

BILL NO. 5817

ORDINANCE NO. 4479

INTRODUCED BY: BOARD OF ALDERMAN

AN ORDINANCE PROVIDING FOR THE ADOPTION OF THE FIFTH AMENDED AND RESTATED POLICE AND FIRE FIGHTERS' PENSION PLAN; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, by Ordinance No. 943, the Board of Aldermen of the City of Brentwood, Missouri adopted the City of Brentwood Police and Fire Fighters' Pension Plan (the "Police and Fire Fighters' Pension Plan") which was formerly called the "City of Brentwood Police and Firemen's Pension Plan"; and

WHEREAS, the Board of Aldermen of the City of Brentwood has adopted several amendments to the City of Brentwood Police and Fire Fighters' Pension Plan since the adoption of Ordinance No. 943; and

WHEREAS, the Board of Trustees of the City of Brentwood Police and Fire Fighters' Pension Trust, after significant study, discussion, and review, recommends several substantive revisions to the City of Brentwood Police and Fire Fighters' Pension Plan so that such Plan continues to be qualified under the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, be it ordained by the Board of Aldermen of the City of Brentwood, Missouri, as follows:

SECTION 1. The Fifth Amended and Restated City of Brentwood Police and Fire Fighters' Pension Plan, attached hereto as Exhibit A, is hereby approved and such Fifth Amended and Restated Plan is hereby adopted in its entirety effective January 1, 2013.

SECTION 2. All ordinances and parts of ordinances in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

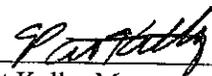
SECTION 3. This ordinance shall be in full force and effect from and after the date of its passage.

ADOPTED BY THE BOARD OF ALDERMEN THIS 2nd DAY OF December, 2013.

APPROVED BY THE MAYOR THIS 2nd DAY OF December, 2013.

Attest:


Bola Akande, City Clerk/Administrator


Pat Kelly, Mayor

1st Reading: 12/2/13

2nd Reading: 12/2/13

EXHIBIT A

**FIFTH AMENDMENT AND RESTATEMENT
OF
CITY OF BRENTWOOD POLICE & FIRE FIGHTERS'
PENSION PLAN**

CONTENTS

ARTICLE I : INTRODUCTION.....1

1.1 ESTABLISHMENT OF PLAN.....1

1.2 ESTABLISHMENT OF FUND.....1

1.3 ENACTMENT PURSUANT TO MISSOURI CONSTITUTION1

1.4 ENACTMENT OF FIFTH AMENDMENT AND RESTATEMENT.....1

ARTICLE II : DEFINITIONS2

2.1 ACCRUED BENEFIT2

2.2 ACCUMULATED CONTRIBUTIONS.....2

2.3 ACTING CHAIRMAN2

2.4 ACTUARY.....2

2.5 BENEFICIARY2

2.6 BOARD OF ALDERMEN2

2.7 BOARD OF TRUSTEES2

2.8 CHAIRMAN.....3

2.9 CITY.....3

2.10 CITY TREASURER.....3

2.11 CLAIMANT3

2.12 CODE3

2.13 COLLECTOR3

2.14 COMPENSATION3

2.15 DEFERRED VESTED BENEFIT3

2.16 DEPENDENT CHILD.....3

2.17 DISABILITY BENEFITS3

2.18 EFFECTIVE DATE3

2.19 EMPLOYEE CONTRIBUTIONS3

2.20 EMPLOYEE4

2.21 EMPLOYMENT COMMENCEMENT DATE.....4

2.22 FINAL COMPENSATION.....4

2.23 FIRE DEPARTMENT.....4

2.24 FIRE FIGHTER4

2.25 FUND4

2.26 HOURS OF SERVICE4

2.27 MAYOR4

2.28 MEDICAL BOARD4

2.29 NON-FORFEITABLE.....4

2.30 NORMAL RETIREMENT AGE4

2.31 NORMAL RETIREMENT BENEFIT4

2.32 PARTICIPANT4

2.33 PERMANENT DISABILITY.....4

2.34 PLAN.....5

2.35 PLAN YEAR.....5

2.36 POLICE DEPARTMENT5

2.37 POLICE OFFICER.....5

2.38 QUALIFIED MILITARY SERVICE.....5

2.39 SECRETARY.....5

2.40 SERVICE.....5

2.41 SEVERANCE FROM SERVICE DATE5

2.42 SPOUSE5

2.43 YEARS OF SERVICE5

ARTICLE III : APPOINTMENT OF TRUSTEE.....7

3.1 SELECTION OF CHAIRMAN AND SECRETARY7

3.2	QUORUM.....	7
3.3	ORDER OF BUSINESS	7
3.4	RULES OF ORDER.....	7
3.5	FREQUENCY OF MEETINGS.....	7
3.6	BOARD OF TRUSTEES VOTING.....	7
ARTICLE IV : POWERS OF BOARD OF TRUSTEES		8
4.1	POWERS OF BOARD OF TRUSTEES	8
4.2	APPOINTMENT OF INVESTMENT FUND MANAGERS	9
4.3	MINUTES OF MEETINGS	9
4.4	CLAIMS	9
4.5	ADMINISTRATIVE AUTHORITY	9
4.6	ESTABLISHMENT OF ACCOUNTS.....	10
4.7	INDEMNIFICATION OF BOARD OF TRUSTEES.....	10
ARTICLE V : ELIGIBILITY		11
5.1	ELIGIBILITY	11
5.2	COMMENCEMENT OF PARTICIPATION.....	11
ARTICLE VI : CONTRIBUTIONS.....		12
6.1	TAX LEVIED BY BOARD OF ALDERMEN	12
6.2	DONATIONS OF FUND.....	12
6.3	EMPLOYEE CONTRIBUTIONS	12
ARTICLE VII : NORMAL RETIREMENT BENEFIT		13
7.1	ELIGIBILITY FOR NORMAL RETIREMENT BENEFIT.....	13
7.2	APPLICATION FOR NORMAL RETIREMENT BENEFIT	13
7.3	RESTRICTIONS ON SERVICE FOLLOWING ELIGIBILITY FOR NORMAL RETIREMENT BENEFIT	13
7.4	AMOUNT OF NORMAL RETIREMENT BENEFIT	13
7.5	TERMINATION OF SERVICE BEFORE SATISFYING NORMAL RETIREMENT BENEFIT; DEFERRED VESTED RETIREMENT BENEFIT	13
7.6	COST OF LIVING INDEX.....	14
ARTICLE VIII : DISABILITY BENEFITS.....		15
8.1	ELIGIBILITY FOR LINE OF DUTY DISABILITY BENEFITS.....	15
8.2	PERMANENT DISABILITY NOT INCURRED IN LINE OF DUTY	15
8.3	PERMANENT DISABILITY OF EMPLOYEES WITH LESS THAN TEN YEARS OF SERVICE.....	16
8.4	DISABILITY OF EMPLOYEES WITH LESS THAN FIVE YEARS OF SERVICE.....	16
8.5	MEDICAL BOARD CERTIFICATION.....	16
8.6	EXAMINATION OF RECIPIENTS OF DISABILITY BENEFITS	16
8.7	RECOVERY FROM PERMANENT DISABILITY.....	16
8.8	MEDICAL BOARD OF COMPOSITION.....	17
ARTICLE IX : DEATH BENEFITS.....		18
9.1	LINE OF DUTY DEATH BENEFITS.....	18
9.2	DEATH AFTER TEN YEARS OF SERVICE	18
9.3	DEATH OF RETIRED PARTICIPANT	19
9.4	DEATH OF FORMER PARTICIPANT ELIGIBLE FOR RETIREMENT	19
9.5	DEATH WHILE RECEIVING DISABILITY BENEFITS.....	19
9.6	ADDITIONAL DEATH BENEFITS	19
9.7	DEATH BENEFITS PAID TO CHILDREN OF DECEASED EMPLOYEE	20
9.8	DEFINITION OF RETIRED EMPLOYEE	20
9.9	DEATH BENEFITS AFTER RECOVERY FROM DISABILITY	20
9.10	DEATH BENEFITS FOR A PARTICIPANT WHO DIES WHILE PERFORMING QUALIFIED MILITARY SERVICE.....	20

ARTICLE X :	DISTRIBUTION OF BENEFITS	21
10.1	INSUFFICIENT FUND ASSETS	21
10.2	APPLICATION FOR BENEFITS	21
10.3	TIME OF PAYMENT OF MONTHLY BENEFITS.....	21
10.4	ACCUMULATED CONTRIBUTIONS.....	21
10.5	QUALIFIED DOMESTIC RELATIONS ORDER	21
10.6	MAXIMUM LIMITS OF BENEFITS.....	26
10.7	ELIGIBLE ROLLOVER DISTRIBUTIONS	28
10.8	EARLY PAYMENT OF EMPLOYEE CONTRIBUTIONS	30
10.9	MINIMUM DISTRIBUTIONS REQUIREMENTS	30
10.10	SMALL BENEFITS	35
10.11	DEFAULT INDIVIDUAL RETIREMENT ACCOUNT.....	35
ARTICLE XI :	MISCELLANEOUS PROVISIONS.....	36
11.1	MODIFICATION OF TAX RATE BY BOARD OF ALDERMAN	36
11.2	LIMITATION ON LIABILITY AND DUTIES OF CITY	36
11.3	NON-ASSIGNABILITY OF BENEFITS.....	36
11.4	DUTIES OF CUSTODIAN.....	36
11.5	DISBURSEMENT OF FUND ASSETS	37
11.6	FALSE STATEMENTS TO PRODUCE BENEFITS	37
11.7	APPOINTMENT OF LEGAL ADVISORS.....	37
11.8	INVALIDITY OF PORTION OF THE PLAN	37
11.9	UNCLAIMED ACCRUED BENEFIT	37
11.10	INFORMATION FROM BENEFICIARIES	38
11.11	CLAIMS PROCEDURE.....	38
11.12	EMPLOYEE AUTHORIZATION FOR WITHHOLDING CONTRIBUTIONS.....	39
11.13	EMPLOYMENT RIGHTS	39
11.14	TERMS BINDING.....	39
11.15	GENDER, SINGULAR AND PLURAL.....	40
11.16	IDENTITY OF DISTRIBUTEES.....	40
11.17	LEGAL ACTION BY BOARD OR BOARD OF ALDERMEN	40
11.18	RELIANCE BY BOARD AND BOARD OF ALDERMEN.....	40
11.19	FUND FOR EXCLUSIVE BENEFIT OF PARTICIPANTS AND BENEFICIARIES	40
11.20	GOVERNING LAW AND VENUE.....	40
11.21	DISCHARGE OF LIABILITY AND RECEIPT	41
11.22	LEGAL CAPACITY OF PAYEE	41
11.23	RETURN OF CITY CONTRIBUTIONS.....	41
11.24	NOTICE	41
ARTICLE XII :	PLAN TERMINATION	43
12.1	FULL VESTING UPON PLAN TERMINATION	43
12.2	LIQUIDATION OF FUND UPON PLAN TERMINATION.....	43
12.3	OVERFUNDING UPON PLAN TERMINATION.....	44

ARTICLE I: INTRODUCTION

1.1 ESTABLISHMENT OF PLAN. As ordained by the Board of Aldermen of the City, there is established the Plan to provide pensions for Fire Fighters and Police Officers who qualify for Retirement, or who incur a Permanent Disability, and for widows and minor children of deceased Fire Fighters and Police Officers.

1.2 ESTABLISHMENT OF FUND. The Fund is hereby established and shall be funded partly from taxation, contributions by Participants and other sources as hereinafter provided.

