

ITEM 15
MANAGER'S REPORT NO. 72
COUNCIL MEETING 1983 11 28

SUBJECT: DEFERRED COMPENSATION PLAN

RECOMMENDATION:

THAT the Municipal Council authorize the Municipal Clerk to sign the Trust Agreement for the Deferred Compensation Plan between the Corporation of The District of Burnaby and Royal Trust Corporation of Canada.

REPORT

At their meeting of 1983 July 25, the Municipal Council approved the concept of amending the Deferred Compensation Plan that is available to all members of the Exempt Group. In review, this Plan allows Exempt employees to shelter a portion of their salary from income tax. The Plan was recently updated to reflect the present-day environment, after being dormant for some time. Once the Plan is established as amended, there will be no on-going costs to the District of Burnaby to operate the Plan, since all administrative costs and annual fees are paid for from the funding in the Plan itself.

Attached, for Council's information, is a copy of the Trust Agreement.

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THIS TRUST AGREEMENT made as of the _____ day of _____, 1983.

BETWEEN:

(hereinafter referred to as the
"Employer")

OF THE FIRST PART,

AND:

a trust company having an office in the
City of Vancouver, in the Province of
British Columbia

(hereinafter referred to as the "Trustee")

OF THE SECOND PART.

WHEREAS the Employer desires to establish an Employee Benefit Plan (hereinafter referred to as the "Plan") for certain of its employees, the terms of which plan are attached as Schedule "A" hereto and form a part hereof;

AND WHEREAS the Employer and the Trustee agree that employees otherwise qualified to join the Plan may do so by executing a letter of agreement in the form set forth and attached as Schedule "B" hereto which forms a part of this agreement.

AND WHEREAS the Employer has appointed the Trustee to be Trustee of the Plan for the purpose of carrying out the terms and conditions of the Plan and the Trustee has agreed to act and the Employer has requested the Trustee to enter into these presents for the purpose of evidencing the terms and trusts in pursuance of which the Plan is to be administered.

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NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained the Employer, the Beneficiary and the Trustee do hereby covenant and agree as follows:

SECTION 1

The Employer hereby establishes with the Trustee a trust fund (the "Fund") which fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of the Plan and this Trust Agreement.

SECTION 2

Within one (1) month of the inception of the Plan, and in every third year thereafter, the Beneficiaries shall elect three (3) of their number who are also Beneficiaries of the Plan, to be the Investment Committee. If, during the currency of the term, one or more of the Members of the Investment Committee should for any reason be unable to act, then the Beneficiaries shall elect another of their number to act in his or her stead.

The Investment Committee shall inform the Trustee and the Employer in writing of the names of the Trustee and elected from time to time. The Trustee shall invest and reinvest the Fund or any part or parts thereof in those types of investment to which trustees are restricted by virtue of any laws of Canada or any province thereof in accordance with the directions of the Investment Committee.

SECTION 3

In any act pertaining to the administration of the Fund the decision of the Trustee shall govern provided, however, that if there is more than one trustee a majority of Trustees shall govern and if a majority cannot be determined on any question, the Employer will appoint an additional trustee to provide the casting vote on that question and the Trustee or if more than one a majority of the Trustees may validly execute any document on behalf of the Trustee.

The exercise by the Trustee and Investment Committee in good faith of any of the powers, authorities, or duties given to it by this Agreement shall not subject them to any liability of any kind and they shall not be liable to make good any loss or diminution in value of the trust property not caused by their gross negligence or bad faith and all persons claiming any beneficial interest in the trust property shall be deemed to take with notice of and subject to the protection hereby conferred upon the Trustee and Investment Committee.

SECTION 4

The Trustee shall keep accounts in a manner acceptable to the Employer of all receipts, disbursements, investments and other transactions hereunder and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Employer or by any Beneficiary.

Within ninety (90) days following the close of each fiscal year of the Plan, the Trustee shall prepare written accounts (the Beneficiaries' Accounts) setting forth all investments, receipts, contributions, credits, disbursements and other transactions effected by it during such fiscal year, also setting forth the amount outstanding to the credit of each Beneficiary in his Account, copies of which written accounts shall forthwith be forwarded to the Employer who, in turn, will forward to each Beneficiary a statement of that Beneficiary's account. Upon the expiration of ninety (90) days from the forwarding of such written accounts to the Employer, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of its acts and transactions shown in such accounts, except with respect to any such acts or transactions as to which the Beneficiary or the Employer shall within such ninety (90) day period file with the Trustee written objections and except for loss or diminution of the Fund resulting from the negligence or bad faith of the Trustee.

SECTION 5

The Trustee may be removed from office at any time with or without cause by the Employer, such removal to be communicated to it by written notice. The Trustee acting hereunder may resign at any time by giving written notice of its

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resignation to the Employer. In the event of vacancies occurring in this Trusteeship at any time, the Employer shall designate and appoint a successor Trustee or Trustees, either personal or corporate. Any successor Trustee or Trustees shall have all the powers conferred upon the original Trustee or Trustees.

The Employer reserves the right at any time to amend, in whole or in part, any or all of the provisions of this Trust Agreement. Such amendments will be communicated by notice thereof in writing delivered to the Trustee; provided, however, that no such amendment which affects the rights, duties or responsibilities of the Trustee may be made without its consent.

SECTION 6

Administrative costs and expenses of or in connection with the Fund, including reasonable remuneration to the Trustee, shall be paid by the Fund and shall be drawn rateably from the accounts of all participating Beneficiaries.

