

## City of Alexandria, Virginia

19  
2-26-02

## MEMORANDUM

DATE: FEBRUARY 22, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER <sup>5</sup>

SUBJECT: PROPOSED REVISIONS TO CITY EMPLOYEE RETIREMENT PLANS

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**ISSUE:** Proposed revisions to City Employee Retirement Plans.

**RECOMMENDATION:** That City Council adopt the attached resolution (Attachment 1) which:

- (1) amends and restates the City of Alexandria Pension Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians and the City of Alexandria Supplemental Retirement Plan in order to make changes required to maintain the qualification of the Plans under the Internal Revenue Code;
- (2) authorizes the City Manager to file a request for a favorable determination letter with the Internal Revenue Service; and
- (3) authorizes the City Manager to make such changes to these four City pension plans and to take such other steps as are necessary or desirable for the Plans to meet the requirements for qualification under Section 401 (a) of the Internal Revenue Code.

**DISCUSSION:** The City of Alexandria participates in five public employee retirement plans, one administered by the Virginia Retirement System (VRS) and four plans that the City administers. Two of the plans are defined benefit retirement plans for which a stated methodology is used for determining benefits and contribution amounts are actuarially determined (the Supplemental Retirement Plan and the Pension Plan for Firefighters and Police Officers). Two plans are single employer defined contribution plans for which contribution amounts are not determined actuarially (the Retirement Income Plan for Firefighters and Police Officers, and the Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians).

General City employees participate in VRS and the Supplemental Retirement Plan. Firefighters and Police Officers participate in the Retirement Income Plan for Firefighters and Police Officers. The Pension Plan for Firefighters and Police Officers includes retirees who began City

police/fire employment before February 1979 and includes only one active Fire Department employee. Deputy Sheriffs and Emergency Rescue Technicians participate in VRS, the Supplemental Retirement Plan and the Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians.

The City also administers a Disability Plan for Firefighters and Police Officers which is available for sworn Fire and Police employees who are unable to work because of a disability prior to when they are eligible to retire. This is not a retirement plan and, therefore, does not need to be amended or submitted to the Internal Revenue Service.

Attachment 2 provides a summary of information about the City's retirement plans that was included in the City's FY 2001 Comprehensive Annual Financial Report.

This docket item, which addresses the four City-administered retirement plans is necessary to enable the City to amend these plans to incorporate changes required by a number of federal laws, enacted since the late 1980s. The revisions are necessary to maintain the qualified status of the plans under the Internal Revenue Code. Revised and restated plans must be submitted to the IRS by February 28, 2002.

The proposed changes to the four plans are set out in Attachments 3 through 6. Changes in the three public safety plans (Pension Plan for Firefighters and Police Officers, Retirement Income Plan for Firefighters and Police Officers, and Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians) are underlined in the attachments. Since the original documents for the Supplemental Retirement Plan date back to 1970, that plan has been totally rewritten to reflect how it is administered today and does not contain underlining.

In the last week, staff has discussed the proposed changes with representatives of the affected employee and retiree groups. On February 21, City Council's Pension Committee (Mayor Donley and Councilman Euille) met with staff and employee representatives and discussed the proposed retirement plan changes. As a result of these discussions, the plan amendments we are recommending to the Pension Plan for Firefighters and Police Officers and the Retirement Income Plan for Firefighters and Police Officers (Attachments 3 and 4), are solely those plan changes required by federal law.

The Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians contains these same changes that are required by law and also includes a change in the provision regarding investment of retirement account funds. Currently, retirement account funds credited to employees with less than five years of service are invested in a guaranteed fund by the City. The amendment provides that such employees may direct the investment of these funds within the investment options available under the plan. This change was discussed with employee representatives, and they are in favor of such a plan change.

**ATTACHMENTS:**

Attachment 1 - Resolution

Attachment 2 - Summary of City of Alexandria Retirement Plans

Attachment 3 - A) City of Alexandria Pension Plan for Firefighters and Police Officers -  
Summary of Applicable Changes in Law and B) Underlined Copy of Plan Changes

Attachment 4 - A) City of Alexandria Retirement Income Plan for Firefighters and Police  
Officers - Summary of Applicable Changes in Law and B) Underlined Copy of Plan  
Changes

Attachment 5 - City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency  
Rescue Technicians

Attachment 6 - City of Alexandria Supplemental Retirement Plan

**STAFF:**

Henry Howard, Director of Personnel Services

Myla Riggs, Division Chief/Benefits and Records Division, Personnel Services

## RESOLUTION

**WHEREAS**, the City of Alexandria maintains the City of Alexandria Pension Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians and the City of Alexandria Supplemental Retirement Plan (collectively, the "Retirement Plans"); and

**WHEREAS**, the Retirement Plans are intended to meet the requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, the City of Alexandria desires to adopt amended and restated plan documents for the Retirement Plans in order to incorporate those changes necessary for the Retirement Plans to retain their qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, a copies of the restated plan documents for the Retirement Plans are attached to these Resolutions;

**NOW, THEREFORE, BE IT RESOLVED THAT** the Alexandria City Council, does hereby recognize, adopt and approve the amended and restated plan documents for the City of Alexandria Pension Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians and the City of Alexandria Supplemental Retirement Plan, copies of which are attached to this Resolution.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to make on behalf of the City of Alexandria any other changes to the Retirement Plans as are requested by the Internal Revenue Service, or, based on advice of counsel, as are necessary or desirable for the Retirement Plans to continue qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to execute such other forms, notices, instruments or other documents and to take such further action as may be necessary or desirable (1) to fully implement the Retirement Plans, (2) to ensure that the Retirement Plans are qualified under Section 401(a) of the Internal Revenue Code and (3) to obtain from the Internal Revenue Service a determination letter to the effect that the retirement plans continue to meet the requirements for qualification under Section 401(a) of the Internal Revenue Code; and

**BE IT FURTHER RESOLVED** that this Resolution shall be effective immediately.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Alexandria to be affixed this 26th day of February 2002.

\_\_\_\_\_  
**KERRY J. DONLEY      MAYOR**  
 On behalf of the City Council  
 of Alexandria, Virginia

ATTEST:

\_\_\_\_\_  
 Beverly I. Jett, CMC City Clerk

*Reviewed as to form and legal sufficiency.*

\_\_\_\_\_  
 Ignacio Pessoa, City Attorney

**SUMMARY OF CITY OF ALEXANDRIA  
RETIREMENT PLANS**

**NOTE 18. EMPLOYEE RETIREMENT SYSTEMS**

The following schedules reflect a description of the plan provisions and membership information, actuarial assumptions, accounting and funding policies, and contribution requirements. Six-year schedules of funding progress and trend information for defined benefit pension plans are provided in Exhibit XV.

**PLAN DESCRIPTION**

	<u>1</u> VRS	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
	<u>City</u>	<u>City Supplemental</u>	<u>Public Safety Pension</u>	<u>Public Safety Retirement Income</u>	<u>Disability Income</u>	<u>Sheriff Retirement Income</u>
Administrator	State of Virginia	Cigna	Cigna	Cigna	SunTrust	Cigna
Employees Covered	General Body	General Body	Public Safety	Public Safety	Public Safety	Sheriff/ERT
Authority for Plan Provisions and Contributions	State Statute	City Ordinance	City Ordinance	City Ordinance	City Ordinance	City Ordinance
Plan Type	Agent Multi- Employer	Single- Employer	Single- Employer	Single- Employer	Single- Employer	Single- Employer
	Defined Benefit	Defined Benefit	Defined Benefit	Defined Contribution	Defined Contribution	Defined Contribution
Stand Alone Financial Report	Yes	No	No	No	No	No
Actuarial Valuation Date	06/30/2000	06/30/2001	07/01/2000	N/A	N/A	N/A

**CITY OF ALEXANDRIA, VIRGINIA**  
**Notes to Financial Statements**  
**June 30, 2001**

**NOTE 18. EMPLOYEE RETIREMENT SYSTEMS**

**DESCRIPTION OF BENEFITS:**

**VRS – City** - Employees are eligible for an unreduced retirement benefit at age 65 with 5 years of service and at age 50 with 30 years of service. Employees who retire with a reduced benefit at age 55 with at least 5 years of credited service are entitled to an annual retirement benefit payable monthly for life in an amount equal to 1.7 percent of their average final salary (AFS) for each year of credited service. An optional reduced retirement benefit is available as early as age 50 with 10 years of credited service. In addition, retirees qualify for annual cost-of-living (COLA) increases on July 1 of the second calendar year after retirement. These benefit provisions and all other requirements are established and may be amended by State statutes.

**City Supplemental** - City employees who retire at or after age 65 or after age 55 with 30 years credited service are entitled to an annual retirement benefit, payable monthly for life, in an amount equal to .80 percent of effective compensation multiplied by service on and after January 1, 1988, and 1.625 percent of effective compensation not to exceed \$100 plus .25 percent of such compensation over \$100 times years service provided subsequent to August 1, 1970, and prior to January 1, 1988, and 1.625 percent of past service compensation not to exceed \$100, plus .25 percent of such compensation over \$100 times years service provided subsequent to August 1, 1960, and prior to August 1, 1970. The pension benefit is reduced by 6 2/3 percent for each year up to five years and 3 1/3 percent for each year between five and ten years preceding normal retirement date. Benefit provisions are established and may be amended by City Ordinance.

**Public Safety Pension** - Employees who retire on or after age 60 are entitled to an annual retirement benefit, payable monthly for life, in an amount equal to 2 percent of final average earnings multiplied by years of credited service, up to a maximum of 30 years. The plan also provides early retirement on or after age 50 with 20 years of credited service or on or after age 56 with 10 years of credited service. This plan further provides early retirement on or after age 50 with 10 years of service with actuarially reduced benefit. Benefit provisions are established and may be amended by City Ordinance.

**Public Safety Retirement Income** - The employees are entitled to contributions made on their behalf after 100 percent vesting. Employee contribution is voluntary and they are allowed to withdraw from their gross voluntary dollars after two years of participation in the plan. They may also cancel their voluntary portion of account. However, if they cancel they will receive a full refund of all voluntary contributions and interest earned to that point and would subsequently be suspended from making any further voluntary contributions for a period of twenty-four months. Benefit provisions are established and may be amended by City Ordinance.

**Disability Income** - This plan is part of the Public Safety Retirement Income Plan. The benefits for service-connected total and permanent disability are 70 percent of final average earnings, 66 2/3 percent for non-service connected total and permanent disability and service-connected partial disability, and 50 percent for non-service connected partial disability. Disability benefits are limited by the assets of the trust fund. If the plan administrator, after consultation with the plan's actuary, foresees the plan becoming insolvent, the administrator may reduce all participants' benefits on a pro rata basis as of the first day of any month after giving each participant receiving benefits under the plan adequate written notice. Benefit provisions are established and may be amended by City Ordinance.

**Sheriff Retirement Income** - This plan provides for benefits to be distributed in the case of termination, retirement, death, or disability to deputy sheriffs and emergency rescue technicians. Distribution options include cash distribution, annuities, or a combination of the two. Benefit provisions are established and may be amended by City Ordinance.

**CITY OF ALEXANDRIA, VIRGINIA**  
**Notes to Financial Statements**  
**June 30, 2001**

**NOTE 18. EMPLOYEE RETIREMENT SYSTEMS**

**MEMBERSHIP AND PLAN PROVISIONS**

As of:	6/00 (1) VRS	6/01 (2)	7/00 (3)	6/01 (4)	6/01 (5)	6/01 (6)
	City	City Supplemental	Public Safety Pension	Public Safety Retirement Income	Disability Income	Sheriff Retirement Income
Active Participants	1,692	1,897	1	444	444	199
Retirees & Beneficiaries	467	80	187	0	44	0
Terminated Vested & Non-vested	464	395	-	49	N/A	13
<b>Normal Retirement Benefits:</b>						
Age	65 50 (30Yrs)	65 55 (30Yrs)	60 50 (20Yrs)	60	N/A	60
Benefits Vested	5	5	10	5	N/A	5
Disability & Death Benefits	Disability Death	Disability Death	Disability Death	N/A Death	Disability N/A	N/A Death
<b>SIGNIFICANT ACTUARIAL ASSUMPTIONS</b>						
Investment Earnings	8.0%	8.0%	8.0%	N/A	N/A	N/A
<b>Projected Salary Increases</b>						
<b>Attributable to:</b>						
Inflation	3.0%	4.0%	N/A	N/A	N/A	N/A
Seniority/Merit	1.25 – 3.10%	2.86%	N/A	N/A	N/A	N/A
Projected Postretirement Increases	3.0%	None	3.0%	N/A	N/A	N/A
Actuarial Cost Method	Entry Age Normal Cost	Aggregate Actuarial Cost	Projected Unit Credit With Zero Normal Cost	N/A	N/A	N/A
Amortization Method	Level Percentage Closed	Level Percentage N/A	Level dollar Closed	N/A	N/A	N/A
Open/Closed	Closed	N/A	Closed	N/A	N/A	N/A
Remaining Amortization Period	24	15	15	N/A	N/A	N/A
Asset Valuation Method	Modified Market	Market Value	Book Value	N/A	N/A	N/A

**CITY OF ALEXANDRIA  
PENSION PLAN  
FOR FIREFIGHTERS AND POLICE OFFICERS**

**SUMMARY OF APPLICABLE CHANGES IN THE LAW  
THAT MUST BE INCLUDED IN THE PLAN DOCUMENT**

The City of Alexandria Pension Plan for Firefighters and Police Officers has previously received a determination letter from the Internal Revenue Service indicating that the Plan met the requirements for qualification under Section 401(a) of the Internal Revenue Code. Since that time, there have been a number of changes in the requirements for qualification under Section 401(a) and the City intends to request an updated determination letter from the Internal Revenue Service. In order for the determination letter to relate back to the last determination letter, the City must amend the Plan to incorporate the changes in the qualification requirements in the plan document and request a new determination letter from the Internal Revenue Service by February 28, 2002. The Plan has been administered in accordance with these new provisions since the date that they became applicable to the Plan.

This memorandum is intended to summarize those changes that must be included in the updated plan document that could affect the Plan in any significant respect. It is not intended to be a definitive list of each and every change that must be incorporated in the new plan document. Also, this summary does not discuss the changes included in the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), which are discussed in a separate memorandum.

Note that the changes described do not affect individuals who retired before the changes became effective.

Tax Reform Act of 1986 ("TRA 86")

- Modification of Limit on Benefits – TRA 86 did not change the general rules regarding the limitation on benefits for qualified police/firefighter plans (such as the Plan). However, TRA 86 provided that the Section 415(b) dollar limitation would not need to be reduced below \$50,000 on account of early benefit commencement by a participant in a qualified police/firefighter plan. Subsequent legislation eliminated altogether the requirement to reduce the Section 415(b) dollar limit on account of early benefit commencement by a participant in a qualified police or firefighter plan.

- Modification of Limit on Annual Additions – The limitation on annual additions applies to the mandatory employee contribution portion of the Plan. TRA 86 changed the limits on annual additions to the Plan that are contained in Section 415(c) of the Internal Revenue Code to the greater of \$30,000 or 25% of the defined benefit dollar limit under Section 415(b) of the Internal Revenue Code. The Section 415(c) limit has since been changed to eliminate the reference to the defined benefit dollar limit.

- TRA 86 provided that *all* employee contributions are treated as annual additions for purposes of the Code section 415(c) limitations.

- Limitation on Compensation Taken into Account – TRA 86 imposed a limitation of \$200,000 on compensation that may be recognized by the Plan. This limit was later reduced to \$150,000 (as indexed for inflation). As of December 31, 2001, the compensation limit was \$170,000. EGTRRA increased the limit to \$200,000 effective January 1, 2002.

- Modification of Minimum Distribution Rules – TRA 86 changed the time at which minimum distributions are required to begin (“Required Beginning Date”) to April 1 of the calendar year following the calendar year in which an employee attained age 70-1/2, even if the employee was still employed at that time. The Required Beginning Date was subsequently changed to the April 1 of the calendar year following the later of (i) the calendar year in which the participant attained age 70-1/2, or (ii) the calendar year in which the participant retired.

- Modification of Rollover Rules – TRA 86 provided that minimum distributions cannot be rolled over to an IRA or another qualified retirement plan.

- TRA 86 provided that eligible rollover distributions made to a surviving spouse are eligible for rollover to an IRA, but not a qualified plan.

- TRA 86 provided that a detailed tax notice is required to be provided when any eligible rollover distribution is made.

#### Unemployment Compensation Act of 1992

- Direct Rollovers – The 1992 Act required the Plan to permit a participant receiving an eligible rollover distribution to have the distribution transferred in a direct rollover to an eligible retirement plan.

#### Uniformed Services Employment and Reemployment Rights Act of 1994

- The Act provided that the Plan is required to provide contributions and service credit to participants who return to the City following a period of qualified military service.

#### Small Business Job Protection Act of 1996 (“SBJPA”)

- Repeal of Combined 415 Limit – The SBJPA repealed the combined limitation under Section 415(e) of the Internal Revenue Code on contributions and benefits applicable to employers who sponsor both defined contribution and defined benefit plans.

- Repeal of the Section 415(b) Limit Based on Compensation – The SBJPA eliminated the “100% of compensation” limit under Section 415(b) for governmental plans.

- Inclusion of Elective Contributions in Compensation for 415 Purposes – The SBJPA provided that pre-tax contributions to qualified retirement plans and cafeteria plans are included in “compensation” for purposes of applying the Section 415 limits. Later legislation also provided that pre-tax contributions to transportation fringe benefit plans are included in “compensation” for Section 415 purposes.

#### Taxpayer Relief Act of 1997

- Exemption of Governmental Plans from Minimum Participation and Nondiscrimination Rules – The Act repealed the minimum participation rules for governmental plans sponsored by state and local governments and made permanent the exemption of these plans from the nondiscrimination rules.

- Elimination of the Reduction of the Section 415(b) Dollar Limit for Early Commencement – The Act repealed the requirement that the Section 415(b) dollar limit be reduced for early benefit commencement by participants in a qualified police/firefighter plan.

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POLICE OFFICERS 2-20-02 DRAFT.DOC

CompareRite found 189 change(s) in the text

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CITY OF ALEXANDRIA  
PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS

As Amended and Restated Effective 4/1/84 12/31/2001

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## History of the Plan

As of July 1, 1956 the City of Alexandria (hereinafter referred to as the "City") established a ~~program for providing the City of Alexandria Pension Plan for Firefighters, and Police Officers (the "Plan") to provide~~ retirement income and other benefits for certain of its employees and their beneficiaries. ~~This program~~ The Plan was set forth in Group Annuity Contract GR-574 issued by Connecticut General Life Insurance Company.

~~Subsequently, this program~~ The Plan has been amended ~~and re-stated in its entirety over the years in order~~ to reflect certain changes and improvements in the retirement program.

Effective January 1, 1984, ~~this program (hereinafter referred to as the "Prior Plan") is again the Plan was~~ amended and restated to reflect further certain legislative changes and amendments to the ~~Program~~. ~~The name of such amended program is the City of Alexandria Pension Plan for Firefighters, and Police Officers and shall be referred to as the "Plan".~~

Effective September 1, 1983, the Plan ~~has been~~ was amended to incorporate gender-neutral Adjustment Factors for contributions made or benefits accrued after August 1, 1983 ~~in accordance with a U.S. Supreme Court decision governing the purchase of benefits under retirement income plans.~~

Effective January 1, 1984, the Plan ~~has been~~ was amended to comply with Internal Revenue Rulings 79-90 and 81-12 which ~~require~~ required retirement income plans to describe the actuarial assumptions used in computing optional benefits and to provide protection of accrued benefits from rate basis changes.

~~Also, the~~ The Plan has been was also amended to comply with the Tax Equity Fiscal Responsibility Act of 1982 ~~which governs the amount and distribution of plan benefits to Participants and beneficiaries ("TEFRA"), the Deficit Reduction Act of 1984 ("DEFRA") and the Retirement Equity Act of 1984 ("REA").~~ In conjunction with ~~this amendment, these amendments,~~ the Plan ~~will now reflect~~ incorporated the updated regulations governing the Internal Revenue Code's Section 415 limitations determining the minimum and maximum amounts of retirement benefits that may be provided for or paid to a Participant under a qualified defined benefit and/or defined contribution plan.

Effective as of December 31, 2001, the Plan has been amended and restated in order to comply with further legislative changes including the Tax Reform Act of 1986 (TRA '86), the Uruguay Round Agreements Act ("GATT"), the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), the Small Business Jobs Protection Act of 1996 ("SBJPA") and the Taxpayer Relief Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act (RRA '98), and the Community Renewal Tax Relief Act of 2000 (CRA).