1.3 ENACTMENT PURSUANT TO MISSOURI CONSTITUTION. The Plan and Fund are enacted pursuant to the Constitution of the State of Missouri and any laws enacted pursuant thereto.

1.4 ENACTMENT OF FIFTH AMENDMENT AND RESTATEMENT. Whereas, the Board of Trustees has approved this Fifth Amendment and Restatement of the Plan on November 12, 2013 effective January 1, 2013, except as otherwise provided herein.

ARTICLE II: DEFINITIONS

2.1 ACCRUED BENEFIT. "Accrued Benefit" means the Participant's Plan Benefits as provided in this Plan. If the Plan requires the Board of Trustees to compute an Employee's Accrued Benefit as of any date before the Employee separates from Service, the Board shall apply this Section 2.1 as if the Employee separated from Service on that date.

2.2 ACCUMULATED CONTRIBUTIONS. "Accumulated Contributions" means the total of all Employee Contributions and interest thereon made and credited pursuant to Section 6.3.

2.3 ACTING CHAIRMAN. "Acting Chairman" means the person selected pursuant to Section 3.1. Such person shall have all the rights, privileges, power and jurisdiction of the Chairman.

2.4 ACTUARY. "Actuary" means an individual selected by the Board of Trustees to provide actuarial services for the Plan who has been approved by the Joint Board of Actuaries to perform actuarial services as required under the Employee Retirement Income Security Act of 1974, as amended.

2.5 BENEFICIARY. "Beneficiary" means the person designated by an Employee who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan shall remain a Beneficiary under the Plan until the Board has fully distributed his benefit to him. A Beneficiary's right to information or data concerning the Plan shall not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

2.6 BOARD OF ALDERMEN. "Board of Aldermen" means the City Board of Aldermen.

2.7 BOARD OF TRUSTEES. "Board of Trustees" or "Board" means the Board of Trustees of the Fund. The Board of Trustees shall consist of those persons holding the following offices:

- (a) Mayor of the City
- (b) A member of the Board of Aldermen who is appointed by the Mayor and whose appointment is approved by the Board of Aldermen
- (c) Treasurer of the City
- (d) Chief of Fire Department
- (e) Chief of Police Department

Their terms of office as members of Board of Trustees shall run concurrently with their terms of office with the City. The Board of Trustees shall also include a Fire Fighter and Police Officer below the rank of Chief. The Fire Fighters and Police Officers shall be elected by majority vote the representative of their respective Departments to serve on the Board of Trustees. The Fire

Chief and Police Chief are not eligible to vote in the election of their respective Department's representative on the Board of Trustees. The representatives of the Police and Fire Departments shall serve a term of three consecutive Plan Years beginning the first day of the Plan Year immediately following election. A Department shall hold a special election, with the Chief of such Department not voting, to fill an unexpired term of office of a Fire Fighter or Police Officer representative who does not complete such term or to recall a representative from the Department.

2.8 CHAIRMAN. "Chairman" means the Chairman of the Board of Trustees.

2.9 CITY. "City" means the City of Brentwood, Missouri.

2.10 CITY TREASURER. "City Treasurer" means the Treasurer of the City.

2.11 CLAIMANT. "Claimant" means any Employee or Beneficiary claiming benefits under the Plan.

2.12 CODE. "Code" means the Internal Revenue Code of 1986, as amended.

2.13 COLLECTOR. "Collector" means the person or persons responsible for the collection of taxes of the City.

2.14 COMPENSATION. "Compensation" with respect to any Employee means the base monthly salary to which the Employee is entitled under the terms of his employment with the City for service as a Fire Fighter or Police Officer including amounts deferred under Code Sections 125,132(f), 414(h)(2) and/or 457(b). Compensation in excess of \$200,000 for a Plan Year shall be disregarded. Such amount shall be adjusted at the same time and in the same amount as permitted under Code Section 401(a)(17).

2.15 DEFERRED VESTED BENEFIT. "Deferred Vested Benefit" means the benefit payable under Section 7.5.

2.16 DEPENDENT CHILD. "Dependent Child" means a person who is under age eighteen and who is a dependent of the Employee as defined in Code Section 152(a)(1). Payments under the Plan on account of a Dependent Child shall terminate as of the earlier of the month the Dependent Child dies or attains age eighteen.

2.17 DISABILITY BENEFITS. "Disability Benefits" means the Plan benefit paid on account of Participant's disability under Article VIII.

2.18 EFFECTIVE DATE. "Effective Date" means February 28, 1950.

2.19 EMPLOYEE CONTRIBUTIONS. "Employee Contributions" means the total of all Employee Contributions made pursuant to Section 6.3 and shall not include any interest credited on such contributions.

2.20 EMPLOYEE. "Employee" means any salaried employee of the Fire Department or the Police Department who is eligible to participate in the Plan other than watchmen, school traffic officers, dispatchers and clerical workers of the City.

2.21 EMPLOYMENT COMMENCEMENT DATE. "Employment Commencement Date" means the date on which an Employee first performs an Hour of Service.

2.22 FINAL COMPENSATION. "Final Compensation" means the highest average monthly Compensation received in any twenty-four consecutive full calendar months of employment as a Fire Fighter or Police Officer. If an Employee has less than twenty-four full calendar months of employment as a Fire Fighter or Police Officer, "Final Compensation" means his average monthly Compensation for his period of employment as a Fire Fighter or Police Officer.

2.23 FIRE DEPARTMENT. "Fire Department" means the City of Brentwood Fire Department.

2.24 FIRE FIGHTER. "Fire Fighter" means an Employee of the Fire Department.

2.25 FUND. "Fund" means the City of Brentwood Police and Fire Fighters' Retirement Fund. The Fund shall include the proceeds of the tax levied by the Board of Aldermen described in Section 6.1; donations to the Fund described in Section 6.2; Employee Contributions as described in Section 6.3; and earnings and interest on all investments of the Fund.

2.26 HOURS OF SERVICE. "Hours of Service" means each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the City.

2.27 MAYOR. "Mayor" means the Mayor of the City.

2.28 MEDICAL BOARD. "Medical Board" means the three member board described in Section 8.8.

2.29 NON-FORFEITABLE. "Non-forfeitable" means a Participant's or Beneficiary's unconditional claim, legally enforceable against the Plan, to the Participant's Accrued Benefit.

2.30 NORMAL RETIREMENT AGE. "Normal Retirement Age" shall mean age fifty-five.

2.31 NORMAL RETIREMENT BENEFIT. "Normal Retirement Benefit" means the benefit to which an Employee is entitled as defined in Section 7.4 of the Plan.

2.32 PARTICIPANT. "Participant" means an Employee of the Police Department or Fire Department who participates in this Plan.

2.33 PERMANENT DISABILITY. "Permanent Disability" means a physical or mental condition which, in the opinion of two or more members of the Medical Board, renders an Employee permanently unable to satisfactorily perform his duties as a Fire Fighter or Police

Officer. Each Employee shall submit to such examinations as may be deemed necessary by the Board of Trustees to determine whether the Employee has suffered a Permanent Disability or continues to suffer from a Permanent Disability.

2.34 PLAN. "Plan" means the City of Brentwood Police and Fire Fighters' Pension Plan.

2.35 PLAN YEAR. "Plan Year" means the annual period ending December 31.

2.36 POLICE DEPARTMENT. "Police Department" means the City of Brentwood Police Department.

2.37 POLICE OFFICER. "Police Officer" means an Employee of the Police Department.

2.38 QUALIFIED MILITARY SERVICE. "Qualified Military Service" means service in the Uniformed Services as defined in Code Section 414(u).

2.39 SECRETARY. "Secretary" means the person elected pursuant to Section 3.1 to serve as the Secretary of the Board of Trustees.

2.40 SERVICE. "Service" of an Employee means that period of employment, including vacation and sick pay leave periods, with the City as a Fire Fighter or Police Officer commencing on the Employee's Employment Commencement Date and ending on his Severance from Service Date.

2.41 SEVERANCE FROM SERVICE DATE. "Severance from Service Date" means the date on which the Employee was last actually at work with the City as a Fire Fighter or Police Officer.

2.42 SPOUSE. "Spouse" means the person to whom the Employee is legally married at the time of his death in a state of the United States of America or a foreign jurisdiction which has the legal authority to sanction marriages, regardless of whether the marriage is legally recognized in the state or jurisdiction in which the Participant or his Spouse resides. A person shall not be the Spouse of the Employee unless such person and the Employee are legally married, as provided herein, for not less than twelve full, consecutive calendar months immediately preceding the Employee's death. The twelve month marriage requirement as provided herein shall not apply in the event the Employee dies in the line of duty as provided in Section 9.1 and, in such event, Spouse means the person to who the Employee is legally married at the time of his death as provided in the first sentence of this Section 2.42.

2.43 YEARS OF SERVICE. "Years of Service" includes all of an Employee's full Years of Service. An Employee shall accrue a full Year of Service if he is an Employee of the Fire or Police Department for at least six months during an anniversary year of his employment. If an Employee terminates employment with the City and receives a distribution of his Accumulated Contributions pursuant to Section 10.4 (except in the case of an Employee electing to receive all or a portion of his Employee Contributions pursuant to Section 10.8), the Years of Service he had on such termination shall not be restored in the event he is reemployed as an

Employee. However, his Years of Service, if such a Participant is reemployed as an Employee prior to the last day of the sixtieth full, consecutive calendar month immediately following the calendar month in which his Accumulated Contributions are paid, shall be restored if he repays to the Fund his Accumulated Contributions, plus interest at the rate prescribed in Section 6.3 on such Accumulated Contributions, for the period from the date the Accumulated Contributions are paid to the Employee to the date he makes the repayment, described in this Section 2.43, to the Fund. Years of Service shall only be restored as provided herein if the Employee repays such Accumulated Contributions plus interest no later than the last day of the third full calendar month immediately following the day he is reemployed as an Employee. Furthermore, an Employee shall accrue Years of Service for periods of Qualified Military Service provided:

(a) He is reemployed by the City as an Employee following such Qualified Military Service within the time period specified by the Uniformed Services and Reemployment Rights Act; and

(b) He pays to the Fund the amount of Employee Contributions he would have made during his period of Qualified Military Service had he remained in the employment of the City as an Employee during such period. The amount of Employee Contributions shall be based upon his Compensation at the time he commences Qualified Military Service as if he is paid such Compensation for his period of Qualified Military Service. Such Employee Contributions must be paid to the Fund no later than the last day of a period equal to three times the period of the Employee's Qualified Military Service or the last day of a five year period, whichever first occurs, after the Employee's reemployment with the City.

In the event an Employee (i) terminates service with the City because he enters Qualified Military Service, (ii) receives a distribution of his Accumulated Contributions at such time, and (iii) is reemployed by the City as an Employee following such Qualified Military Service, the Years of Service of such Employee at the time he enters such Qualified Military Service shall not be restored upon his reemployment by the City unless he repays the amount of Accumulated Contributions paid to him when he enters such Qualified Military Service plus interest as provided in this Section 2.43.

ARTICLE III: APPOINTMENT OF TRUSTEE

3.1 SELECTION OF CHAIRMAN AND SECRETARY. The Board of Trustees shall elect a Chairman and a Secretary. The Secretary, may, but is not required to, be a member of the Board of Trustees. The City Treasurer shall serve as the Treasurer of the Board of Trustees. Members of the Board of Trustees shall not receive any compensation for services rendered as such. The Board of Trustees shall select from the Board of Trustees a member who shall be the Acting Chairman in the absence of the Chairman.

