

RESOLUTION 93-90

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, APPROVING AN ADDITIONAL DEFERRED COMPENSATION PLAN; AUTHORIZING THE EXECUTION OF THE MASTER DEFERRED COMPENSATION AGREEMENT AND PLAN DOCUMENT; AUTHORIZING THE COUNTY MANAGER TO EXECUTE JOINDER AGREEMENTS WITH EMPLOYEES AND AUTHORIZING PAYROLL DEDUCTIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Alachua County has in its employ personnel who are and will be rendering valuable services to the County and said employees often are unable to acquire adequate retirement security under other existing and available retirement plans due to the contingencies of employment mobility; and,

WHEREAS, the Board of County Commissioners of Alachua County has offered one deferred compensation plan through the International City Manager's Association Retirement Corporation; and,

WHEREAS, it is desirous to provide a choice to employees among more than one deferred compensation plan; and,

WHEREAS, the Board of County Commissioners of Alachua County has determined that any deferred compensation plan offered should be government affiliated since such organizations enjoy

- 1) Stable government clientele and
- 2) Sponsor plans that are transferable among governmental units and
- 3) In such plans the County's deferred compensation monies are pooled only with monies of other governmental units; and,

WHEREAS, The National Association of Counties sponsors a deferred compensation plan that meets the foregoing;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:

1. The Board of County Commissioners does hereby establish the National Association of Counties Deferred Compensation Program for County employees as an authorized deferred compensation plan of the County.

2. The Board of County Commissioners further effectuates the Deferred Compensation Program by approving the Administration Agreement and Plan Document (attached hereto as Exhibits "A" and "B" and incorporated herein by reference) and hereby authorizes the Chair and Clerk of the Board to execute both Documents with the National Association of Counties Deferred Compensation Program. See Exhibit "A" and "B"

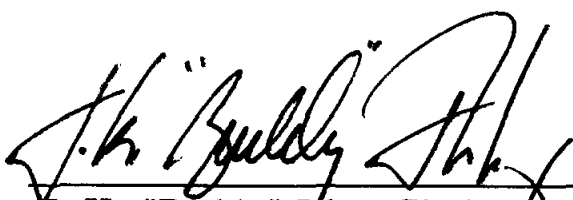
3. The Board of County Commissioners hereby authorizes the County Manager, on behalf of the County, to execute all Subsequent Participation Agreements with County employees and other eligible officials and officers that are necessary for said persons' participation in the Program, an example of such participation agreement is attached hereto as Exhibit "C". Any Participation Agreement for County Commissioners shall be executed by the Chair. Upon the execution of the Administration Agreement and Plan Document and an appropriate Participation Agreement, the Board of County Commissioners further authorizes deferrals of compensation by payroll deductions.


4. This resolution shall take effect immediately upon its adoption.


DULY ADOPTED in regular session, this 26 day of October A.D., 1993.

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA,

ATTEST:


J. K. "Buddy" Irby, Clerk

By: 
Penelope Wheat, Chair

APPROVED AS TO FORM

Alachua County Attorney

**NATIONAL ASSOCIATION OF COUNTIES
DEFERRED COMPENSATION PROGRAM
ADMINISTRATIVE AGREEMENT**

Exhibit A

This Agreement is executed this _____ day of _____, 19____, by and between NACoServices, a subsidiary of the National Association of Counties (NACo), the County of _____ (County), and Public Employees Benefit Services Corporation (PEBSCO).

WHEREAS, NACo endorses and NACoServices sponsors a prototype deferred compensation program (Program) pursuant to Section 457 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the County recognizes that such tax deferred savings benefits as may be derived from adoption of a deferred compensation plan (Plan) under the Program will act as incentives for employees to voluntarily set aside and invest portions of their current income to meet their future financial requirements and supplement their retirement income; and

WHEREAS, the County recognizes that through the adoption of a Plan under the Program, all such regulatory, operational, administrative, and other Plan management responsibilities are assumed by NACoServices on behalf of the County, in accordance with the Program document, and certain responsibilities have been and may be delegated by NACoServices, to the Program Administrator; and

WHEREAS, the County recognizes the important contribution of NACoServices' technical expertise in the design, implementation, and administration of a national Program established and administered in compliance with all applicable regulatory authorities; and

WHEREAS, the County recognizes the advantages and economies of scale secured by the mass purchasing leverage of NACoServices and NACo's Participating Counties through a comprehensive national bid selection analysis; and

WHEREAS, the County recognizes the benefit of NACoServices' making arrangements on behalf of Counties for a functional administrative system to administer the Program; and

WHEREAS, the County has enacted the necessary resolution/court order to adopt the NACo Deferred Compensation Program and this County Administrative Agreement and to establish its Plan for its employees.

