted under the Plan, as provided in Section 9.08, after a participant attains age (*select one of the below options*):

   ☑ 59 ½
   ☐ 70½ ***("70½" is the default provision under the Plan if no selection is made.)***
   ☐ Not permitted at any age

3. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days:

   ☑ Yes ☐ No ***("Yes" is the default provision under the Plan if no selection is made.)***

4. Tax-free distributions of up to $3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

   ☑ Yes ☐ No ***("No" is the default provision under the Plan if no selection is made.)***

5. In-service distributions of the Rollover Account are permitted under the Plan as provided in Section 9.09

   ☑ Yes ☐ No ***("No" is the default provision under the Plan if no selection is made.)***

6. The Plan will provide the following with respect to loans:

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

      ☐ Yes ☑ No ***("No" is the default provision under the Plan if no selection is made.)***

   b. Designated Roth Accounts will be available as a source for loans under the Plan ***(401(k) plans with Roth feature only)*** :

      ☐ Yes ☐ No ***("No" is the default provision under the Plan if no selection is made.)***

7. ***(401(k) plans only)*** Hardship withdrawals are permitted under the Plan as provided in Section 9.07 but only if specifically elected by the Employer.

   ☐ Yes ☐ No ***("No" is the default provision under the Plan if no selection is made.)***

   If selected, hardship distributions will be available for the following accounts:

   a. Employer Contribution Account (Nonforfeitable Interest):

      ☐ Yes ☐ No ***("No" is the default provision under the Plan if no selection is made.)***

   b. Participant Elective Deferral Account (not including earnings thereon accrued after December 31, 1988):

      ☐ Yes ☐ No ***("Yes" is the default provision under the Plan if no selection is made.)***

c. The determination of any deemed immediate and heavy financial need will be expanded to include any immediate and heavy financial need of the Participant's Primary Beneficiary, as provided in Section 9.07(b)(3):

☐ Yes ☐ No ***("Yes" is the default provision under the Plan if no selection is made.)***

XIII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

☑ 1. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.

☐ 2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. ***("Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.)***

☐ 3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

XIV. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

☐ All Eligible Employees

☑ Other: N/A

Final Pay shall be defined as (select one):

☐ A. Accrued unpaid vacation

☐ B. Accrued unpaid sick leave

☐ C. Accrued unpaid vacation and sick leave

☐ D. Other *(insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave):*

_____

☐ 1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____% of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

☐ 2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute ____ % (insert fixed percentage of final pay to be contributed) or up to ____ % (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

☐ All Eligible Employees

☐ Other: _____

Accrued Leave shall be defined as (select one):

☐ A. Accrued unpaid vacation

☐ B. Accrued unpaid sick leave

☐ C. Accrued unpaid vacation and sick leave

☐ D. Other *(insert definition of accrued leave that is bona fide vacation and/or sick leave):*

_____

☐ 1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

☐ For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of ____ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).

☐ For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____ % of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

☐ 2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____ % (insert fixed percentage of accrued unpaid leave to be contributed) or up to _____ % (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

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

XVII. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust. This ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVIII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT SHARING PLAN & TRUST.

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

XIX. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 20_____ .

EMPLOYER

By: _____

Print Name: _____

Title: _____

Attest: _____

ICMA RETIREMENT CORPORATION
777 North Capitol St., NE Suite 600
Washington, DC 20002
800-326-7272

By: _____

Print Name: _____

Title: _____

Attest: _____

ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG

BRC000-215-21269-201405-W1304

REV 3/2015

ADMINISTRATIVE SERVICES AGREEMENT

Between

ICMA Retirement Corporation

and

City of Altamonte Springs

Type: 401

Account #: 108495

RS

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement"), made as of the day of , 2015 (herein referred to as the "Inception Date"), between the International City Management Association Retirement Corporation ("ICMA-RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware, and the City of Altamonte Springs ("Employer"), a City organized and existing under the laws of the State of Florida with an office at 225 Newburyport Avenue, Altamonte Springs, Florida 32701.

RECITALS

Employer acts as public plan sponsor of a retirement plan ("Plan"), and in that capacity, has responsibility to obtain administrative services and investment alternatives for the Plan;

VantageTrust is a group trust established and maintained in accordance with New Hampshire Revised Statutes Annotated section 391:1 and Internal Revenue Service Revenue Ruling 81-100, 1981-1 C.B. 326, which provides for the commingled investment of retirement funds held by various state and local governmental units for their employees;

ICMA-RC acts as investment adviser to VantageTrust Company, LLC, the Trustee of VantageTrust;

ICMA-RC has designed, and VantageTrust offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in VantageTrust's principal disclosure document, "Making Sound Investment Decisions: A Retirement Investment Guide" and the accompanying VantageTrust Fund Fees and Expenses document ("Retirement Investment Guide");

The Funds are available only to public employers and only through VantageTrust and ICMA-RC; and

In addition to serving as investment adviser to VantageTrust, ICMA-RC provides a range of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account recordkeeping, investment and tax reporting, transaction processing, benefit disbursement, and asset management.

AGREEMENTS

1. Appointment of ICMA-RC

Employer hereby appoints ICMA-RC as Administrator of the Plan to perform all nondiscretionary functions necessary for the administration of the Plan. The functions to be performed by ICMA-RC shall be those set forth in Exhibit A to this Agreement.

2. Adoption of Trust

Employer has adopted the Declaration of Trust of VantageTrust Company and agrees to the commingled investment of assets of the Plan within VantageTrust. Employer agrees that the investment, management, and distribution of amounts deposited in VantageTrust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the Retirement Investment Guide or Employer Bulletins) as those terms and conditions may be adjusted from time to time.

3. Employer Duty to Furnish Information

Employer agrees to furnish to ICMA-RC on a timely basis such information as is necessary for ICMA-RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in VantageTrust, and information as to the employment status of participants, and participant ages, addresses, and other identifying information (including tax identification numbers). Employer also agrees that it will notify ICMA-RC in a timely manner regarding changes in staff as it relates to various roles. This is to be completed through the online EZLink employer contact options. ICMA-RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and ICMA-RC shall not be responsible for any error arising from its reliance on such information. ICMA-RC will provide reports, statements and account information to the Employer through EZLink, the online plan administrative tool.

Employer is required to send in contributions through EZLink, the online plan administration tool provided by ICMA-RC. Alternative electronic methods may be allowed, but must be approved by ICMA-RC for use. Contributions may not be sent through paper submittal documents.

To the extent Employer selects third-party funds that do not have fund profile information provided to ICMA-RC through our electronic data feeds from external sources (such as Morningstar) or third party fund providers, the Employer is responsible for providing to ICMA-RC timely fund investment updates for disclosure to Plan participants. Such updates may be provided to ICMA-RC through the Employer's investment consultant or other designated representative.

Failure to provide timely fund profile update information, including the source of the information, may result in a lack of fund information for participants, as ICMA-RC will remove outdated fund profile information from the systems that provide fund information to Plan participants.

4. Certain Representations and Warranties

ICMA-RC represents and warrants to Employer that:

(a) ICMA-RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of ICMA-RC to serve as investment adviser to VantageTrust is dependent upon the continued willingness of VantageTrust for ICMA-RC to serve in that capacity.

(b) ICMA-RC is an investment adviser registered as such with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended.

(c) ICMA-RC shall maintain and administer the Plan in accordance with the requirements for plans which satisfy the qualification requirements of Section 401 of the Internal Revenue Code and other applicable federal law; provided, however, ICMA-RC shall not be responsible for the qualified status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 401 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of ICMA-RC's standardized plan document, ICMA-RC shall not be responsible for the qualified status of the Plan to the extent affected by the differing terms in the Employer's plan document. ICMA-RC shall not be responsible for monitoring state or local law or for administering the Plan in compliance with local or state requirements unless Employer notifies ICMA-RC of any such local or state requirements.

Employer represents and warrants to ICMA-RC that:

(d) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.

(e) Employer understands and agrees that ICMA-RC's sole function under this Agreement is to act as recordkeeper and to provide administrative,

investment or other services at the direction of Plan participants, the Employer, its agents or designees in accordance with the terms of this Agreement. Under the terms of this Agreement, ICMA-RC does not render investment advice, is not the Plan Administrator or Plan Sponsor as those terms are defined under applicable federal, state, or local law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the Plan and its related trust. ICMA-RC does not perform any service under this Agreement that might cause ICMA-RC to be treated as a "fiduciary" of the Plan under applicable law, except, and only, to the extent that ICMA-RC provides investment advisory services to individual participants enrolled in Guided Pathways.

(f) Employer acknowledges and agrees that ICMA-RC does not assume any responsibility with respect to the selection or retention of the Plan's investment options. Employer shall have exclusive responsibility for the Plan's investment options, including the selection of the applicable mutual fund share class. Where applicable, Employer understands that the VT Retirement Income Advantage Fund is an investment option for the Plan and that the fund invests in a separate account available through a group variable annuity contract. By entering into this Agreement, Employer acknowledges that it has received the Important Considerations document and the Retirement Investment Guide and that it has read the information therein concerning the VT Retirement Income Advantage Fund.