3.2 QUORUM. A quorum of the Board of Trustees shall consist of four trustees.

3.3 ORDER OF BUSINESS. The order of business at all regular meetings of the Board of Trustees shall be as follows:

- (a) Roll call;
- (b) Consideration and approval of the minutes of the previous meeting;
- (c) Hearing of any matter of interest to the condition of the Plan upon the request of any person present;
- (d) Reading of claims, accounts and demands against the Plan and acting thereon;
- (e) Unfinished business;
- (f) New business;
- (g) Adjournment.

3.4 RULES OF ORDER. The Chairman shall rule upon all questions arising in meetings of the Board of Trustees and his ruling shall be final, except when an appeal from such ruling shall be voted by a majority of the members of the Board of Trustees. Robert's Rules of Orders Revised Edition shall be followed when in doubt.

3.5 FREQUENCY OF MEETINGS. The Board of Trustees shall hold at least one regular meeting each calendar year. The Board of Trustees may hold meetings more frequently as required by the transaction of its business.

3.6 BOARD OF TRUSTEES VOTING. Each member of the Board of Trustees other than the Chairman shall vote on any question requiring a vote of the Board of Trustees. The Chairman shall have a seat on and preside over the Board, but shall not vote any question except in the case of a tie.

ARTICLE IV: POWERS OF BOARD OF TRUSTEES

4.1 POWERS OF BOARD OF TRUSTEES. The Board of Trustees shall have the following powers, to be exercised in the best interests of the Fund:

- (a) To return property contributed to the Fund;
- (b) To invest and reinvest, subject to the limitations of Missouri law, the funds of the Fund in any property, real, personal or mixed, within or without Missouri, not being limited to investments considered suitable for Fund funds, including, but not limited to, bonds, debentures, mortgages, real estate, shares of open end investment companies and stocks of corporations incorporated under the law of any of the United States or of any foreign country, preferred and common;
- (c) To manage Fund property, improve it and pay taxes and other lawful charges against it;
- (d) To sell or otherwise dispose of the Fund property;
- (e) To collect the income from Fund property;
- (f) To lease Fund property upon terms the Board of Trustees deems advisable, for any term of years, even though it may extend beyond the life of the Fund;
- (g) To borrow money and to mortgage or pledge Fund property;
- (h) To hold Fund property in cash without liability to pay interest in order to meet future cash requirements;
- (i) To compromise claims in favor of or against the Fund;
- (j) To engage in litigation;
- (k) To apportion receipts and expenditures between principal and income;
- (l) To vote in person or by proxy stock or other securities;
- (m) To consent to the reorganization, merger, consolidation, liquidation or dissolution of a corporation in which funds of the Fund are invested;
- (n) To carry stocks, registered securities or other property belonging to the Fund in the name of a nominee or nominees;
- (o) To employ agents, including investment counsel, attorneys and accountants;
- (p) To delegate duties with regard to the administration of the Fund to another party or parties including agents and accountants provided that the nature of the duties delegated is specifically stated;

(q) To commingle the assets of the Fund with the assets of another trust of which the Board of Trustees of this Fund is the trustee;

(r) To delegate investment of all or part of the assets of the Fund to an investment manager or managers, provided that the nature and extent of the duties and powers delegated are specifically stated in writing;

(s) To invest and reinvest all or any part of the assets of the Fund through the medium of any common, collective or commingled trust fund maintained by any trust company, as the same may have heretofore been or may hereafter be established or amended, which is qualified under the provisions of Code Section 401(a) and exempt under Code Section 501(a), and during such period of time as an investment through any such medium shall exist, the declaration of trust of such fund shall constitute part of this Fund; and

(t) To purchase insurance against death or disability on any or all Employees, payable to the Board of Trustees, for the benefit and protection of the Plan.

In addition to the foregoing powers, the Board of Trustees shall have all other powers, rights and privileges necessary or appropriate for the full exercise of the foregoing powers and the performance of its duties under the trust agreement.

4.2 APPOINTMENT OF INVESTMENT FUND MANAGERS. The Board of Trustees may, from time to time, appoint one or more investment fund managers, each of whom, during his period of such appointment, shall have and exercise all of the investment powers reserved to the Board of Trustees hereunder with respect to that portion of the Fund assets transferred to him. The Board of Trustees shall have no personal liability or responsibility for any loss or depreciation of the Fund occasioned by reason of the purchase, sale, custody or retention of any asset by an investment fund manager. Expenses of an investment fund manager shall be charged against the Fund. Upon termination of the appointment of an investment fund manager, the Fund assets assigned or transferred to the investment fund manager shall revert to the Board of Trustees, who shall become responsible for their investment unless or until another investment fund manager is appointed.

4.3 MINUTES OF MEETINGS. The Board of Trustees shall keep minutes of all its meetings, as well as full and complete records of all its receipts, securities and other properties coming into its hands, and all such minutes or records shall be open to public inspection; provided, however, the records of any medical examination made of any retired Employees or applicants for retirement shall not be subject to public inspection.

4.4 CLAIMS. The Board of Trustees shall have exclusive jurisdiction to receive, hear and rule upon all claims for benefit from the Fund and to hear and settle all such claims in the first instance.

4.5 ADMINISTRATIVE AUTHORITY. The Board of Trustees, in its discretion, is authorized to determine eligibility for benefits under this Plan and construe the Plan's terms. The Board of Trustees shall administer the Plan in accordance with its terms and it shall have all powers necessary to carry out the provisions of the Plan (except such powers as are reserved by the Plan or by law to the City), whether or not such powers are specifically enumerated herein,

but not inconsistent with any of the express terms and conditions of the Plan including the power to make and publish such bylaws and regulations as it may deem necessary to carry out the provisions of the Plan. Notwithstanding the foregoing, the City shall have the absolute and sole right to determine and make appropriations for funding contributions to the Plan and the Board of Trustees' powers and rights under the Plan shall be limited to custodial and administrative functions.

Without limiting the generality of the foregoing, the Board of Trustees shall have the general management of the Plan and, subject to the powers specifically reserved herein and inherent to the City, the sole, final and absolute right to reconcile any inconsistency in the Plan, to interpret and construe the provisions of the Plan in all particulars, in such manner and to such extent as it deems proper, and to take all action and make all decisions and determinations under the Plan and/or in connection with its administration, interpretation, and application. Any interpretation or construction placed upon any term or provision of the Plan by the Board of Trustees, any decision of the Board with regard to the eligibility of an Employee to become a Participant, the right of a Participant, a former Participant, or the Beneficiaries, or any other person to a Plan benefit, any reconciliation or inconsistency in the Plan made by the Board or any other action, determination or decision whatsoever taken by the Board shall be final, conclusive and binding upon all persons and parties interested in or concerned with the Plan, including, but not by way of limitation, the Employees, Participants, former Participants and Beneficiaries, subject, however, to review in the Circuit Court of the County of St. Louis, Missouri pursuant to administrative procedures established by Missouri state law. No Board of Trustees member shall act or vote in any case in which his individual right or claim to any benefit is particularly involved.

The Board of Trustees may delegate its duties, obligations and responsibilities hereunder to an individual or entity.

4.6 ESTABLISHMENT OF ACCOUNTS. The Board of Trustees shall set up a system of accounts, such as will be required for an Actuary to determine annually the financial condition of the Fund, the contributions required annually for sound actuarial operation of the Plan, and shall furnish to the Board of Aldermen upon request, such information in order that the Board of Aldermen may have the necessary data concerning the tax requirements of the Fund.

4.7 INDEMNIFICATION OF BOARD OF TRUSTEES. The City shall indemnify each member of the Board of Trustees for liability to an Employee or Beneficiary under the Plan. The Board of Trustees may be insured for liability to an Employee or Beneficiary under the Plan. The premium for such insurance shall be paid from the Fund.

ARTICLE V: ELIGIBILITY

5.1 ELIGIBILITY. Each Employee of the Fire and Police Departments shall be a Participant in this Plan.

5.2 COMMENCEMENT OF PARTICIPATION. Each Employee eligible to participate pursuant to Section 5.1 shall become a Participant on such Employee's Employment Commencement Date.

ARTICLE VI: CONTRIBUTIONS

6.1 TAX LEVIED BY BOARD OF ALDERMEN. The Fund shall in part be funded from the proceeds of taxes dedicated to funding the Fund, levied by the Board of Aldermen on the total value of all taxable real estate and personal property annually assessed in the City as the same appears on the tax books of the City. The rates of said tax rates may be changed from time to time provided any such changes therein must be made in accordance with the applicable laws of the state of Missouri. Such changes may be made by an Ordinance generally setting the tax rates for City government and need not be made by a specific amendment to this Ordinance. The proceeds of the aforementioned taxes shall be contributed to the Fund solely for the purposes mentioned in this Ordinance, and such money shall not be used for nor devoted to any purpose other than herein provided. The proceeds of the aforementioned taxes shall not be subject to Collector's fees in the event the Collector of the City or the Collector of County of St. Louis should hereafter be compensated on the basis of a percentage of taxes collected.

6.2 DONATIONS OF FUND. The Board of Trustees may accept donations to the Fund in the form of gifts, grants, devises and bequests of any money, personal property, real property or any interest therein, or any right of property, and any such gift, grant, devise or bequest may be absolute or in fee simple, or upon condition that only the rents, income or profits arising therefrom shall be applied to the purpose for which the Fund is established.

6.3 EMPLOYEE CONTRIBUTIONS. Each Employee shall be assessed and required to pay pursuant to the Plan an amount equal to six percent of his Compensation. The City, in making its payroll for Employees, shall deduct from current Compensation due each Employee for each payroll period, a sum equal to six percent of the current Compensation of the Employee and shall pay such amount on behalf of each Employee to the Fund no later than the tenth day following the month in which such amounts are deducted from Compensation. Contributions made by the City on behalf of an Employee pursuant to this Section 6.3 shall satisfy Employee's obligation to make Contributions pursuant to the Plan. Contributions made on behalf of an Employee pursuant to this Section 6.3 shall be credited to an account for his benefit and interest shall be annually credited on such account at an annual rate of four and one-half percent, compounded annually. Notwithstanding anything to the contrary in this Section 6.3:

(a) Employee Contributions paid to the Fund pursuant to this Section 6.3 shall be paid by the City in lieu of contributions by Employees; and

(b) Employees do not have the option of receiving cash instead of the contributions made on their behalf pursuant to this Section 6.3.

(c) Employee contributions under this Section 6.3 are designated as employee pickup contributions within the meaning of Code Section 414(h)(2).

ARTICLE VII: NORMAL RETIREMENT BENEFIT

7.1 ELIGIBILITY FOR NORMAL RETIREMENT BENEFIT. Any Employee who attains Normal Retirement Age and has twenty or more Years of Service shall be eligible for a Normal Retirement Benefit.

7.2 APPLICATION FOR NORMAL RETIREMENT BENEFIT. Any Employee eligible for a Normal Retirement Benefit must file an application with the Board of Trustees and have such application approved by the Board of Trustees before receiving a Normal Retirement Benefit.

7.3 RESTRICTIONS ON SERVICE FOLLOWING ELIGIBILITY FOR NORMAL RETIREMENT BENEFIT. Any Employee eligible for a Normal Retirement Benefit shall not be required to continue in Service after satisfying the eligibility conditions of Section 7.1, nor shall any Employee who has satisfied the eligibility conditions of Section 7.1 be prohibited from remaining in Service with the City unless decided otherwise by the Board of Aldermen. However, no retirement benefit shall be paid pursuant to this Article VII to an Employee who has not terminated as an Employee with the City.