## Preservation of Rights

Each Participant under the ~~Prior~~ Plan who is in the active employ of the City on December 31, ~~1983~~ 2001, shall continue to be a Participant under this Plan on and after ~~January 1, 1984~~ December 31, 2001, in accordance with its terms.

Except as hereinafter provided each former employee who is was receiving benefits under the ~~Prior~~ Plan on prior to December 31, ~~1983~~ 2001, shall continue to receive such payments on

January 1, 1984 in accordance with the terms of the ~~Prior Plan~~ Plan as in effect prior to December 31, 2001.

Except as hereinafter provided each former employee who terminated employment prior to January 1, 1984 December 31, 2001, shall not be eligible for coverage hereunder.

No provisions of this Plan, other than those required to maintain this Plan as one that is qualified under Section 401(a) of the Code, shall operate to diminish or otherwise adversely affect the amount or terms of retirement income accrued in respect to a Participant's coverage under the ~~Prior Plan~~.

Plan as in effect prior to December 31, 2001.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to Plan Years (or other applicable 12-month periods, as the case may be) commencing after December 31, 2001.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to Employees of the City on and after December 31, 2001, and the rights, benefits and interests of any Employee who died, retired or otherwise terminated his employment with the City prior to December 31, 2001, shall be determined under the provisions of the Plan as in effect on the date such former Employee died, retired or otherwise terminated his employment with the City.

CITY OF ALEXANDRIA PENSION PLAN

FOR FIREFIGHTERS AND POLICE OFFICERS

AS AMENDED AND RESTATED EFFECTIVE ~~JANUARY 1, 1984~~ DECEMBER 31, 2001

ARTICLE I

DEFINITIONS

1. "PLAN" means the City of Alexandria Pension Plan for Firefighters and Police Officers, as described herein or as hereinafter amended.
2. "CITY" means City of Alexandria, Virginia.
3. "EFFECTIVE DATE" means ~~January 1, 1984~~ December 31, 2001, the effective date of this amended and restated Plan; provided, however, that any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before December 31, 2001, in order to retain the qualification of the Plan under Section 401(a) of the Code shall, nevertheless, be effective as of its required effective date under the Internal Revenue Code.
4. "EMPLOYEE" means any individual in the employ of the City who is classified as a firefighter or police officer, other than an individual who is classified as a meter patrol officer. The term Employee shall include any Leased Employee as described in ~~Section 414(n)~~ Section 414(n) of the Code, unless such Leased Employee is covered by a money purchase pension plan sponsored by the lessor under which:
  - (1) non-integrated lessor contributions equal or exceed ~~7 1/2%~~ 7 1/2% of compensation; and
  - (2) the plan provides for immediate participation and for full and immediate vesting.If no such plan exists, any retirement income accrued under this Plan by a Leased Employee will be reduced by the amount of retirement income funded by the lessor which is attributable to the same period of employment.
5. "PARTICIPANT" means an Employee who becomes covered under this Plan.
6. "SPOUSE" means the lawful wife of a male Participant, or the lawful husband of a female Participant.
7. "BENEFICIARY" means the Beneficiary designated in accordance with the further terms of this Plan.
8. "CONTINGENT ANNUITANT" means the person designated as the Contingent Annuitant in accordance with the further terms of this Plan.
9. "NORMAL RETIREMENT DATE" of each Participant shall be the first day of the month coinciding with or next following his 60th birthday.

10. "MANDATORY RETIREMENT DATE" of a Participant shall be (a) the first day of the month coinciding with or next following his 65th birthday in the case of a Participant holding at least the rank of Fire Deputy Chief or Police Captain or (b) the first day of the month coinciding with or next following his 60th birthday in the case of a Participant holding a rank lower than Fire Deputy Chief or Police Captain.
11. "EARLY RETIREMENT DATE" means the date that a Participant is entitled to a pension in accordance with Sections B or C of Article IV.
12. "POSTPONED RETIREMENT DATE" means the date that a Participant is entitled to a pension in accordance with Section D of Article IV.
13. "DISABILITY RETIREMENT DATE" means the date that a Participant is entitled to receive a disability benefit in accordance with Article VI.
14. "EARNINGS" – prior to January 1, 1976, Earnings shall refer to basic earnings, overtime, holiday pay, and educational incentive pay. On and after January 1, 1976, Earnings shall refer to basic earnings and educational incentive pay. However, Earnings shall not include overtime pay, holiday pay or any other additional compensation, unless otherwise specified. Effective as of January 1, 1996, Earnings with respect to any Plan Year shall in no event exceed the dollar limit specified in Section 401(a)(17) of the Code (as adjusted from time to time by the Secretary of the Treasury.
15. "FINAL AVERAGE EARNINGS" shall refer to the highest average Earnings received during any 36 consecutive months while the Participant is actively employed by the City and is covered under the Plan.
16. "TERMINATION OF EMPLOYMENT" means a severance of the relationship between the City and the Employee other than a severance on account of death, disability or retirement.
17. "CREDITED INTEREST" shall refer to interest added to a Participant's Pension Contributions at the rate of 2% per annum prior to January 1, 1977 and 3% per annum thereafter, compounded annually, for the number of completed months from the ~~January~~ + January 1 following the date such Participant's Pension Contribution was made to whichever of the following dates is earliest.
  - (a) the date on which the Participant elects a refund of his Pension Contributions,
  - (b) the date of a Participant's death,
  - (c) the date that the Participant's pension commences, or to the date specified hereinafter; provided, however, that with respect to a Participant's Pension Contributions made prior to July 1, 1967, Credited Interest shall be computed on each Participant's Pension Contribution for the number of completed months from the July 1 following the date such Participant's Pension Contribution was received to January 1, 1968, and then interest will be compounded annually thereon from January 1, 1968 to the appropriate date specified above.
18. "CREDITED SERVICE" is as defined in Article III.

19. "INSURANCE COMPANY" means Connecticut General Life Insurance Company, or any other legal reserve life insurance company with whom the City may contact for the issuance of a group annuity contract or contracts for the purpose of providing the benefits specified and provided for in this Plan.
20. Unless the context otherwise requires, the singular number shall include the plural and the masculine gender shall include the feminine.
21. "ADJUSTMENT FACTOR" – the appropriate adjustment factor(s) which may be applicable to a Participant's retirement income in accordance with the further terms of the Plan.

With respect to each Participant whose retirement date occurs after August 1, 1983, the appropriate Adjustment Factors are the applicable gender-neutral Adjustment Factors as shown in the Tables attached hereto, subject to the following:

- (a) With respect to participants whose retirement dates are other than the Normal Retirement Date, the Early Retirement Adjustment Factors as in effect in accordance with the terms of this Plan as constituted on August 1, 1983 shall continue to be of full force and effect after August 1, 1983.
  - (b) In no event will the pension payable to a Participant on his retirement date, as adjusted by the applicable Adjustment Factor(s) as in effect after August 1, 1983, be less than the amount of pension the Participant had accrued on August 1, 1983, as adjusted by the applicable Adjustment Factor(s) as in effect in accordance with the terms of this Plan as constituted on August 1, 1983.
22. "PARTICIPANT DISABILITY CONTRIBUTION" means an amount of Participant contributions which shall be deducted by the City from his Earnings and shall be used to offset the cost as determined by the Insurance Company to provide for the Non-Service-Connected Partial Disability Benefit of this Plan. The initial amount of Participant Disability Contribution shall be ½% of each Participant's Earnings; however, this amount may be changed on any January 1 that the Insurance Company determines that such change is necessary to maintain proper funding.
  23. "VALUE" – the present value of a Participant's retirement income based upon the male annuity factors in the Pension Benefit Guaranty Corporations' Prospective Actuarial and Mortality Tables, Publication Number PBGC 509, as in effect at the beginning of the Plan Year in which the Value is determined. In no event shall the interest rate used be greater than the Pension Benefit Guaranty Corporation's immediate annuity interest rate in effect at the beginning of the Plan Year in which the Value is determined.

## ARTICLE II

### PARTICIPATION AND FUNDING

#### Section A – Participation

1. Each Employee who was a Participant on ~~December 31, 1983~~ December 30, 2001, will continue to be a Participant under this Plan on ~~January 1, 1984~~ December 31, 2001, provided that he did not elect a transfer of the assets attributable to his coverage under this Plan in accordance with Section D of this Article II.
2. Each Participant who continues to be covered hereunder shall continue to contribute 7½% of his Earnings received during each month thereafter in accordance with ~~Section B~~ Section B, below.
3. No other Employee shall become a Participant on or after ~~February 13~~ February 13, 1979.

#### Section B – Funding

1. Participant's Pension Contributions shall be deducted by the City from his Earnings and shall be used to help fund for any retirement benefits or death benefits that become payable hereunder.

Each Participant shall also be required to contribute Participant Disability Contributions in accordance with Section D of Article VI and Definition 22 of Article I.

The Participant's obligation to make said contributions shall continue to the earliest of the date he completes 30 years of Credited Service, his retirement date or date of Termination of Employment.

A rehired Employee shall be considered to be a new employee; provided, however, that an employee who terminates his employment with the City and who is rehired within 24 months of his termination date, may obtain retirement credit for his prior service by repaying the amount of his Participant's Pension Contributions with Credited Interest refunded to him on or after his Termination of Employment plus 6% interest per annum on this amount from the date such refund was made until the date of repayment. The date of repayment of the refunded Participant's Pension Contributions with Credited Interest must be completed within 24 months after reemployment, provided, however, that with respect to any Participant who was reemployed prior to July 1, 1975 and who had not previously elected to repay his Participant's Pension Contributions with Credited Interest will have until April 1, 1978 to elect to repay such previously refunded contributions with interest in accordance with this paragraph 3. This reinstated Participant must complete a new payroll deductions order and contribute the same as a Participant in paragraph 2 of Section A, above.

2. The City will make the remainder of the contributions necessary to provide the benefits hereunder and to pay the cost of administering the Plan.
3. Forfeitures resulting from the Termination of Employment shall be used as soon as possible to reduce the City's cost of the Plan.

### Section C – Establishment of Pension Fund

1. All contributions made to the fund for the benefits to be provided under this Plan shall be paid to the Insurance Company for application under the group annuity contract or contracts. The assets of said contract or contracts shall constitute the Pension Fund.

### Section D – Transfer of Assets

1. Each Employee who was a Participant on ~~February 12~~ February 12, 1979 may elect to have the assets attributable to his coverage under this Plan as of such date transferred from this Plan to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers. If a Participant makes such an election, no benefits will be payable to him, his Spouse, Contingent Annuitant or Beneficiary as a result of his coverage under this Plan. All benefits payable with respect to such a Participant will be determined in accordance with the terms of the City of Alexandria Retirement Income Plan for Firefighters and Police Officers.
2. The amount of assets to be transferred in accordance with paragraph 1 above will be equal to:
  - (a) the actuarial equivalent of the Participant's annual pension accrued under this Plan as of ~~January 1~~ January 1, 1978 (but not less than the aggregate of the Participant's Pension Contributions made prior to ~~January 1~~ January 1, 1978 with Credited Interest as of such date), plus
  - (b) 20% of the Participant's basic earnings (excluding overtime, holiday pay, educational and incentive pay) received during the period from January 1, 1978 through May 30, 1979, plus
  - (c) if the Participant so elects, the aggregate of his Participant's Pension Contributions made during the period from ~~January 1~~ January 1, 1978 through ~~May 30~~ May 30, 1979 together with Credited Interest to ~~May 30~~ May 30, 1979 on the amount of such Participant's Pension Contributions made during calendar year 1978. Participant's Pension Contributions transferred to the City of Alexandria Retirement Income Plan Firefighters and Police Officers will be treated as Voluntary Employee Contributions under the terms of that Plan.
3. In lieu of an election in accordance with paragraph 2(c) above, a Participant who elects to have assets transferred in accordance with this Section D of Article II may elect to receive a refund of the amount of his ~~participant's~~ Participant's Pension Contributions with Credited Interest determined in accordance with paragraph 2(c) above.
4. An election under this Section D of Article II shall be made in writing on forms provided by the City and returned to the Personnel Department of the City no later than ~~May 15~~ May 15, 1979.
5. Each Employee who was a Participant on ~~May 24~~ May 24, 1983 may elect within three weeks of receiving actuarial data from the Connecticut General Life Insurance Company providing him with information as to the amount that may be transferred from this Plan (but in any event, prior to ~~September 1~~ September 1, 1983) to have the assets attributable to his coverage under this Plan as defined herein transferred from this Plan to the City of

Alexandria Retirement Income Plan for Firefighters and Police Officers and, to the extent set forth herein, to the City of Alexandria Firefighters and Police Officers Disability Income Plan. Such transfer shall be subject to the provisions of paragraphs 5 through 9 of this Article II, Section D. If a Participant makes such an election and assets attributable to his coverage under this Plan as defined herein are transferred from this Plan, no benefits will be payable to him, his Spouse, Contingent Annuitant or Beneficiary as a result of his coverage under this Plan. All benefits payable with respect to such a Participant will be determined in accordance with the terms of the City of Alexandria Retirement Income Plan for Firefighters and Police Officers and the City of Alexandria Firefighters and Police Officers Disability Income Plan.

6. The amount of assets to be transferred in accordance with paragraph 5 above to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers (and, in the case of subparagraph (d) hereof, the City of Alexandria Firefighters and Police Officers Disability Income Plan) will be equal to:
- (a) the actuarial equivalent of the Participant's annual pension accrued under this Plan as of ~~January 1~~ January 1, 1978 and calculated in the same manner as prior transfers as of ~~January 1~~ January 1, 1978 (but not less than the aggregate of the Participant's Pension Contributions made prior to ~~January 1~~ January 1, 1978 with Credited Interest as of such date and with interest equal to that sum which would have been credited by the Insurance Company had such amount been transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers on ~~June 1~~ June 1, 1979), plus
  - (b) 20% of the Participant's basic earnings (excluding overtime, holiday pay, educational and incentive pay) received during the period from ~~January 1~~ January 1, 1978 through the date of transfer, including interest equal to that sum which would have been credited by the Insurance Company had such amount been transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers on ~~June 1~~ June 1, 1979, plus
  - (c) if the Participant so elects, the aggregate of his
    - (i) Participant's Pension Contributions made during the period from ~~January 1~~ January 1, 1978 through the date of transfer; and
    - (ii) Participant's Disability Contributions made during the period from ~~January 1~~ January 1, 1978 through ~~May 31~~ May 31, 1979together with interest equal to that sum which would have been credited by the Insurance Company had such amounts been transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers on ~~June 1~~ June 1, 1979 to the date of transfer. Participant's Pension Contributions and Disability Contributions transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers will be treated as Voluntary Employee Contributions under the terms of that plan.
  - (d) Participant's Disability Contributions made during the period from ~~June 1~~ June 1, 1979, through the date of transfer, without interest.

7. In lieu of an election in accordance with paragraph 6(c) above, a Participant who elects to have assets transferred in accordance with this Section D of Article II may elect to receive a refund of the amount of his Participant's Pension and Disability Contributions with interest determined in accordance with paragraph 6(c) above.
8. An election under this Section D of Article II shall be made in writing on forms provided by the City and returned to the Personnel Department of the City no later than ~~September~~ September 1, 1983.
9. In the event that the amount to be transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers pursuant to paragraph 6(b) exceeds \$200,000, elections to transfer will be accepted, but transfers of funds will be effectuated in 1983 only with respect to those employees with the greatest number of years of Credited Service, the transfer of whom would require an aggregate amount determined under paragraph 6(b) not to exceed \$200,000. All other Participants who had submitted an election to transfer on or before ~~September 1~~ September 1, 1983 shall have transfers of their assets under paragraph 6(b) effectuated in 1984 or thereafter, not to exceed \$200,000 per year. Interest calculations on assets transferred will be to the date of transfer as to any deferred asset transfers. Effective as of the date of transfer, for those Participants on whose behalf transfers of funds have been effectuated, all benefits shall be determined solely under the City of Alexandria Retirement Income Plan for Firefighters and Police Officers or the City of Alexandria ~~Retirement Income Plan for Firefighters and Police Officers~~ Disability Income Plan, as appropriate. No benefits for such Participants shall be determined pursuant to the terms of this Plan. If there is a delay in asset transfers for a Participant because of the \$200,000 per year limitation on the amount to be transferred pursuant to paragraph 6(b), such Participant shall continue to make Pension Contributions and Disability Contributions to this Plan, and his benefits shall be determined solely pursuant to the terms of this Plan until the effective date of the transfer of assets attributable to his coverage under this Plan.
10. Any Employee who is a Participant in this Plan as of ~~March 11~~ March 11, 1986 may advise the City no later than ~~April 11~~ April 11, 1986 that he desires to be considered for transfer from this Plan to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers (the 'New Pension Plan'). The City, in its discretion, may either grant or reject all such requests. If the City proposes to grant all such requests, it shall promptly request Connecticut General Life Insurance Company ('CG') to make calculations in the same manner as was done in 1979 and 1983, as more particularly set forth in paragraphs 6 and 7 of Article II, Section D, as set forth in the first change in the amendments to this Plan effective ~~May 24~~ May 24, 1983, as determined by CG, and advise the City of such calculations and the proposed transfer amounts. If the City then continues to approve all such requests, in its sole discretion, it shall then advise all such Participants and furnish each such Participant with CG calculations. Each such Participant shall then have a period of three weeks to notify the City in writing of his election to have the assets thus calculated as being attributable to his coverage under this Plan transferred to the New Pension Plan. The City may effectuate such transfer from existing funds in the Plan or from new City contributions or a ~~combinations~~ combination, in its sole discretion. If a Participant makes such election to transfer, and assets attributable to his coverage under this Plan as defined herein are transferred from this Plan, no benefits will be payable to him, his Spouse, Contingent Annuitant or Beneficiary as a result of his coverage under this Plan.

ARTICLE III

CREDITED SERVICE

Section A. Credited Service

1. The term "Credited Service" means continuous employment with the City while classified as an Employee, and, for the purpose of determining eligibility for benefits hereunder, shall include the periods of time specified in paragraphs 2, 3 and 4 below; however for the purpose of determining the amount of benefits hereunder, Credited Service shall not include the period of time specified in paragraphs 3 and 4 below.
2. Absence from employment with the City on account of active duty in the Armed Forces will be counted as continuous employment with the City in accordance with the City's Administrative Regulations.
3. Absence from employment with the City on account of authorized leave of absence will be counted as continuous employment with the City in accordance with the City's Administrative Regulations.
4. The period of time while he is disabled in accordance with Article VI.

In determining Credited Service all Participants under similar circumstances will be treated alike.

Notwithstanding any provision of this Plan to the contrary, effective on and after December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

## ARTICLE IV

### BENEFITS UPON RETIREMENT

#### Section A. Normal Retirement

1. Each Participant who retires on his Normal Retirement Date on and after ~~January 1~~ January 1, 1984 will be entitled to an annual pension commencing on his Normal Retirement Date equal to 2½% of his Final Average Earnings multiplied by his years of Credited Service up to a maximum of 30 years. In determining the Participant's annual pension, Credited Service shall be computed to the nearest 1/12 year.
  
2. Each Participant who was receiving a disability benefit in accordance with Article VI immediately prior to his Normal Retirement Date shall be entitled to an annual pension equal to his disability benefit payable immediately prior to his Normal Retirement Date without regard to any reduction in accordance with paragraph 5, Section F of Article VI, if applicable. However, each Participant who was receiving a partial disability benefit in accordance with Article VI immediately prior to his Normal Retirement Date and whose Disability Retirement Date commenced on and after ~~May 24~~ May 24, 1983 shall be entitled only to an annual pension equal to his accrued retirement benefit immediately prior to his Disability Retirement Date, determined in accordance with paragraph 1, Section A of Article IV. ~~Provided; provided~~ that the benefit payable ~~under the preceding sentence~~ at such Participant's Normal Retirement Date shall not be less than 50% of the Participant's Final Average Earnings.

#### Section B. Early Retirement – Voluntary

##### 1. Unreduced

Each Participant who has attained his 50<sup>th</sup> birthday and completed at least 20 years of Credited Service or who has attained his 56<sup>th</sup> birthday and completed at least 10 years of Credited Service may elect to receive an early pension, commencing on his Early Retirement Date, by filing a written notice to the City. Such Early Retirement Date shall be the first day ~~or~~ of any month between the date such election is made and the Participant's Normal Retirement Date. The annual pension, commencing on a Participant's Early Retirement Date, shall be determined in accordance with paragraph 1 Section A of this Article IV.

##### 2. Reduced

Each Participant who has attained his 50<sup>th</sup> birthday and completed at least 10 years of Credited Service may elect to receive an early pension commencing on his Early Retirement Date by filing notice with the City. Such Early Retirement Date shall be the first date of any month between the date such election is made and the Participant's Normal Retirement Date. The annual pension, commencing on a Participant's Early Retirement Date shall be determined in accordance with ~~Paragraph~~ paragraph 1, Section A of this Article IV based on the Participant's Credited Service completed prior to his Early Retirement Date computed to the nearest 1/12 of year, with the annual amount so determined adjusted by multiplying by the appropriate early retirement Adjustment Factor in Table B-1.