(g) Employer acknowledges that certain such services to be performed by ICMA-RC under this Agreement may be performed by an affiliate or agent of ICMA-RC pursuant to one or more other contractual arrangements or relationships, and that ICMA-RC reserves the right to change vendors with which it has contracted to provide services in connection with this Agreement without prior notice to Employer.

(h) Employer acknowledges that it has received ICMA-RC's Fee Disclosure Statement, prepared in substantial conformance with ERISA regulations regarding the disclosure of fees to plan sponsors.

(i) Employer approves the use of its Plan in ICMA-RC external media, publications and materials. Examples include press releases announcements and inclusion of the general plan information in request for proposal responses.

5. Participation in Certain Proceedings

The Employer hereby authorizes ICMA-RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Plan. Unless Employer notifies ICMA-RC otherwise, Employer consents to the

disbursement by ICMA-RC of benefits that have been garnished or transferred to a former spouse, current spouse, or child pursuant to a domestic relations order or child support order.

6. Compensation and Payment

(a) ICMA-RC's compensation under this Agreement shall be as set forth in subsection (b) below.

(b) **Compensation for Management Services to VantageTrust, Compensation for Advisory and other Services to The Vantagepoint Funds and Payments from Third-Party Mutual Funds**. Employer acknowledges that, in addition to amounts payable under this Agreement, ICMA-RC receives fees from VantageTrust for investment advisory services and plan and participant services furnished to VantageTrust. Employer further acknowledges that certain wholly owned subsidiaries of ICMA-RC receive compensation for advisory and other services furnished to The Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through VantageTrust. For a VantageTrust Fund that invests substantially all of its assets in a third-party mutual fund not affiliated with ICMA-RC, ICMA-RC or its wholly owned subsidiary receives payments from the third-party mutual fund families or their service providers in the form of 12b-1 fees, service fees, compensation for sub-accounting and other services provided based on assets in the underlying third-party mutual fund. These fees are described in the Retirement Investment Guide and ICMA-RC's fee disclosure statement. In addition, to the extent that third party mutual funds are included in the investment line-up for the Plan, ICMA-RC receives administrative fees from its third party mutual fund settlement and clearing agent for providing administrative and other services based on assets invested in third party mutual funds; such administrative fees come from payments made by third party mutual funds to the settlement and clearing agent.

(c) **Redemption Fees**. Redemption fees imposed by outside mutual funds in which Plan assets are invested are collected and paid to the mutual fund by ICMA-RC. ICMA-RC remits 100% of redemption fees back to the specific mutual fund to which redemption fees apply. These redemption fees and the individual mutual fund's policy with respect to redemption fees are specified in the prospectus for the individual mutual fund and referenced in the Retirement Investment Guide.

(d) **Payment Procedures**. All payments to ICMA-RC pursuant to this Section 6 shall be made from Plan assets held by VantageTrust or received from third-party mutual funds or their service providers in connection with Plan assets invested in such third-party mutual funds, to the extent not paid by the Employer. The amount of Plan assets administered by ICMA-RC shall be adjusted as required to reflect any such payments as are made from the

Plan. In the event that the Employer agrees to pay amounts owed pursuant to this Section 6 directly, any amounts unpaid and outstanding after 30 days of invoice to the Employer shall be withdrawn from Plan assets.

The compensation and payment set forth in this Section 7 is contingent upon the Employer's use of ICMA-RC's EZLink system for contribution processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement. The compensation in this Section 6 is also based on the assets of the Plan being invested in R5shares of VantageTrust.

7. Contribution Remittance

Employer understands that amounts invested through VantageTrust are to be remitted directly to VantageTrust in accordance with instructions provided to Employer by ICMA-RC and are not to be remitted to ICMA-RC. In the event that any check or wire transfer is incorrectly labeled or transferred to ICMA-RC, ICMA-RC may return it to Employer with proper instructions.

8. Indemnification

ICMA-RC shall not be responsible for any acts or omissions of any person with respect to the Plan or its related trust, other than ICMA-RC in connection with the administration or operation of the Plan. Employer shall indemnify ICMA-RC against, and hold ICMA-RC harmless from, any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney's fees, that may be incurred by, imposed upon, or asserted against ICMA-RC by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan or its related trust, excepting only any and all loss, damage, penalty, liability, cost or expense resulting from ICMA-RC's negligence, bad faith, or willful misconduct.

9. Term

This Agreement shall be in effect and commence on the date all parties have signed and executed this Agreement ("Inception Date"). This Agreement will be renewed automatically for each succeeding year unless **written notice of termination** is provided by either party to the other no less than 60 days before the end of such Agreement year. The Employer understands and agrees that, in the event the Employer terminates this Agreement (or replaces the VT PLUS Fund as an investment option in its investment line-up), ICMA-RC retains full discretion to release Plan assets invested in the VT PLUS Fund in an orderly manner over a period of up to 12 months from the date ICMA-RC receives written notification from the Employer that it has made a final and binding selection of a replacement for ICMA-RC as administrator of the Plan (or a replacement investment option for the VT PLUS Fund).

10. Amendments and Adjustments

(a) This Agreement may be amended by written instrument signed by the parties.

(b) ICMA-RC may amend this agreement by providing 60 days' advance written notice to the Employer prior to the effective date of such proposed amendment. Such amendment shall become effective unless, within the 60-day notice period, the Employer notifies ICMA-RC in writing that it objects to such amendment.

(c) The parties agree that enhancements may be made to administrative and operations services under this Agreement. The Employer will be notified of enhancements through the Employer Bulletin, quarterly statements, electronic messages or special mailings. Likewise, if there are any reductions in fees, these will be announced through the Employer Bulletin, quarterly statement, electronic messages or special mailing.

11. Notices

All notices required to be delivered under this Agreement shall be in writing and shall be delivered, mailed, e-mailed or faxed to the location of the relevant party set forth below or to such other address or to the attention of such other persons as such party may hereafter specify by notice to the other party.

ICMA-RC: Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C., 20002-4240
Facsimile; (202) 962-4601

Employer: at the office set forth in the first paragraph hereof, or to any other address, facsimile number or e-mail address designated by the Employer to receive the same by written notice similarly given.

Each such notice, request or other communication shall be effective: (i) if given by facsimile, when transmitted to the applicable facsimile number and there is appropriate confirmation of receipt; (ii) if given by mail or e-mail, upon transmission to the designated address with no indication that such address is invalid or incorrect; or (iii) if given by any other means, when actually delivered at the aforesaid address.

12. Complete Agreement

This Agreement shall constitute the complete and full understanding and sole agreement between ICMA-RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. This Agreement supersedes all written and oral agreements, communications or negotiations among the parties. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

13. Titles

The headings of Sections of this Agreement and the headings for each of the attached schedules are for convenience only and do not define or limit the contents thereof.

14. Incorporation of Schedules

All Schedules (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto certify that they have read and understand this Agreement and all Schedules attached hereto and have caused this Agreement to be executed by their duly authorized officers as of the Inception Date first above written.

CITY OF ALTAMONTE SPRINGS

By _____
Signature/Date

By _____
Name and Title (Please Print)

INTERNATIONAL CITY MANAGEMENT
ASSOCIATION RETIREMENT CORPORATION

By _____
Erica McFarquhar
Assistant Secretary

Please return fully executed contract to:

New Business Services
ICMA-RC
777 North Capitol Street NE
Suite 600
Washington DC 20002-4240

Exhibit A

Administrative Services

The administrative services to be performed by ICMA-RC under this Agreement shall be as follows:

(a) Participant enrollment services, including providing a welcome package and enrollment kit containing instructions and notices necessary to implement the Plan's administration. Employees will enroll online or through a paper form. Employer can also enroll employees through EZLink.

(b) Establishment of participant accounts for each employee participating in the Plan for whom ICMA-RC receives appropriate enrollment instructions. ICMA-RC is not responsible for determining if such Plan participants are eligible under the terms of the Plan.

(c) Allocation in accordance with participant directions received in good order of individual participant accounts to investment funds offered under the Plan.

(d) Maintenance of individual accounts for participants reflecting amounts deferred, income, gain or loss credited, and amounts distributed as benefits.

(e) Maintenance of records for all participants for whom participant accounts have been established. These files shall include enrollment instructions (provided to ICMA-RC through Account Access or EZLink), beneficiary designation instructions and all other and documents concerning each participant's account.

(f) Provision of periodic reports to the Employer through EZLink. Participants will have access to account information through Investor Services, Voice Response System, Account Access and through quarterly statements that can be delivered electronically through Account Access or by postal service.

(g) Communication to participants of information regarding their rights and elections under the Plan.