7.4 AMOUNT OF NORMAL RETIREMENT BENEFIT. Effective for an Employee retiring on or after January 1, 2008, the monthly Normal Retirement Benefit shall be the sum of (i) seventy percent of Final Compensation, plus (ii) the product of one percent of Final Compensation, multiplied by his Years of Service in excess of twenty, but not to exceed ten additional Years of Service. The monthly Normal Retirement Benefits of an Employee who terminates employment with the Police or Fire Department prior to January 1, 2008 shall be governed by the Ordinances in effect at the time of such termination. If a Participant becomes eligible for a Disability Benefit under Section 8.1 or 8.2 and is also eligible for a Normal Retirement Benefit under this Section 7.4, he shall, before payment of his Plan Benefits commences, elect, in accordance with Board rules, to have his Plan Benefits paid either as a Normal Retirement Benefit under this Section 7.4 or as a Disability Benefit under Section 8.1 or 8.2.

7.5 TERMINATION OF SERVICE BEFORE SATISFYING NORMAL RETIREMENT BENEFIT; DEFERRED VESTED RETIREMENT BENEFIT. Any Employee who terminates employment on or after January 1, 2008 for a reason other than death, voluntarily or involuntarily, with the Police or Fire Department before attaining Normal Retirement Age, but after completing ten or more Years of Service, shall, upon attainment of Normal Retirement Age and the filing of an application that is accepted by the Board of Trustees, be paid monthly a Deferred Vested Retirement Benefit equal to the sum of (i) the product of three and one-half percent of Final Compensation multiplied by his Years of Service, but not to exceed twenty Years of Service, plus (ii) the product of one percent of Final Compensation multiplied by his Years of Service in excess of twenty, but not to exceed ten additional Years of Service. The monthly Deferred Vested Retirement Benefit of an Employee who terminates employment with the Police or Fire Department before attaining Normal Retirement Age before January 1, 2008 shall be determined by the Ordinance in effect at the time of such termination. If a Participant becomes eligible for a Disability Benefit under Section 8.1 or 8.2 and is also eligible for a Deferred Vested Retirement Benefit under this Section 7.5, he shall, before payment of his Plan

Benefits commences, elect, in accordance with Board rules, to have his Plan Benefits paid either as a Deferred Vested Retirement Benefit under this Section 7.5 or as a Disability Benefit under Section 8.1 or 8.2.

7.6 COST OF LIVING INDEX. The monthly Normal or Deferred Vested Retirement Benefit (herein called "COLA Benefit") of a Participant, who has ten or more Years of Service and the payment of whose Normal or Deferred Vested Retirement Benefit commences on or after January 1, 1999 on or after the Participant attains Normal Retirement Age, shall be annually increased at the rate of two percent, calculated on the basis of simple and not compound interest. The annual increases provided herein shall not start to be applicable to a COLA Benefit until payment of such Benefit commences. The annual increases provided herein only apply to the Normal or Deferred Retirement Benefits of a Participant whose employment with the City terminates on or after his Normal Retirement Age except that the adjustment provided in this Section 7.6 shall also apply to the monthly Death Benefits payable under Section 9.3 to the Spouse of a deceased Participant who has qualified for a Normal Retirement Benefit under Section 7.4. Such Death Benefit is also called a "COLA Benefit" for purposes of this Section 7.6. The maximum total increases in a Participant's COLA Benefit hereunder cannot, for all years following the date payment of the COLA Benefit commences, exceed twenty percent of the amount of his COLA Benefit which first becomes payable on account of his retirement or termination under this Article VII. The twenty percent maximum limitation applies to the aggregate COLA Benefits paid to a Participant and his Spouse. The percentage increase of in the monthly COLA Benefit for the year immediately following the year payment of the COLA Benefit commences, shall be determined by multiplying two percent by a ratio of the number of months in the year in which payment of the COLA Benefit commences divided by twelve. Notwithstanding anything in this Section 7.6 to the contrary, an increase shall not be effective as of January 1 of a given year during which COLA Benefits are paid if the Board, before such January 1, determines that the two percent increase provided herein shall not be applicable for such year.

ARTICLE VIII: DISABILITY BENEFITS

8.1 ELIGIBILITY FOR LINE OF DUTY DISABILITY BENEFITS. An Employee, who becomes Permanently Disabled on or after January 1, 2008, from illness or injury sustained or incurred while performing his duties as a Fire Fighter or Police Officer for which he is compensated by the City, excluding illness or injury sustained or incurred while on military duty, leave of absence (other than a leave of absence for which the Employee is compensated by the City), self-inflicted injury or illness, or illness or injury sustained or incurred in any employment or self-employment other than performing his duties as a Fire Fighter or Police Officer for which he is compensated by the City, shall be paid monthly for the duration of such Permanent Disability out of the Fund a sum equal to the greater of (i) seventy percent of the Employee's Final Compensation or (ii) the product of three and half percent of the Employee's Final Compensation multiplied by his Years of Service, not to exceed twenty Years of Service, plus the product of one percent of the Employee's Final Compensation multiplied by his Years of Service in excess of twenty Years of Service, not to exceed ten additional Years of Service. A Permanently Disabled Employee, entitled to Disability Benefits under this Section 8.1, shall be entitled to an additional sum for each Dependent Child, up to a maximum of three Dependent Children, of ten percent of the Employee's Final Compensation. Performance of duties as a Fire Fighter or Police Officer for which he is compensated by the City includes paid service as a private security officer within the city limits of the City. The line of duty Disability Benefits of Participants who became Permanently Disabled before January 1, 2008 shall be governed by the ordinances of the City in effect at the time he incurred such Disability. If a Participant becomes eligible for a Disability Benefits under this Section 8.1 and is also eligible for a Normal or Deferred Vested Retirement Benefit under Section 7.4 or Section 7.5, he shall, before payment of his Plan Benefits commences, elect, in accordance with Board rules, to have his Plan Benefits paid either as a Disability Benefit under this Section 8.1 or as Normal or Deferred Vested Retirement Benefit under Section 7.4 or Section 7.5.

8.2 PERMANENT DISABILITY NOT INCURRED IN LINE OF DUTY. An Employee, having ten Years of Service or more, who, while still employed by the City, becomes Permanently Disabled on or after January 1, 2008 from illness or injury sustained or incurred while not in the performance of his duties as a Fire Fighter or Police Officer for which he is compensated by the City, excluding illness or injury sustained or incurred while on military duty, self-inflicted injury or illness, or illness or injury sustained or incurred in any employment or self-employment other than performing his duties as a Fire Fighter or Police Officer for which he is compensated by the City, shall be paid (and his Dependent Children shall be paid) monthly for the duration of such Permanent Disability the amount that would have been payable for Permanent Disability incurred while he was performing duties as a Fire Fighter or Police Officer for which he is compensated by the City as provided in Section 8.1. The non-line of duty Disability Benefits of Participants who became Permanently Disabled before January 1, 2008 shall be governed by the ordinances of the City in effect at the time he incurred such Disability. If a Participant becomes eligible for a Disability Benefits under this Section 8.2 and is also eligible for a Normal or Deferred Vested Retirement Benefit under Section 7.4 or Section 7.5, he shall, before payment of his Plan Benefits commences, elect, in accordance with Board rules, to have his Plan Benefits paid either as a Disability Benefit under this Section 8.1 or as Normal or Deferred Vested Retirement Benefit under Section 7.4 or Section 7.5.

8.3 PERMANENT DISABILITY OF EMPLOYEES WITH LESS THAN TEN YEARS OF SERVICE. An Employee, having five or more Years of Service but less than ten Years of Service, who, while still employed by the City, becomes Permanently Disabled from illness or injury sustained or incurred while not in the performance of his duties as a Fire Fighter or Police Officer for which he is compensated by the City, excluding illness or injuries sustained or incurred while on military duty, self-inflicted injury or illness, or an illness or injury sustained or contracted in any employment or self-employment other than performing his duties as a Fire Fighter or Police Officer for which he is compensated by the City, shall be paid monthly for the duration of such Permanent Disability out of the Fund a sum equal to thirty-five percent of the Employee's Final Compensation. A Permanently Disabled Employee entitled to Disability Benefits under this Section 8.3 shall be entitled to an additional sum for each Dependent Child, up to a maximum of three Dependent Children, of five percent of the Employee's Final Compensation. Non line of duty Disability Benefits of Participant with less than ten Years of Service who became Permanently Disabled before January 1, 2008 shall be governed by the ordinances of the City in effect at the time he incurred such Disability.

8.4 DISABILITY OF EMPLOYEES WITH LESS THAN FIVE YEARS OF SERVICE. Except as provided in Section 8.1, an Employee who has less than five Years of Service shall not be entitled to Disability Benefits.

8.5 MEDICAL BOARD CERTIFICATION. In all claims for Disability Benefits, it shall be necessary for two or more of the members of the Medical Board to certify that the disability is permanent and total and that the Employee should be retired from Service. Absent such certification, the Board of Trustees shall not allow any claim for Disability Benefits.

8.6 EXAMINATION OF RECIPIENTS OF DISABILITY BENEFITS. At any time, as the Board of Trustees shall deem necessary, the Board of Trustees shall require an Employee receiving Disability Benefits hereunder and who has not attained the age of fifty-five years and completed twenty Years of Service to undergo a physical examination by the Medical Board. Such examinations shall be made by the Medical Board or, within the discretion of the Board of Trustees, by another medical expert designated by the Board of Trustees. If two or more of the members of the Medical Board or other medical experts examining such Employee certify to the Board of Trustees that the Employee's Permanent Disability has terminated, the right of such Employee to such Disability Benefits hereunder shall terminate. Should any such Employee refuse to submit to such medical examinations, his Disability Benefits hereunder shall be suspended and discontinued pending his submission thereto. If such refusal continues for a period of one year, all rights of such Employee to retirement or Disability Benefits hereunder shall terminate.

8.7 RECOVERY FROM PERMANENT DISABILITY. In the event any Employee receiving Disability benefits as herein provided, and who not yet having attained fifty-five years of age and completed twenty Years of Service, shall be found no longer to be Permanently Disabled, the Employee's Disability benefits hereunder shall forthwith cease. If he returns to active employment with the City as an Employee, the Employee's liability to make contributions to the Fund shall again accrue and such Employee shall make such contributions as provided in Section 6.3 upon him being rehired as an Employee. Upon his or her subsequent retirement, the Employee shall be credited with all his or her Service as a member of the Police and/or Fire

Departments. A Participant who received Disability Benefits under Article VIII shall not be eligible to retire under Article VII unless he (i) recovers from Permanent Disability, (ii) returns to active employment with the City as a Police Officer or Fire Fighter, (iii) satisfies the requirements for retirement under Article VII, and (iv) retires from the City under Article VII.

8.8 MEDICAL BOARD OF COMPOSITION The Medical Board shall consist of three physicians and/or medical experts appointed by the Board of Trustees. The Medical Board shall make all examinations required under the Plan. Fees for such examinations, of an Employee who initially applies for Disability Benefits, shall be paid from the Fund. Fees for such examinations of an Employee, who applies for Disability Benefits, whose claim therefore is denied by the Board of Trustees and who reapplies for Disability Benefits, shall be paid by the Employee and not from the Fund. In this event, the Employee shall pay the cost of any examination to the Fund before any such examination is performed. Provided, however, in the case of a reapplication for Disability Benefits which, in the discretion of the Board of Trustees, is allegedly attributable to an injury or sickness which is different from the injury or sickness upon which the Employee's initial application for Disability Benefits was based, the fees for examinations relating to such subsequent claim shall be paid from the Fund.