NOW, THEREFORE, in consideration of the premises set forth hereinabove, and the promises contained hereinafter, the parties agree as follows:

I. THE PROGRAM

- A. NACo endorses a prototype Section 457 Program developed in cooperation with NACoServices and PEBSCO, a third party administrator, which permits the County and its employees to enjoy the advantages derived from Section 457 of the Internal Revenue Code, as amended.
- B. The Program is intended to assist the County in providing an increased measure of financial security to its employees by providing for additional retirement income through the deferral of before-tax dollars and the reduction of current income tax liability.
- C. Plans adopted pursuant to the Program will be provided at no cost to the County other than incidental expense related to payroll deductions.

II. REGULATORY CONSIDERATIONS

PEBSCO has represented and warranted to NACoServices that the Program and the Plans adopted thereunder meet all necessary criteria for approval by all federal and state regulatory authorities governing such programs.

III. COMPETITIVE BID PROCESS

The Program makes available to the County a third party administrator and investment and insurance products which as a result of a careful evaluation of administrative abilities and experience, and the combination of costs, benefits, and services, provide a quality deferred compensation program. National bid selection processes for these administrative and investment services were performed by NACoServices.

IV. PROGRAM ADMINISTRATOR

NACo and NACoServices have agreed to sponsor the Program in its present form, and have selected and exclusively contracted with an independent third party administrator, PEBSCO, qualified to fulfill the responsibility for all administrative requirements necessary for the successful operation of the Program.

The County hereby accepts PEBSCO to act as Program Administrator in fulfilling the administrative and marketing

VII. TERMINATION:

A. COUNTY

County may terminate this Agreement upon 90 days' written notice to NACoServices and PEBSCO if NACoServices or PEBSCO fails to perform any of their obligations hereunder. During such 90 day period, the defaulting party shall have the right to cure the default or breach. Any written notice given hereunder shall specifically state the nature of the default or breach.

B. NACoSERVICES OR PEBSCO

If the County fails to agree, whether by act or omission, to the terms and conditions for participation in the Program, NACoServices or PEBSCO shall have the right to terminate this Agreement upon 90 days' written notice to the County; provided, however, the County may cure the default or omission within 90 days immediately following the date of said notice.

VIII. CONTRACT TERM

This Agreement is effective until written notice of termination pursuant to Article VII above is provided by any party.

NACoSERVICES

Title: _____

COUNTY

Title: _____

PUBLIC EMPLOYEES BENEFIT SERVICES CORPORATION

Title: _____

CLERK CIRCUIT COURT
FINANCE & ACCOUNTING
1993 AUG -5 A 2:52
RECEIVED

**NATIONAL ASSOCIATION OF COUNTIES
DEFERRED COMPENSATION PROGRAM
THE DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
PLAN DOCUMENT**

Exhibit B

NAME OF COUNTY

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

ARTICLE I

Definitions

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

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

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

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

ARTICLE III

EMPLOYER Contributions

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

ARTICLE IV

Plan Transfers

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

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

ARTICLE V

Designation of Beneficiary

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

ARTICLE VI

Accounts and Reports

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X

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

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

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

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

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

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

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

ARTICLE XI

Prior Plan

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

ARTICLE XII

Effective Date

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

IN WITNESS WHEREOF, the undersigned has executed this Plan this _____ of _____, 19____.

(Name of County)

By: _____

PLEASE SIGN AND RETURN THIS PAGE ONLY.

TEAR HERE AT PERFORATION

PLEASE READ THE REVERSE SIDE OF THIS FORM PRIOR TO COMPLETION

I HAVE READ AND UNDERSTAND EACH OF THE STATEMENTS ON THE **FRONT AND BACK** OF THIS FORM, WHICH HAVE BEEN DRAFTED IN COMPLIANCE WITH SECTION 457 OF THE INTERNAL REVENUE CODE. I ACCEPT THESE TERMS AND UNDERSTAND THAT THESE STATEMENTS DO NOT COVER ALL THE DETAILS OF THE PLAN OR PRODUCTS.

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