### Section C. Early Retirement – Involuntary

1. The City may require early retirement in any case with respect to a Participant who has attained his 50<sup>th</sup> birthday and completed at least 20 years of Credited Service where it is deemed necessary due to lack of work or the inability of the Participant to perform his occupation in a satisfactory manner of efficiency, provided that the City shall exercise this right to retire a Participant early in a nondiscriminatory manner. The Early Retirement Date of such a Participant will be the first of the month coinciding with or next following his retirement. The annual pension, commencing on such Early Retirement Date, shall be determined in accordance with paragraph 1, Section A of this Article IV.

### Section D. Postponed Retirement

With the consent of the City, a Participant may continue to be employed after his Normal Retirement Date, but in no event may he continue to be so employed beyond his Mandatory Retirement Date. The Participant's Postponed Retirement Date shall be the first day of the month coinciding with or next following his date of actual retirement. The Participant's annual pension, commencing on his Postponed Retirement Date shall be calculated in accordance with Section A of this Article IV with Service being credited to his actual retirement date and using his Earnings in effect at his retirement date.

### Section E. Minimum Annual Pension

In no event will the annual pension payable to a Participant under this Article be less than the annual pension that can be provided by applying the aggregate of the Participant's Pension Contributions with Credited Interest to the appropriate factor contained in Table E-2 used to provide the benefits specified and attached to this Plan.

### Section F. Cost-of-Living Benefit

1. For the purposes of this Section, the Terms "Consumer Price Index," "Current Pension," "Base Pension," and "Base Index," shall have the following meanings:
  - (a) Consumer Price Index means the Consumer Price Index (U.S. All Items Index) published by the United States Department of Labor, Bureau of Labor Statistics.
  - (b) The Current Pension of any Participant, Contingent Annuitant, Spouse or Beneficiary shall mean the annual pension which is payable on the date specified on the form of pension which is applicable to said individual; except that with respect to a Participant whose annual pension is payable under the Social Security option, the amount of Current Pension shall mean the amount of annual pension which will be payable to the Participant after his Social Security Commencement Date if he is then living.
  - (c) Base Pension means the annual pension which becomes payable to a ~~participant~~ Participant on his Early Retirement Date or his Normal Retirement Date or Postponed Retirement Date, whichever is applicable. With respect to a Participant whose annual pension commences on his Normal Retirement Date in accordance with paragraph 2, Section A, Article IV, the Base Pension shall be

equal to the Current Disability Benefit payable to such Participant during the month immediately preceding his Normal Retirement Date. The amount of the Base Pension shall be redetermined on the following later dates, if applicable:

- (i) the date an optional form of pension becomes effective with respect to such annual pension; or
- (ii) the date a reduced amount of annual pension become payable to the Participant's Contingent Annuitant as a result of the Participant's death,

and shall be equal to the annual pension then payable. If an annual pension is payable to a Participant under the Social Security Option, the term Base Pension shall mean the annual pension, if any, which will continue to be payable after the Participant's Social Security Commencement Date if he is then living.

- (d) Current Disability Benefit means the annual amount of disability benefit which is payable on the date specified to said Participant in (e), below.
- (e) Base Disability Benefit means the annual amount of disability benefit initially payable in accordance with Article IV, as applicable below:
  - (i) For a Participant whose Disability Retirement Date commenced prior to May 24, 1983 in accordance with Section D of Article ~~IV~~, VI, such Participant's Base Disability Benefit means the amount of disability benefit payable to the Participant as of the January 1 immediately following his 50<sup>th</sup> birthday.
  - (ii) For a Participant whose Disability Retirement Date commenced on and after May 24, 1983 in accordance with Sections C and D of Article VI, such Participant's Base Disability Benefit means the amount of disability benefit payable to the Participant as of January 1 immediately following his 60<sup>th</sup> birthday.
- (f) With respect to an amount of Base Pension or Base Disability Benefit, the term Base Index shall mean the Consumer Price Index for the month of January in the calendar year in which such Base Pension or Base Disability Benefit became payable or January 1, 1970, whichever is later. (Notwithstanding anything herein to the contrary, for Participants whose Disability Retirement Dates commenced prior to May 24, 1983, in accordance with Section D of Article ~~IV~~ VI, the Base Index shall be determined as of January 1 immediately following his 50<sup>th</sup> birthday. For Participants whose Disability Retirement Dates commenced on and after May 24, 1983 in accordance with Sections C and D of Article ~~IV~~ VI, the Base Index shall be determined as of January 1 immediately following his 60<sup>th</sup> birthday.) If the Bureau of Labor Statistics subsequently adjusts the basis on which the Consumer Price Index is determined, the Base Index shall be adjusted as of the next following January by multiplying it by the ratio that the Consumer Price Index for said January on the new basis bears to the Consumer Price Index for said January on the prior basis.

- (g) Current Index means the Consumer Price Index for January of the current calendar year.
2. On May 1, 1971 and on May 1 thereafter, there shall be determined a cost of living benefit for each Participant, Contingent Annuitant, Spouse and Beneficiary to whom an annual pension, or a disability benefit which is determined in accordance with Sections A, B, C or D ~~of~~ of Article VI is then payable. (Notwithstanding anything herein to the contrary, for Participants whose Disability Retirement Dates commenced prior to ~~May 24~~ May 24, 1983, in accordance with Section D of Article VI, the Base Index shall be determined as of January 1 immediately following his 50<sup>th</sup> birthday. For Participants whose Disability Retirement Dates commenced on and after May 24, 1983 in accordance with Sections C and D of Article VI, the Base Index shall be determined as of January 1 immediately following his 60<sup>th</sup> birthday.) The cost of living benefit on any May 1 for a Participant, Contingent Annuitant, or Beneficiary shall be equal to the excess of (a) over (b) where:
- (a) is equal to his Base Pension or Base Disability Benefit, whichever is applicable, multiplied by the quotient obtained by dividing the Current Index by the Base Index applicable to such Base Pension or Base Disability Benefit; and
- (b) is his Current Pension or Current Disability Benefit, whichever is applicable.

Each such payee shall be eligible for an additional amount of annual pension or disability benefit equal to the Cost of Living Benefit so determined, if any, provided that such additional annual pension may be cancelled or such additional disability benefit reduced in accordance with the terms of paragraph 3, below and provided further that such cost of living benefit shall not exceed 3% of his Current Pension or Current Disability Benefit whichever is applicable, prior to the determination of the cost of living benefit nor shall it increase his Current Pension or Current Disability Benefit to more than 200% of his Base Pension.

3. If on any May 1, the Current Pension of a Participant, Contingent Annuitant, Spouse or Beneficiary or the Current Disability Benefit exceeds the amount described in subparagraph (a) of paragraph 2, above, for him as a result of a decline in the Consumer Price Index, a portion of the annual pension payable to such payee equal to the excess shall be cancelled or a portion of the disability benefit reduced; provided, however, that the amount cancelled or reduced shall not exceed 3% of his Current Pension or Current Disability Benefit prior to such cancellation nor shall it reduce his Current Pension or Current Disability Benefit to less than his Base Pension.
4. Notwithstanding anything herein to the contrary, the cost of living benefit shall be applicable only to those Participants whose annual pension is determined in accordance with Article IV, V, IX or whose disability benefits are determined in accordance with Sections A, B, C or D of Article VI.
5. Each Participant who was receiving an annual pension or disability benefit prior to ~~March 21~~ March 21, 1967, who is still receiving such type of payment as of January 1, 1982, will be eligible for a one-time Cost-of-Living Benefit increase as of such latter date. This Benefit increase will be payable with each benefit payment made to such Participant on

and after January 1, 1982, and shall remain payable unless the City deems the increase should be eliminated due to a sufficient decline in the Consumer Price Index. This one-time increase will be determined by the following formula:

Participant's Base Pension (without regard to any Social Security Yearly Amount reduction) multiplied by 75% of the ratio the cost-of-living benefit being paid immediately prior to January 1, 1982 bears to the Participant's Base Pension; such resulting amount then reduced by the cost-of-living benefit payable.

## ARTICLE V

### TERMINATION OF EMPLOYMENT

#### Section A. Refund of Participant's Pension and Disability Contributions

1. A Participant may elect, on or after his date of Termination of Employment, to receive a cash refund equal to his Participant's Pension and Disability Contributions made under the Plan together with Credited Interest thereon to the date he makes such an election. Such cash refund shall be in lieu of all other rights and benefits of the Participant under the Plan.

#### Section B. Retirement Benefit

1. If a Participant does not make the election of a cash refund in accordance with Section A, above, a Participant will be entitled to receive an annual pension commencing on his 56<sup>th</sup> birthday. The amount of such Participant's pension shall be determined by (a) or, if applicable, (b) below:
  - (a) If the Participant has ~~les~~ less than 10 years of Credited Service his annual pension shall be determined by applying his Participant's Pension Contributions together with Credited Interest to an appropriate factor contained in Table E-2 attached to this Plan.
  - (b) If the Participant has 10 or more years of Credited Service he will be 100% vested in his accrued retirement benefit. Such benefit will be determined in accordance with paragraph 1 Section A of Article IV.

A Participant who has 10 or more years of Credited Service may elect to have his pension commence prior to age 56 but not earlier than age 50. If a Participant elects to receive his pension prior to age 56 he shall receive an amount of pension determined in accordance with subparagraph (b) above, adjusted by multiplying by the appropriate early retirement Adjustment Factor in Table B-1.

2. Any Participant who is on leave of absence prior to January 1, 1974 must return to active service with the City of Alexandria for a period of at least 12 months to become eligible to vest in his accrued retirement benefit.

#### Section C. Repayment of Refund

1. A Participant, who is ~~re-employed~~ reemployed with 24 months of his termination of employment, whose accrued retirement benefit was forfeited in accordance with the preceding ~~section~~ Section may repay the Plan within 24 months of his re-employment an amount equal to the cash refund he received plus 6% interest per annum on this amount from the date the refund was made until the date of repayment. Upon repayment of this amount, the Participant shall have his prior accrued retirement benefit restored to him.

## ARTICLE VI

### DISABILITY BENEFITS

#### Section A. Eligibility for a Disability Benefit on Account of Service-Connected Total and Permanent Disability

1. A Participant will be eligible for a disability benefit commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties of all jobs for which he is otherwise qualified or any job for which he could become qualified by rehabilitation or retraining, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician(s) selected by the City, and
  - (b) he has been so disabled for a period ~~of~~ of six consecutive months, and
  - (c) his disability has been ruled by the Virginia State Industrial Commission as total and permanent and is compensable as Workmens' Compensation, and the Participant must be receiving Social Security disability benefits.

#### Section B. Eligibility for a Disability Benefit on Account of Non-Service-Connected Total and Permanent Disability

1. A Participant will be eligible for a disability benefit commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties of all jobs for which he is otherwise qualified or any job for which he could become qualified through rehabilitation or retraining, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician(s) selected by the City, and
  - (b) he has been so disabled for a period of six consecutive months,
  - (c) the Participant must be receiving Social Security disability benefits.

#### Section C. Eligibility for a Disability Benefit on Account of Service-Connected Partial Disability

1. A Participant will become eligible for a disability benefit as a result of a service-connected partial disability commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties he was assigned by the City at the time of suffering such illness or injury, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician(s) selected by the City,

- (b) his disability has been ruled by the Virginia State Industrial Commission as partial and is compensable as Workmen's Compensation, and
- (c) his disability is certified by the City as a service-connected partial disability, and
- (d) the City determines that such disability is not reasonably correctable nor subject to rehabilitation, the cost of which will be borne by the City.

Section D. Eligibility for a Disability Benefit on Account of Non-Service-Connected Partial Disability

1. A Participant will become eligible for a disability benefit as a result of a non-service-connected partial disability commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties of the job he was assigned by the City at the time of suffering such illness or injury, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician selected by the City,
  - (b) he has been a Participant under this Plan (including any participation under the ~~Pre Existing~~ Prior Plan) for at least five years at the commencement of his partial disability, and
  - (c) his disability is certified by the City as a non-service-connected partial disability, ~~and~~
  - (d) the City determines that such disability is not reasonably correctable nor subject to rehabilitation, the cost of which will be borne by the City, and
  - (e) he is contributing Participant Disability Contributions,

Section E. Certain Excluded Disabilities

1. Notwithstanding anything in this Plan to the contrary, a Participant shall not become eligible for a disability benefit under this Article VI if this total and permanent disability or his partial disability results from, or consists of addiction to narcotics or conviction of participation in a felonious act.

Section F. Amount of Disability Benefits

1. The annual amount of disability benefit payable to a Participant in accordance with Section A, above, will be equal to the greater of 70% of the Participant's final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV.
2. The annual amount of disability benefit payable to a Participant in accordance with Section B, above, will be equal to the greater of 66-2/3% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV.

3. The annual amount of disability benefit payable to a Participant in accordance with Section C, above, will be equal to the greater of 66-2/3% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV reduced by an amount determined in 5 below. Such reduction shall be applied on a monthly basis in an amount equal to 1/12 of the yearly amount so determined.
4. The annual amount of disability benefit payable to a Participant in accordance with Section D, above, will be equal to the greater of 50% of the Participant's Final Average Earnings ~~of~~ or his accrued benefit as determined in Sections A and E of Article IV, reduced as of July 1, each year, by a yearly amount determined in 5 below.

Such reduction shall be applied on a monthly basis in an amount equal to 1/12 of the yearly amount so determined.

5. The total of (a) and, if applicable, (b), where
  - (a) is equal to one-half of the amount of income received which exceeds the difference between (i) and (ii):
    - (i) the amount of pay to which he would have been entitled had his employment progressed in the same rank and grade he had attained had he not been disabled, and
    - (ii) the amount of his Disability Benefits otherwise receivable but for this reduction.

Incurred cost-of-living adjustments will be reflected in determining the amount of pay to which such person would have been entitled had his employment progressed in the same rank and grade he had attained. No step increases for such rank and grade shall be considered for purposes of this program. Such a reduction in benefits shall continue until his Normal Retirement Date, had he remained uninjured and continued his employment. For purposes of this ~~section~~ Section, 'income' means "earned income received from employment (including any voluntary salary reductions for retirement of fringe benefit plans) and/or self-employment income less deduction for social security taxes only."

- (b) for a Participant disabled in accordance with Section C is the annual amount of periodic payments payable if any, under the Workmen's Compensation Act of the Commonwealth of Virginia.

#### Section G. Gainful Employment

1. Any occupation or employment engaged in by a Participant who is disabled, except for purposes of rehabilitation as approved by the City, shall be considered as gainful employment.
2. If any person is entitled to and receives a Disability Benefit hereunder and becomes subsequently gainfully employed, whether part time or full time, his Disability Benefit shall be reduced by one-half of the amount of income received which exceeds the difference between (i) the amount of pay to which he would have been entitled had his employment progressed in the same rank and grade he had attained had he not been

disabled, and (ii) the amount of his Disability Benefit. Incurred cost-of-living adjustments will be reflected in determining the amount of pay to which such person would have been entitled had his employment progressed in the same rank and grade he had attained. No step increases for such rank and grade shall be considered for purposes of this program. Such a reduction in benefits ~~hall~~ shall continue until his Normal Retirement Date, had he remained uninjured and continued his employment.

For purposes of this ~~section~~ Section, 'income' means "earned income received from employment (including any voluntary salary reductions for retirement or fringe benefit plans) and/or self-employment income less deduction for social security taxes only.

Notwithstanding the foregoing, any person who was receiving disability retirement benefits on the date immediately prior to the adoption of the amendments to this Plan effective May 24, 1983 shall have a one-time affirmative election to return to the provisions of Article VI, Section F, Paragraph 5(a) and Article VI, Section G, ~~Paragraph 2 Paragraph 2~~ Paragraph 2 in effect at such date, as those ~~sections~~ Sections are restated in Appendix 1 attached hereto. Such election, to be effective, must be within thirty (30) days after receipt of the notification of the right to make the election from the Personnel Department. For disability retirees after May 24, 1983 (and those who do not elect to return to such pre-amendment provisions), the offset shall be one-half of the income receive which exceeds the difference between (i) and (ii) as set forth above.

Any Participant entitled to additional benefits for the period May 24, 1983 to the date of this Amendment as a result of this change shall promptly receive a lump-sum payment from CG for such amount.

Any person receiving a Disability Benefit under this Plan shall, on or before May 1 of each year, provide to the Plan Administrator a true and correct copy of all IRS Forms W-2, 1099 MISC and K-1, showing income received, or a statement under oath as to whether he has received compensation for services performed as an employee, sole proprietor, partner or independent contractor in the previous calendar year. Upon request such Participant will be required to submit a true and accurate copy of his federal income tax return for such taxable year. Refusal to provide such documents shall be grounds for termination of benefits, until such documents are produced. Production of the documents shall be required only until such time as the person would have been eligible for Normal Retirement, had he remained uninjured and continued his employment. Nothing contained in this ~~section~~ Section shall limit or restrict the right of any person to receive Workmen's Compensation benefits under Title 65.1 of the Code of Virginia as amended.

3. Effective For Disability Retirement Dates On or After May 24, 1983 – Notwithstanding any other provision of this Plan, any Participant receiving benefits or eligible to receive benefits under this Plan as a result of a disability shall be required to accept employment in any position offered by an employer for which the Participant is qualified or for which the City is willing to assume the costs for the ~~restraining~~ retraining and rehabilitation necessary to enable the Participant to qualify, if the City, in its sole judgment, determines that such employment is appropriate under the circumstances and if the locus of employment is suitable to the Participant's residence.

The provisions of the preceding paragraph shall be subject to the following conditions:

- (a) Prior to any action to provide such alternative employment,
  - (i) the Personnel Department shall present a detailed job description to an independent physician selected by the City (who shall be the treating physician if the disability was covered by the Workmen's Compensation Act) for review and a determination that the Participant is medically able to undertake such employment;
  - (ii) the Personnel Department shall notify the Participant of the particulars of the alternative employment (including the job location and a copy of the job description) and a copy of the physician's determination that the Participant is able to undertake the offered employment;
  - (iii) if the Participant believes he has just cause to refuse to accept such alternate employment, he shall notify the Personnel Department in writing of such reason or reasons for refusal, no later than ten (10) days from receipt of the notification required by the preceding subparagraph;
  - (iv) should the Personnel Director, after reviewing the Participant's written statement, still believe the alternative employment is appropriate and suitable, he shall respond in writing to the Participant, stating the reasons supporting the determination of appropriateness and suitability, particularly responding to the Participant's written statement of reasons;
  - (v) should the Participant continue to refuse to accept the alternate employment, the issue shall be determined in accordance with the procedures of paragraph (b)(i) or (ii).
- (b) (i) In the event the Participant who refuses employment is, in addition, entitled to receive benefits under the Workmen's Compensation Act, the decision as to whether his refusal is justifiable shall be presented to the Industrial Commission of Virginia for determination under the provisions of Section 65.1-63, Code of Virginia, and the decision of the Industrial Commission shall also be binding on the question of termination of disability retirement benefits, as set forth in Article VI, Section H, Paragraphs 2(e) and 3(d). If the Industrial Commission should fail or refuse to act on this question, then the determination shall be made pursuant to sub-paragraph (ii) below.
- (ii) If a Participant entitled to disability benefits under this Plan is not entitled to receive benefits under the Workmen's Compensation Act of the Commonwealth of Virginia, the decision as to whether his refusal of alternative employment is justifiable shall be presented to the City Attorney who shall act as an impartial arbitrator, based upon the entire record, under the standards utilized by the Industrial Commission under the provisions of Section 65.1-63, Code of Virginia. The City Attorney shall issue a written opinion specifying his reasoning and precedential support, if any, for his decision. The City Attorney may request either the Participant or the Personnel Director, or both, to present additional information prior to rendering his decision.

Section H. Commencement and Cessation of Disability Benefit.