(h) Making available Investor Services Representatives through a toll-free telephone number from 8:30 a.m. to 9:00 p.m. Eastern Time, Monday through Friday (excluding holidays and days on which the securities markets or ICMA-RC are closed for business (including emergency closings), to assist participants.

(i) Making available access to ICMA-RC's web site, to allow participants to access certain account information and initiate plan transactions at any time. Account access is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to

ensure high-quality performance. The scheduled maintenance window is outlined at https://harper1.icmarc.org/login.jsp

(j) Distribution of benefits as agent for the Employer in accordance with terms of the Plan. Participants who have separated from service can request distributions through Account Access or via form.

(k) Upon approval by the Employer that a domestic relations order is an acceptable qualified domestic relations order under the terms of the Plan, ICMA-RC will establish a separate account record for the alternate payee and provide for the investment and distribution of assets held there under.

(l) Loans may be made available on the terms specified in the Loan Guidelines, if loans are adopted by the Employer. Participants can request loans through Investor Services or Account Access.

(m) Guided Pathways – Participant Advice and Guidance may be made available through a third party vendor on the terms specified on ICMA-RC's website.

(n) ICMA-RC will determine appropriate delivery method (electronic and/or print) for plan sponsor/participant communications and education based on a number of factors (audience, effectiveness, etc.).

ICMA RETIREMENT CORPORATION

GOVERNMENTAL PROFIT-SHARING PLAN & TRUST

ICMARC

BUILDING PUBLIC SECTOR
RETIREMENT SECURITY

ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT-SHARING PLAN & TRUST

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ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT-SHARING PLAN & TRUST

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.14 and 14.03, 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.

II. DEFINITIONS

2.01 **Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.

2.02 **Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.

2.03 **Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.

2.04 **Beneficiary.** The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement.

Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII.

Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.

For purposes of Section 9.07, relating to hardship distributions, the term Primary Beneficiary means an individual who is named as a Beneficiary under the Plan and who has an unconditional right to all or a portion of the Participant's account balance under the plan upon the death of the Participant.

2.05 **Break in Service.** A Period of Severance of at least twelve (12) consecutive months. In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

2.06 **Catch-up Contributions.** Elective Deferrals made to the Plan that are in excess of an otherwise applicable plan limit and that are made by Participants who are age 50 or over by the end of their taxable years. An otherwise applicable plan limit is a limit in the Plan that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on annual additions and the dollar limitation on Elective Deferrals under Code section 402(g) (not counting Catch-up Contributions). Catch-up Contributions for a Participant for a taxable year may not exceed (1) the dollar limit on Catch-up Contributions under Code section 414(v) (2)(B)(i) for the taxable year or (2) when added to other Elective Deferrals, 75 percent of the Participant's Earnings for the taxable year. The dollar limit on Catch-up Contributions under Code section 414(v)(2)(B)(i) was $5,000 for taxable years beginning in 2006. After 2006, the $5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 414(v)(2)(C). Any such adjustments will be in multiples of $500. Catch-up Contributions are not subject to the limits on annual additions. Provisions in the Plan relating to Catch-up Contributions apply to Elective Deferrals made after 2001.

2.07 **Code.** The Internal Revenue Code of 1986, as amended from time to time.

2.08 **Covered Employment Classification.** The group or groups of Employees eligible to make and/ or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

2.09 **Disability.** A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

2.10 **Earnings.**

(a) General Rule. Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.

(b) Limitation on Earnings. For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

(c) Limitations for Governmental Plans. In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

(d) Earnings Paid After Severance from Employment. Earnings for purposes of allocations under the Plan shall not include amounts paid after a Participant's severance from Employment with the Employer except as provided in this Section 2.10(d).

(1) Leave Cashouts. Earnings shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (i) the Participant would have been able to use the leave if employment had continued, and (ii) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

(2) Regular Pay. Earnings shall include regular pay after severance from employment if:

(a) The payment is included in the Participant's W-2 earnings;

(b) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and

(c) Such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

Notwithstanding anything to the contrary in this subsection (b), unless the Employer has specifically elected to include overtime compensation and bonuses in Earnings, Earnings shall exclude overtime compensation and bonuses paid after severance from employment.

(3) Effective Date. This Section 2.10(d) is effective for Plan Years beginning on or after January 1, 2009. For Plan Years beginning before January 1, 2009, the amounts specified in subsections (1) and (2) must be paid within 2½ months after severance from employment with the Employer maintaining the Plan.

2.11 **Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.

2.12 **Elective Deferrals.** Contributions made by the Employer on behalf of the Participant pursuant to Section 4.03.

2.13 **Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.

2.14 **Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.

2.15 **Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

2.16 **Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Elective Deferral, Participant Contribution, Rollover, and Voluntary Contribution Accounts.

2.17 **Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

2.18 **Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).

2.19 **Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

2.20 **Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

2.21 **Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement. If the Employer has elected in the Adoption Agreement to permit Participants to make Elective Deferrals, this Plan is a profit-sharing plan containing a 401(k) arrangement.

2.22 **Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator. Unless otherwise provided in the Plan, the Plan Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction.

2.23 **Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

2.24 **Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

3.01 **Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

3.02 **Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.

3.03 **Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

3.04 **Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

4.01 **Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.04 or 4.05 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.

4.02 **Forfeitures.** All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be used no later than the end of the next Plan Year. Forfeitures will be used to reduce dollar for dollar Employer Contributions otherwise required under the Plan. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions. If no Employer Contributions are required under the Plan, forfeitures will be allocated in the ratio that the Earnings of each Participant bears to that of all Participants.

4.03 Elective Deferrals and Catch-up Contributions. If the Employer so elects in the Adoption Agreement, and subject to the limitations provided in Article V, a Participant may elect after he/she meets the eligibility requirements provided in Article III to have the Employer make payments either (1) as Elective Deferrals on his/her behalf, pursuant to a properly executed salary reduction agreement, whereby the Employee agrees to reduce his/her future Earnings by a specific amount, and the Employer to contribute such Elective Deferrals to the Trust on behalf of the Employee or (2) to the Employee directly in cash. Such a Participant, if age 50 or over by the end of his or her taxable year, is also permitted to make Catch-up Contributions. Elective Deferrals (and Catch-up Contributions) shall be made by payroll reduction, and shall be accounted for separately in the Participant's Elective Deferral Account. Such Account shall be at all times nonforfeitable by the Participant.

The Employer must provide a period(s), as elected in the Adoption Agreement, of not less than thirty (30) days at least once each calendar year during which a Participant may elect to commence Elective Deferrals and Catch-up Contributions. Such election may not be made retroactively. A Participant's election to commence Elective Deferrals must remain in effect until modified or terminated.

Notwithstanding anything to the contrary elsewhere contained in this Plan, Elective Deferrals and Catch-up Contributions are intended to be employer contributions within the meaning of the Code and regulations, not employee contributions, and relevant provisions shall be construed accordingly.

Elective Deferrals and Catch-up Contributions are available only to an Employer who established a cash or deferred arrangement under section 401(k) of the Code on or before May 6, 1986.

4.04 Mandatory Participant Contributions. If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution "picked up" under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify in a contemporaneous written document by a person duly authorized by the Employer that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

4.05 Employer Matching Contributions of Voluntary Participant Contributions or Elective Deferrals. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions or Elective Deferrals for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions or Elective Deferrals are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.

4.06 **Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty-five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

4.07 **Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant. No part of the deductible voluntary contribution account will be used to purchase life insurance.

4.08 **Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. This election may be made even if the Employer does not elect to make any other contributions under the Plan.

4.09 **Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. This election may be made even if the Employer does not elect to make any other contributions under the Plan.

4.10 **Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.

4.11 **Accrual of Additional Benefits for Qualified Military Service**

(a) Death Benefits with Respect to Qualified Military Service. In the case of a Participant who dies on or after January 1, 2007 while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in the Participant's entire Employer Contribution Account to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.

(b) Benefit Accruals with Respect to Differential Wage Payments. If the Employer so elects in the Adoption Agreement, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)). Solely for purposes of applying the limits of Code section 415, differential wage payments shall be treated as compensation.

(c) Benefit Accruals with Respect to Qualified Military Service. Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects in the Adoption Agreement, Participants who die or become Disabled while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).

4.12 Changes in Participant Election. A Participant may elect to change his/her rate of Elective Deferrals, Catch-up Contributions, or Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

The Employer must provide a period of not less than thirty (30) days at least once each calendar year during which a Participant may elect to terminate an election or to modify the amount or frequency of his/her Elective Deferrals, Catch-up Contributions, or Voluntary Participant Contributions.

4.13 Portability of Benefits.

(a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:

(1) A qualified plan described in Section 401(a) or 403(a) of the Code;

(2) An annuity contract described in Section 403(b) of the Code;

(3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and

(4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).

(b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;

(c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.

(d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.

(e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.