ARTICLE IX: DEATH BENEFITS

9.1 LINE OF DUTY DEATH BENEFITS. If an Employee of the City's Police or Fire Departments dies on or after January 1, 2008 from injury or disease sustained or incurred while performing his duties as a Police Officer or Fire Fighter for which he is compensated by the City, excluding illness or injury sustained or incurred while on military duty, leave of absence (other than a leave of absence for which the Employee is compensated by the City), self-inflicted illness or injury or illness or injury sustained or incurred in any employment or self-employment other than performing his duties as a Police Officer or Fire Fighter for which he is compensated by the City, his Spouse shall be entitled to a monthly benefit, until the Spouse dies or remarries, in an amount equal to the greater of:

- (i) 46.667 percent of the Employee's Final Compensation, or
- (ii) the product of 2.333 percent of the Employee's Final Compensation multiplied by his Years of Service, not to exceed twenty Years of Service, plus the product of 0.667 percent of the Employee's Final Compensation multiplied by his Years of Service in excess of twenty Years of Service, not to exceed ten additional Years of Service.

Additional monthly benefits shall be paid to each of the deceased Employee's Dependent Children, up to a maximum of three Dependent Children, in an amount equal to ten percent of the Employee's Final Compensation. Performance of duties as a Fire Fighter or Police Officer for which he is compensated by the City includes paid service as a private security officer within the city limits of the City. The line of duty Death Benefits for a Participant who dies before January 1, 2008 shall be governed by the ordinances of the City in effect at the time he dies. In the event a Participant's Spouse becomes entitled to Death Benefits under both this Section 9.1 and Section 9.3 because of the death of the Participant, the Spouse shall elect, in accordance with Board rules, to have Death Benefits paid under either this Section 9.1 or Section 9.3.

9.2 DEATH AFTER TEN YEARS OF SERVICE. If an Employee, having ten or more Years of Service, dies on or after January 1, 2008 while still employed by the City from illness or injury sustained or incurred while not performing his duties as a Fire Fighter or Police Officer for which he is compensated by the City, excluding death as a result of illness or injury sustained or incurred while on military duty (except as provided in Section 9.10), self-inflicted illness or injury or illness or injury sustained or incurred in any employment or self-employment other than performing his duties for which he is compensated by the City, his Spouse shall be entitled to a monthly benefit, until the Spouse dies or remarries, in an amount equal to the greater of:

- (i) 46.667 percent of the Employee's Final Compensation, or
- (ii) the product of 2.333 percent of the Employee's Final Compensation, multiplied by his Years of Service, not to exceed twenty Years of Service, plus the product of 0.667 percent of the Employee's Final Compensation multiplied by his Years of

Service in excess of twenty Years of Service, not to exceed ten additional Years of Service.

Additional monthly benefits shall be paid to each of the deceased Employee's Dependent Children, up to a maximum of three Dependent Children, in an amount equal to ten percent of the Employee's Final Compensation. The non-line of duty Death Benefits of a Participant who dies before January 1, 2008 shall be governed by the ordinances of the City in effect at the time he dies.

9.3 DEATH OF RETIRED PARTICIPANT. If a former Employee dies after having retired or becoming eligible to retire under Section 7.4, his Spouse shall be entitled to a monthly benefit, until the Spouse dies or remarries, in an amount equal to sixty-six and two-thirds percent of the amount of the monthly benefits the Employee was receiving or was entitled to receive under Section 7.4 before his death. No benefits shall be paid to the Dependent Children of the deceased Employee. In the event a Participant's Spouse becomes entitled to Death Benefits under both this Section 9.3 and Section 9.1 because of the death of the Participant, the Spouse shall elect, in accordance with Board rules, to have Death Benefits paid under either this Section 9.3 or Section 9.1.

9.4 DEATH OF FORMER PARTICIPANT ELIGIBLE FOR RETIREMENT. If a former Employee of the Police or Fire Department dies on or after age fifty-five while receiving or becoming entitled to receive retirement benefits pursuant to Section 7.5, his Spouse shall be entitled to a monthly benefit, until the Spouse dies or remarries, in an amount equal to sixty-six and two-thirds percent of the amount of the monthly benefit the Employee was receiving or was entitled to receive under Section 7.5 before his death. No benefits shall be paid to the Dependent Children of the deceased Employee. No death benefits shall be paid with respect of a former Employee or the Police or Fire Department, who dies before attaining age fifty-five, who would otherwise be eligible to receive retirement benefits pursuant to Section 7.5 at age fifty-five.

9.5 DEATH WHILE RECEIVING DISABILITY BENEFITS. If a former Employee of the Police or Fire Department dies, while receiving or becoming entitled to receive Disability Benefits under Section 8.1 or 8.2, after sustaining or incurring the injury or disease which resulted in his retirement, his Spouse shall be entitled to a monthly benefit, until such Spouse dies or remarries, in an amount equal to sixty-six and two-thirds percent of the monthly Disability Benefit the Employee was receiving or was entitled to receive before his death. There shall be paid additional monthly benefits for each of the deceased Employee's Dependent Children, up to a maximum of three Dependent Children, in the amount of ten percent of the Employee's Final Compensation for each Dependent Child.

9.6 ADDITIONAL DEATH BENEFITS. (a) If an active Participant dies, or if a retired Participant dies while he is receiving pension benefits under this Plan, there shall be paid to his surviving Spouse, if any, or if he leaves no surviving Spouse there shall be paid to the Beneficiary designated by such Employee, the sum of five thousand dollars in addition to any other benefits provided by this Plan. The Death Benefits under this Section 9.6(a) shall not be paid on account of the death of an Employee who is entitled to a Deferred Vested Retirement Benefit under Section 7.5 and who dies prior to attainment of his Normal Retirement Age.

(b) If no other benefits have been paid to the Employee during his life or are to be paid to or for the Employee's Spouse or children of the deceased Spouse after his death under any Section of this Plan, other than Section 9.6(a), then the Accumulated Contributions account of the Employee shall be paid to the Employee's surviving Spouse, if any, or, if he leaves no such surviving Spouse, to the Beneficiary designated by the Employee. In the event a deceased Employee's Accumulated Contributions exceed the amount of benefits paid pursuant to any other provision of this Plan (other than Subsection 9.6(a)) at the time of termination of payment of such Benefits, the difference between the amount of such Benefits paid and the deceased Employee's Accumulated Contributions shall be paid to the Employee's surviving Spouse, if any, or, if he leaves no such surviving Spouse, to the Beneficiary designated by the Employee.

(c) In the event a deceased Participant does not leave a surviving spouse, a written designation of a deceased Participant's Beneficiary cannot be located or all the deceased Participant's designated Beneficiaries predecease or die simultaneously with the Participant, the Death Benefits under this Section 9.6 shall be paid to the estate of the deceased Participant. In the event the Employee referred to in this Section 9.6 does not leave a valid will, any living Beneficiary set forth on the Employee's Beneficiary designation form who is legally entitled to receive the benefits, or, if the Employee dies intestate and leaves no heirs who are eligible to inherit under the laws of intestacy of the state where such Employee is domiciled at the time of his death, the funds referred to herein, rather than escheat to the state, shall be retained by the Fund.

9.7 DEATH BENEFITS PAID TO CHILDREN OF DECEASED EMPLOYEE.

Wherever in this Plan there are provided benefits to be paid to children after the death of the Employee parent, said benefits shall be paid to the legally appointed guardian or curator of said children, but the Board of Trustees shall not be responsible for the application or use of such benefits paid from the Fund to said guardian or curator.

9.8 DEFINITION OF RETIRED EMPLOYEE. The term "retired Employee" as used in this Article IX shall mean a formerly active Employee who is on a retired status or who, except as otherwise provided in this Section, is receiving pension or Disability benefits at the time of his death.

9.9 DEATH BENEFITS AFTER RECOVERY FROM DISABILITY. In the event an Employee, who was retired on account of a Permanent Disability, shall have recovered from such Disability, then he shall no longer be considered a retired Employee for the benefits mentioned under this Article IX unless he shall thereafter have become eligible for retirement by reason of age and length of service or shall thereafter have incurred subsequent Permanent Disability and be receiving Disability benefits therefor at the time of his death.

9.10 DEATH BENEFITS FOR A PARTICIPANT WHO DIES WHILE PERFORMING QUALIFIED MILITARY SERVICE A Participant who dies while performing Qualified Military Service shall be treated, for purposes of this Article IX, as though the Participant resumed employment with the City as an Employee immediately before his death and then died.

ARTICLE X: DISTRIBUTION OF BENEFITS

10.1 INSUFFICIENT FUND ASSETS. If at any time hereafter the Fund herein created shall be insufficient to pay in full all benefits herein provided to those at the time being entitled to such benefits, the amount then on hand and available for payment of benefits shall be prorated among all Participants and Beneficiaries so that all Participants and Beneficiaries shall receive the same percentage of their full monthly benefits. For purposes of this Section 10.1, "Participants" includes former Participants who are entitled to benefits under the Plan.

10.2 APPLICATION FOR BENEFITS. Applications for benefits to be paid from the Fund shall be made upon forms provided by the Board of Trustees and shall contain full information from which the Board of Trustees may determine the eligibility of the applicant. If such application is founded upon Permanent Disability, full information concerning the nature and extent of the injury must be furnished with the application, and the applicant may be required to submit to examination by the Medical Board or other medical expert as determined by the Board of Trustees as provided in Section 8.6. The Board of Trustees may hold hearings, and take and preserve evidence regarding the nature and extent of the injuries upon which such claims are based, and may thereafter approve or deny such application. If denied, the applicant shall have the right to review and appeal, as provided in this Plan. If such application for retirement is approved, no further Compensation for service shall thereafter be paid by the City to such Employee.

10.3 TIME OF PAYMENT OF MONTHLY BENEFITS. Payment of any benefit under Articles VII, VIII, and IX shall commence on the twenty-fifth day of the month following the month in which the event giving rise to payment occurs and shall be paid on the twenty-fifth day of each succeeding month through the last day of the month immediately preceding the month in which such payment stops. The payment for the month in which payment stops shall be the monthly amount of the benefit determined under Article VII, VIII or IX, multiplied by the ratio of the number of days in such month which precede the event causing such payment to cease divided by the total number of days in such month.

10.4 ACCUMULATED CONTRIBUTIONS. In the event a Participant terminates Service with the City with less than ten Years of Service, such Participant shall be paid his Accumulated Contributions upon termination of such employment in a single, lump sum payment. In this event, neither the Participant nor any other person will be entitled to any other benefits under the Plan with respect to the Participant's Accrued Benefit and he shall no longer be a Participant under the Plan except as otherwise provided in Section 2.43 and Section 10.8.

In the event a Participant terminates Service with the City with more than ten but less than twenty Years of Service, he may elect to have his Accumulated Contributions paid to him upon termination of such employment in a single, lump sum payment. In this event, neither such Participant nor any other person will be entitled to any other benefits under the Plan with respect to the Participant's Accrued Benefit and he shall no longer be a Participant under the Plan except as otherwise provided in Section 2.43 and Section 10.8.

10.5 QUALIFIED DOMESTIC RELATIONS ORDER. The following rules and procedures apply with respect to a domestic relations order received by the Board of Trustees:

(a) In general. The Board of Trustees may use the QDRO procedures set forth in subsection (h) below for determining whether a domestic relations order is a QDRO and for administering distributions under a QDRO or may develop separate QDRO procedures.