1. - Disability benefits will be paid in monthly installments equal to 1/12 of the annual amount commencing on the Participant's Disability Retirement Date.
2. With respect to a Participant who is permanently and totally disabled in accordance with Section A or B of this Article, disability benefits will cease on the first day of the month coinciding with or next following the earliest of the dates specified below:
  - (b) the date the City determines, on the basis of a medical examination by an independent diagnostic clinic/physician(s) selected by the City, that the Participant is no longer permanently and totally disabled,
  - (c) the date the Participant refuses to undergo medical examination requested by the City, provided that the Participant may not be required to undergo such medical examination more often than twice a year,
  - (d) the Participant's Normal Retirement Date (see Article IV),
  - (e) the date that the Participant's disability payments under Social Security cease or
  - (f) the date the Participant refuses any employment which the Participant is required to accept pursuant to Article VI. G.3 of this Plan,
  - (g) the date the Participant returns to regular occupation or employment.
3. With respect to a Participant who is partially disabled in accordance with Sections C or D of this Article, disability benefits will cease on the first day of the month coinciding with or next following the earliest of the dates specified below:
  - (a) the date the City determines, on the basis of a medical examination by an independent diagnostic clinic/physician(s) selected by the City, that the Participant is no longer partially disabled.
  - (b) the date the Participant refuses to undergo a medical examination requested by the City, provided the Participant may not be required to undergo such a medial examination more often than twice a year,
  - (c) the date the Participant refuses to submit a report of his total earnings from gainful employment in accordance with Section G of this article, ~~or~~
  - (d) the date the Participant refuses any employment which the Participant is required to accept pursuant to Article VI.G.3 of this Plan, or
  - (e) ~~The~~ the Participant's Normal Retirement Date (see Article IV).

Section I. Cash Settlement Option

1. The Participant may at the option of the City, receive a cash settlement in an amount agreed upon by the Participant and the Employer prior to his Disability Requirement Date

in lieu of the disability benefit which he would otherwise be entitled to, provided such disability is due to a partial or total service-connected disability. Any such cash settlement shall not be in excess of the Value of the Participant's disability benefit on his Retirement Date, as determined in accordance with definition 23, Article I assuming the normal form of pension described in Article IX is effective.

ARTICLE VII

SPOUSE BENEFITS

Section A. Eligibility

Upon the death of a Participant, his Spouse will receive a Spouse Benefit as described below if the following conditions are met when the Participant dies:

- (A) The Participant had a Spouse to whom the Participant had been married at least one full year prior to his death.
- (B) The Participant's Termination of Employment Date, Early Retirement Date, Disability Retirement Date or Normal Retirement Date had not yet occurred.
- (C) One of the following must be applicable:
  - (1) The Participant dies in the line of duty, or
  - (2) The Participant has accrued at least 5 years of Service.

Section B. Amount of Spouse Benefit

If benefit payments become payable to a Spouse in accordance with this Section, the yearly amount will be equal to the greater of (A) or (B):

- (A) 50% of the pension that the deceased Participant had accrued to his date of death reduced by any Social Security benefits that become payable to his Spouse, provided, however, that such Social Security reduction shall be limited solely to the Social Security widow's benefit – no deduction will be made for any burial allowance or for any benefits received for dependent children. Any change in the Social Security status of a Spouse receiving such widow's benefit will cause a redetermination of the Spouse's benefit.
- (B) \$100 per month

Section C. Payment of Spouse Benefit

Spouse Benefit payments will be payable monthly with each payment equivalent to 1/12 of the yearly amount. The initial monthly payment will be made as of the first of the month next following the Participant's death, with subsequent monthly payments being made as of the first day of each month thereafter until the earlier of:

- (1) the Spouse's death,
- (2) the Spouse's remarriage.

In the event of remarriage there will be a lump sum payment made to the Spouse equal to 12 monthly payments, less any payments made after the date of remarriage, and no further payments will be made.

When the final Spouse Benefit payment has been made, an amount, equal to the excess, if any, of the Participant's Pension Contributions with Credited Interest thereon to his date of death over, the sum of the Spouse Benefit payments plus any lump sum payments made under this Section C, will become payable to the Spouse if still living, or if not, to the Participant's Beneficiary.

No such refund, however, will be paid if the Participant had previously elected a refund of his Participant's Pension Contributions with Credited Interest.

## ARTICLE VIII

### DEATH BENEFITS

#### Section A. Death Benefits Prior to Retirement

1. Upon the death of a Participant prior to the date his annuity pension commences, a death benefit will be payable in accordance with (A) or (B) below whichever applies,
  - (A) If if a married Participant's Spouse was eligible to receive a Spouse Benefit in accordance with Article VII then the death benefit will be paid in accordance with that Article,
  - (B) If if a Participant is not eligible for a Death Benefit in accordance with (A) above then the Participant's Beneficiary will become eligible to receive a death benefit, in a lump sum, in an amount equal to the Participant's Pension and Disability Contributions together with Credited Interest thereon to the date of the Participant's death,

provided, however, that in the case of a Participant who, as of the date of his death, was receiving a disability benefit, had a Contingent Annuitant option in effect in accordance with Section B of Article IX and whose death occurs prior to his Normal Retirement Date, any death benefit payable will be made in accordance with the terms of such option.

2. No such death benefit, however, will be payable if the Participant dies on or after his Normal Retirement Date and before his annual pension commences if either the Contingent Annuitant option or the Ten Year Certain and Life Annuity option is in effect on the date of death. In such event, any death benefit will be determined in accordance with either Section B or Section C of Article IX, whichever is applicable.

#### Section B. Death Benefits After Retirement

1. Upon the death of the Participant (or, if the Contingent Annuitant option set forth in Section B of Article IX is in effect, upon the death of the survivor of the Participant and his Contingent Annuitant) on or after the date as of which the Participant's annual pension commences, a death benefit will be paid to the Participant's Beneficiary, in a lump sum, in an amount equal to the excess, if any, of the Participant's Pension and Disability Contributions together with Credited Interest thereon to the date the Participant's annual pension commenced over the sum of the pension payments that have become payable.
2. In no event will the death benefit described in paragraph 1, above, become payable if the Ten Year Certain and Life Annuity option set forth in Section C of Article IX is in effect on the date of the Participant's death. In such event, any death benefit will be determined in accordance with Section C of Article IX.

### Section C. Beneficiary

1. The Participant will designate a Beneficiary and may change from time to time his designation of Beneficiary by filing with the City written notice thereof on a form satisfactory to the City. Such designation or change of designation of Beneficiary shall take effect as of the date of execution of such notice thereof whether or not the Participant be living at the time of such filing but without prejudice to this Plan on account of any payments made hereunder before receipt of such notice by the City.
2. In case of death any benefits hereunder payable to a Beneficiary will be paid to the payee most recently designated by the Participant as Beneficiary provided the name of the Beneficiary has been filed with the City. If no name has been filed or if the named Beneficiary does not survive the Participant, the benefits which would have otherwise been paid to the named Beneficiary shall, at the option of the City, be paid to one of the following: the Participant's widow or widower, surviving children in equal shares, or the executor or administrator of the Participant.
3. Payment made to any person set out in the preceding paragraph will release the Pension Fund from all further liability to the extent of such payment.
4. If the Beneficiary designated is the executor or administrator of the Participant or a corporation, association, partnership or trustee, any pension payments to which the Beneficiary becomes entitled will be commuted and paid in one sum. If a Beneficiary dies after having become entitled to receive pension payments, any remainder of such will, unless otherwise provided by the Participant, be commuted and paid in one sum to the executor or administration of the Beneficiary. A Participant may elect that any pension payments to which his Beneficiary becomes entitled will be commuted and paid in one sum; or in the absence of such election and unless otherwise provided by the participant, a Beneficiary who is entitled to receive the pension payments may elect that the remainder of such payments be commuted and paid in one sum. Any such commutation will be made in accordance with the terms of Definition 23 of Article I.

### Section D. Death Benefits: Limitations

1. In the event of a Participant's death after the commencement of benefits hereunder in accordance with a method of distribution permitted under Article IX, Section F, the death benefit, if any, payable to his Beneficiary shall be distributed in accordance with the method of distribution already in effect.
2. Notwithstanding anything contained herein to the contrary, all death benefits paid pursuant to this Article VIII shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), which requirements are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. The preceding sentence shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

3. Notwithstanding anything contained herein to the contrary, in the event a Participant has validly elected a method of distribution other than one permitted under Article VIII, Section 2, payments hereunder shall be made according to such method of distribution, provided that (1) such method was elected by the Participant prior to January 1, 1984, and (2) such method was permitted by law and by the terms of the Plan as of December 31, 1983.

## ARTICLE IX

### NORMAL AND OPTIONAL FORMS OF PENSION

#### Section A. Normal Form of Pension

1. Except in the case of a disability benefit payable prior to the Participant's Normal Retirement Date, the normal form of pension under this Plan is a modified cash refund annuity which provides that lifetime pension payments in equal monthly installments will be payable to a Participant commencing on his retirement date (commencing on the Participant's Normal Retirement Date in the case of a Participant receiving disability benefits under the Plan) and terminating with the last payment payable preceding his death, ~~the~~ The Participant's Beneficiary will receive a lump sum death benefit in an amount ~~equal to the excess, if any, of the Participant's Pension and~~ equal to the excess, if any, of the Participant's Pension and Disability Contributions together with Credited Interest thereon to the Participant's retirement date over the sum of the pension payments that have become payable.
2. In lieu of receiving his pension on the normal form of payment described above, the Participant may elect to receive a pension of equal value under an optional form of pension in accordance with the further terms of this Article provided, however, that a Participant who becomes eligible for a disability benefit may elect, prior to his Disability Retirement Date, to receive a disability benefit of equal value in accordance with ~~Section B~~ Section B below.
3. The Participant may elect, or revoke an option at any time before his Retirement Date by filing written notice with the Employer. However, a Participant may not elect more than one option to be effective at the same time. No such election or revocation can be made after the Participant's Retirement Date.

If a Participant elects an optional form of payment, the amount of pension benefit payable to him must be more than 50% of the present value of the pension benefit payable to the Participant had the option not been elected, unless the alternate recipient is the Participant's spouse; otherwise, such election will be inoperative.

#### Section B. Contingent Annuitant Option

1. Prior to his Early Retirement Date or Normal Retirement Date, whichever is earlier, or in the case of a Participant who is disabled, prior to his Disability Retirement Date, a Participant may elect the Contingent Annuitant option and designate a Contingent Annuitant. Such Contingent Annuitant shall not be more than 30 years younger than the Participant. Under this option, the Participant will receive a reduced annual pension (or disability benefit whichever applies) which, after his death, will be continued in the same amount or two-thirds or one-half thereof (as specified in the election) and paid to the Contingent Annuitant for life.
2. On the date a Participant's annual pension commences, if the Contingent Annuitant option is then in effect, the amount of annual pension (or disability pension) to which the Participant is entitled will be determined by multiplying the amount which would otherwise be payable to him by the appropriate Adjustment Factor attached to this Plan.

3. Upon the death of a Participant on or after his annual pension (or disability pension) commences, if the Contingent Annuitant option is in effect and if the Contingent Annuitant survives the Participant, the annual pension (or disability pension) in the amount that was payable to the Participant, or two-thirds or one-half thereof if so specified in the election, will be continued and paid to the Contingent Annuitant as long as he lives.
4. If either the Participant or the Contingent Annuitant dies before the Participant's annual pension (or disability pension) commences, this option will be inoperative except as may be provided in the following paragraph.
5. In the event of the death of a Participant on or after his Normal Retirement Date, and before his Postponed Retirement Date, if the Contingent Annuitant survives to the first day of the month next following the Participant's death, the Contingent Annuitant will become eligible to have an annual pension provided for him, under which an annual pension will be payable to the Contingent Annuitant commencing on such first day of the month and continuing as long as he lives. Such annual pension will be in the same amount as that which would have been payable to the Contingent Annuitant had the Participant's Postponed Retirement Date been such first day of the month and had the Contingent Annuitant survived him.
6. If in the case of a disabled Participant such Participant ceases to be eligible for disability benefits for reasons other than death, this option will be inoperative.
7. If the Contingent Annuitant dies before the Participant, or, if in accordance with the terms of divorce decree or legal separation, the Contingent Annuitant has waived all rights to benefits under the Plan, this option will become inoperative and the Participant's annual pension (or disability benefit) will be adjusted back to the full amount.
8. In the case of a Contingent Annuitant who is receiving payments hereunder on account of a disabled Participant's death, upon the death of the Contingent Annuitant a death benefit will be paid to the Participant's Beneficiary, in a lump sum, in an amount equal to the excess, if any, of the Participant's Pension and Disability Contributions with Credited Interest thereon to the earlier of the date of the Participant's death or the Participant's Normal Retirement Date over the sum of the payments that have become payable.
9. The Insurance Company reserves the right to make this option inoperative with respect to any Participant if the annual pension to the Contingent Annuitant would be less than \$60.00.
10. A Participant's election, revocation or change under this ~~section~~ Section shall be made by written notice filed with the City. Only one option described in this Article IX may be elected by the Participant.

#### Section C. Ten Year Certain Option

1. Prior to his Early Retirement Date or Normal Retirement Date, whichever is earlier, a Participant may elect the Ten Year Certain option. Under this option the Participant will receive a reduced annual pension with the provision, however, that the annual pension in such reduced amount will be payable for a period of at least ten years.

2. On the date a Participant's annual pension commences, if the Ten Year Certain option is in effect, the annual pension to which the Participant is entitled will be determined by multiplying the amount which would otherwise be payable to him by the appropriate Adjustment Factor attached to this Plan.
3. Upon the death of a Participant within the ten-year period beginning on the date his annual pension commences, if the Ten Year Certain option was in effect on the date his annual pension commenced, the annual pension in the amount that was payable to the Participant will be continued and paid to his Beneficiary during the remainder of such period.
4. This option will be inoperative if the Participant dies before his Early Retirement Date or Normal Retirement Date, whichever is earlier.
5. In the event of the death of a Participant on or after his Normal Retirement Date and before his Postponed Retirement Date, if the Ten Year Certain option is in effect, his Beneficiary will become eligible to have an annual pension provided for him, under which Retirement Annuity payments will be payable to the Beneficiary during the ten-year period commencing on the first day of the month next following the Participant's death. Such annual pension will be in the same amount as the annual pension that would have been payable to the Participant had his Postponed Retirement Date been on such first day of the month.
6. A Participant's election and revocation under this ~~section~~ Section shall be made by written notice filed with the City. Only one option described in this Article IX may be elected by the Participant.

Section D. Social Security Option

1. For the purposes of this option, the following terms are defined:
  - (a) Social Security Yearly Amount. A ~~participant's~~ Participant's Social Security Yearly Amount is the yearly Primary Insurance Amount, or portion thereof, which the Participant is expected to receive under the Social Security Act.
  - (b) Social Security Commencement Date. A Participant's Social Security Commencement Date is the first day of the month coinciding with or next following the date his Social Security Yearly Amount is expected to commence or the first day of the month next following his 65<sup>th</sup> birthday, whichever is earlier.

When a Participant elects this option, his Social Security Yearly Amount and Social Security Commencement Date will be determined conclusively by the City on the basis of the Social Security Act as then constituted.

2. Prior to the date a Participant's annual pension commences, if such date precedes his Social Security Commencement Date, he may elect the Social Security option. Under this option, the amount of the annual pension payable to the Participant before his Social Security Commencement Date will be increased and the amount of the annual pension payable to the Participant on and after such date will be reduced.

3. The yearly amount of such increased Retirement Annuity payments will be equal to the yearly amount of Retirement Annuity payments which would have been payable to the Participant if this option had not been elected plus his Social Security Yearly Amount multiplied by the appropriate Adjustment Factor attached to this Plan.
4. The yearly amount of such reduced Retirement Annuity payments will be equal to the increased yearly amount of Retirement Annuity payments payable to the Participant before his Social Security Commencement Date minus his Social Security Yearly Amount.
5. Prior to the date his annual pension commences, a Participant may revoke this option.
6. The Insurance Company reserves the right to modify the terms of this option with respect to any Participant if the reduced annual pension payable to him would be less than \$60.
7. A Participant's election and revocation under this ~~section~~ Section shall be made by written notice filed with the City. Only one option described in this Article IX may be elected by the Participant.

Section E. Payment of Retirement Income to Participant

A Participant's retirement income will be payable monthly with each payment equivalent to 1/12 of the yearly amount. The first of such monthly payments will be made at the Participant's Retirement Date, with subsequent monthly payments being made at the first of each month thereafter until the Participant's death occurs.

Unless the Participant elects otherwise, the payment of retirement income shall commence not later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:

- (A) the Participant attains the earlier of age 65 or the normal retirement age specified, if different, or
- (B) the tenth anniversary of the year in which the Participant commenced participation in the Plan occurs, or
- (C) the Participant terminates his Service with the Employer.

Section F. Minimum Distribution Requirements.

Notwithstanding anything contained herein to the contrary, all benefits paid pursuant to this Article IX shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), and thus, the following rules shall apply to the extent required thereunder:

1. Except as provided in subsection 8, the accrued benefit of a Participant shall be distributed (or shall commence being distributed) no later than the April 1<sup>st</sup>  
~~Notwithstanding any provision to the contrary, payment of retirement income must commence no later than the first day of April of the~~  
~~calendar year~~ following the later of (1) ~~the~~ (A) the calendar year in which the such Participant attains age 70  $4/2, 1/2$  or (2) ~~the~~ (B) the calendar year in which the Participant retires; such Participant terminates employment with the Employer ("Required Beginning Date").

2. Section F. Limits on Payment Options ~~Payments~~ As of the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date ("Distribution Calendar Year"), distributions, if not made in a lump sum payment, may be made only (1) over-sum, may only be made over one of the following periods (or a combination thereof): (1) the life of the Participant or, (2) the life joint lives of the Participant and a designated Beneficiary, or (2) over a term beneficiary, (3) a period certain not extending beyond to exceed the life expectancy of the Participant, or (4) a period certain not extending beyond the joint and last survivor expectancy or the joint life expectancies of the Participant and a designated beneficiary. Beneficiary. Notwithstanding the foregoing, distribution shall in no event extend beyond the maximum permissible period described in Treasury Regulation Section 1.401(a)(9)-2.
3. Section G. Minimum Amounts to be Paid For purposes of calculating the applicable life expectancy, the following rules shall apply:
- (A) If the Participant's entire interest is to be paid in other than a lump sum, then the amount to be paid each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire interest by the life expectancy of the Participant or joint and last survivor expectancy of the Participant and designated beneficiary. Life expectancy and joint and last survivor expectancy are computed Life expectancies shall be calculated pursuant to Treasury Regulation Section 1.401(a)(9)-1, by the use of the return multiples contained in section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Treasury Regulation Section 1.72-9, or in such other manner as may otherwise be prescribed or permitted by law.
- (B) For the Distribution Calendar Year, the Participant's life expectancy may be recalculated no more frequently than annually, however, the life expectancy of a non-spouse beneficiary may not be recalculated shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. For the Distribution Calendar Year, the designated Beneficiary's life expectancy shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. Notwithstanding the foregoing, however, if annuity payments commence before a Participant's Required Beginning Date, life expectancies shall be determined on the Participant's or Beneficiary's (as the case may be) attained age in the year such payments commence.
4. If the Participant's spouse is not the designated beneficiary, the method of payment selected must assure that at least 50 percent of the present value of the amount available for payment would be payable within the life expectancy of the Participant. accrued benefit is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:
- (A) If the Participant dies after payment of his interest has commenced, the remaining portion of such interest shall be paid at least as rapidly as under the method of payment being used prior to the Participant's death. The annuity distributions must be paid in periodic payments made at intervals not longer than one year.

- (B) ~~If the Participant dies before payment of his interest commences, the Participant's entire interest must be paid no later than 5 years after~~ The distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in Section 401(a)(9)(A)(ii) or Section 401(a)(9)(A)(iii) of the Code, whichever is applicable.
- (C) The life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy.
- (D) Once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted.
- (E) Payments must be nonincreasing or, alternatively, must increase only as follows to provide cash refunds of employee contributions, if any, upon the Participant's death except to the extent that an election is made to receive payment in accordance with (a) or (b) below:
- (F) (a) if any portion The amount which must be distributed on or before the Participant's Required Beginning Date shall be the payment which 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., bimonthly, monthly, semiannually or annually.
5. ~~Any part of the Participant's interest is payable to a designated beneficiary, such payments shall be made in substantially equal installments over the life or life expectancy of the designated beneficiary and shall commence no later than 1 year after the Participant's death; which is in the form of an individual account shall be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and accompanying Treasury Regulations.~~
6. ~~(b) if, however, the designated beneficiary is the Participant's surviving spouse, the date on which payments are required to begin in accordance with (a) above is not required to be earlier than the date on which the Participant would have attained age 70 1/2; but, if the spouse dies before such payments begin, subsequent payments shall be made as if the spouse had been the Participant. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.3(h) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.~~
7. Section H. TEFRA Transaction Rule Elections Notwithstanding anything contained herein to the contrary, in the event that the distribution of benefit payments to a Participant commences after he has attained age 70½, the Participant's accrued benefit shall be actuarially increased to take into account the period after age 70½ during which

benefit payments were not made. The actuarial increase shall begin on the April 1<sup>st</sup> following the calendar year in which the Participant attains age 70½ and shall end on the date on which benefits commence after retirement in an amount sufficient to satisfy the requirements of Section 401(a)(9) of the Code.