(f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

4.14 Return of Employer Contributions. Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ELECTIVE DEFERRALS AND ALLOCATIONS

5.01 Maximum Elective Deferrals. Notwithstanding anything to the contrary herein, no Participant shall be permitted to have Elective Deferrals made under this Plan, or Elective Deferrals under any other plan, contract or arrangement maintained by the Employer, during any calendar year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for the Participant's taxable year beginning in such calendar year. In the case of a Participant age 50 or over by the end of the taxable year, the dollar limitation described in the preceding sentence includes the amount of Elective Deferrals that can be Catch-up Contributions. The dollar limitation contained in Code section 402(g) was $15,000 for taxable years beginning in 2006. After 2006, the $15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under section 402(g)(4). Any such adjustments will be in multiples of $500.

5.02 Distribution of Excess Elective Deferrals.

(a) A Participant may assign to this Plan any Excess Elective Deferrals made during a preceding taxable year of the Participant by providing the Plan Administrator with written notice on or before March 1 of the amount of Excess Elective Deferrals to be assigned to the Plan. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plan, contract or arrangement of this Employer. Notwithstanding any other provisions of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant whose Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year or calendar year. Participants who claim Excess Elective Deferrals for the preceding taxable year must submit their claims in writing to the Plan Administrator on or before March 1. Distribution of Excess Elective Deferrals for a year shall be made first from a Participant's Pre-tax Elective Deferral account, to the extent Pre-tax Elective Deferrals were made for the year, unless a Participant specifies otherwise.

(b) Excess Elective Deferrals shall be adjusted for any income or loss.

(1) For taxable years beginning after 2007, the income or loss allocable to Excess Elective Deferrals is the income or loss allocable to a Participant's Elective Deferral account for the taxable year multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the year and the denominator is a Participant's account balance attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year.

(2) For taxable years beginning before 2008, income or loss allocable to Excess Elective Deferrals also includes ten percent (10%) of the amount determined under subsection (b)(1) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

5.03 Participants Only in This Plan.

(a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to

the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

(b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

5.04 Participants in Another Defined Contribution Plan.

(a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.03(b).

(c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

(d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

(e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,

(1) The total Excess Amount allocated as of such date, multiplied by

(2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.

.05 **Definitions.** For the purposes of this Article, the following definitions shall apply:

(a) Annual Additions: The sum of the following amounts credited to a Participant's account for the Limitation Year:

(1) Employer Contributions (including Elective Deferrals and contributions "picked up" by the Employer under Section 4.04);

(2) Forfeitures;

(3) Employee contributions (including after-tax Voluntary Contributions under Section 4.06 and Mandatory Participant Contributions under Section 4.04 not "picked up" by the Employer); and

(4) Allocations under a simplified employee pension. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

(5) Notwithstanding the above, the term Annual Additions does not include the following:

(a) Restorative Payments. Annual Additions for purposes of Code section 415 shall not include restorative payments. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that give rise to Annual Additions.

(b) Other Amounts. Annual Additions for purposes of Code section 415 shall not include (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; (iv) repayments of amounts described in Code section 411(a)(7)(B) (in accordance with Code sections 411(a)(7)(C)) and 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code section 414(d)) as described in Code section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments; (v) Employee Contributions to a qualified cost of living arrangement within the meaning of Code section 415(k)(2)(B); (vi) catch-up contributions made in accordance with section 414(v) and §1.414(v)-1 and (vii) excess deferrals that are distributed in accordance with §1.402(g)-1(e)(2) or (3).

(c) Date of Employer Contributions. Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(b) Compensation: Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. section 1.62-2(c).

(1) Notwithstanding the foregoing, Compensation does not include:

(i) Contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as Compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Participant when distributed; and

(ii) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code section 125).

(iii) Other items of remuneration that are similar to the items listed in subparagraph (i) or (ii) of this subsection (b).

(2) Compensation Paid After Severance or Deemed Severance from Employment. Compensation shall be adjusted as set forth herein for the following types of compensation paid after a Participant's severance from employment (as determined under section 415 of the Code and the regulations thereunder) with the Employer. Any payment that is not described in subsection (i), (ii), (iii), or (iv) of this Section is not considered Compensation within the meaning of section 415 of the Code if paid after severance from employment with the Employer.

(i) Regular Pay.

(A) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;

(B) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and

(C) Such amounts are paid:

1. for Limitation Years beginning before January 1, 2009, within 2½ months after severance from employment with the Employer maintaining the Plan; and

2. for Limitation Years beginning on or after January 1, 2009, by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

(D) The date January 1, 2009 in subsections (b)(2)(i)(C)(1) and (2) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(ii) Leave Cashouts.

(A) For Limitation Years beginning before January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid within 2½ months after severance from employment with the Employer maintaining the Plan, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.

(B) For Limitation Years beginning on or after January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.

(C) The date January 1, 2009 in subsections (b)(2)(ii)(A) and (B) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(iii) Salary Continuation Payments for Military Service Participants.

(A) Compensation includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)) to the extent:

1. Those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; and

2. Those payments would be included in Compensation if the individual had continued to perform services for the Employer rather than entering qualified military service.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)).

(iv) Salary Continuation Payments for Disabled Participants.

(A) Compensation includes amounts paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) to the extent:

1. Salary continuation applies to all Participants who are permanently and totally disabled for a

fixed or determinable period or the Participant was not a highly compensated employee (as defined in Code section 414(q)) immediately before becoming disabled.

2. Those amounts would be included in Compensation if the Participant had continued to perform services for the Employer.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year. Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

(c) Defined Contribution Dollar Limitation: $40,000, as adjusted for increases in the cost of-living in accordance with section 415(d) of the Code.

(d) Elective Deferrals: Any Employer Contributions made to the Plan at the election of the Participant, in lieu of cash compensation. With respect to any taxable year, a Participant's Elective Deferrals is the sum of all Employer Contributions made on behalf of such Participant pursuant to an election to defer under any qualified CODA described in section 401(k) of the Code, any salary reduction simplified employee pension described in section 408(k)(6) of the Code, any SIMPLE IRA described in section 408(p), and any plan described under section 501(c)(18) of the Code, and any Employer Contributions made on the behalf of the Participant for the purchase of an annuity contract under section 403(b) of the Code pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess Annual Additions.

(e) Employer: The Employer that adopts this Plan.

(f) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

(g) Excess Elective Deferrals: Those Elective Deferrals of a Participant that either (1) are made during the Participant's taxable year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in section 414(v) for such year); or (2) are made during a calendar year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in section 414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer. Excess Elective Deferrals shall be treated as Annual Additions, as defined under Section 5.05, unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.

(h) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in section X. 2 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the

new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year and the maximum permissible amount shall be prorated for the resulting short Limitation Year.

(i) Maximum Permissible Amount: Except for Catch-up Contributions described in Code section 414(v), the maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

(1) The Defined Contribution Dollar Limitation, or

(2) One hundred percent (100%)) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

06 Aggregation and Disaggregation of Plans.

(a) Generally. For purposes of applying the limitations of Code section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives Annual Additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and any other entity which the Employer determines, based on a reasonable, good faith interpretation of existing law in accordance with Notice 89-23, 1989-1 C.B. 654, as modified by Notice 96-64, 1996-2 C.B. 229, should be aggregated for purposes of applying the limitations of Code section 415. For purposes of this Section:

(1) A former employer is a "predecessor employer" with respect to a Participant if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. section 1.415(f)-1(b)(2) apply as if the Employer and predecessor employer constituted a single employer under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer, a former entity that antedates the Employer is a "predecessor employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code section 415(f) and the Treasury Regulations thereunder as of the first day of a Limitation

Year do not fail to satisfy the requirements of Code section 415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no Annual Additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

5.07 **Effective Date.** Except as otherwise provided in Section 5.05(b)(2), this Article shall apply to limitation years beginning on or after July 1, 2007. The Employer may elect a delayed effective date for this Article in Section X. 3 of the Adoption Agreement, however, such effective date must apply to limitation years that begin on or after the date that is 90 days after the close of the first legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.

VI. TRUST AND INVESTMENT OF ACCOUNTS

6.01 **Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.

6.02 **Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Sections 6.05 and 13.03.

(a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer

form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

(f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.

(i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 **Taxes and Expenses.** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

6.04 **Payment of Benefits.** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person, or the Employer if directing such person, decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 **Investment Funds.** In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

6.06 **Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be

valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 **Participant Loan Accounts.** Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

6.08 **Deemed IRAs.** If deemed IRAs are available pursuant to section 408(q) of the Code, the assets of such deemed IRAs may be commingled with the Plan assets for investment purposes but, if held in the same trust, the trustee shall maintain a separate account for each deemed IRA.

VII. VESTING

7.01 **Vesting Schedule.** The portion of a Participant's Account attributable to Elective Deferrals, Catch-up Contributions, Mandatory Participant Contributions, and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.05, 18.02(a), and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

7.02 **Crediting Periods of Service.** Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an Hour of Service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

7.03 **Service After Break in Service.** In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be

treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

7.04 **Vesting Upon Normal Retirement Age.** Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

7.05 **Vesting Upon Death or Disability.** Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

7.06 **Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions. Forfeitures shall be allocated in the manner described in Section 4.02.