(b) Definitions related to Qualified Domestic Relations Orders (QDROs).

(i) QDRO. A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with respect to a Participant under the Plan. The QDRO must contain certain information and meet other requirements described in this Section 10.5 and Code Section 414(p).

(ii) Domestic relations order. A domestic relations order is a judgment, decree, or order (including approval of a property settlement) that is made pursuant to a state domestic relations law (including community property law).

(iii) Alternate Payee. An Alternate Payee must be a spouse, former spouse, child, or other dependent of a Participant.

(c) Recognition as a QDRO. To be a QDRO, an order must be a domestic relations order (as defined in subsection (b)(ii) above) that relates to the provision of child support, alimony payments, or marital property rights for the benefit of an Alternate Payee. The Board of Trustees is not required to determine whether the court or agency issuing the domestic relations order had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties, or whether an individual identified in an order as an Alternate Payee is a proper Alternate Payee under state law.

(d) Contents of QDRO. A QDRO must contain the following information:

(i) The name and last known mailing address of the Participant and each Alternate Payee.

(ii) The name of each plan to which the order applies;

(iii) The dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee; and

(iv) The number of payments or time period to which the order applies.

(e) Impermissible QDRO provisions.

(i) The order must not require the Plan to provide an Alternate Payee or Participant with any type or form of benefit or any option not otherwise provided under the Plan;

- (ii) The order must not require the Plan to provide an Alternate Payee or Participant with any benefits under the Plan at any time other than at the time such benefits would be paid to the Participant or his Beneficiary under the Plan;
- (iii) The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value);
- (iv) The order must not require the Plan to pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO; and
- (v) The order must not require the Plan to pay benefits to an Alternate Payee in the form of a joint and survivor annuity for the lives of the Alternate Payee and his or her subsequent spouse.

(f) Fee for QDRO determination. The Board of Trustees may condition the making of a QDRO determination on the payment of a fee by a Participant or an Alternate Payee (either directly or as a charge against the Participant's Accrued Benefit).

(g) QDRO Ordering Rules. A Qualified Domestic Relations Order otherwise meeting the requirements for a QDRO under Code Section 414(p)(3) should not fail to be treated as a QDRO solely:

- (i) Because the order is issued after or reverses another QDRO; or
- (ii) Because of the time at which the order is issued, including orders issued after the death of a Participant.

Any QDRO described in this Section 10.5(g) shall be subject to the same requirements and protections which apply to a ADRO under Code Section 414(p)(3).

(h) QDRO Procedure. This subsection (h) applies as the procedure the Board of Trustees uses to determine whether a domestic relations order is a QDRO. This QDRO procedure incorporates the requirements set forth below.

- (i) Access to information. The Board of Trustees provides access to Plan and Participant benefit information sufficient for a prospective Alternate Payee to prepare a QDRO. Such information might include the summary plan description, other relevant plan documents, and a statement of the Participant's benefit entitlements. The disclosure of this information is conditioned on the prospective Alternate Payee providing to the Plan Administrator information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations order.

- (ii) Notification to Participant and Alternate Payee. The Board of Trustees promptly notifies the affected Participant and each Alternate Payee named in the domestic relations order of the receipt of the order. The Board Trustees sends the notification to the address included in the domestic relations order. Along with the notification, the Board of Trustees provides a copy of the Plan's procedures for determining whether a domestic relations order is a QDRO.
- (iii) Alternate Payee representative. The prospective Alternate Payee may designate a representative to receive copies of notices and Plan information that are sent to the Alternate Payee with respect to the domestic relations order.
- (iv) Evaluation of domestic relations order. Within a reasonable period of time, the Board of Trustees evaluates the domestic relations order to determine whether it is a QDRO. A reasonable period will depend on the specific circumstances. The domestic relations order must contain the information described in subsection 10.5(d). If the order is only deficient in a minor respect, the Board of Trustees may supplement information in the order from information within the Board of Trustees' control or through communication with the prospective Alternate Payee.
 - (A) Separate accounting. Upon receipt of a domestic relations order, the Board of Trustees separately accounts for and preserves the amounts that would be payable to an Alternate Payee until a determination is made with respect to the status of the order. During the period in which the status of the order is being determined, the Board of Trustees takes whatever steps are necessary to ensure that amounts that would be payable to the Alternate Payee, if the order were a QDRO, are not distributed to the Participant or any other person. The separate accounting requirement may be satisfied, at the Board of Trustees' discretion, by a segregation of the assets that are subject to separate account.
 - (B) Separate accounting until the end of "18 month period." The Board of Trustees continues to separately account for amounts that are payable under the QDRO until the end of an "18-month period." The "18-month period" begins on the first date following the Plan's receipt of the order upon which a payment would be required to be made to an Alternate Payee under the order. If, within the "18-month period," the Board of Trustees determines that the order is a QDRO, the Board of Trustees must pay the Alternate Payee

in accordance with the terms of the QDRO. If, however, the Board of Trustees determines within the "18-month period" that the order is not a QDRO, or, if the status of the order is not resolved by the end of the "18-month period," the Board of Trustees may pay out the amounts otherwise payable under the order to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order applies only prospectively; that is, the Alternate Payee is entitled only to amounts payable under the order after the subsequent determination.

- (C) Preliminary review. The Board of Trustees performs a preliminary review of the domestic relations order to determine if it is a QDRO. If this preliminary review indicates the order is deficient in some manner, the Board of Trustees allows the parties to attempt to correct any deficiency before issuing a final decision the domestic relations order. The ability to correct is limited to a reasonable period of time.
- (D) Notification of determination. The Board of Trustees notifies in writing the Participant and each Alternate Payee of the Board of Trustees' decision as to whether a domestic relations order is a QDRO. In the case of a determination that an order is not a QDRO, the written notice contains the following information:
 - (1) References to the Plan provisions on which the Board of Trustees bases its decision.
 - (2) An explanation or any time limits that apply to rights available to the parties under the Plan (such as the duration of any protective actions the Board of Trustees may take); and
 - (3) A description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.
- (E) Treatment of Alternate Payee. If an order is accepted as a QDRO, the Board of Trustees will act in accordance with the terms of the QDRO as if it were a part of the Plan. The Plan Administrator will provide any appropriate disclosure information relating to the Plan to the Alternate Payee.

10.6 MAXIMUM LIMITS OF BENEFITS. In no event shall the annual benefit under this Plan and all other defined benefit plans maintained by an Employer exceed the lesser of

(a) The amount specified in Code Section 415(b)(1)(A), as adjusted for any applicable increases in the cost of living in accordance with Code Section 415(d), as in effect on the last day of the Plan Year; and

(b) One hundred percent (100%) of the average compensation of such Participant for his high three (3) consecutive Plan Years as provided in Code Section 415.

Notwithstanding anything to the contrary in this Section 10.6, the annual benefit, when paid in the form of a joint and survivor annuity with the Participant's Spouse as the survivor, can be as great as that of a single life annuity for the Participant, not in excess of the limitations contained in the first sentence of this Section 10.6.

Code Section 415, is hereby incorporated by reference. The reduced and increased limitation for early and later retirement benefits for alternative forms of benefits shall be determined in accordance with Code Section 415 and the applicable regulations under that Code Section.

For purposes of this Section, "Employer" means the City and any corporation or other entity that from time to time is, along with the Employer, a member of controlled group as defined in Code section 414, as modified by Code Section 415(h).

For purposes of this Section, compensation shall mean wages, salaries, and fees for professional services and other amounts received (without regard to whether or not 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 (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Treasury Regulation 1.62-2(c)) and excluding the following:

(a) Employer contributions (other than elective contributions described in Code Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) 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 such contributions are not includible in the Participant's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than amounts received during the year by a Participant pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;

(b) Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Treasury Regulation section 1.21-1(b), or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

(d) 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 Employee and are not salary reduction amounts that are described in Code Section 125);

(e) Other items of remuneration that are similar to any of the items listed in (a) through (d) of this subsection.

Compensation for a Plan Year is the compensation actually paid or made available during such Plan Year. If compensation for a Plan Year includes amounts earned but not paid during the Plan Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Plan Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no compensation is included in more than one Plan Year.

Compensation for a Plan Year shall also include compensation paid by the later of 2 ½ months after an Employee's severance from employment with the Employer maintaining the Plan or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer maintaining the Plan, if:

(a) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer;

(b) the payment is for unused, accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or

(c) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above are not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment, except, (i) payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service to the extent these 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; or (ii) compensation paid to a Participant who is permanently and totally disabled, as defined in Code Section 22(e)(3), provided, salary continuation applies to all Employees who are permanently and totally disabled for a fixed or determinable period, or the Employee was not a highly compensated employee, as defined in Code Section 414(q), immediately before becoming disabled.

Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), is treated as compensation for the Plan Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition. Compensation paid or made available during such Plan Year includes amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(k), or 457(b). Compensation also includes any elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4). Compensation shall also include deemed Code Section 125 compensation. Deemed Code Section 125 compensation is an amount that is excludable under Code Section 106 that is not available to an Employee in cash in lieu of group health coverage under a Code Section 125 arrangement solely because the Employee is unable to certify that he has other health coverage. Amounts are deemed Code Section 125 compensation only if the Employer does not request or otherwise collect information regarding the Employee's other health coverage as part of the enrollment process for the health plan. Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States. Compensation also includes differential wage payments, as defined in Section 3402(w)(2).

Reduction of benefits or contributions to all plans, where required to comply with Section 10.6, shall be accomplished by reducing the Employee's benefit under any defined benefit plans maintained by an Employer in which he participated, such reduction to be made first with respect to the plan in which he most recently accrued benefits and thereafter in such priority as shall be determined by the Board of Trustees and the administrators of such other plans.

10.7 ELIGIBLE ROLLOVER DISTRIBUTIONS. The following rules apply to an "eligible rollover distribution":

(a) 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.

(b) For purposes of applying the provisions of this Section 10.7:

(i) "Eligible rollover distribution" means 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 Code Section 401(a)(9); the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized

appreciation with respect to employer securities); and, any hardship distribution described in Code Section 401(k)(2)(B)(i)(iv).

- (ii) “Eligible retirement plan” means:
 - (A) a qualified plan described in Code Section 401(a);
 - (B) an individual retirement account described in Code Section 408(a);
 - (C) an individual retirement annuity described in Code Section 408(b);
 - (D) an annuity plan described in Code Section 403(a);
 - (E) a tax sheltered annuity plan described in Code Section 403(b); or
 - (F) an eligible plan under Code Section 457(b) 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;
 - (G) a Roth IRA, provided the Participant or the Beneficiary satisfies the requirements for making Roth contributions under Code Section 408-A(c)(3)(B).
- (iii) “Distributee” means an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving Spouse and the Employee’s or former Employee’s Spouse or former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p), are distributees with regard to the interest of the Spouse or former Spouse. A distributee also includes an Employee’s Beneficiary (as defined in Code Section 401(a)(9)(E)) who is not the Employee’s surviving Spouse, provided that in the case of such a distributee, the eligible retirement plan includes only an individual retirement account under Code Section 408(a) or an individual retirement annuity under Code Section 408(b) that is established on behalf of the Beneficiary and that is treated as an inherited individual retirement account under Code Section 402(c)(11).
- (iv) “Direct rollover” means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) A distribution shall not fail to be an eligible rollover distribution merely because the distribution consists of after tax contributions which are not includable in gross income. However, the portion of the distribution attributable to after tax contributions may be transferred only to (i) an individual retirement account or annuity described in Code Section 408(a) or (ii) a qualified trust or an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts transferred (including interest thereon), including separate accounting for the portion of such distribution which is included in gross income and the portion of such distribution which is not so included.