8. ~~Notwithstanding the other requirements of this article and subject~~ Notwithstanding anything contained herein to the contrary, in the event that a Participant has validly elected a method of distribution other than one permitted under this Article IX, Section F, payments hereunder shall be made according to the Joint and Survivor annuity requirements, distribution on behalf of any Participant may be made in accordance with all of the following requirements (regardless of when such distribution commences):(A) The distribution by the Plan is one which would not have disqualified such Plan under section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.(B) The distribution is in accordance with a method of distribution, provided that (1) such method was elected by the Participant prior to January 1, 1984, and (2) such method was permitted by law and by the terms of designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a beneficiary of such Participant.(C) Such designation was in writing, was signed by the Participant or the beneficiary, and was made before January 1, 1984.(D) Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority. The method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution would be payable within the life expectancy of the Participant. Section G. Direct Rollover Option

~~A distribution upon death will not be covered by this transition rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.~~(a) This Section I applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

~~For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant or the beneficiary, to whom~~(b) Definitions

- (1) "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 being made, will be presumed to have designated the method of distribution required

~~under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (A) and (E) above.~~

~~If a designation is revoked any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code as amended. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life); any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Code received after December 31, 1998; and 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).~~

- (2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) “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 Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) “Direct rollover” means payment by the Plan to the eligible retirement plan specified by the distributee.

## ARTICLE X

### PAYMENT AND FORFEITURE OF BENEFITS

#### Section A. Frequency of Payment

1. Except as may be otherwise provided under this Plan, the Participant's annual pension will be paid in monthly installments equal to 1/12 of the annual amount commencing on his Early Retirement Date, Normal Retirement Date or Postponed Retirement Date, as the case may be, with subsequent payments payable on the first day of each month thereafter, terminating with the last monthly payment prior to the Participant's death.

#### Section B. Small Payments

1. If the Value of a Participant's benefit at his cessation of employment or death prior to commencement of benefits is \$3,500 or less, the Plan Administrator may authorize a lump sum payment of such value in lieu of all future benefits.

#### Section C. Non-Assignability

1. All payments, benefits, and refunds hereunder to a Participant or other payee are for the support and maintenance of such payee and shall not be assigned, commuted or anticipated and shall be free from the claims of all creditors to the fullest extent permitted by law.

#### Section D. Facility of Payment

1. If, in the judgment of the City, any payee is legally, physically or mentally incapable of personally receiving and receipting for any payment due him, such payment or any part thereof may be paid to any person or institution who, in the opinion of the City is then maintaining or has custody of the payee until claim is made by the duly appointed guardian or other legal representative of the payee. Such payments will constitute a full discharge of the liability of the ~~pension fund~~ Pension Fund to the extent thereof.

#### Section E. Misstatements

1. If the date of birth, sex, or any other fact pertaining to a Participant's coverage under this Plan has been misstated, the annual pension will be adjusted to that provided by the City's contributions made on behalf, on the basis of the correct facts, or, at the option of the City, adjustment may be made in the liability under the group annuity contract or contracts. Overpayments will be charged against (to the extent possible), and underpayments will be added to, any further payments with respect to the Participant's coverage under this Plan.

ARTICLE XI

ADMINISTRATION

Section A. Administration

1. The Plan shall be administered by the City.
2. The City shall have such powers as are necessary for proper administration of the Plan, including but not restricted to the following:
  - (a) To prescribe procedures to be followed by Employees in filing application for benefits and for furnishing of evidence necessary to establish Employee's rights to such benefits.
  - (b) To make determinations as to the rights of an Employee applying for or receiving retirement benefits and to afford a mechanism for adjusting the complaint of any individual dissatisfied with any such determination
  - (c) To develop procedures for determining service of Employees and, after affording Employees an opportunity after written notice to make objection with respect thereto, to establish such service in advance of retirement.
  - (d) To authorize all disbursements from the ~~pension fund~~ Pension Fund in accordance with the provisions of this ordinance and to establish necessary procedures therefor.
  - (e) To establish policies and standards and make determinations concerning disability for the purpose of this Plan.
  - (f) To notify Employees at least 90 days prior to Normal Retirement Date of their right to elect the Contingent Annuitant option or Ten Year Certain and Life Annuity option hereunder and the terms thereof.

Section B. Inconsistency with Group Annuity Contract

1. In the case of any inconsistency between the provisions of this Plan and those of any group annuity contract or contracts issued by the Insurance Company, the latter shall govern to the extent required by the Insurance Company in order to provide for effective administration of the Plan

## ARTICLE XII

### AMENDMENT AND TERMINATION OF PLAN

#### Section A. Amendment and Termination

1. While it is the intent of the City that this Plan be permanent, the City necessarily reserves the right to amend from time to time or terminate this Plan, but any such amendment or termination shall not affect in any way the amount or terms of any benefits accrued prior to the effective date of such amendment, unless it is deemed advisable to make such amendment of retroactive effect in order to conform the Plan to the requirements of the appropriate Sections of the ~~federal Internal Revenue~~ Code, or any benefits accrued prior to the effective date of termination of the Plan ~~except as may be required in Section C of this Article~~. In the event this Plan is terminated, the liability of the City under this Plan shall only be to the extent of all Participant's Pension and Disability Contributions which have not been refunded or used to provide benefits plus all benefits under the Plan to the extent funded as of the date of termination for all Participants who are active, retired or disabled or for other payees receiving benefits hereunder.
2. The City shall give notice to Participants prior to making any material changes to this Plan, except those required by statutes, and shall be available to receive and consider comments of Participants as to proposed changes. When the City Staff, City Council or a committee of the City Council has formulated the substance of a proposed material change, notice of the substance of the proposed change will be given Participants at least sixty (60) days before City Council votes on the proposal. This notice will contain a 'plain language' explanation of the substance of the proposed changes. Employees will have access to the Staff during such sixty (60) day period. If requested in writing by at least five (5) Participants, a meeting shall be held between the Staff and interested Participants at which time the Staff will explain the proposal and answer any questions. These questions and areas of concern must be submitted in writing by interested Participants at least five (5) days prior to the scheduled meeting. At least seven (7) days notice shall be given of the time and place of such meeting.
3. In addition to the foregoing, the City shall not hereafter adopt any amendment to this Plan (except where required by law or for tax qualification) which adversely effects benefits to Participants unless the City determines that such amendment includes offsetting benefit improvements of at least actuarially determined equal values. Provided, further that any disability formula benefit changes reflected in any amendment to this Plan shall not affect persons then retired on disability, except where required by law or for tax qualification.

#### Section B. Distribution at Termination

1. In the event this Plan is terminated, the ~~pension fund~~ Pension Fund shall be distributed among the Participants in a manner determined by the City precluding individual discrimination by the purchase of annuities or other equitable means of distribution, provided that if the balance in the ~~pension fund~~ Pension Fund exceeds the amount required to fully fund the benefits accrued to the date of termination for all Participants who are then active, retired or disabled or for other payees who are then receiving benefits hereunder, any such excess shall be returned to the City.

2. In the event there is a termination or a complete discontinuance of contributions under the Plan within the meaning of Section 401(a) of the Federal Internal Revenue Code, each ~~participant~~ Participant shall have a vesting percentage of 100%.

Section C. Restriction of Benefits Upon Early Termination of the Plan

This Section is included in the Plan to conform to the requirements of Treasury Regulation 1.401-4(e):

1. For the purposes of this Section the term Plan Date means the date an Employer becomes covered under the Plan and each later date when the Employer's Plan is changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in the event of subsequent discontinuance of contributions to this Plan.

2. With respect to each Plan Date of an Employer, the term Restricted Participant means any of the Participants whose anticipated yearly amount of retirement income provided by Employer contributions exceeds \$1,500, who were among the 25 highest paid Employees on such Plan Date (including any such high paid Employees who are not Participants at such time but may become Participants):

3. If at any time during the ten year period beginning on a Plan Date the Plan is terminated, the Employer contributions which may be used for the benefit of a Restricted Participant shall not exceed the greatest of the applicable following amounts:

(a) \$20,000.

(b) An amount computed by multiplying 20% of the first \$50,000 of the Participant's average regular annual compensation during his last five years of Service by the number of years for which the full current costs of the Plan have been met since the latest Plan Date, plus, if there is more than one Plan Date to be taken into account, the Employer contributions which would have been applied to provide benefits for the Participant if the Plan had terminated on the day before the latest Plan Date.

(c) If there is more than one Plan Date to be taken into account, the Employer contributions which would have been applied to provide benefits for the Participant if the Plan was in effect on the day before the latest Plan Date had been continued without change.

(d) If the Restricted Participant is an Employee other than a substantial owner (as defined in Section 4022(b)(5) of ERISA) and this is a qualified plan covered by section 4021(a) of ERISA, the dollar amount equal to the Value of the maximum benefit described in section 4022 (b)(3)(B) of ERISA without regard to any other limitations in section 4022 of ERISA.

(e) If the Restricted Participant is a substantial owner and this is a qualified plan covered by section 4021(a) of ERISA, the dollar amount equal to the Value of the maximum benefit described in section 4022 of ERISA.

4. The foregoing conditions shall not restrict the current payment of the full benefits called for by the Plan with respect to a Restricted Participant while the Plan remains in effect and the full current costs have been met, except as provided below with respect to the Cash Option:

5. If a Restricted Participant elects the Cash Option, the portion of the cash settlement payable to the Restricted Participant on his Retirement Date shall not exceed the maximum payment to the Restricted Participant if the Plan were then terminated, as described above. If less than the full cash settlement is paid to the Restricted Participant on his Retirement Date, the Restricted

~~Participant may receive an additional payment each year thereafter on account of any increase in the maximum payment to the Restricted Participant if the Plan were then terminated, as determined by the Plan Administrator, until the full cash settlement has been paid, subject to the following:~~

~~(a) If the Participant ceases to be a Restricted Participant or dies before the earlier of the date of termination of the Plan or the failure to meet the current costs of the Plan, the remainder of the cash settlement will be payable.~~

~~(b) Upon termination of the Plan or the failure to meet the full current costs of the Plan, no further payments will be payable in respect to the Restricted Participant's coverage and any unpaid portion of the cash settlement will be cancelled.~~

~~6. As an alternative to such method of payment for the Cash Option, the full amount of the cash settlement may be paid on the Restricted Participant's Retirement Date if provision for repayment to the Plan of any part of the cash settlement which would not have been made on the Restricted Participant's Normal Retirement Date had the cash payment been made as described in (B) above, is made in a manner satisfactory to the Plan Administrator.~~

~~7. The terms of this Section shall prevail over any other terms of the Plan that may be inconsistent herewith.~~

~~8. The limitations described in this Section shall automatically become inoperative and of no effect upon a ruling by the Internal Revenue Service that they are not required.~~

### ARTICLE XIII

#### MISCELLANEOUS PROVISIONS

1. This Plan shall not be construed to give any Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge such ~~partieipant~~ Participant at any time, nor shall it be deemed to give the City the right to require such Participant to remain in its employ, nor shall this Plan interfere with the City's right to terminate the Participant's employment with the City at any time.
2. It shall be impossible at any time prior to the satisfaction of all liabilities with respect to Participants and Beneficiaries for any part of the corpus or income to be used for, or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries.

#### Section A. Special Maximum Pension Benefit Provisions

1. ~~The statutory maximum amount of~~ Notwithstanding anything contained herein to the contrary, the yearly pension payable ~~during in~~ during any Limitation Year shall be determined in accordance with the further provisions of this Section A to a Participant under this Plan (and under any other defined benefit plan maintained by the City), when expressed in the form of a straight-life annuity for the life of the Participant (with no ancillary benefits, but without adjustment for that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity under Section 417(b) of the Code), shall comply with limitations placed thereon by Section 415 of the Code. For the purposes of this Section A, the term "Limitation Year" shall mean a calendar year, ~~and the term "Compensation" shall mean Compensation as defined in Section (A)(9).(1) Basic~~

~~Limitation~~Regardless of any other provisions of this Plan, other than paragraphs (2)(e), (3) and (4) below, the amount of pension benefits (including disability benefits) payable hereunder for any Limitation Year shall not exceed the lesser of (1) \$90,000 or (2) 100% of the Participant's average annual Compensation determined with reference to the three consecutive Limitation Years of participation in the Plan in which he received the highest aggregate Compensation from the Employer (referred to hereinafter in this Section A as "Highest Average Compensation").

~~(2) Secondary Limitations~~The basic limitation in paragraph (1) shall be reduced or increased, as applicable, for the following situations if they are applicable:

~~(a) Form of Pension other than Life No Death Benefit, Joint and Survivor, or Contingent Pensioner (with Spouse as Contingent Pensioner)~~If the pension is payable on a form other than Life No Death Benefit, or Joint and Survivor, or Contingent Pensioner with the Participant's Spouse designated as Contingent Pensioner with Life No Death Benefit as the basic form of payment, the basic limitation in paragraph (1) shall be adjusted to its actuarial equivalent based upon the age at which such retirement income commences and an interest rate assumption of the greater of the rate of interest used to develop the Adjustment Factors in this Plan or 5%.

~~(b) Less Than 10 Years of Service~~If the Participant has less than 10 full years of Service, the basic limitations in paragraph (1) shall be reduced by multiplying such limitation by a fraction, the numerator of which is the Participant's years of Service (computed to the nearest full month) and the denominator of which is 10.

~~(c) Commencement of Pension Prior to Age 62~~If a Participant's retirement income commences prior to age 62, the dollar limitation in paragraph (1) shall be reduced to its actuarial equivalent based upon the age at which such retirement income commences and an interest rate assumption of the greater of the rate of interest used to develop the Adjustment Factors in this Plan or 5%, provided, however, that if such retirement income commences on or after age 55, the dollar limitation in paragraph (1) shall not be reduced to less than \$75,000. If the retirement income commences before age 55, the dollar limitation shall not be reduced to be less than the amount which is the equivalent of \$75,000 at age 55.

~~(d) Commencement of Pension After Age 65~~If a Participant's retirement income commences after age 65, the dollar limitation in paragraph (1) shall not exceed its actuarial equivalent based upon the age at which such retirement income commences and an interest rate which is the lesser of the rate of interest used to develop the Adjustment Factors in the Plan or 5%.

~~(e) Protection of Prior Accrued Benefit~~The dollar limit described in paragraph (1) will not reduce any Participant's benefit accrued as of December 31, 1982, subject to the provision of Section 415 of the Code as then in effect.

~~(3) Minimum Pension~~If the Participant's yearly pension is not more than \$10,000, as adjusted in accordance with paragraph (2)(b) above, the Participant may receive such \$10,000 without regard to the other secondary limitations, provided the Participant did not at any time participate in a defined contribution plan maintained by the Employer.

~~(4) Cost of Living Limitation Adjustment~~Effective January 1, 1988, and each January 1 thereafter, the \$90,000 limitation of paragraph (1) above will be automatically adjusted to the new dollar limitation determined by the Commissioner of Internal Revenue for that calendar year. The new limitation will apply to Limitation Years in which the dollar limitation is changed.

~~(5) Participation in More Than One Defined Benefit Plan~~If the Participant participated in more than one defined benefit plan maintained by the Employer regardless of whether any such plans are terminated, the statutory maximum retirement benefit shall be determined as if there were just one defined benefit plan, but the retirement income so determined will apply on a pro rata basis between, or among, such plans.

~~(6) Annual Additions~~The sum of:

~~(a) amounts defined as Annual Additions under applicable defined contribution plans; and~~

~~(b) the Participant's non-deductible contributions to this and all~~

~~other defined benefit plans maintained by the Employer, regardless of whether any such plan is terminated; and (c) amounts allocated in Plan Years commencing after March 31, 1984 to an individual medical account, as defined in Section 415 (1)(1) of the Code, which is a part of this or any other defined benefit plan maintained by the Employer; and (d) amounts derived from contributions paid or accrued after December 31, 1985 attributable to post-retirement medical benefits allocated to the separate account of a Key Employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer. (7) Participation in One or More Defined Contribution Plans If any Participant is or has been a Participant in a defined contribution plan maintained by the Employer regardless of whether any such plans are terminated, the Participant may not accrue pension under this Plan which would cause the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction to exceed 1.0. This shall be accomplished by reducing the pension otherwise determined under this Plan to the extent necessary to preclude such excess. (a) Defined Benefit Fraction A fraction, the numerator of which is the sum of the Participant's Projected Annual Benefit under each defined benefit plan maintained by the Employer regardless of whether any such plans are terminated, and the denominator of which is the lesser of 125 percent of the dollar limitation in effect for the Limitation Year under Section 415(b)(1)(A) of the Code or 140 percent of the Highest Average Compensation. Notwithstanding the above, if the Participant was a Participant in one or more defined benefit plans maintained by the Employer which were in existence on July 1, 1982, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of December 31, 1982. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Section 415 of the Code as in effect at the end of the 1982 Limitation Year. The Projected Annual Benefit shall be the yearly pension to which a Participant is entitled under the terms of each applicable defined benefit plan assuming continued employment until normal retirement age, or current age if later, and Compensation and all other relevant factors used to determine benefits under the plan remaining constant until normal retirement age, or current age if later. (b) Defined Contribution Fraction A fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under all the defined contribution plans maintained by the Employer regardless of whether any such plans are terminated for the current and all prior Limitation Years and the denominator of which is the sum of the Maximum Aggregate Amounts for the current and all prior Limitation Years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The Maximum Aggregate Amount in any Limitation Year is the lesser of 125 percent of the dollar limitation in effect under Section 415 (c)(1)(A) of the Code or 35 percent of the Participant's Compensation for such year. If the Employee was a participant in one or more defined contribution plans maintained by the Employer which were in existence on July 1, 1982, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 multiplied by (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. This adjustment also will be made if, at the end of the last Limitation Year beginning at the end of the last Limitation Year beginning before January 1, 1984, the sum of the fractions exceeds 1.0 because of accruals or additions that were made before the~~

~~limitations of this Article became effective to any Plan of the Employer in existence on July 1, 1982.(8) EmployerThe term Employer as referred to in this section shall mean the City of Alexandria.(9) CompensationFor the purpose of this Section A., a Participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:(a) Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;(b) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk or forfeiture;(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;(d) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).Compensation for any Limitation Year is the compensation actually paid or included in gross income during such year.(10) Discrepancy With CodeThe limitations set forth in this Section A. are intended to comply with the provisions of Section 415 of the Code and any regulations issued pursuant thereto, so that the maximum pension benefit shall be exactly equal to the maximum amount allowed under said Section 415, and any regulations issued pursuant thereto. Should there be any discrepancy between the provisions of this Section A. and those of said Section 415 and any regulations issued pursuant thereto, such discrepancy shall be resolved by giving full effect to the provisions of said Section 415 and any regulations issued pursuant thereto.~~

2. Whenever otherwise allowed by law, the maximum yearly pension allowable under Section 415 of the Code shall be automatically increased, without any amendment to this Plan, to reflect cost of living increases announced by the Internal Revenue Service pursuant to Section 415(d) of the Code and the increase which is effective as of the January 1st contained within the Limitation Year shall be effective for the entire Limitation Year.
3. To the extent a Participant's benefit is subject to provisions of Section 415 of the Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

IN WITNESS THEREOF, the City has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_,

By

Title

(Seal)

Witness

IMPORTANT NOTE

~~Neither Connecticut General Life Insurance Company nor any of its employees can provide you with legal advice in connection with the execution of this document. Prior to execution of this document, you should consult your attorney on whether this document is appropriate for you.~~  
February, 2002.