7.07 **Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

8.01 **Claim of Benefits.** A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.

8.02 **Appeal Procedure.** If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

9.01 **Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or incurs a severance from employment for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the one-hundred eighty (180) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

Except as otherwise provided under the Plan, a Participant's Elective Deferrals and income allocable thereto

are not distributable to a Participant or his/her Beneficiary(ies), in accordance with such Participant's or Beneficiary(ies) election, earlier than upon the Participant's severance from employment, death, or Disability.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

9.02 Restrictions on Immediate Distributions. Notwithstanding anything to the contrary contained in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least $1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the one-hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.05(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

(a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the Plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers

shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.11.

(b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:

(1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;

(ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code;

(iii) any hardship distribution; and

(iv) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or, for distributions occurring after December 31, 2007, to a Roth IRA described in § 408A of the Code, or to a qualified defined contribution plan described in section 401(a) or a qualified annuity contract described in section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible Retirement Plan.

(i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA");

(ii) an annuity plan described in section 403(a) of the Code;

(iii) an annuity contract described in section 403(b) of the Code;

(iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan;

(v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution; or

(vi) for distributions occurring after December 31, 2007, a Roth IRA described in Code section 408A. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to

a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

(3) Distributee. Participant; in addition, the Participant's surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless a later date is elected by the Employer pursuant to subsection (d)(1) below, but no later than Plan Years beginning after December 31, 2009), a distributee includes the Employee's or former Employee's nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary for the purpose of receiving the distribution.

(4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(d) Rollover by a Non-Spouse Designated Beneficiary.

(1) Unless otherwise elected by the Employer in the Adoption Agreement, for distributions beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(2) Notwithstanding paragraph (1), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

(e) Rollover by a Surviving Spouse Distributee. If any distribution attributable to a Participant is paid to the Participant's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the Participant. However, a qualified plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A-2) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than $1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least $1,000 but not more than the dollar limit under section 411(a)(11)(A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the

full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.07 Hardship Withdrawals.

(a) Where elected by the Employer in the Adoption Agreement for a profit-sharing plan containing a 401(k) arrangement, distribution of nonforfeitable amounts attributable to Employer Contributions and/or Elective Deferrals (including Catch-up Contributions but not including earnings attributable to Elective Deferrals accrued after December 31, 1988) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Employee and where the distribution is necessary to satisfy the immediate and heavy financial need.

(b) Special Rules:

(1) The following are the only financial needs considered immediate and heavy (or as otherwise provided for under Treasury Regulation section 1.401(k)-1(d)(3) (iii)(B) or any subsequence guidance thereto):

(i) Expenses for medical care (within the meaning of section 213(d) of the Code) previously incurred or necessary to obtain medical care for the Employee, the Employee's spouse or dependents;

(ii) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Employee;

(iii) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Employee, the Employee's spouse, children or dependents;

(iv) Payments necessary to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence; or

(v) Payments for funeral or burial expenses for the Employee's deceased parent, spouse, child or dependent and expenses to repair damage to the Employee's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income). The last two needs (funeral expenses and home repair) only apply to Plan Years beginning after 2005.

(2) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the employee only if:

(i) The distribution is not in excess of the amount of an immediate and heavy financial need, including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;

(ii) The Employee has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer; and

(iii) All plans maintained by the Employer provide that the Employee's Elective Deferrals (and Employee

contributions) will be suspended for six (6) months after the receipt of the hardship distribution, provided that Employee contributions that are "picked up" by the Employer pursuant to Section of the Plan shall not be considered Employee contributions for this purpose.

(3) Distributions for Financial Hardship. Unless otherwise elected by the Employer, after August 31, 2007, the determination of any deemed immediate and heavy financial need described in Treasury Regulation section 1.401(k)-1(d)(3)(iii)(B)(1), (3), or (5) (relating to medical, tuition, and funeral expenses, respectively) will be expanded to include any immediate and heavy financial need of a Participant's Primary Beneficiary.

9.08 In-Service Distributions. If elected by the Employer in the Adoption Agreement, a Participant who has attained age 59½ and has a Nonforfeitable Interest in his/her entire Employer Contribution Account shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

9.09 In-Service Distribution from Rollover Account. Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

9.10 Latest Commencement of Benefits. Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.

9.11 Spousal Consent. Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

9.12 Qualified Reservist Distribution Available under the Plan. Unless otherwise elected by the Employer, after September 11, 2001, Qualified Reservist Distributions will be available under the Plan.

(a) Qualified Reservist Distribution. The term "Qualified Reservist Distribution" means any distribution of Elective Deferrals to a Qualified Reservist that is made during the period beginning on the date that the Qualified Reservist is ordered or called to duty and ending on the last day of active duty. A Qualified Reservist Distribution may be made to a Qualified Reservist under any circumstance and/or for any reason without violating the distribution restrictions of Code section 401(k)(2)(B)(i).

(b) Qualified Reservist. The term "Qualified Reservist" means an individual who is a member of a reserve component, as defined in section 101 of title 37, United States Code, and who is ordered or called to active duty after September 11, 2001 either for a period in excess of 179 days or for an indefinite period.

9.13 Deemed Severance from Employment.

(a) Unless otherwise elected by the Employer in the Adoption Agreement, effective January 1, 2009, a

Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.

(b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to make an Elective Deferral or after-tax voluntary contributions during the six-month period beginning on the date of the distribution.

(c) If a Participant receives a distribution which could be attributable to:

(i) a deemed severance from employment described in subsection (a); or

(ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on Elective Deferrals or after-tax voluntary contributions set forth in subsection (b).

9.14 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

(a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to $3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.

(b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term "Public Safety Officer" has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

(c) The term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

(a) Generally. Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002.

With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.

(b) Distributions in Accordance with 401(a)(9). All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.

(c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:

(1) The life of the Participant,

(2) The joint lives of the Participant and a designated Beneficiary,

(3) A period certain not extending beyond the life expectancy of the Participant, or

(4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

(d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(e) EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in section 702 of the Emergency Economic Stabilization Act of 2008 ("EESA") shall apply to the Plan.

(f) KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 ("KETRA") and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

10.02 Time and Manner of Distribution

(a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

(a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

(a) Death On or After Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Required Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

(a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.

(b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately

preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.

(d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

10.06 Application of Minimum Distribution Requirements. The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

10.07 Special Rule for Scheduled Installment Payments. All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 10.07, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

XI. MODES OF DISTRIBUTION OF BENEFITS

11.01 Normal Mode of Distribution. Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment. Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

11.02 Elective Mode of Distribution. Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

(a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.

(b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.

(c) Other. Any other sequence of payments requested by the Participant.

(d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant's election of a payment option must be made in writing between thirty (30) and one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

(a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/ her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.

(b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

(a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.

(b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the one-hundred eighty (180) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the

Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

(a) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

(b) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS

13.01 Availability of Loans to Participants.

(a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.

(b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

(a) Availability. Loans shall be made available to all Participants who are active Employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.

(b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.

(c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.

(d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.

(e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.

(f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

(g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:

(1) $50,000, reduced by the excess (if any) of

(i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over

(ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or $10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer, including 457(b) plans, under Code section 72(p)(4) are aggregated.

(h) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.

(i) Length of Loan. The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the

required installment payment was due.

(j) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

(k) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer. Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.

(l) Security. The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).

(m) Assignment or Pledge. For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.

(n) Spousal Consent. If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan. Spousal consent shall be obtained no earlier than the beginning of the one-hundred eighty (180) day period (ninety (90) day period for plan years beginning before January 1, 2007) that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

(o) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:

(1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;

(2) rules relating to reamortization of loans; and

(3) rules relating to refinance of loans.

13.03 Participant Loan Accounts.

(a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

(b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.

(c) Repayment of principal and payment of interest shall be made by payroll deduction or Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account. A payment intended to be a Prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.

(d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

(a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or

(b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(d)(2) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required

good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. An Employer that amends the Plan for any other reason will be considered to have an individually designed plan.

14.02 Amendment of Vesting Schedule. If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

(a) Sixty (60) days after the amendment is adopted;

(b) Sixty (60) days after the amendment becomes effective; or

(c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

14.04 Discontinuance of Contributions. A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

14.05 Amendment by Plan Administrator. The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations, revenue rulings, other statements published

by the Internal Revenue Service (including model and sample amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved Plans may be applied to all Employers who have adopted the Plan. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

For purposes of reliance on the advisory letter, the Plan Administrator shall no longer have authority to amend the Plan on behalf of the Employer as of the date of the adoption of an Employer amendment to the Plan to incorporate a type of plan not allowable in the volume submitter program described in section 16.03 of Revenue Procedure 2011-49 (or successor guidance) or as of the date the Internal Revenue Service notifies the Plan Administrator that the Plan is being treated as an individually designed plan pursuant to section 24.03 of Revenue Procedure 2011-49 (or successor guidance).