10.8 EARLY PAYMENT OF EMPLOYEE CONTRIBUTIONS. An Employee may elect, in accordance with Board of Trustee rules, to receive payment of all or a portion of his Employee Contributions in a single sum at the time payment of his Plan benefits commences. Similarly, the surviving Spouse of a deceased Employee, or the Dependent Child or Children of such Employee if there is no surviving Spouse, who is or are entitled to Death Benefits under Article IX (other than Section 9.6), may elect, in accordance with Board of Trustee's rules, to receive payment of all or a portion of the Employee's Employee Contributions which have not previously been paid in a single sum at the time payment of such Death Benefits commences. In this event, the monthly Plan benefits of such an Employee, surviving Spouse or Dependent Child or Children shall be reduced by the actuarial equivalent of the Employee's surviving Spouse's and/or Dependent Children's monthly Retirement, Death or Disability Benefits attributable to the amount of the Employee's Employee Contributions paid at the time payment of Plan Benefits commences utilizing the mortality rates from the 1984 Unisex Mortality Tables and the annual interest rate on thirty year Treasury Securities, as published in the Internal Revenue Bulletin for the second calendar month immediately preceding the calendar month in which the Employee's Employee Contributions are paid.

10.9 MINIMUM DISTRIBUTIONS REQUIREMENTS. The requirements of this Section 10.9 take precedence over any inconsistent provisions of the Plan.

(a) General Rules. All distributions required under this Section 10.9 will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

(b) Time and Manner of Distribution.

(i) 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.

(ii) 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:

(A) 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 70 1/2, if later.

- (B) 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 dies.
- (C) 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.
- (D) 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 10.9(b)(ii), other than Section 10.9(b)(ii)(A), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 10.9(b)(ii) and Section 10.9(e), distributions are considered to begin on the Participant's required beginning date (or, if Section 10.9(b)(ii)(D) applies, the date distributions are required to begin to the surviving Spouse under Section 10.9(b)(ii)(A). If annuity payments 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 10.9(b)(ii)(A), the date distributions are considered to begin is the date distributions actually commence.

(c) Form 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 10.9(c), (d) and (e). 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. Any part of the Participant's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and the Treasury regulations that apply to individual accounts.

(d) Determination of Amount to be Distributed Each Year.

(i) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements.

(A) distributions will be paid in periodic payments made at intervals not longer than one year;

- (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 10.9(d) or (e);
- (C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (D) payments will either be nonincreasing or increase only as follows:
 - (1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (2) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 10.9(d) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p).
 - (3) to provide cash refunds of Employee Contributions upon the Participant's death; or
 - (4) to pay increased benefits that result from a Plan amendment.

(ii) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 10.9(b)(ii)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

(e) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution

calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(f) Requirements For Annuity Distributions That Commence During Participant's Lifetime.

- (i) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non Spouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non Spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

- (ii) Period Certain Annuities. Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age seventy, the applicable distribution period for the Participant is the distribution period for age seventy under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 10.9(d)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the annuity starting date.

(g) Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

- (i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 10.9(b)(ii)(A) and (B), over the life of the designated beneficiary or over a period certain not exceeding:
- (A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
- (B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.
- (ii) 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.
- (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his interest begins, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section 10.9(e) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 10.9(b)(ii)(A).

(h) Definitions.

- (i) Designated beneficiary. The individual who is designated as the Beneficiary under Section 2.5 and is the designated Beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (ii) 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 pursuant to Section 10.9(b)(ii).

- (iii) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (iv) Required beginning date. For a Participant who is not a five percent (5%) owner, the Required Beginning Date is the April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age 70-1/2, or (ii) the calendar year in which the Participant retires. The required beginning date for a Participant who is a five percent (5%) owner (as defined in Section 416(i) of the Code) is April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.

10.10 SMALL BENEFITS If the single sum actuarial equivalent of a Participant's Accrued Benefit, other than an Accrued Benefit payable under Sections 9.6, 10.4 or 10.9, is \$5,000 or less at the time the Participant terminates employment with the City, the actuarial equivalent of such benefits shall be paid in a single, lump sum payment as of the date of termination of employment. "Actuarial equivalent" means, for purposes of this Section 10.10, equality in value of the aggregate amount of benefits expected to be paid under the Plan which shall be determined using the applicable interest rate and the applicable mortality table. "Applicable interest rate" for a given Plan Year is the applicable interest rate within the meaning of Code Section 417(e)(3)(C) for the month before the distribution and the applicable mortality table is the mortality table within the meaning of Code Section 417(e)(3)(B) for the Plan Year in which the distribution occurs. The single sum, actual equivalent shall be based upon the time payment of the relevant benefit would otherwise commence under the Plan if this Section 10.10 was not in effect.

10.11 DEFAULT INDIVIDUAL RETIREMENT ACCOUNT If the total amount of a Participant's or Beneficiary's Accrued Benefit, which is payable as a single sum, is \$5,000 or less and the Participant or Beneficiary does not elect to have such benefit either (i) paid to an eligible retirement plan within the meaning of Section 10.7(b)(ii) or (ii) to receive the distribution directly, the Board of Trustees shall cause the distribution to be paid to an individual retirement plan designated by the Board of Trustees.

ARTICLE XI: MISCELLANEOUS PROVISIONS

11.1 MODIFICATION OF TAX RATE BY BOARD OF ALDERMAN. The tax rate set forth in Section 6.1 of this Plan is the maximum tax rate which the Board of Aldermen is authorized to levy for the operation of the Plan herein set forth, but the Board of Aldermen may, in its sole discretion, fix a lower rate upon receipt of a written report of a competent Actuary that such lower rate will maintain the Fund and provide for the payment of benefits hereunder. The conclusions in such Actuary's report shall be based upon actuarial assumptions and practices which in the aggregate are reasonable.

In the event the Board of Trustees finds that such lower rate will not maintain the Fund and provide for the payment of benefits hereunder, it shall appoint an Actuary to review the conclusions of the Actuary appointed by the Board of Aldermen. If the Actuary appointed by the Board of Aldermen and the Actuary appointed by the Board of Trustees cannot agree that the lower tax rate will maintain the Fund and provide for the payment of benefits hereunder, both Actuaries shall mutually appoint a third Actuary to determine the adequacy of the lower rate. The decision of the third Actuary shall be conclusive.

The expense of the Actuary appointed by the Board of Aldermen shall be paid by the City, the expense of the Actuary appointed by the Board of Trustees shall be paid from the Fund and the expense of the Actuary appointed by the two Actuaries shall be paid equally by the City and from the Fund.

Upon receipt of a final report in accordance with this Section 11.1 that a lower tax rate and proportionally lower Employee contributions will maintain the Fund and provide for the payment of benefits hereunder, the tax rate and contributions from Employees and the City will be reduced by proportionate amounts.

11.2 LIMITATION ON LIABILITY AND DUTIES OF CITY. In no event shall anything in this Plan be held or constructed to impose upon the City any duty or liability in excess of the taxes levied and actually collected for the purpose herein specified and the payment thereof to the Board of Trustees.

11.3 NON-ASSIGNABILITY OF BENEFITS. The benefits payable from the Fund herein provided, with the exception of a QDRO described in Section 10.5, shall not be assignable, subject to counterclaim, recoupment or set-off, nor shall they be subject to assignment, garnishment, sequestration, execution, injunction, or any other decree, order, process or proceeding in any court for the payment of any debt of an Employee and/or Beneficiary, and the benefits shall be held and distributed for the purpose of this Plan, and for no other purpose whatsoever.

11.4 DUTIES OF CUSTODIAN. The Board of Trustees shall appoint a custodian of all moneys, securities and other property of the Fund, subject to control and direction of the Board of Trustees. The custodian shall keep separate books and complete accounts of the Fund, and books and records shall be subject to inspection of the Board of Trustees, or any of its members, at all times. On the custodian's termination, he or it shall deliver to his successor all

unexpended money, securities, books, records and any other property which may have come into his or its possession as custodian of the Fund.

11.5 DISBURSEMENT OF FUND ASSETS. All disbursements of funds from the Fund shall be by voucher stating its purpose and the name of the payee, and after approval by the Board of Trustees such voucher shall be certified by the Chairman and Secretary authorizing the Treasurer to draw a check therefor upon the Fund for the amount therein specified which voucher shall be delivered to the Treasurer and constitute his authority for issuing checks therefor; all such checks shall be signed by the Treasurer and countersigned by the Chairman and Secretary. Retirement benefits shall be approved by the Board of Trustees upon retirement of each Employee and annually thereafter.

The Board of Trustees may delegate authority to disburse benefits from the Fund to a bank chartered under Federal or state law which is duly authorized to conduct a trust business. Such entity shall only disburse funds in accordance with specific instructions from the Board of Trustees; however, such entity shall not be otherwise required to follow the procedures for the disbursement of funds prescribed pursuant to this Section 11.5.

11.6 FALSE STATEMENTS TO PRODUCE BENEFITS. Any person who shall knowingly or willfully make any false statement for the purpose of securing benefits under the terms of this Plan, or shall falsify, cause or permit to be falsified, any record or records of said Plan in any attempt to defraud, shall be adjudged guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Fifty Dollars nor more than One Hundred Dollars, or by imprisonment not exceeding ninety days or by both fine and imprisonment, and all his rights, interest and privileges under and by virtue of this Plan shall be forfeited.

11.7 APPOINTMENT OF LEGAL ADVISORS. The Board of Trustees shall appoint a legal advisor and shall prescribe his duties and fix, the compensation to be paid to him.

11.8 INVALIDITY OF PORTION OF THE PLAN. If any clause, phrase, sentence, section or subsection of this Plan is declared illegal, inoperative or invalid such clause, phrase, sentence, section or subsection shall not affect the remainder of this Plan.

11.9 UNCLAIMED ACCRUED BENEFIT. If all or a portion of a Participant's Accrued Benefit becomes payable, and the Board, after a reasonable search, cannot locate the Participant, or his Beneficiary if such Beneficiary is entitled to payment, the Board shall notify such person, by registered mail addressed to the person concerned at the last known address, that all unmailed and future payments shall be henceforth withheld until he provides the Board with evidence of his continued life and his proper mailing address or his Beneficiary provides the Board with evidence of his death. In the event that (i) such notification is mailed to such person and his designated Beneficiary, (ii) the Board is not furnished with evidence of his death within three years of the date such notification was mailed and (iii) the Board is unable to find any person to whom payment is due under the provisions of the Plan within three years of the date such notification was mailed, all retirement income and other benefit payments due shall be forfeited at the end of such three year period following the date such notification was mailed and such forfeited amount shall be applied to reduce future City contributions under the Plan; provided, however, if claim for any forfeited benefit is subsequently made by any such person to

whom payment is due under the Plan prior to the distribution of the assets upon termination of the Plan, such forfeited benefits shall be reinstated. If the Plan is terminated prior to the end of such three year period, or if longer, the escheat period under state law, the Board may direct the transfer of any such person's unclaimed benefit to an individual retirement account on behalf of such person.