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

Witness: \_\_\_\_\_

## EARLY RETIREMENT ADJUSTMENT FACTORS

### Number of Years and Months from Retirement Date to Age 56

<u>Months</u>	Years:	0	1	2	3
0			94.0	90.4	86.8
1		99.5	93.7	90.1	86.5
2		99.0	93.4	89.8	86.2
3		98.5	93.1	89.5	85.9
4		98.0	92.8	89.2	85.6
5		97.5	92.5	88.9	85.3
6		97.0	92.2	88.6	85.0
7		96.5	91.9	88.3	84.7
8		<u>96.5</u> <u>96.0</u>	91.6	88.0	84.4
9		95.5	91.3	87.7	84.1
10		95.0	91.0	87.4	83.8
11		94.5	90.7	87.1	83.5

<u>Months</u>	Years:	4	5	6
0		83.2	79.6	76.0
1		82.9	79.3	
2		82.6	79.0	
3		82.3	78.7	
4		82.0	78.4	
5		81.7	78.1	
6		81.4	77.8	
7		81.1	77.5	
8		80.8	77.2	
9		80.5	76.9	
10		80.2	76.6	
11		79.9	76.3	

Table B-1

YEARS CERTAIN ADJUSTMENT FACTORS

AGE*	5 CC	6 CC	10 CC	15 CC	20 CC
41	99.9	99.8	99.4	98.6	97.6
42	99.8	99.8	99.3	98.5	97.3
43	99.8	99.7	99.2	98.3	96.9
44	99.8	99.7	99.1	98.0	96.6
45	99.8	99.6	99.0	97.8	96.2
46	99.7	99.6	98.9	97.5	95.8
47	99.7	99.5	98.7	97.2	95.3
48	99.6	99.5	98.6	96.9	94.8
49	99.6	99.4	98.4	96.6	94.3
50	99.5	99.3	98.2	96.2	93.7
51	99.5	99.3	98.0	95.9	93.1
52	99.4	99.2	97.8	95.4	92.4
53	99.4	99.1	97.6	94.9	91.6
54	99.3	99.0	97.3	94.4	90.8
55	99.2	98.9	97.1	93.8	89.9
56	99.1	98.8	96.7	93.2	88.9
57	99.0	98.6	96.4	92.5	87.9
58	98.9	98.5	96.0	91.7	86.7
59	98.8	98.3	95.5	90.8	85.4
60	98.6	98.1	95.0	89.8	84.1
61	98.5	97.8	94.4	88.7	82.6
62	98.3	97.6	93.7	87.5	81.1
63	<del>97.3</del> <u>98.1</u>	97.3	93.0	86.2	79.4
64	<del>96.9</del> <u>97.8</u>	96.9	92.1	84.8	77.7
65	<del>96.5</del> <u>97.5</u>	96.5	91.1	83.3	75.8
66	97.2	96.0	90.1	81.7	73.9
67	96.8	95.5	89.0	80.0	72.0
68	96.3	94.9	87.8	78.2	69.9
69	<del>96.8</del> <u>95.8</u>	94.2	86.5	76.3	67.9
70	95.3	93.5	85.1	74.4	65.8
71	94.7	92.7	83.6	72.4	63.8
72	94.1	92.0	82.1	70.4	61.7
73	93.5	91.1	80.5	68.4	59.6
74	92.8	90.2	78.7	66.3	57.5
75	92.0	89.1	76.8	64.1	55.4

\*Age nearest birthday on Retirement Date, or on date Years Certain and Life option becomes effective, if later.

effective, if later.

Factors for other ages will be determined in a manner consistent with the manner used in determining these factors.

71GAM, 6%  
6/6-0/6  
LA to NYC Option

Table B-2

## SOCIAL SECURITY ADJUSTMENT FACTORS

Number of Years From Retirement Date to Social Security Commencement Date	Participant's Age Nearest Birthday on Social Security Commencement Date			
	62	63	64	65
10	41.0	40.2	39.4	38.5
9	44.5	43.7	42.9	42.0
8	48.3	47.5	46.7	45.8
7	52.6	<del>48.8</del> <u>51.8</u>	51.0	50.1
6	57.3	56.6	55.8	54.9
5	62.6	61.9	61.1	60.3
4	68.4	67.8	67.1	66.4
3	75.0	74.4	73.9	73.2
2	82.4	81.9	81.5	81.0

If the number of years is not an integer, the percentage will be determined by a straight line interpolation between the percentage for the next higher integer and the percentage for the next lower integer.

Other factors will be determined in a manner consistent with the manner used in determining these factors.

71GAM, 6%  
6/6-0/6  
LA/MCRA to LA/MCRA  
SS Option

Table B-2

## APPENDIX 1

### Gainful Employment Provisions Applicable to Disability Retirees at May 24, 1983 Making Affirmative Election to Return to Old Provisions

#### Article VI, Section F 5(a)

(a) is equal to the amount of earnings received from gainful employment in the preceding calendar year which is in excess of the greater of (i) or (ii)

(i) the Participant's Earnings received from the City in the 12-month period immediately preceding his disability,

(ii) the current average entry level Earnings for either a police officer or firefighter, whichever applies, and

(b) for a Participant disabled in accordance with Section C is the annual amount of periodic payments payable if any, under the Workmen's Compensation Act of the Commonwealth of Virginia.

#### Article VI, Section G 2

In order for a disability benefit to be paid to a Participant who is partially disabled in accordance with Sections C or D of this Article when such Participant is engaged in gainful employment, the Participant will be required to report his total earnings received during each calendar year when he is so gainfully employed and provide the City with such documents that will substantiate the earnings being reported including the following acceptable documents: ~~1. federal~~ 1. federal income tax return, or 2. notarized statement from a Certified Public Accountant stating that such earnings did not exceed the limitation set forth in F 5(a) above. These earnings shall include any salary, wages, commissions or fees, but excluding income from investments or savings for which the Participant is contributing neither time nor talent. It will be expected that these documents will be made available to the City by April 15, but, in the event of delay, consideration will be given to suspending payment of disability benefits after May 1.

**CITY OF ALEXANDRIA  
RETIREMENT INCOME PLAN  
FOR FIREFIGHTERS AND POLICE OFFICERS**

**SUMMARY OF APPLICABLE CHANGES IN THE LAW  
THAT MUST BE INCLUDED IN THE PLAN DOCUMENT**

The City of Alexandria Retirement Income Plan for Firefighters and Police Officers received a determination letter from the Internal Revenue Service dated May 12, 1987 indicating that the Plan met the requirements for qualification under Section 401(a) of the Internal Revenue Code. Since that time, there have been a number of changes in the requirements for qualification under Section 401(a) and the City intends to request an updated determination letter from the Internal Revenue Service. In order for the determination letter to relate back to the last determination letter, the City must amend the Plan to incorporate the changes in the qualification requirements in the plan document and request a new determination letter from the Internal Revenue Service by February 28, 2002. The Plan has been administered in accordance with these new provisions since the date that they became applicable to the Plan.

This memorandum is intended to summarize those changes that must be included in the updated plan document that could affect the Plan in any significant respect. It is not intended to be a definitive list of each and every change that must be incorporated in the new plan document. Also, this summary does not discuss the changes included in the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), which are discussed in a separate memorandum.

**Tax Reform Act of 1986 ("TRA 86")**

- **Modification of Limit on Annual Additions** – TRA 86 changed the limits on annual additions to the Plan that are contained in Section 415(c) of the Internal Revenue Code to the greater of \$30,000 or 25% of the defined benefit dollar limit under Section 415(b) of the Internal Revenue Code. The Section 415(c) limit has since been changed to eliminate the reference to the defined benefit dollar limit.
- TRA 86 provided that *all* employee contributions are treated as annual additions for purposes of the Code section 415(c) limitations.
- **Limitation on Compensation Taken into Account** – TRA 86 imposed a limitation of \$200,000 on compensation that may be recognized by the Plan. This limit was later reduced to \$150,000 (as indexed for inflation). As of December 31, 2001, the compensation limit was \$170,000. EGTRRA increased the limit to \$200,000 effective January 1, 2002.
- **Modification of Minimum Distribution Rules** – TRA 86 changed the time at which minimum distributions are required to begin ("Required Beginning Date") to

April 1 of the calendar year following the calendar year in which an employee attained age 70-1/2, even if the employee was still employed at that time. The Required Beginning Date was subsequently changed to the April 1 of the calendar year following the later of (i) the calendar year in which the participant attained age 70-1/2, or (ii) the calendar year in which the participant retired.

- Modification of Rollover Rules – TRA 86 provided that minimum distributions cannot be rolled over to an IRA or another qualified retirement plan.

- TRA 86 provided that eligible rollover distributions made to a surviving spouse was eligible for rollover to an IRA, but not a qualified plan.

- TRA 86 provided that a detailed tax notice is required to be provided when any eligible rollover distribution is made.

#### Unemployment Compensation Act of 1992

- Direct Rollovers – The 1992 Act required the Plan to permit a participant receiving an eligible rollover distribution to have the distribution transferred in a direct rollover to an eligible retirement plan.

#### Uniformed Services Employment and Reemployment Rights Act of 1994

- The Act provided that the Plan is required to provide contributions and service credit to participants who return to the City following a period of qualified military service.

#### Small Business Job Protection Act of 1996 (“SBJPA”)

- Repeal of Combined 415 Limit – The SBJPA repealed the combined limitation under Section 415(e) of the Internal Revenue Code on contributions and benefits applicable to employers who sponsor both defined contribution and defined benefit plans.

- Inclusion of Elective Contributions in Compensation for 415 Purposes – The SBJPA provided that pre-tax contributions to qualified retirement plans and cafeteria plans are included in “compensation” for purposes of applying the Section 415 limits. Later legislation also provided that pre-tax contributions to transportation fringe benefit plans are included in “compensation” for Section 415 purposes.

#### Taxpayer Relief Act of 1997

- Exemption of Governmental Plans from Minimum Participation and Nondiscrimination Rules – The Act repealed the minimum participation rules for governmental plans sponsored by state and local governments and made permanent the exemption of these plans from the nondiscrimination rules.

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between  
-  
original document : E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN (FIREFIGHTERS  
AND POLICE) - CURRENT WORKING COPY.DOC  
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FIREFIGHTERS AND POLICE OFFICERS 2-21-02 DRAFT.DOC

CompareRite found 80 change(s) in the text

Deletions appear as Overstrike text

Additions appear as Double Underline text

## **SUMMARY OF CHANGES ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 CHANGES AFFECTING PLAN**

This summary discusses the changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) affecting the Plan. The Plan will be administered in accordance with these provisions and the plan document will be amended to incorporate the required changes within the timeframe required for the Plan to maintain its qualification under Section 401(a) of the Internal Revenue Code.

- **Increase in Section 415 Limits** – EGTRRA increases the limitation on annual additions under Section 415(c) of the Internal Revenue Code to the lesser of 100% of compensation or \$40,000. This change will permit employees to begin contributing up to 10% of their compensation to the Plan in the form of after-tax contributions. Previously, after-tax contributions were limited to 5% of compensation because Section 415(c) limited “annual additions” to 25% of compensation (which only left 5% after subtracting the 20% contribution made by the City).
- **Increase in Compensation Limit** – EGTRRA increases the limitation on compensation that may be recognized by the Plan to \$200,000.
- **Modification of Rollover Rules** – In addition to rolling over a distribution from the Plan to another qualified (Section 401(a)) plan or an IRA, eligible rollover distributions may now be transferred, in a direct rollover, to a tax sheltered annuity or custodial account under Section 403(b) or a eligible deferred compensation plan sponsored by a governmental organization under Section 457(b).
- EGTRRA allows the surviving spouse of a deceased participant to elect to transfer, in a direct rollover, the participant’s account under the Plan, to a qualified retirement plan, a tax sheltered annuity or custodial account under Section 403(b) or a eligible deferred compensation plan sponsored by a governmental organization under Section 457(b) (in addition to a transfer to an IRA, as permitted under present law).
- EGTRRA permits (but does not require) the Plan to accept contributions made pursuant to the expanded types of rollovers described above.
- Involuntary cash-out distributions of more than \$1,000 are required to be transferred to an IRA of a designated trustee or issuer, unless the participant elects to have the distribution rolled over to a different eligible retirement plan or paid in cash.

**CITY OF ALEXANDRIA RETIREMENT INCOME PLAN  
FOR FIREFIGHTERS AND POLICE OFFICERS**

This is an informal working copy of the Plan incorporating ~~Amendment Number One which is effective March 11, 1986.~~ Amended and Restated Effective as of December 31, 2001

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PREAMBLE

The City of Alexandria Retirement Income Plan for Firefighters and Police Officers, originally effective as of February 13, 1979, is hereby amended and restated in its entirety.

The terms of the Plan, as amended and restated, shall apply only with respect to Plan Years commencing after December 31, 2001; provided, however, that any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before the effective date of this amended and restated Plan in order to retain the qualification of the Plan under Code Section 401(a) shall, nevertheless, be effective as of its required effective date under the Code.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to employees of the Employer on and after December 31, 2001, and the rights, benefits and interests of any employee who died, retired or otherwise terminated his employment with the Employer prior to December 31, 2001, shall be determined under the provisions of the Plan as in effect on the date such former employee died, retired or otherwise terminated his employment with the Employer.

The Plan, as amended and restated hereby, is intended to qualify as a money purchase pension plan under Code Section 401(a) and is a governmental plan as described in Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

ARTICLE I  
DEFINITIONS

- 1.1 ACCRUED BENEFIT. The term Accrued Benefit means the value on any applicable date of the Participant's Account.
- 1.2 ACTIVE PARTICIPANT. The term Active Participant means any Participant who (a) performs duties as an Employee for the Employer, and (b) is not an Inactive Participant.
- 1.3 ADMINISTRATOR. The term Administrator means the Person or Persons designated by the Employer and any successor(s) thereto. If more than one Person shall be designated, the committee thus formed shall be known as the Administrative Committee and all references in the Plan to the Administrator shall be deemed to apply to the Administrative Committee. The Administrator shall signify in writing his acceptance of his responsibility as a Named Fiduciary.
- 1.4 ANNUITY CONTRACT. The term Annuity Contract means the group annuity contract issued by the Insurance Company to the Employer to fund the benefits provided under this Plan, as such contract may hereafter be amended from time to time in accordance with the terms thereof.
- 1.5 BENEFICIARY. The term Beneficiary means the beneficiary or beneficiaries entitled to any benefits under a Participant's Account hereunder upon the death of a Participant or a Beneficiary.
- 1.6 COMPENSATION. The term Compensation means the basic earnings paid by the Employer to the Employee for the period specified in the Plan. Effective as of January 1, 1996, Compensation with respect to any Plan Year shall in no event exceed the dollar limit specified in Section 401(a)(17) of the Code (as adjusted from time to time by the Secretary of the Treasury).
- 1.7 CONTRIBUTION PERIOD. The term Contribution Period means that regular period specified by the Employer for which Employer Contributions and Voluntary Contributions, if any, shall be made. No change in the Contribution Period may be made except as of a Renewal Date.
- 1.8 DISABILITY. The term Disability means a Participant's inability to perform the duties of his occupation because of a medically determinable physical or mental impairment. Such determination of Disability shall be made by the Administrator with the advice of a competent medical authority selected by the City and such determination shall correspond with the determination of disability under the Firefighters and Police Officers Disability Income Plan. All Participants in similar circumstances will be treated alike.
- 1.9 DISABILITY DATE. The term Disability Date means the first day of the month after the Administrator has determined that a Participant's inability to perform the duties of his occupation is a Disability.
- 1.10 EFFECTIVE DATE. The term Effective Date means ~~January 1, 1984~~ February 13, 1979. The effective date of this restatement is December 31, 2001.
- 1.11 EMPLOYEE. The term Employee means any individual, other than a sole-proprietor or partner, in the employ of the Employer.
- 1.12 EMPLOYEE CONTRIBUTIONS. The term Employee Contributions means the amount for any Plan Year which is equal to his Voluntary Contributions.
- 1.13 EMPLOYER. The term Employer means the City of Alexandria and any successor organization to such Employer which elects to continue the Plan.
- 1.14 ENTRY DATE. The term Entry Date means either the Effective Date or any date thereafter when an Employee who has fulfilled the eligibility requirements commences participation in the Plan.

- 1.15 **FIXED ANNUITY.** The term Fixed Annuity means an annuity providing a series of payments that are payable in specified dollar amounts.
- 1.16 **FORFEITURE.** The term Forfeiture means the amount, if any, by which the value of a Participant's Account exceeds his Vested Interest upon the occurrence of a 1-Year Break in Service following such Participant's Termination of Employment.
- 1.17 **INACTIVE PARTICIPANT.** The term Inactive Participant means any Participant who does not currently meet the requirements to be an Active Participant due to ~~+~~ a suspension of the performance of duties for the Employer.
- 1.18 **INSURANCE COMPANY.** The term Insurance Company means Connecticut General Life Insurance Company, a legal reserve life insurance company of Hartford, Connecticut.
- 1.19 **JOINT AND SURVIVOR ANNUITY.** The term Joint and Survivor Annuity means a monthly Fixed Annuity payable for the life of the Participant with a survivor annuity for the life of the Participant's spouse. The monthly annuity payment to the spouse shall be equal to 50% (or 100% if so elected by the Participant) of the amount which was payable to the Participant.
- 1.20 **LATE RETIREMENT DATE.** The term Late Retirement Date means the first day of the month coinciding with or next following the date a Participant is separated from Service with the Employer after his Normal Retirement Age, for any reason other than death.
- 1.21 **NORMAL RETIREMENT AGE.** The term Normal Retirement Age means the date the Participant attains age 60.
- 1.22 **NORMAL RETIREMENT DATE.** The team Normal Retirement Date means the first day of the month coinciding with or next following the date a Participant attains his Normal Retirement Age.
- 1.23 **PARTICIPANT.** The term Participant means any Employee of the Employer, who is or becomes eligible to participate under this Plan in accordance with its provisions and shall include an Active Participant and an Inactive Participant.
- 1.24 **PARTICIPANT'S ACCOUNT.** The term Participant's Account means each Participant's individual account maintained under the Annuity Contract by the Insurance Company in accordance with the terms of this Plan and the Annuity Contract. Each Participant's Account will be maintained so as to reflect the amount attributable to Employer Contributions and earnings thereon and the amount, if any, attributable to Employee Contributions and earnings thereon. Each Participant's Account shall be equal to the sum of the Participant's Guaranteed Long Term Account, if any, the participant's Variable Account, if any, and the participant's Guaranteed Short Term Account, if any.
- 1.25 **PARTICIPANT'S GUARANTEED LONG TERM ACCOUNT.** The term Participant's Guaranteed Long Term Account means that portion, if any, of the Participant's Account which is invested in the Insurance Company's general portfolio. The amount in the Guaranteed Long Term Account is invested primarily in bonds, mortgages and real estate. Such Participant's Guaranteed Long Term Account shall be credited with interest monthly in accordance with the terms of the Annuity Contract.
- 1.26 **PARTICIPANT'S GUARANTEED SHORT TERM ACCOUNT.** The term Participant's Guaranteed Short Term Account means that portion, if any, of the Participant's Account which is invested in the Insurance Company's Separate Account 20 (SA-20). Separate Account 20 may be invested in short-term money market instruments having maturities considered appropriate by Connecticut General. Such Participant's Guaranteed Short Term Account shall be credited with interest daily in accordance with the terms of the Annuity Contract.

- 1.27 **PARTICIPANT'S VARIABLE ACCOUNT.** The term Participant's Variable Account means that portion, if any, of the Participant's Account which is invested in the Insurance Company's Separate Account (SA-3). Separate Account 3 is invested primarily in common stocks. Such Participant's Variable Account shall be valued on each date that the New York Stock Exchange is for open for unrestricted trading and the Insurance Company is open to transact its normal business.
- 1.28 **PERSON.** The term Person means any natural person, partnership, corporation, trust or estate.
- 1.29 **PLAN.** The term Plan means the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the terms of which are set forth herein as it may be amended from time to time.
- 1.30 **PLAN YEAR.** The term Plan Year means the twelve-month period commencing on January 1 and ending the following December 31.
- 1.31 **PRIOR PLAN.** The term Prior Plan means the City of Alexandria Pension Plan for Firefighters and Police Officers.
- 1.32 **RENEWAL DATE.** The term Renewal Date means each January 1 as of which changes in the amount of any Voluntary Contributions may be made. Certain other determinations, transactions, and calculations shall also be made as of each Renewal Date, as more fully indicated in the body of the Plan.
- 1.33 **SEPARATE ACCOUNT.** The term Separate Account means either Separate Account 3 (Variable Account or SA-3) or Separate Account 20 (Guaranteed Short Term Account or SA-20) which are pooled separate accounts maintained by the Insurance Company with respect to a portion of its assets and which are included in the Annuity Contract.
- 1.34 **TERMINATION OF EMPLOYMENT.** The term Termination of Employment means a severance of the Employer-Employee relationship which occurs prior to a Participant's Normal Retirement Age for any reason other than Disability or death.
- 1.35 **VARIABLE ANNUITY.** The term Variable Annuity means an annuity providing a series of payments that increase or decrease to reflect changes in investment performance of the underlying portfolio.
- 1.36 **VESTED INTEREST.** The term Vested Interest on any date means the nonforfeitable right to an immediate or deferred benefit in the amount which is equal to the sum of (a) and (b) below:
- (a) The value on that date of that portion of the Participant's Account that is attributable to and derived from a Participant's own contributions, if any.
  - (b) The value on that date of that portion of the Participant's Account attributable to assets transferred pursuant to Section 3.5, if any.
  - (c) The value on that date of that portion of the Participant's Account that is attributable to and derived from Employer Contributions multiplied by his Vesting Percentage determined on the date applicable.
- 1.37 **VESTING PERCENTAGE.** The term Vesting Percentage means that Participant's nonforfeitable interest in Employer Contributions credited to his account plus the earnings thereon computed as of the date of determining such percentage because of the occurrence of some event in accordance with the following schedule based on Years of Service with the Employer:

Years of Service

Vesting Percentage

Less than 1	0%
1 but less than 2	20%
2 but less than 3	40%
3 but less than 4	60%
4 but less than 5	80%
5 or more	100%

Amounts attributable to the City of Alexandria Pension Plan for Firefighters and Police Officers which have been transferred from GR-574 to the Plan will at all times be 100% vested.