14.06 Optional Provisions. Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

14.07 Failure of Qualification. If the Employer's plan fails to attain or retain qualification, such plan will no longer participate in this Plan and will be considered an individually designed plan.

XV. ADMINISTRATION

15.01 Powers of the Employer. The Employer shall have the following powers and duties:

(a) To appoint and remove, with or without cause, the Plan Administrator;

(b) To amend or terminate the Plan pursuant to the provisions of Article XIV;

(c) To appoint a committee to facilitate administration of the Plan and communications to Participants;

(d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;

(e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;

(f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and

(g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties, subject to the oversight by the Employer:

(a) To construe and interpret the provisions of the Plan;

(b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;

(c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;

(d) To determine the amount, manner, and time of payment of benefits hereunder;

(e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;

(f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;

(g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and

(h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by the Code.

15.03 Protection of the Employer. The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

15.04 Protection of the Plan Administrator. The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

15.05 Resignation or Removal of Plan Administrator. The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

15.06 No Termination Penalty. The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.

15.07 Decisions of the Plan Administrator. All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

XVI. MISCELLANEOUS

16.01 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

16.02 Rights to Trust Assets. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.

16.03 Nonalienation of Benefits. Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

16.04 Qualified Domestic Relations Order. Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.

16.05 Nonforfeitability of Benefits. Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/ she becomes entitled in accordance with the provisions of the Plan.

16.06 Incompetency of Payee. In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

(a) The parent of such person;

(b) The guardian, committee, or other legal representative, wherever appointed, of such person;

(c) The person with whom such person resides;

(d) Any person having the care and control of such person; or

(e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

16.07 Inability to Locate Payee. Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

16.08 Mergers, Consolidations, and Transfer of Assets. The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

16.09 Employer Records. Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.

16.10 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

16.11 Applicable Law. The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.

16.12 Electronic Communication and Consent. Unless expressly provided otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

XVII. SPOUSAL BENEFIT REQUIREMENTS

17.01 Application. Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.06.

17.02 Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a Qualified Election within the one-hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.

17.03 Qualified Optional Survivor Annuity. For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period, provided, however, that this Section shall apply only to the extent the Plan makes another survivor annuity available.

17.04 Qualified Preretirement Survivor Annuity. If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.

17.05 Notice Requirements.

(a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than one-hundred eighty (180) days (or ninety (90) days for notices given in Plan Years before January 1, 2007) prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than thirty (30) days after the written explanation was provided to the Participant, provided that the following requirements are met:

(1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

(2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;

(3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and

(4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.

(b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.04, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

(i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);

(ii) a reasonable period ending after the individual becomes a Participant;

(iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;

(iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events

described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

(c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

17.06 Definitions. For the purposes of this Section, the following definitions shall apply:

(a) Annuity Starting Date. The first day of the first period for which an amount is paid as an annuity or any other form.

(b) Election Period. The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation. Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.05(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.

(c) Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(d) Qualified Election. A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations

by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.05.

(e) Qualified Joint and Survivor Annuity. An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.

(f) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

(g) Straight Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

(h) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.07 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan. Eligibility for Final Pay Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

(a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.

(b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each eligible

Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

18.03 Equivalencies. The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

18.04 Excess Contributions. Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

19.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

19.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.

(a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.

(b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Accrued Leave, as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked. The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is

distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

19.03 Equivalencies. The Accrued Leave Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

19.04 Excess Contributions. Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XX. ROTH PROVISIONS

20.01 Effective Date. This Article XX has no effect unless and until the Employer affirmatively elects to permit Roth Elective Deferrals under Section 20.03 in the Adoption Agreement. An Employer may elect to permit Roth Elective Deferrals under Section 20.03 only if the Plan offers Elective Deferrals.

20.02 Definitions. The following definitions shall apply for purposes of this Article XX.

(a) Designated Roth Account. A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from a designated Roth account under an Eligible Retirement Plan, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.

(b) In-Plan Roth Conversion. A distribution occurring after September 27, 2010 from a Participant's Account, other than the Participant's Designated Roth Account, that is rolled over to the Participant's Designated Roth Account under the Plan, pursuant to Code section 402A(c)(4). Notwithstanding anything herein to the contrary, an amount is not eligible for an In-Plan Roth Conversion unless it is distributable under the terms of the Plan and such distribution is an eligible rollover distribution within the meaning of Code section 402(c)(4). Thus, for example, amounts that are not fully vested are not eligible for an In-Plan Roth Conversion.

(c) Pre-Tax Account. A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.

(d) Qualified Roth Contribution Program. A program described in paragraph (1) of Code section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.

(e) Roth Elective Deferrals. Amounts contributed pursuant to Section 20.03 by a Participant, which amounts are:

(1) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax Elective Deferrals the Participant is otherwise eligible to make under the Plan; and

(2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Compensation.

20.03 Permitted Roth Elective Deferrals.

(a) As of the effective date, a Participant shall be permitted to make Roth Elective Deferrals from his or her Compensation in such amount or percentage as may be specified in a salary reduction agreement executed by the Participant. A Participant's Roth Elective Deferrals will be allocated to a separate Designated Roth Account maintained for such deferrals as defined in Section 20.02(a) above.

(b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Elective Deferrals for all purposes under the Plan.

20.04 Separate Accounting.

(a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an Eligible Retirement Plan will be credited and debited to a participant's Designated Roth Account.

(b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an Eligible Retirement Plan in each Participant's Designated Roth Account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and the Participant's other Accounts under the Plan.

(d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from a designated Roth account under an Eligible Retirement Plan, and properly attributable Earnings will be credited to each Participant's Designated Roth Account.

20.05 Direct Rollovers.

(a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an applicable retirement plan described in section 402A(e)(1) of the Code or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.

(b) Notwithstanding anything to the contrary in the Plan, unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an applicable retirement plan described in section 402A(e)(1) of the Code, or if the rollover is an In-Plan Conversion defined in section 20.06 of this document.

(c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account balances under the Plan exceeds $1,000 for purposes of mandatory distributions from the Plan.

20.06 In-Plan Roth Conversions. Unless otherwise elected by the Employer in the Adoption Agreement, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.

(a) Tax Treatment. The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.

(b) Irrevocability. Any election made by the Participant to do an In Plan Roth Conversion shall be irrevocable.

(c) Treatment of Loans. Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.

(d) Spousal Consent. Notwithstanding anything herein to the contrary, if the Plan requires spousal consent to distribution, a married Participant shall not be required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion.

(e) Availability of Loans from Designated Roth Accounts. A Participant's Designated Roth Account balance can

be included to determine a Participant loan amount under Article XIII. However, unless the Employer elects otherwise in the Adoption Agreement, Designated Roth Accounts will not be available as a source for loans under the Plan.

(f) Effective Date. This section 20.06 shall be effective for distributions occurring after September 27, 2010, or if later, when adopted by the Employer.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

(a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and

2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.

(b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:

1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.

(c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.

(d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: Paul F. Gallagher
Name: Paul F. Gallagher
Title: Assistant Secretary

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Plan Description: Volume Submitter Profit Sharing Plan
FFN: 315D0880004-001 Case: 201200591 EIN: 23-7268394
Letter Serial No: J593645a
Date of Submission: 04/02/2012

ICMA RETIREMENT CORP
777 NORTH CAPITOL ST. NE, SUITE 600
WASHINGTON, DC 20002

Contact Person:
Janell Hayes
Telephone Number:
513-263-3602
In Reference To: TEGE:EP:7521
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the practitioner on behalf of employers must provide the date of adoption by the practitioner.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of Code sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Letter 4333

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,

Andrew E. Zuckerman
Director, Employee Plans Rulings and Agreements

Letter 4333

ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG

BRC000-213-21267-201405-W1372
REV 3/2015

Meeting Date: April 19, 2016

From: _____
Mark B. DeBord, Finance Director

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: AFIRST – Altamonte to Apopka Reclaimed Water Transmission change order numbers 1, 2, 3, and 4

SUMMARY EXPLANATION & BACKGROUND: On May 21, 2013, the Commission awarded Bid #RFP13038 to Aecom Technical Services, Inc. for professional engineering services for the AFIRST – Altamonte to Apopka Reclaimed Water Transmission project. The contract was issued for $437,303.00.

Change order No. 1 is for additional design, permitting and construction services, adding $49,877.00.

Change order No. 2 is for additional services due to a pipeline alignment change and construction phase services, adding $161,153.00.

Change order No. 3 is for redesign and detour plan due to change in easement access, adding $15,762.00.

Change order No. 4 is for additional services to address contractor performance issues with a flow control valve, and reviews for as-built record drawings, adding $10,474.00.

The total contract will increase to $674,569.00.

FISCAL INFORMATION:
Fund: AFIRST project
Dept/Dev: AFIRST Project
Activity/Element: City Utility System
Account Number: 40608310-563700-13021
Amount: $187,389.00

RECOMMENDED ACTION: Approve contract change orders No. 1, 2, 3, and 4 with Aecom Technical Services, Inc. in the amount of $187,389.00.