SECTION 7

During the currency of the Plan any income or gains arising from a Beneficiary's Account shall enure to the benefit of the Employer, and shall be paid to the Employer in each year.

SECTION 8

The fiscal year end of the Plan shall be the 31st day of December in each year.

SECTION 9

This Agreement shall be administered, construed and enforced according to the laws of the Province of British Columbia.

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IN WITNESS WHEREOF the parties hereto have executed
this Trust Agreement the day and year first above written.

The corporate seal of _____)
_____)
was hereunto affixed in the)
presence of: _____)
_____)
_____)
_____)

c/s

The corporate seal of _____)
_____)
was hereunto affixed in the)
presence of: _____)
_____)
_____)
_____)

c/s

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SCHEDULE "A"
EMPLOYEE BENEFIT PLAN
TERMS AND CONDITIONS

1. In the year in which this agreement is entered into, the Beneficiary shall determine and notify the Employer in writing no later than December 15, the amount which the Beneficiary wishes the Employer to deduct from the compensation that otherwise would be paid to the Beneficiary in the following year which amount in no case shall be less than Five Hundred Dollars (\$500.00) and shall in no case exceed thirty (30%) per cent of the amount of the normal gross salary received by the Beneficiary for the previous taxable year.
2. In each year subsequent to the year in which this agreement is entered into and while the Beneficiary remains in the employment of the Employer, the Beneficiary shall determine and notify the Employer in writing no later than December 15, the amount, if any, which the Beneficiary wishes the Employer to deduct from the compensation that otherwise would be paid to the Beneficiary in the next following year which amount shall in no event be less than Five Hundred Dollars (\$500.00) and shall in no event exceed thirty (30%) per cent of the amount of the Beneficiary's normal gross salary. The Beneficiary's normal gross salary shall mean the salary that would otherwise be paid to the Beneficiary if no deduction were made for any contribution to this Plan.
3. The amount that the Beneficiary and the employer agree to deduct from the compensation which otherwise would be paid to the Beneficiary, pursuant to paragraphs 1 and 2 hereof, shall in the year of deduction be deducted pro rata from each compensation payment made to the Beneficiary.
4. The amount deducted pursuant to paragraphs 1, 2 and 5 hereof shall be paid to a Trustee to be invested by the Trustee in such investment or investments as may from time to time be determined by the Investment Committee in accordance with Section 2 of the Trust Agreement.
5. Any income or gains arising with respect to the account of the Beneficiary will enure to the benefit of and be paid to the Employer, and shall, within ten (10) days of receipt by the Employer, be paid by the Employer to the Trustee as a contribution to the Plan. The Trustee shall credit amounts so received to the Beneficiary's Account and shall be invested in accordance with paragraph 4 hereof.

6. The Beneficiary's Account shall be held for the Beneficiary until the Beneficiary attains age sixty-five (65) years, at which time the amount in the Beneficiary's Account shall be paid to the Beneficiary in one of the following ways:

- (a) a lump sum;
- (b) periodic payments for a period not to exceed fifteen (15) years, with the amount and frequency of the payments to be determined by the Beneficiary; or
- (c) by the purchase by the Plan of an annuity payable for the life of the Beneficiary and or his spouse, which annuity may or may not be guaranteed.

Any election made pursuant to this section must be made in the calendar year preceding the year in which the Beneficiary attains age sixty-five (65) years. If option (b) is selected, then at the time of selecting option (b) the Beneficiary must also designate the amount and frequency of payments.

If option (c) is selected, then the annuity will be acquired by the Trustee, the annuity payments will be paid by the Trustee to the Beneficiary or his spouse, and the income portion thereof will not enure to the Trustee or the Employer.

7. On the death of the Beneficiary prior to electing pursuant to Section 6 hereof, no amount shall immediately be payable to the Beneficiary's estate. In such event the Beneficiary's estate shall, within one (1) year of the date of death, elect to have the amount in the Beneficiary's Account paid in accordance with Section 6(a) or 6(b) hereof. No amount shall be paid to the estate until thirty (30) days from the date of the said election have elapsed.

8. In the case of the termination of employment prior to attaining age sixty-five (65) years, the Beneficiary may elect to receive payment pursuant to paragraph 6 hereof as if the date of his termination was age sixty-five (65) years. In such case, the election must be made at least fifteen (15) days prior to termination. In the case of termination of employment without at least thirty (30) day's notice, the Beneficiary shall have

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thirty (30) days from the date of termination to make an election pursuant to this paragraph, and in any event no payments shall be made to him pursuant to this Plan until sixty (60) days from the date of termination.

9. In the case of serious family illness or financial difficulty as concurred to by the Trustee, the Trustee may pay the Fund or such part thereof as the Beneficiary and the Trustee agree to the Beneficiary.

10. To become a member of the Plan a Beneficiary shall execute two (2) copies of a letter agreement in the form of Schedule "B" to the Trust Agreement. These letters shall be delivered to the Employer who will send one copy to the Trustee.

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SCHEDULE "B"
EMPLOYEE BENEFIT PLAN
LETTER OF AGREEMENT

TO: THE CORPORATION OF THE DISTRICT OF BURNABY

Dear Sirs:

I hereby state that I agree to be a member of the Employee Benefit Plan entered into between you and the Royal Trust Corporation of Canada.

I have received a copy of the Trust Agreement and Plan and agree to be bound by the provisions thereof.

Yours truly,