ARTICLE II  
SERVICE

- 2.1 PERIOD OF SERVICE. The term Period of Service or Service means the Employer-Employee relationship which begins on the Employee's employment date and continues until his Severance from Service Date.
- 2.2 PERIOD OF SEVERANCE. The term Period of Severance means a period of time commencing on the Participant's Severance from Service Date and ending on the date such individual is re-employed by the Employer.
- 2.3 SEVERANCE FROM SERVICE DATE. The Severance from Service Date shall be the latest of (a), (b), or (c) below.
- (a) The date the Employee terminates employment by reason of a quit, discharge, Disability, retirement or death.
  - (b) The Except to the extent provided in Section 2.7, the expiration date from Service on account of an authorized leave to join the United States Armed Forces provided the Employee does not return to work within 90 days of this date.
  - (c) The expiration date of an authorized leave.
- 2.4 1-YEAR BREAK IN SERVICE. The term 1-Year Break In Service shall mean a 12 consecutive month Period of Severance, beginning on the Employee's Severance from Service Date.
- 2.5 YEAR OF SERVICE. For the purpose of determining a Participant's Vesting Percentage, the term Year of Service shall mean Period of Service equaling 12 months. Service counted in computing Years of Service need not be consecutive or continuous, and all fractional Periods of Service shall be aggregated.
- 2.6 RE-EMPLOYMENT. An Employee who is rehired following a Disability shall be eligible to participate in the Plan immediately, provided he is still a member of an eligible class of employees. If such employee again becomes a Participant, all Years of Service shall be taken into account.

An Employee who is rehired following a Termination of Employment shall be considered a new Employee for all purposes of the Plan.

- 2.7 QUALIFIED MILITARY SERVICE. Notwithstanding any provision of this Plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

ARTICLE III  
ELIGIBILITY, ENROLLMENT AND PARTICIPATION

- 3.1 **ELIGIBILITY.** Each Employee who was a Participant prior to the Effective Date and who is in the Service of the Employer on the Effective Date shall continue as a Participant in the Plan. Each other Employee shall be eligible to become a Participant as of the Effective Date or the Entry Date thereafter when he first meets the following requirements:
- classified as a Firefighter or Police Officer (excluding meter patrol officers) for the City of Alexandria and remains in a sworn police officer or firefighter classification.
- 3.2 **ENROLLMENT AND PARTICIPATION.** Each eligible Employee shall become a Participant as of his Entry Date and shall complete and deliver to the Administrator as soon as administratively convenient thereafter, an enrollment form provided by the Insurance Company.
- 3.3 **RE-EMPLOYED EMPLOYEE.** In the case of an individual who ceases to be an Employee and is subsequently rehired as an Employee, the following provisions shall apply in determining his eligibility to again participate in the ~~plan~~ Plan:
- (a) If the Employee had met the eligibility requirements specified in Section 3.1 prior to his separation from employment, he shall become an Active Participant in the Plan in accordance with Section 3.2 as of the date he is re-employed.
  - (b) If the Employee had not met the eligibility requirements specified in Section 3.1 prior to his separation from employment, he shall be eligible to participate in the Plan on the first Entry Date following his fulfillment of such eligibility requirements.
- 3.4 In the event a Participant becomes ineligible to participate because he is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his return to an eligible class of Employees.
- 3.5 **PRIOR PLAN PARTICIPANTS.** Each employee who was a Participant under the Prior Plan as of February 13, 1979, may elect to transfer his coverage to this Plan, subject to the transfer provisions as set forth in the Prior Plan.

ARTICLE IV  
CONTRIBUTIONS

- 4.1 EMPLOYER CONTRIBUTIONS. The Employer shall contribute on behalf of each Participant who was an Active Participant on any day of the Contribution Period, an amount equal to 20% of his Compensation for each Contribution Period, subject to the limitation on allocations in accordance with Article IV-A.

The Employer Contribution shall be paid to the Insurance Company at the end of the Contribution Period and shall be reduced by the amount of any Forfeitures available in accordance with Section 9.3.

Unless elected otherwise in accordance with the terms of the Annuity Contract the Employer will contribute to the Plan the amount necessary to pay the expense charges and administration charges described in the Annuity Contract.

- 4.2 CREDITING OF EMPLOYER CONTRIBUTIONS. The Employer Contribution, exclusive of any Annuity Contract charges, shall be credited to the Participant Account of each Participant for whom such Contribution was made, in accordance with the provisions of Article V.

- 4.3 ROLLOVERS AND TRANSFERS. With the written permission of the Administrator and without regard to the limitations imposed under Article IV-A, the Employer may receive ~~on behalf of a Participant all or part of the entire amount of (a) any distribution from a terminated pension or profit sharing plan meeting the requirements of Internal Revenue Code Section 401(a); or (b) any lump sum distribution theretofore received by such Participant from a pension or profit sharing plan meeting the requirements of Internal Revenue Code Section 401(a), either directly from the Participant within 60 days after receipt by such Participant, or through the medium of an Individual Retirement Account, provided that the amounts to be rolled over are in no way attributable to employment as a self employed person and are attributable solely to Employer contributions and earnings thereon, earnings on Employer contributions, and Employee contributions which were eligible for a tax deduction under Internal Revenue Code section 219 and earnings thereon. Also, with the written permission of the Administrator and without regard to the limitations imposed under Article IV A, the Employer may receive directly from a terminated pension or profit sharing plan meeting the requirements of Internal Revenue Code section 401(a) all or a part of the entire amount distributable on behalf of the Participant from such plan. The Employer, notwithstanding the provisions of Article IV A, may receive the assets of any predecessor Plan and invest such assets in any manner authorized under the provisions of this~~ assets to be held under the Annuity Contract for the benefit of a Participant which were (1) received by the Participant from another qualified retirement plan or conduit individual retirement account or annuity and were transferred by the Participant to the Fund, provided that such assets qualify under all of the requirements for a rollover contribution as described in any applicable provisions of the Code, or (2) transferred directly from the trustee or other fiduciary of another qualified retirement plan, or in a conduit individual retirement account or annuity, to the Trustee of this Plan. In no event shall the Administrator be required to approve any direct transfer of assets from a plan to be held under this Plan if the Administrator, in its discretion, determines that the acceptance of any such assets may adversely affect the continued qualification of the Plan.

- 4.4 VOLUNTARY CONTRIBUTIONS BY PARTICIPANTS. Each Active Participant may elect to make periodic Voluntary Contributions under the Plan twice each Plan Year by completing and delivering to the Administrator a payroll deduction order provided by the Insurance Company. An Active Participant may elect to make Voluntary Contributions as of his Entry Date or as of any Renewal Date thereafter, and he may designate an amount equal to a percentage (not more than 10% but not less than \$10.00 per pay period) of his Compensation for the Contribution Period as his Voluntary Contribution under the Plan.

Voluntary Contributions shall be deducted by the Employer from the Participant's earnings while he has a payroll deduction order in effect and shall be paid by the Employer to the Insurance Company not less frequently than monthly or four weekly.

Each Participant's Voluntary Contributions to all qualified plans of the Employer shall not exceed 10% of said Participant's aggregate Compensation computed from his Entry Date.

- 4.5 **ADDITIONAL VOLUNTARY CONTRIBUTIONS.** An Active Participant who is making Voluntary Contributions under the Plan may elect to make an additional Voluntary Contribution in a lump sum. Such additional Voluntary Contributions may be made (1) as of the Effective Date; or (2) as of any Renewal Date thereafter provided election is made as of any date which is thirty days before such Renewal Date, in an amount up to, but not in excess of, the difference between (a) 10% of the aggregate of his Compensation while an Active Participant under the Plan, and (b) the aggregate of his Voluntary Contributions made under the Plan prior to such date. For the purposes of determining such amount, Compensation paid to the Participant during the twenty-four month period following a cancellation of Voluntary Contributions shall not be taken into account.

Additional Voluntary Contributions shall be paid by the Employer to the Insurance Company within thirty days after the date such additional Voluntary Contribution is made by the Participant and shall be reported on the appropriate form furnished by the Insurance Company. Additional Voluntary Contributions shall be considered Voluntary Contributions for all other purposes of the Plan, and shall be subject to the terms thereof.

- 4.6 **CREDITING VOLUNTARY CONTRIBUTIONS.** Each Participant's Voluntary Contributions, if any, shall be credited to his Participant's Account in accordance with the provisions of Article V.

- 4.7 **SUSPENSION OF VOLUNTARY CONTRIBUTIONS BY PARTICIPANTS.** The following provisions shall apply with respect to suspension of Voluntary Contributions, if any, by Participants:

- (a) **Voluntary Suspension.** An Active Participant may elect to suspend his payroll deduction order for Voluntary Contributions by filing a written notice thereof with the Administrator at any time. Such notice shall be effective, and his Voluntary Contributions shall be suspended, on the date specified in such notice, which date must be at least fifteen days after such notice is filed. The notice shall specify the period for which such suspension shall be effective, but such period shall be for not less than three months nor more than twenty-four months. A longer period of suspension of Voluntary Contributions may be approved by the Administrator.
- (b) **Suspension for Leave.** A Participant who is absent from employment on account of an authorized leave of absence or military leave shall, except as otherwise provided in Section 2.7, be an Inactive Participant and have his payroll deduction order for Voluntary Contributions suspended during such leave. Such suspension of Contributions shall be effective on the date that payment of Compensation by the Employer to him ceases and shall remain in effect until payment of Compensation is resumed.
- (c) **Involuntary Suspension.** An Active Participant who ceases to meet the eligibility requirements as specified in Section 3.1 but who remains in the employ of the Employer, shall become an Inactive Participant and have his payroll deduction order for his Voluntary Contributions suspended, effective as of the date he ceases to meet the eligibility requirements. Such suspension shall remain in effect until he again meets such eligibility requirements.

At the expiration of the suspension period described in (a), (b) or (c) above, the Participant's payroll deduction order for Voluntary Contributions shall automatically become effective again

and the Participant shall resume making Voluntary Contributions. If, however, the Participant does not resume making Voluntary Contributions at the expiration of the suspension period, the terms of Cancellation of Voluntary Contributions shall apply.

- 4.8 CANCELLATION OF VOLUNTARY CONTRIBUTIONS. A Participant may cancel his payroll deduction order for Voluntary Contributions by filing written notice thereof with the Administrator at any time. With the written permission of the Participant, such cancellation of his Voluntary Contributions shall be effective on the date specified in such notice, which date must be at least fifteen days after such notice is filed.

On the effective date of such cancellation, an amount equal to the then value of that portion of his Participant's Account attributable to his Voluntary Contributions, including any gains thereon, shall be distributed to the Participant in accordance with the terms and conditions of Article VI.

Any Participant who has cancelled his payroll deduction order for Voluntary Contributions may elect to again make Voluntary Contributions under this Plan by completing and delivering to the Administrator a new payroll deduction order as if it were an original election in accordance with the terms of Section 4.4. Such election shall be effective on the date specified in such notice, which date must be at least fifteen days after such notice is filed and at least twenty-four months after the date the Participant's Voluntary Contributions were last previously cancelled.

ARTICLE IV-A  
LIMITATIONS ON ALLOCATIONS

4A.1 LIMITATIONS ON ALLOCATIONS. Definitions - The following definitions are atypical terms which refer only to terms used in the Limitation on Allocations sections of this Article IV-A.

- (a) ~~(a) Annual Addition - The term Annual Additions shall mean for any Limitation Year commencing on or after January 1, 1987, the sum of those amounts allocated to the Participant's Account under this Plan and under any other qualified defined contribution plan to which the Employer contributes for any Limitation Year, consisting of (1) Employer Contributions, (2) Employee Contributions and (3) forfeitures. In addition to the foregoing, Annual Additions shall also include (1) any amounts allocated to the sum of the following amounts allocated on behalf of a Participant for a Limitation Year: (i) all Employer Contributions, and (ii) all Forfeitures, and (iii) the lesser of (1) one-half of all Employee Contributions, and (2) the amount of all Employee Contributions in excess of 6 percent of such Participant's actual Compensation. For the purposes of this Article, Excess Amounts reapplied to reduce Employer Contributions under Section 4A.2(d) shall also be included as Annual Additions. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Internal Revenue Section 415(l)(1) of the Code Section 415(l)(1), which is part of a defined benefit plan maintained by the Employer, are treated as annual additions to a defined contribution plan. Also, amounts derived from and (2) any contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of such Participant (if he is a key employee, as defined in Internal Revenue Code Section 419(d)(3), Section 419A(d)(3) of the Code) under a welfare benefit fund, as defined in Internal Revenue Section 419(e) of the Code Section 419(e), maintained by the Employer, are treated as annual additions to a defined contribution plan.~~
- (b) ~~(b) Compensation - The term Compensation shall mean compensation, as defined in Code Section 415(c)(3) and regulations issued thereunder. Effective for Limitation Years beginning on or after January 1, 1998, the term Compensation shall include amounts deferred pursuant to a salary reduction agreement under any plan described in Section 402(h), 132(f) or 125 of the Code a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following: (i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; (ii) amounts realized from the exercise of a non-qualified stock option, 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; (iii) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (iv) other amounts which received special tax benefits, or Contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Internal Revenue Code section 403(b) (whether or not the amounts are actually excludable from the gross income of the Employee). For purposes of applying the Limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such year.~~
- (c) ~~(c) Employer - The term Employer shall mean the employer that adopts this Plan. In the case of a group of employers which constitutes a controlled group of~~

~~corporations (as defined in Internal Revenue Code Section 414(b) as modified by section 415(h)), or which constitutes trades or business (whether or not incorporated) which are under common control (as defined in Section 414(c) as modified by section 415(h)), or affiliated service groups (as defined in Section 414(m)) of which the adopting employer is a part, all City of Alexandria and any other employer who is required to be treated as a single employer with the City under Section 414(b), (c), (m) or (o) of the Code. All such employers shall be considered a single employer for purposes of applying the limitations of this Article.~~

~~(d) Excess Amount—The term Excess Amount shall mean the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.~~

~~(d)~~ (e) Limitation Year - The term Limitation Year shall mean the Plan Year.

~~(f) Maximum Permissible Amount—The term Maximum Permissible Amount shall mean the lesser of (1) \$30,000 (or such other amount as may be determined by the Secretary of the Treasury or his delegate), or (2) 25 percent of the Participant's Compensation for the Limitation Year.~~

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the Maximum Permissible Amount for the short Limitation Year will be the lesser of (1) \$30,000 multiplied by the following fraction: Number of months in the short Limitation Year divided by 12 or (2) 25 percent of the Participant's Compensation for the short Limitation Year.

4A.2 LIMITATIONS ON ALLOCATIONS. ~~Employers who do not maintain any qualified plan in addition to this Plan:~~

~~(a) If an Employer does not maintain any other qualified plan, the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan.~~

~~(b) Prior to the determination of the Participant's actual Compensation for a Limitation Year, the Maximum Permissible Amount may be determined on the basis of the Participant's estimated annual Compensation. Such Compensation shall be determined on a reasonable basis and shall be uniformly determined for all Participants similarly situated. Any Employer Contributions based on estimated annual Compensation shall be reduced by any Excess Amounts carried over from prior years.~~

~~(c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for such Limitation Year shall be determined on the basis of the Participant's actual Compensation for such Limitation Year. In the event a Participant separates from the Service of the Employer prior to the end of the Limitation Year, the Maximum Permissible Amount for such Participant shall be determined prior to any distribution of his Account on the basis of his actual Compensation. Any Excess Amounts shall be disposed of in accordance with Section 4A.2(d).~~

~~(d) If, pursuant to Section 4A.2(c), there is an Excess Amount with respect to a Participant for a Limitation Year, such Excess Amount shall be disposed of as follows:~~

~~(i) First, any Voluntary Employee Contributions shall be returned to the Participant, to the extent that the return would reduce the Excess Amount.~~

~~(ii) Second, any remaining Excess Amount must not be distributed to the Participant, but shall be reapplied to reduce Employer Contributions under this Plan for the next Limitation Year (and for succeeding Limitation Years, as necessary). In each such succeeding Limitation Year the sum of actual Employer Contributions, plus the reapplied amount resulting from Excess Amount, if any, shall equal the amount of Employer Contributions that would otherwise be allocated to each Participant's Account.~~

~~4A.3 LIMITATIONS ON ALLOCATIONS. Employers who, in addition to this Plan, maintain one or more defined contribution plans:~~

- ~~(a) If, in addition to this Plan, the Employer maintains any other qualified defined contribution plans, the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year, shall not exceed the lesser of:~~
- ~~(i) The Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Account for the same Limitation Year under this Plan and such other defined contribution plan; or~~
- ~~(ii) Any other limitation contained in this Plan.~~

~~Prior to the determination of the Participant's actual Compensation for the Limitation Year, the amounts referred to in (i) above may be determined on the basis of the Participant's estimated annual Compensation for such Limitation Year. Such estimated annual Compensation shall be determined for all Participants similarly situated.~~

~~Any Employer Contribution based on estimated annual Compensation shall be reduced by any Excess Amounts carried over from prior years, if applicable.~~

~~(b) As soon as is administratively feasible after the end of the Limitation Year, the amounts referred to in Section 4A.3(a) shall be determined on the basis of the Participant's actual Compensation for such Limitation Year.~~

~~(c) If amounts are contributed to a Participant's Account under this Plan on an allocation date which does not coincide with the allocation date(s) for all such other plans, and if a Participant's Annual Additions under this Plan and all such other plans result in an Excess Amount, such Excess Amount shall be deemed to have derived from those Contributions last allocated.~~

~~(d) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributable to this Plan will be the product of (i) and (ii) below:~~

~~(i) The total Excess Amount allocated as of such date (including any amount which would have been allocated but for the limitations of Internal Revenue Code Section 415).~~

~~(ii) The ratio of (1) the amount allocated to the Participant as of such date under this Plan, divided by (2) the total amount allocated as of such date under all qualified defined contribution plans (determined without regard to the limitations of Internal Revenue Code Section 415).~~

~~(e) Any excess Amounts attributed to this Plan shall be disposed of as provided in Section 4A.2(d).~~

~~4A.4 LIMITATIONS ON ALLOCATIONS. Participants participating in both a Defined Benefit plan and a Defined Contribution plan:~~

~~(a) If an individual is a Participant at any time in both a defined benefit plan and a defined contribution plan maintained by the Employer, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any year may not exceed 1.0. In the event that the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction exceeds 1.0, the Defined Contribution Plan Fraction will be reduced in accordance with Section 4A.2(d) until the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction does not exceed 1.0, or, if appropriate, the numerator of the Defined Contribution Fraction will be adjusted if the sum of the Defined Contribution Fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the Fractions over 1.0 times (2) the denominator of this Fraction, will be permanently~~

~~subtracted from the numerator of this Fraction. The adjustment is calculated using the Fractions as they would be computed as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. This adjustment also will be made if at the end of the last Limitation Year beginning before January 1, 1984 the sum of the Fractions exceeds 1.0 because of accruals or additions that were made before the limitations of this Article became effective to any plans of the Employer in existence on July 1, 1982.~~

~~For purposes of this Section 4A.4, all defined benefit plans of the Employer, whether or not terminated, are to be treated as one defined benefit plan and all defined contributions plans of the Employer, whether or not terminated, are to be treated as one defined contribution plan.~~

~~(b) The Defined Benefit Plan Fraction for any year is a fraction, the numerator of which is the Participant's Projected Annual Benefit under the defined benefit plan (determined as of the close of the Limitation Year), and the denominator of which is the lesser of (i) or (ii) below:~~

~~(i) 1.25 times the dollar limitation in effect under Internal Revenue Code Section 415(b)(1)(A) on the last day of the Limitation Year; or~~

~~(ii) 1.4 times the amount which may be taken into account under Internal Revenue Code Section 415(b)(1)(B) with respect to such Participant for the Limitation Year.~~

~~Notwithstanding the above if the participant was a participant in one or more defined benefit plans maintained by the Employer which were in existence on July 1, 1982, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the participant had accrued as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. The preceding sentence applies only if the defined benefit plan individually and in the aggregate satisfied the requirements of Internal Revenue Code Section 415 as in effect at the end of the 1982 Limitation Year.~~

~~(c) A Participant's Projected Annual Benefit is equal to the annual benefit to which the Participant would be entitled under the terms of the defined benefit plan based upon the following assumptions:~~

~~(i) The Participant will continue employment until reaching normal retirement age as determined under the terms of the plan (or current age, if that is later).~~