Meeting Date: April 19, 2016

From: _____
Mark DeBord, Finance Director

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: City surplus equipment and machinery.

SUMMARY EXPLANATION & BACKGROUND:
The equipment and machinery outlined on the attached list is currently held by the City of Altamonte Springs. These items are now considered obsolete by the various departments.

The Finance Department would like to dispose of these items at an upcoming public auction on April 30, 2016. For the auction, we will be able to retain the services of George Gideon Auctioneers, Inc. at the low commission rate negotiated by Seminole County by attaching our surplus property to their contract parameters.

FISCAL INFORMATION:
This has no material effect on the budget.

RECOMMENDED ACTION:
Declare the attached list of property as surplus as required by Florida State Statute 274.07 and approve disposal at public auction.

Initiated by: Laurie Daugherty, Accountant

Surplus Property List

Auction Date: April 30, 2016

Equipment Description	Make	Veh/Tag #	Serial/VIN #	ASSET #	Location
Sedan	Impala	459	2G1WS55R679307819	21702	Fleet
Sedan	Impala	469	2G1WS55R579284758	21813	Fleet
Sedan	Impala	473	2G1WS553289248250	21970	Fleet
Sedan	Impala	479	2G1WS553689250485	21978	Fleet
Sedan	Impala	482	2G1WS553689253631	21981	Fleet
Sedan	Impala	1828	2G1WF52K619228945	19281	Fleet
Sedan	Impala	805	2G1WS55R779201086	21688	Fleet
Sedan	Impala	460	2G1ws55R079306813	21789	Fleet
Hybrid Sedan	Prius	1844	JTDKB20U483417763	22081	Fleet
Hybrid Sedan	Prius	1409	JTDKB20U177628491	21797	Fleet
Sedan	HHR	471	3GNDA23P58S568324	21864	Fleet
Pick-up Truck	F150	1823	1FTPW14584KA51006	22783	Fleet
1 Ton Utility Pick-up Truck	F350	2360	1FTWW33F12EB97793	20172	Fleet
Utility Cart	Gem	2111	5ASAJ27468FD45230	21985	Fleet
Utility Cart	Gem	3023	5AGTGA48AF050803	22400	Fleet
Utility Cart	Cushman	660	2458263	21689	Fleet
Utility Cart	E-Z-Go	662	2500621	21697	Fleet
Utility Cart	Gator	2129	W004X2X077273	20165	Fleet
Utility Cart	Gator	2103	W04X2SD008905	21240	Fleet
Utility Cart	Gator	3256	W004X2X077274	20166	Fleet
Chipper	Vermeer	1297	1VRN1312321002892	20426	Fleet
Mower	Toro	676	270001309	21869	Fleet
Mower	Toro	513	260000454	21619	Fleet
Mower	Snapper	534	21157052	14697	Fleet
WB Mower	Scag	608	6260152	19906	Fleet
WB Mower	Scag	554	6230202	19811	Fleet
Turf Sweeper	Toro	607	3000318911	19899	Fleet
String Trimmer	Stihl	3358	287570179	-	Fleet
String Trimmer	Stihl	673	272984400	-	Fleet
String Trimmer	Stihl	675	272167213	-	Fleet
Hedge Trimmer	Stihl	3299	268925559	-	Fleet
Hedge Trimmer	Stihl	3298	268925555	-	Fleet
Hedge Trimmer	Stihl	3310	272883559	-	Fleet
Edger	McClane	645	585434	-	Fleet
Edger	Stihl	3355	287147508	-	Fleet
Edger	Stihl	658	268108965	-	Fleet
Edger	Stihl	526	269023205	-	Fleet
Edger	Stihl	672	272119307	-	Fleet
Edger	Stihl	3304	269022872	-	Fleet
Backpack Blower	Stihl	3390	290409275	-	Fleet

Surplus Property List

Auction Date: April 30, 2016

Equipment Description	Make	Veh/Tag #	Serial/VIN #	ASSET #	Location
Pressure Washer	Honda	545	GC8KT-1142754	21652	Fleet
Vaccum	Stihl	1206	268387528	-	Fleet
Sand Pro	Toro	516	230000393	20473	Fleet
Concrete Mixer	Stone	1607	202006295	21561	Fleet
Trailer	U-Dump	1544	43ZDG21B3N0001085	15049	Fleet
Tractor Forks	John Deere				Fleet
Misc Police Equipment -	Palletized				Fleet
Dyna Clean					Fleet
File Cabinets					Fleet
Motorola Portable Radio			466CDL0115	20603	W. Alt-Whse
Motorola Portable Radio			466AXW1317	18821	W. Alt-Whse
Motorola Portable Radio			466CDE0834	20544	W. Alt-Whse
Motorola Portable Radio			466AXW1297	18821	W. Alt-Whse
Motorola Portable Radio			466AXW1363	18867	W. Alt-Whse
Motorola Portable Radio			466AXW1313	18817	W. Alt-Whse
Motorola Portable Radio			466AXW1311	18815	W. Alt-Whse
Motorola Portable Radio			466AXW1350	18854	W. Alt-Whse
Motorola Portable Radio			466AYE1987	19024	W. Alt-Whse
Motorola Portable Radio			466AYE1988	19025	W. Alt-Whse
Multi Charger					W. Alt-Whse
(10) Single Charger					W. Alt-Whse
(6) Batteries					W. Alt-Whse
(6) Clips					W. Alt-Whse
(5) Antenna					W. Alt-Whse
(2) Dust Covers					W. Alt-Whse
Mail Machine, Neopost			000JS580034		City Clerk
APC Backups 350		IS01722	AB0233341725		IS
APC Backups 500		IS02480	BB0424034202		IS
APC Backups 500		IS00196	BB0424034524		IS
APC BACKUPS 500		IS01773	JB0401002193		IS
APC Backups 500		IS02511	BB0424034314		IS
APC SMARTUPS 2200			js1019016185		IS
Arbitrator Mic		IS04699	TX120227943-V12		IS
Avaya 4602SW		IS03678	05GM31031661		IS
Avaya 4690 Polycom			004f2e2cc53		IS
Avaya AWH55+		IS03692	BA062378		IS
Avaya Polycom 4690		IS04884	0004F2E3B5E3		IS

Surplus Property List

Auction Date: April 30, 2016

Equipment Description	Make	Veh/Tag #	Serial/VIN #	ASSET #	Location
Avaya9611G		IS05817	12WZ110605N2		IS
Avaya9611G		IS05994	12WZ080601LD		IS
Avaya9611G		IS05520	10WZ32551552		IS
Avaya9611G		IS05763	12WZ11160H7F		IS
Avaya9611G		IS05976	12WZ082602E7		IS
Black Phone		IS01198	AF10005117		IS
Black Phone			AF10004440		IS
Black Phone			AF10000996		IS
Canon iP100 Printer			ABCF57802		IS
Cisco 2600		IS00149	JMX0819L4R2	20878	IS
Cisco Catalyst 3750		IS03295	FDO1332Y0C2		IS
Cisco Catalyst 3750		IS02575	CAT0938R365		IS
Cisco Catalyst 3750		IS03996	FD01148Z7AB		IS
Dell E02S Server		IS04455	8N9BSS1		IS
Dell E07S Server R410			6Y4D5M1		IS
Dell Latitude 2110		is04141	f53h6p1		IS
Dell Latitude 2110		IS04153	653H6P1		IS
Dell Latitude 2110		is04148	D53H6P1		IS
Dell Latitude 2110		is04139	753H6P1		IS
Dell Latitude 2110		is04144	353h6p1		IS
Dell Latitude 2110		is04145	B53H6P1		IS
Dell Latitude 2110		is04151	853h6p1		IS
Dell Latitude 2110		is04149	253h6p1		IS
Dell Latitude 2110		IS04140	453H6P1		IS
Dell Latitude 2110		IS04150	553H6P1		IS
Dell Latitude 2110		IS04152	C53H6P1		IS
Dell Latitude 2110		IS04147	953H6P1		IS
Dell Latitude 2110		IS04146	G53H6P1		IS
Dell Monitor P2212HB		is06199	cn0ndmrp742612971cgu		IS
Dell Monitor U2312HMT		IS04427	CN-0T9MJ3-74445-214-AUZL		IS
Dell Monitor U2410F		IS03877			IS
Dell Monitor U2410F		is04443			IS
Dell Monitor U2412MB		IS04451	CN-0M2GCR-74261-1CL-3GRL		IS
Dell Power Edge R310			GRV4FP1	22519	IS
Digital Patroler camera			1946	21570	IS
Digital Patroler camera			484	20960	IS
Digital Patroler camera			1273		IS
Digital Patroler LCD			1275		IS
Digital Patroler LCD			1273		IS
Digital Patroler LCD			492		IS