11.10 INFORMATION FROM BENEFICIARIES. A recipient of benefits from the Plan, in accordance with Board of Trustees rules, shall keep the Board of Trustees informed of his or her correct address, marital status and ages of children and all other matters relevant to his or her right to receive benefits under the Plan and the right of his or her Beneficiaries to receive benefits under the Plan. The Board may, in its discretion, suspend or forfeit Plan benefits of recipients who fail to comply with this Section 11.10.

11.11 CLAIMS PROCEDURE. Claims for benefits under the Plan shall be filed with the person (called the "Administrator") designated by the Board to make initial determinations on benefit claims, on forms supplied by the Board. Notice of the Administrator's determination shall be furnished the claimant within ninety days of the receipt of the claim, unless special circumstances require an extension of time. In such case, the Administrator may extend the period for not in excess of an additional ninety days, provided that the claimant is given written notice of the extension within the original ninety day period. Such notice shall indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render a final decision. The claimant shall be given written notice of the Administrator's determination. If the claim is denied, in whole or in part, the notice of the denial shall set forth in a manner calculated to be understood by the claimant, the following: The Administrator's notice to the claimant shall set forth:

- (a) The specific reason for the denial;
- (b) Specific references to pertinent Plan provisions on which the Board of Trustees based its denial;
- (c) A description of any additional material information needed for the claimant to perfect his claim and an explanation of why the material or information is needed; and
- (d) That any appeal the claimant wishes to make of the adverse determination must be in writing to the Board of Trustees within seventy-five days after receipt of the Administrator's notice of denial of benefits. The Administrator's notice must further advise the claimant that his failure to appeal the action to the Board of Trustees in writing within the seventy-five day period will render the Administrator's determination final, binding and conclusive. The Administrator's notice of denial of benefits shall identify the name of each member of the Board of Trustees and the name and address of the Board of Trustees member to whom the claimant may forward his appeal.

If the determinations of the Administrator's is not furnished to the claimant within one time permitted herein, the claim shall be deemed denied.

11.15 GENDER, SINGULAR AND PLURAL. Terms in the masculine shall be deemed to include the feminine, and terms in the singular shall be deemed to include the plural, and vice versa, wherever the context so admits or requires.

11.16 IDENTITY OF DISTRIBUTEES. If at any time any doubt exists as to the identity of any person entitled to distribution hereunder of any benefit or installment thereof, or as to the amount or time of any such distribution, upon certification of such fact to the Board, the Board shall be entitled to, or shall be entitled to direct any custodian of the Fund, to hold such sum in a savings account or other savings instrument until further orders of the Board or until final order of a court of competent jurisdiction, or to pay such sum into a court of competent jurisdiction in accordance with any lawful procedure in such case made and provided.

11.17 LEGAL ACTION BY BOARD OR BOARD OF ALDERMEN. The Board or the Board of Alderman may, at any time, and from time to time, take such legal action as it may deem advisable to have determined judicially any matter arising hereunder, including any matter as to which the Board is empowered to act hereunder as to which the Board fails, refuses or does not desire to act.

11.18 RELIANCE BY BOARD AND BOARD OF ALDERMEN. The Board of Alderman of the City and the Board may (but shall not be required to) rely upon any certificate, statement or other representation made to it or them by an Employee, a Participant, former Participant or Beneficiary in respect of any fact required to be determined under any of the provisions of the Plan, and shall not be liable on account of the payment or distribution of any moneys or the doing of any act or any failure to act in reliance upon any such certificate, statement or other representation made by such Employee, Participant, former Participant or Beneficiary. Any such certificate, statement or other representation made by such Employee, Participant, former Participant or Beneficiary shall be conclusively binding upon such party, his personal representative and heirs (but not upon the City or the Board) and any such Employee, Participant, former Participant or Beneficiary, his personal representative and heirs (but not the City or the Board) shall thereafter be estopped from disputing the truth and correctness of any such certificate, statement or other representation.

11.19 FUND FOR EXCLUSIVE BENEFIT OF PARTICIPANTS AND BENEFICIARIES. It shall be impossible by operation of the Plan or by termination of either, by power or revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any fund maintained pursuant to this Plan or any funds contributed thereto, to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their respective Beneficiaries.

11.20 GOVERNING LAW AND VENUE. This Plan has been executed in the State of Missouri and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that state, to the extent such laws are not inconsistent with applicable Federal law. Any dispute under the Plan shall be subject to the exclusive jurisdiction of the Circuit Court of St. Louis County, and/or the United States Federal District court in St. Louis, Missouri.

A claimant's whose claim is denied, in whole or in part, may submit a written request to the Board for a review of the determination within seventy five days after receipt by claimant of the written notification of the denial.

If the claimant should appeal to the Board of Trustees, he, or his duly authorized representative, may submit, in writing, whatever issues and comments he or his duly authorized representative, feels are pertinent. The claimant, or his duly authorized representative, may review pertinent Plan documents. The Board of Trustees shall re-examine all facts related to the appeal and make a final determination as to whether the denial of benefits is justified under the circumstances. The Board of Trustees shall advise the claimant of its decision within seventy five days of the claimant's written request for review, unless special circumstances (such as a hearing) would make the rendering of a decision within the seventy five day limit unfeasible, but in no event shall the Board of Trustees render a decision respecting a denial for a claim for benefits later than one hundred twenty days after its receipt of a request for review.

The claimant shall be given written notice of the decision on review. The decision on review shall be written in a manner calculated to be understood by the claimant and shall include:

- (1) Specific reason or reasons for the decision; and
- (2) Specific references to the pertinent Plan provisions on which the decision is based.

If the decision on review is not furnished to the claimant in writing within the time permitted herein, the claim shall be deemed denied on review. The Board shall maintain minutes of any meeting denying a claim for benefits and of any review thereof and copies thereof shall be made available to the claimant upon written request.

11.12 EMPLOYEE AUTHORIZATION FOR WITHHOLDING CONTRIBUTIONS.

Each Employee shall execute and deliver to the City Administrator an authorization in proper form for the deduction of Employee Contributions pursuant to Section 6.3 and for the designation of a Beneficiary or Beneficiaries to receive the Employee's benefits under this Plan in the case of the Employee's death. No person shall be employed in the Police or Fire Departments until such person executes this authorization. Any such person now employed in either the Police or Fire Departments refusing to execute such authorization shall be ineligible to receive any of the benefits provided under this Plan.

11.13 EMPLOYMENT RIGHTS. Nothing in the Plan or any amendment thereto shall give a Beneficiary, Employee or other person a right unless it is specifically provided or is accorded by the City and the Board pursuant to the Plan. Nothing in the Plan or any amendment thereto shall be construed as giving a Participant or Beneficiary the right to be retained in the employ of the City and all persons shall remain subject to discharge at any time to the same extent as if the Plan had not been adopted.

11.14 TERMS BINDING. The terms of the Plan shall be binding upon the heirs, personal representatives, administrators, successors and assigns of all parties in interest.

11.21 DISCHARGE OF LIABILITY AND RECEIPT. The payment and acceptance of any money or property in settlement of any participation under this Plan shall constitute a complete acquittance and discharge of all liability of the City, Board of Trustees and a custodian of the Fund with respect to such participation. On final payment or distribution to any Participant, Former Participant or his legal representative or Beneficiary in accordance with the provisions hereof, the Board shall be entitled to demand a receipt or acquittance in full satisfaction of all claims against the Fund, the City, the Board of Trustees and any custodian of the Fund.

11.22 LEGAL CAPACITY OF PAYEE. In the event any person entitled to receive any distribution hereunder of a benefit or any installment thereof, who in the opinion of the Board shall be legally incapable of giving a valid receipt and discharge for distribution of such benefit and another person or institution is then maintaining or has custody of such person and no guardian or representative of the estate of such person shall have been duly appointed, then such benefit or installment thereof, at the option of the Board, may be distributed to such person or institution. Distribution to such other person or institution shall be in complete discharge of liability under the Plan for the distribution of such benefit or installment thereof and there shall be no responsibility whatsoever on the City, the Board of Trustees or anyone else to see to the application of such benefit or installment thereof so distributed.

11.23 RETURN OF CITY CONTRIBUTIONS. Contributions made to the Plan by the City shall be returned to the City only under the following circumstances:

(a) All contributions made to the Plan are conditioned upon legality of the contributions in full under the law of the State of Missouri or any statute of similar import. If all or any portion of the contributions is not legal, the amount so determined to be illegal shall be returned to, as appropriate, the City and affected Participants, if the City so directs the Board of Trustees, within one (1) year of the determination of the illegality of the contribution.

(b) A contribution made by a mistake of fact shall be returned, as appropriate, to the City and affected Participants within one (1) year after the payment of the Contribution if the City so directs the Board.

11.24 NOTICE. Any notice, request, direction or approval required or permitted to be given hereunder shall be deemed to have been duly given or made only:

(a) If to a person, upon personal delivery thereof to such person or upon the mailing of the same by certified or registered United States mail (return receipt requested), postage fully prepaid, and duly addressed to such person at the last address of such person appearing upon the records of the City.

(b) If to the City, upon personal delivery thereof to the City Administrator, or upon mailing the same certified or registered by United States mail (return receipt requested), postage full prepaid, and duly addressed to the City at its principal place of business (or such other address as the Board of Alderman of the City may hereafter designate by notice to the Board).

(c) If to the Board of Trustees, upon personal delivery thereof to the Chairman, or upon mailing the same by United States mail (return receipt requested), postage fully prepaid, and duly addressed to such person at the address show on the records of the City (or at such other address as the City may from time to time designate in accordance with the terms hereof).

ARTICLE XII: PLAN TERMINATION

12.1 FULL VESTING UPON PLAN TERMINATION. Notwithstanding any other provision of this Plan to the contrary, upon the date of full or partial termination of the Plan, an affected Employee's right to his Accrued Benefit shall be one hundred percent non-forfeitable.

12.2 LIQUIDATION OF FUND UPON PLAN TERMINATION. If the Plan is terminated, the Board shall liquidate all assets of the Plan and shall determine the value of the Fund as of the business day next following the date of such termination. The Board shall allocate assets of the Fund among Employees and Beneficiaries, according to the following priorities:

(a) First to that portion of an Employee's Accrued Benefit which is derived from the Employee's Employer Contributions;

(b) Second, in the case of benefits payable as an annuity:

(1) In the case of an Employee or Beneficiary which was in pay status as of the beginning of the three year period ending on the termination date of the Plan, each such benefit, based on the provisions of the Plan (as in effect during the five-year period ending on such date) under which such benefit would be least; or

(2) In the case of an Employee's or Beneficiary's benefit (other than a benefit described in subparagraph (1)) which would have been in pay status as of the beginning of such three-year period if the Employee had retired prior to the beginning of the three-year period and if his benefits had commenced (in the normal form of annuity payment under the Plan) as of the beginning of such period, each such benefit based on the provisions of the Plan (as in effect during the five-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (1), the lowest benefit in pay status during a three-year period is the benefit in pay status for such period.

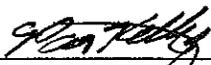
(c) All other non-forfeitable benefits under the Plan; and

(d) Any other benefits under the Plan.

If assets are insufficient to provide all benefits under the Plan, the Board shall allocate such assets to satisfy obligations within each category by order of priority. If assets are insufficient to provide all benefits under a priority category, the Board shall allocate assets to Employees within that category in the ratio which each Employee's total benefit bears to all Employees within that category.

12.3 OVERFUNDING UPON PLAN TERMINATION. If the Plan is overfunded at the date of termination, the amount by which the Plan is overfunded shall be applied to increase the Accrued Benefits of Employees.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Plan to be adopted as of the dates first above written.



Chairman of the Board of Trustees