

HOLD HARMLESS AGREEMENT

THIS HOLD HARMLESS AGREEMENT, is entered into this ____ day of _____, 2019 by and between the **CITY OF DELRAY BEACH**, a Florida municipal corporation (hereinafter referred to as “**EMPLOYER**”) and **ICMA RETIREMENT COROPORATION**, a nonprofit corporation organized and existing under the laws of the State of Delaware, (hereinafter referred to as “**ICMA-RC**”).

W I T N E S S E T H:

WHEREAS, Employer acts as a public plan sponsor of a 457 Deferred Compensation Plan (“Plan”) with the responsibility of providing administrative services for the Plan; and

WHEREAS, Employer has appointed ICMA-RC as Administrator of the Plan to perform all nondiscretionary function necessary for the administration of the Plan; and

WHEREAS, Employer and ICMA-RC desire to authorize ICMA-RC to process emergency withdrawal requests on behalf of participants in the Plan without requiring Employer approval under limited circumstances; and

WHEREAS, the City Commission deems this Agreement to be in the best interest of the City.

NOW, THEREFORE, for the mutual covenants and matters set forth herein, as of the date set forth above, the parties hereby agree as follows:

1. The recitations set forth above are incorporated herein.
2. ICMA-RC will make available to the Employer and participants in the Plan copies of the ICMA-RC 457 Deferred Compensation Plan Emergency Withdrawal Form (or an Employer-customized form) (“Form”) to be used in connection with emergency withdrawal

requests. Employer will notify participants that they must complete the Form and submit it, along with all required documentation, (the “Application”) to ICMA-RC for processing.

3. ICMA-RC will review the Application to determine whether the participant’s request complies with the criteria for an unforeseeable emergency withdrawal under section 457 of the Internal Revenue Code (“Code”) and regulations thereunder, and applicable Plan provisions (collectively, the “Emergency Withdrawal Criteria”).

4. ICMA-RC may rely in all respects, without having to make further inquiry, upon the Application submitted by the participant, including all supporting documentation, information, or representations provided by the participant. ICMA-RC shall be deemed to have received an Application in good order upon receipt of an Application in a form and manner required by or acceptable to ICMA-RC. ICMA-RC shall not be required to process an Application that has not been submitted in good order.

5. ICMA-RC may take up to five (5) business days to review a request for the purpose of determining whether it is in good order. This five day assessment period shall not be counted for the purpose of determining ICMA-RC’s compliance with disbursement processing performance standards subject to performance guarantees.

6. Adequate supporting documentation must be provided by a participant in order for ICMA-RC to make a determination regarding compliance of the participant’s request with the Emergency Withdrawal Criteria. An Application otherwise in good order that does not include such documentation will be denied.

7. A participant may resubmit an Application so denied, along with the necessary supporting documentation, for reconsideration by ICMA-RC.

8. Based on ICMA-RC's review of the Application, ICMA-RC will either (a) approve and process the request or (b) reject and deny the request. On a monthly basis, ICMA-RC will provide the Employer or its designee, as appropriate, a report listing all the Applications processed during the previous month. Such a report will list the participant's name, request date, requested amount, reason for the request and the decision whether to grant or deny the request.

9. If a participant disagrees with ICMA-RC's denial of the Application or partial approval of the Application, the participant may request that the Employer review the Application. In such cases, ICMA-RC will provide the Employer with a copy of the Application.

10. The Employer will treat as binding ICMA-RC's decision to make a payment pursuant to an Application in good order.

11. Employer agrees to allow participants in the Plan to submit their requests for Emergency Withdrawal through ICMA-RC's secure web portal.

12. Employer acknowledges and agrees that ICMA-RC is not responsible for detecting inaccuracies, misstatements, or falsifications made by participants related to the processing of the Application. ICMA-RC's review is not designed to detect such issues. Processing Applications is subject to the limitation that errors, misstatements, fraud, or other unlawful acts by participants may not be detected. Nonetheless, unless prohibited by law or by judicial or regulatory request, ICMA-RC will communicate to the Employer or their designee, as appropriate, any such matters that come to ICMA-RC's attention during the processing of the Application.

13. To the extent permitted by law and subject to the financial limitations of Section §768.28, *Florida Statutes*, Employer agrees to hold ICMA-RC harmless in connection with any claim or liability arising as a result of ICMA-RC's processing of emergency withdrawal requests

under the Plan, unless such claim or liability results solely from the willful misconduct of ICMA-RC or its employees, directors, officers, servants, designees, appointees, or agents.

14. Employer further acknowledges and agrees that Employer retains the ultimate discretionary authority with respect to decisions regarding a participant's unforeseeable emergency withdrawal request.

15. This Agreement shall be governed by the laws of the State of Florida. Any proceeding initiated to enforce the provisions of this agreement shall be brought in the State or Federal courts located in Palm Beach County, Florida. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this Agreement, each party shall pay their own attorney's fees and costs, including appellate fees and costs. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement the day
and year first written above.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: _____

City Clerk

Approved as to Form:

By: _____

Shelly Petrolia, Mayor

By: _____

City Attorney

**INTERNATIONAL CITY MANAGEMENT
ASSOCIATION RETIREMENT
CORPORATION**

By: _____

(print or type name)