Surplus Property List

Auction Date: April 30, 2016

Equipment Description	Make	Veh/Tag #	Serial/VIN #	ASSET #	Location
Digital Patroler LCD			1277		IS
Digital Patroler LCD			9002		IS
Latitude 6400		IS04047	BTXL3M1	22377	IS
Latitude 6400		IS03082	GRG0NK1	22330	IS
Latitude 6400		IS04060	HTXL3M1	22390	IS
Latitude 6400		IS04001	2V3HTL1	22342	IS
Latitude 6400		IS04030	D2YL3M1	22360	IS
Latitude 6400		IS04013	B0YL3M1	22343	IS
Latitude 6400		IS04029	50YL3M1	22359	IS
Latitude 6400		IS04031	GSXL3M1	22361	IS
Latitude 6400		IS04056	7TXL3M1	22386	IS
Latitude 6400		IS04053	GTXL3M1	22383	IS
Latitude 6400		IS04019	JTXL3M1	22349	IS
Latitude 6400		IS04059	8SXL3M1	22389	IS
Latitude 6400		IS04026	6WXL3M1	22356	IS
Latitude 6400		IS04021	JSXL3M1	22351	IS
Latitude 6400		IS04058	CSXL3M1	22388	IS
Latitude 6400		IS04049	FTXL3M1	22379	IS
Latitude 6400		IS04020	1TXL3M1	22350	IS
Latitude 6400		IS04008	8V3HTL1	22340	IS
Latitude 6400		IS04034	18YL3M1	22364	IS
Latitude 6400		IS04048	DVXL3M1	22378	IS
Latitude 6400		IS04156	GQFLXN1	22504	IS
Latitude 6400		IS04002	4V3HTL1	22334	IS
Latitude 6410		IS04111	8J8HTM1		IS
Latitude 6410		IS04124	33KXTM1		IS
Latitude 6410		IS04115	HT7HTM1		IS
Latitude 6410		IS04109	B78HTM1		IS
Latitude 6410		IS04162	1J8HTM1	22510	IS
Latitude 6410		IS04161	DPFLXN1	22509	IS
Latitude 6410		IS04158	9QFLXN1	22506	IS
Latitude 6410		IS04159	CNFLXN1	22507	IS
Latitude 6410		IS04165	DQFLXN1	22513	IS
Latitude 6410		IS04143	8QFLXN1	22502	IS
Latitude 6410		IS04137	2KMC2M1		IS
Latitude 6410		IS04160	JPFLXN1	22508	IS
Latitude 6410		IS04112	GD8HTM1		IS
Latitude 6410		IS04103	6Q8HTM1		IS
Latitude 6410		IS04114	7D8HTM1		IS
Latitude 6410		IS04125	12KXTM1		IS

Surplus Property List

Auction Date: April 30, 2016

Equipment Description	Make	Veh/Tag #	Serial/VIN #	ASSET #	Location
Latitude D630		is00249	c2yt8f1	22043	IS
Optiplex GI200		IS01893	5NBPC01	19950	IS
Optiplex 780		IS04214	9FNCBP1		IS
Optiplex 780		IS04204	9FTBBP1		IS
Optiplex GX620		IS02630	GC7G691	21374	IS
Precision 670		IS02625	8TN6691	21370	IS
Dell Latitude D520		IS00396	FDY1YB1	21747	IS
Box Miscellanous Keyboards					IS
Box of Keyboards and Mice					IS
Box of Miscellanous cables, GPS Cables					IS
Box of Miscellanous digital patroler cables					IS
Box of Miscellanous harddrive holders					IS
(2) Miscellanous box of Harddrives					IS
Box of Miscellanous Mice and Cables					IS
Metal keyboard Tray					IS
Miscellaneous box of wires, cables, peripherals					IS
(3) Miscellanous Box of Harddrives					IS
(7) Miscellaneous office Chairs					IS
Teletrend Sprint Phone box DSAWM-121LB					IS
Vizio 32 inch TV			LQKEADK2001381		IS
Vowell Miscellanous Box			05HA04011766		IS
Yellow Phone Box					IS
MDS 1710 Radio	1710		1680714	22176	Keller-Lab
Fluke Scope Meter	99		FL1998303	7230	Keller-Lab
Endress-Hauser Open Channel FM	FTU5060		3.50.03		Keller-Lab
Endress-Hauser Ultrasonic Sensor	Du218				Keller-Lab
MDS 9810 Radio	9810		845917		Keller-Lab
Seametrics LF Mag FM	EM101		9062051		Keller-Lab
(2) Ametek Drexelbrook	Sensor		N/A		Keller-Lab
MDS 1710 Radio	1710		1680670	21944	Keller-Lab
SCADAPack 334	334		S170385		Keller-Lab
3-Door Refrigerator			9336540	14230	Keller-Lab
(8) Pole light heads 277 volts					PW-Keller
(2) 50 horse vertical motors					PW-Keller
(3) 150 horse vertical motors					PW-Keller
75 horse power horizontal motor					PW-Keller
(3) 15 horse vertical motor					PW-Keller
electrical cabinet					PW-Keller
electrical troff					PW-Keller
(6) Pole barriers					PW-Keller
miscellaneous box of hand tools					Facilities

Surplus Property List

Auction Date: April 30, 2016

Equipment Description	Make	Veh/Tag #	Serial/VIN #	ASSET #	Location
9- desks					Facilities
1- small table on wheels					Facilities
4- chairs					Facilities
14- doors					Facilities
1-6' bookcase w/doors					Facilities
1-4' open bookcase					Facilities
1-wood file cabinet					Facilities
TAN SAFE	MEILINK		8005119		PD
6FT WOOD SHELF					PD
GRAY/CHROME OFFICE CHAIR				10912	PD
GRAY/SILVER OFFICE CHAIR					PD
BLACK HIGH BACK OFFICE CHAIR					PD
LARGE FOUR DRAWER FILE CABINET				11096	PD
RED HIGH BACK OFFICE CHAIR					PD
DELL LAPTOP BAG					PD
SAMSUNG TUBE TV APPROX 20IN			3CCN501561V		PD
BROWN SINGLE COMPARTMENT SHELF					PD
LARGE PAPER SHREDDER			63523	20196	PD
5FT EXPANDABLE PICNIC TABLE				2188	PD
2IN HOLE PUNCH					PD
(2) BLACK/WOOD CHAIR					PD
SHORT BACK RED CHAIR/ NO ARMS					PD
FOUR DRAWER FILE CABINET				11096	PD
(3) THREE SMALL FILE CABINETS					PD
CANNON SINGLE SHEET SCANNER			HFKA76080		PD
RoadStor portable memory card backup system			n/a		PD
camera case			n/a		PD
Color Printer	PhotoSmart 8750		n/a		PD
Trek Bike			WL31866483	21991	PD
Trek Bike			WL3186491	21782	PD
Trek Bike			WTU204C0753E	N/A	PD
Trek Bike			WTU204C0567E	N/A	PD
DVD 4 slot copier device					PD

ALTAMONTE SPRINGS
SERVICE
FOUNDED 1920
FLORIDA

Meeting Date: April 19, 2016

From: _____
Mark B. DeBord, Finance

Approved: _____
Franklin W. Martz, II, City Manager

Official Use Only

Commission Action: _____

City Manager: _____

Date: _____

SUBJECT: Solicitation Award - RFP-16-018-BK - Professional Engineering Services - Potable Reuse Demonstration Pilot

SUMMARY EXPLANATION & BACKGROUND:

The solicitation called for offers to secure the services of a licensed professional engineer to design, construct, and assist with start-up operations of a potable reuse (PR) pilot demonstration plant with a minimum capacity of 20 gpm (gallons per minute) that consistently and reliably produces water suitable for direct or indirect PR.

The City received sealed proposals from five firms.

Procurement evaluated the proposals for conformance to the general requirements. They found all five submittals complete and responsive.

An Evaluation Committee evaluated the proposals. Each Committee person independently evaluated the submittals based on pre-established evaluation criteria. Procurement compiled the results and presented the cumulative results, which the Committee approved and elected to proceed with requesting approval of the ranking without formal presentations. The Evaluation Committee ranked the firms as follows:

1st - Carollo Engineers, Inc.
2nd - Tetra Tech, Inc.
3rd - Hazen and Sawyer
4th - Arcadia, U.S., Inc.
5th - AECOM Technical Services, Inc.

Upon approval of the ranking, Public Works staff will negotiate with Carollo Engineers, Inc. a final scope and professional services fee for the Mayor to execute. If Public Works staff is not able to negotiate a contract with Carollo Engineers, Inc., they will begin negotiations with the next ranked firm.

FISCAL INFORMATION: Fund: Water & Sewer Capital Projects

RECOMMENDED ACTION: Approve RFP-16-018-BK Evaluation Committee's ranking, authorize staff to negotiate a contract with the top ranked firm, Carollo Engineers, Inc., and authorize the Mayor to execute the final negotiated contract.

Initiated by: FN/Procurement

Cc: E Torres/C Rader/ J Jackson, PW, L Griffiths, FN