~~(ii) The Participant's Compensation for the Limitation Year under consideration will remain the same until the date the Participant attains the age described in sub-division (i) of this subparagraph.~~

~~(iii) All other relevant factors used to determine benefits under the plan for the Limitation Year under consideration will remain constant for all future Limitation Years.~~

~~(d) The Defined Contribution Plan Fraction for any Limitation Year is a fraction, the numerator of which is the sum of the Annual Additions to the Participant's Accounts in such Limitation Year and for all prior Limitation Years, and the denominator of which is the lesser of (i) or (ii) below for such Limitation Year and for all prior Limitation Years of such Participant's Employment (assuming for this purpose, that Internal Revenue Code Section 415(e) had been in effect during such prior Limitation Years).~~

~~(i) 1.25 times the dollar limitation in effect under Internal Revenue Code section 415(e)(1)(A) on the last day of the Limitation Year; or~~

~~(ii) 1.4 times the amount which may be taken into account under Internal Revenue Code Section 415(e)(1)(B) with respect to such Participant for the Limitation Year.~~

~~(e) Notwithstanding the forgoing, at the election of the Plan Administrator, in computing the Defined Contribution Plan Fraction with respect to any Plan Year ending after December 31, 1982, the denominator shall be an amount equal to the product of:~~

~~(i) The denominator of the Defined Contribution Plan Fraction, computed in accordance with the rules in effect for the Plan Year ending in 1982; and~~

~~(ii) the transition fraction, which is a fraction—~~

~~(1) the numerator of which is the lesser of:~~

~~(A) \$51,875, or~~

~~(B) 1.4 times 25% of the compensation of the Participant for the Plan Year ending in 1981, and~~

~~(2) the denominator of which is the lesser of:~~

~~(A) \$41,500, or~~

~~(B) 25% of the Compensation of the Participant for the Plan Year ending in 1981. Notwithstanding anything contained herein to the contrary, the total Annual Additions credited to a Participant's Account under this Plan (and under all other defined contribution plans, defined benefit plans and welfare benefit funds to which the Employer contributes) for any Limitation Year commencing on or after January 1, 1995, shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Section 415(d) of the Code) or (ii) 25 percent of the Participant's Compensation. In the event that the limitations on Annual Additions described above are exceeded with respect to any Participant in any Limitation Year due to forfeiture allocations, a reasonable error in estimating a Participant's annual compensation, or such other circumstances as are permitted by law, then the contributions allocable to the Participant for such Limitation Year shall be reduced to the minimum extent required by such limitations in the following order of priority (unless otherwise determined by the Administrator according to applicable law):~~

~~(a) All excess Annual Additions attributable first to Employee Contributions (plus attributable earnings) shall be distributed to such Participant.~~

~~(b) If such Participant is covered by the Plan as of the end of the Limitation Year in which such excess arose, all excess Annual Additions allocated to such Participant's Account shall, be used as soon as possible to reduce Employer Contributions allocable to such Participant in the next and succeeding Limitation Years.~~

~~(c) If the Participant is not covered by the Plan as of the end of the Limitation Year in which the excess arose (or any succeeding Limitation Year, if applicable), then such excess amounts shall be credited to an account designated as the limitations account and carried forward to the next and succeeding Limitation Years and shall be used as soon as possible to reduce Employer Contributions for all remaining Participants in the Plan. No investment gains or losses or other income shall be allocated to this limitations account. In the next succeeding Limitation Year, all amounts in the limitations account must be allocated before any Employer Contributions may be made to the Plan for any such Limitation Year.~~

~~(d) The Administrator shall determine to what extent the Annual Additions to any Participant's Account must be reduced in each Limitation Year. In the event the Employer maintains any other plan to which Annual Additions may be credited, and a Participant participates in both plans during any Limitation Year, then the Administrator shall reduce the Annual Additions to such other plan before reducing Annual Additions to this Plan.~~

- (e) In the event this Plan is terminated, any amounts credited to the limitations account described above which have not been reallocated as set forth herein shall, upon the Employer's request, be returned to the Employer.

To the extent a Participant's benefit is subject to provisions of Section 415 of the Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

ARTICLE V  
ANNUITY CONTRACT AND PARTICIPANT'S ACCOUNT

5.1 ANNUITY CONTRACT. The Employer shall apply for and take the necessary steps to obtain the Annuity Contract from the Insurance Company. All Contributions under the terms of this Plan shall be paid to the Insurance Company in accordance with the further terms of this Plan. All payments to Participants and/or Beneficiaries, payable under the terms of the Plan out of Participants' Accounts, will be paid by the Insurance Company in accordance with the terms of Article VI.

5.2 PARTICIPANT'S ACCOUNT. A Participant's Account shall be maintained on behalf of each Participant until such account is used to provide an annuity, or distributed in accordance with the further terms of this Plan and the terms of the Annuity Contract.

With respect to Employer Contributions, the Administrator shall have the responsibility to decide the portion of the amount of contributions made under this Plan for each Participant that shall be paid to the Participant's Guaranteed Long Term Account, the portion that shall be paid to the Participant's Variable Account and the portion that shall be paid to the Participant's Guaranteed Short Term Account. Such responsibility shall be applied in a uniform manner to all Participants. However, the Administrator may delegate this responsibility to each Participant, provided that this is done in a consistent and nondiscriminatory manner.

With respect to Employee Contributions, the Participant shall have the right to decide the amount that shall be paid to the Participant's Guaranteed Long Term Account, the amount that shall be paid to the Participant's Variable Account, and the amount that shall be paid to the Participant's Guaranteed Short Term Account.

The Administrator or the Participant, as the case may be, may change such amounts once during a Plan Year, in accordance with the terms of the Annuity contract.

5.3 TRANSFERS BETWEEN THE GUARANTEED LONG TERM, VARIABLE AND GUARANTEED SHORT TERM ACCOUNTS. Where permitted by the terms and limitations of the Annuity Contract, amounts in a Participant's Account may be transferred between the Participant's Guaranteed Long Term Account and the Participant's Variable Account, and from the Participant's Guaranteed Short Term Account to the Participant's Guaranteed Long Term Account and/or the Participant's Variable Account once during a calendar year, where applicable. With respect to that portion of the Participant's Account attributable to Employer Contributions, the Administrator shall have the responsibility to designate that portion of such Account to be transferred between the Participant's Guaranteed Long Term Account and the Participant's Variable Account and the portion of the Guaranteed Short Term Account to be transferred to the Guaranteed Long Term Account and/or the Variable Account. Such responsibility shall be applied in a uniform manner to all Participants. However, the Administrator may delegate this responsibility to each Participant provided that this is done in a consistent and nondiscriminatory manner.

With respect to the portion of a Participant's Account attributable to his Employee Contributions, the Participant may designate the portion to be transferred between the Participant's Guaranteed Long Term Account and the Participant's Variable Account and the portion to be transferred from the Guaranteed Short Term Account to the Guaranteed Long Term Account and/or the Variable Account.

5.4 Once during each year the Insurance Company shall furnish the Administrator and each Participant with a written report of (a) the value of each such Participant's Guaranteed Long Term Account, (b) the fair market value of each such Participant's Variable Account, and (c) the value of each such Participant's Guaranteed Short Term Account.

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ARTICLE VI  
DISTRIBUTION OF BENEFITS

- 6.1 DISTRIBUTIONS IN GENERAL. All distributions hereunder, whether in the form of an annuity or cash, or a combination thereof, shall be made by the Insurance Company as of the date specified, in accordance with the terms and conditions set forth in the Annuity Contract. The Insurance Company shall be entitled to receive written instructions and proper notice from the Administrator with respect to any distribution and shall not be required to make such distribution until such instructions have been received in a form which in the opinion of the Insurance Company is sufficiently clear with respect to the distributions required.
- 6.2 PAYMENT OF BENEFITS. Unless the Participant elects otherwise, the payment of benefits under this Plan to the Participant shall begin not later than the 60<sup>th</sup> day after the close of the Plan Year in which the later of (a) or (b) occurs.
- (a) The date on which the Participant attains his Normal Retirement Age; or
  - (b) The date on which the Participant terminates his Service (including Termination of Employment, death or Disability) with the Employer.

~~In the event the benefit payment on account of a Participant's separation from Service is to be made in the form of a cash distribution, the Participant may make an irrevocable written election, prior to receipt of the payment, to defer such payment until the date he incurs a 1 Year Break in Service.~~

~~Notwithstanding subsections (a) and (b) above, distribution to a Participant will commence no later than the date determined in accordance with the provisions of the following paragraph.~~

~~Distribution to a Participant must commence no later than the first day of April following the calendar year in which the later of Termination of Employment or age 70½ occurs.~~

~~If distribution is made in other than a lump sum, the second payment shall be distributed no later than December 31 following the April 1 by which the first payment was required to be distributed. Each succeeding payment shall be distributed no later than each December 31, thereafter.~~

~~In order that the Insurance Company may provide each benefit in accordance with this Section the Administrator will furnish the Insurance Company with the necessary forms and information at least 30 days prior to the date payment is due to begin.~~

- 6.3 The rules and procedures for electing the timing and form of distribution effective for each Participant or Beneficiary shall be formulated and administered by the Administrator in a consistent manner for all Participants in similar circumstances. The distribution shall normally be made in the form of an annuity. However, with respect to that portion of the distribution attributable to Employer Contributions, the Administrator shall have the right to specify that each Participant may elect a distribution in the form of cash or a combination of cash and an annuity. With respect to that portion of the distribution attributable to Employee Contributions, the Participant shall have the right to elect the manner of distribution. Any annuity elected in accordance with this Section may be a Fixed Annuity, or a Variable Annuity, or a combination of both.

Notwithstanding the foregoing paragraph, if the value of the Participant's Account available for the purchase of a retirement annuity is less than three thousand five hundred dollars (\$3,500), the distribution shall be in the form of cash.

- 6.4 DIRECT ROLLOVER OPTION. Effective as of January 1, 1992, any distribution or portion thereof payable to a Participant (or any other eligible distributee, if applicable) which is an "eligible rollover distribution" (as defined in Section 401(a)(31)(C) of the Code) shall be rolled

over directly to another "eligible retirement plan" (as defined in Section 401(a)(31)(D) of the Code), if elected by the Participant (or such other eligible distributee, if applicable) according to rules and procedures adopted by the Administrator from time to time, so long as such rules and procedures comply with Section 401(a)(31) of the Code and any regulations promulgated thereunder.

## 6.5 DISTRIBUTION REQUIREMENTS.

- (a) ~~(a)~~ The requirements of this Section shall apply to any distribution of a Participant's Accrued Benefit.
- (b) The vested Accrued Benefit of a Participant shall be distributed (or shall commence being distributed) no later than the April 1<sup>st</sup> following the later of (1) the calendar year in which such Participant attains age 70½ or (2) the calendar year in which such Participant terminates employment with the Employer ("Required Beginning Date").
- (c) As of the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date ("Distribution Calendar Year"), distributions, (b) Limits on Settlement Options. Distributions if not made in a lump sum payment, may be made only (1) over a term certain not to exceed the life expectancy of the Participant or the joint life expectancies sum, may only be made over one of the following periods (or a combination thereof): (1) the life of the Participant, (2) the life of the Participant and a designated Beneficiary, or (2) over the life of the Participant or the joint lives (3) a period certain not extending beyond the life expectancy of the Participant, or (4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary. Notwithstanding the foregoing, distribution shall in no event extend beyond the maximum permissible period described in Treasury Regulation Section 1.401(a)(9)-2.
- (d) The minimum amount which must be distributed during each calendar year, commencing with the Distribution Calendar Year, (e) Minimum Amounts to be Distributed. If the Participant's entire Vested Interest is to be distributed in other than a lump sum, then the amount to be distributed each year must be at least an amount equal to the lesser of (1) the Participant's total distributable interest, or (2) the quotient obtained by dividing the Participant's entire Vested Interest by the life expectancy of the Participant or joint and last survivor expectancy of the Participant and designated beneficiary. Life Expectancy and joint and last survivor expectancy are computed total distributable interest at the beginning of each such calendar year (valued for this purpose as of the Valuation Date immediately preceding the first day of such calendar year, adjusted for contributions allocated and distributions made subsequent to such Valuation Date but prior to the first day of such calendar year) by the lesser of (A) the applicable life expectancy (as described below), or (B) if the Participant's Beneficiary is not his spouse, by the applicable divisor, as described in Treasury Regulation Section 1.401(a)(9)-2.
- (e) For purposes of calculating the applicable life expectancy, the following rules shall apply:
- (1) Life expectancies shall be calculated pursuant to Treasury Regulation Section 1.401(a)(9)-1, by the use of the return multiples contained in section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Treasury Regulation Section 1.72-9, or in such other manner as may otherwise be prescribed or permitted by law.

- (2) For the Distribution Calendar Year, the Participant's life expectancy of a nonspouse Beneficiary may not be recalculated, shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. For the Distribution Calendar Year, the designated Beneficiary's life expectancy shall be determined based upon his attained age on his birthday during such Distribution Calendar Year.
- (3) If the Participant's spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution is paid within Except as provided in subsection (4) below, for each calendar year subsequent to the Distribution Calendar Year, the Participant's life expectancy and his designated Beneficiary's life expectancy, as determined with respect to the Distribution Calendar Year, shall be reduced by one for each calendar year which has begun since the Required Beginning Year.
- (4) Notwithstanding the rules contained in subsection (3) above, the Participant may elect, prior to his Benefit Starting Date, to have his life expectancy, or the joint life expectancies of the Participant and his spouse (if his spouse is his Beneficiary), recalculated on an annual basis, based upon his (and, if applicable, his spouse's) attained age on his birthday (and, if applicable, his spouse's birthday) during the calendar year for which such recalculation is applicable. In no event, however, may the life expectancy of a non-spouse Beneficiary be recalculated.
- (f) Notwithstanding that distributions under the Plan may have commenced to the Participant before the Distribution Calendar Year, the Participant shall receive no credit under this Section 6.5 for such earlier distributions; rather, the total remaining distributable interest of the Participant, calculated as provided above at the beginning of the Distribution Calendar Year, shall be subject to the minimum distribution requirements contained in this Section 6.5.
- (g) Notwithstanding the rules contained in this Section 6.5, if distribution hereunder is made under an annuity contract purchased from an insurance company, which contract provides for annual (or more frequent) nonincreasing (except as otherwise permitted under applicable Treasury Regulations) payments commencing no later than the April 1<sup>st</sup> following the Distribution Calendar Year and payable over a period permitted by Section 6.5(c), then the life expectancy of the Participant (and his Beneficiary, if applicable) shall be determined based upon the age of the Participant (and his Beneficiary, if applicable) as of the birthday occurring during the calendar year in which benefits commence, even if such calendar year is prior to the Participant's Distribution Calendar Year, and such calendar year shall be treated as the Distribution Calendar Year. In all events, distribution under any such annuity contract shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations).
- (h) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.5(h) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

- (i) Notwithstanding anything contained herein to the contrary, in the event that a Participant has validly elected a method of distribution other than one permitted under this Section 6.5, payments hereunder shall be made according to such method of distribution, provided that (1) such method was elected by the Participant prior to January 1, 1984, and (2) such method was permitted by law and by the terms of the Plan as of December 31, 1983.

6.6

6.5

NON-TRANSFERABLE. The Participant's right to any annuity payments, benefits and refunds is not transferable and shall be free from the claims of all creditors to the fullest extent permitted by law.

6.6 6.7

DEATH DISTRIBUTION PROVISIONS. ~~Upon the death of the Participant, the following distribution provisions shall take effect:~~ Notwithstanding anything contained herein to the contrary, the payment of death benefits shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), and thus, the following rules shall apply to the extent required thereunder:

- (a) ~~(a) If the Participant dies after distribution of his or her entire Vested Interest has commenced, the remaining portion of such Vested Interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.~~ (b) If the Participant dies before distribution of his Vested Interest commences, the Participant's entire Vested Interest will be distributed no later than 5 years after In the event of a Participant's death prior to the April 1<sup>st</sup> following his Distribution Calendar Year (unless his benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.5(g), in which case the provisions of this Section 6.7(a) shall not apply, but rather, the provisions of Section 6.7(b) shall apply), then death benefits, if any, attributable to such Participant shall be completely distributed to his Beneficiary no later than the last day of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below, subject to the exceptions contained in Sections 6.7(a)(1) and (2) below:

- (1) ~~(1) If any portion of the Participant's Vested Interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or If the Participant or Beneficiary has elected that death benefits be paid in installments over a term certain or over the life of the Beneficiary, then such distributions shall be made, as elected, over a term certain not to exceed the life expectancy of the designated Beneficiary commencing no later than 1 year after Beneficiary or over the life of the Beneficiary, commencing in either case no later than the last day of the calendar year containing the first anniversary of the Participant's death. Such method of distribution must comply with Section 6.5, except that the applicable life expectancy shall be that of the Beneficiary.~~ (2)

- (2) ~~If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with spouse, then the rules contained in Section 6.7(a)(1) above shall be modified as follows:~~

- (A) The date distributions would otherwise be required to commence in accordance with Section 6.7(a)(1) above shall not be earlier than the date on later of (i) the last day of the calendar year containing the first anniversary of the Participant's death, or (ii) the last day of the calendar year in which the Participant would have attained age 70½.

(B) ~~However, the surviving spouse may elect, at any time following the Participant's death to defer the date on which distributions will begin until no later than the date on which the Participant would have attained age 70½ and, if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the Participant.~~(c) ~~For purposes of (b) above, payments will be calculated by use of the return multiples specified in section 1.72-9 of the Income Tax Regulations. Life expectancy of a surviving spouse may be recalculated annually, however, in the case of any other designated Beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.~~(d) ~~For purposes of this Section (Death Distribution Provisions) any amount paid to a child of the Participant will be treated as if it had been paid In the event of the spouse's death after the Participant but prior to the spouse's required benefit commencement date, as described in Section 6.7(a)(2)(A), (unless such spouse's benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.5(g), but payable over a period permitted by Section 6.7(a), in which case the provisions of this Section 6.7(a)(2)(B) shall not apply, but rather, the provisions of Section 6.7(b) shall apply as if the spouse were the Participant), then subsequent distributions, if any, shall be subject to the 5-year or 1-year rule described above, whichever is applicable, but such rule shall be applied as if the spouse were the Participant; provided, however, that the rules contained in Section 6.7(a)(2)(A) shall not be available to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority. of the Participant's surviving spouse.~~

(b) 6.7 TRANSITIONAL RULE. In the event of a Participant's death (A) subsequent to the April 1<sup>st</sup> following his Distribution Calendar Year and subsequent to his actual commencement of benefits under a payment option other than an annuity contract described in Section 6.5(g), or (B) subsequent to the irrevocable commencement of benefits under an annuity contract meeting the requirements of Section 6.5(g), then any death benefits payable to the Participant's Beneficiary shall be distributed at least as rapidly as under the method of distribution being utilized as of the date of the Participant's death.

(c) ~~(a) Notwithstanding the other requirements of this Article distribution on behalf of any Employee, may be made in accordance with all of the following requirements (regardless of when such distribution commences): With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.7(c) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.~~

(d) ~~(1) The distribution by the Plan is one which would not have disqualified such Plan under Internal Revenue Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.(2) The distribution is in accordance with Notwithstanding anything contained herein to the contrary, in the event a Participant or Beneficiary has validly elected a method of distribution other than one permitted under this Section 6.7, payments hereunder shall be made according to such method of~~

~~distribution, provided that (1) such method was elected by the Participant or Beneficiary prior to January 1, 1984, and (2) such method was permitted by law and by the terms of the Plan as of December 31, 1983, designated by the Employee whose interest in the trust is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.(3) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.(4) The Employee had accrued a benefit under the Plan as of December 31, 1983.(5) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.(b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distribution to be made upon the death of the Employee.(c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a)(1) and (5).(d) If a designation is revoked any subsequent distribution must satisfy the requirements of Section 401(a)(9) as amended. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).~~

ARTICLE VII  
RETIREMENT BENEFITS

- 7.1 NORMAL RETIREMENT. A Participant who attains his Normal Retirement Age shall have a Vesting Percentage of 100%. If a Participant retires from the active Service of the Employer on his Normal Retirement Date he shall receive a distribution of the entire value of his Participant's Account as of his Normal Retirement Date.
- 7.2 LATE RETIREMENT. A Participant may continue in the Service of the Employer after his Normal Retirement Age, and in such event he shall retire on his Late Retirement Date. Such Participant shall continue as a Participant under this Plan until such Late Retirement Date. The Participant shall have a Vesting Percentage of 100% and shall receive a distribution of the entire value of his Participant's Account as of his Late Retirement Date.
- 7.3 All distributions on account of retirement described in this Article shall be further subject to the terms and conditions of Article VI.

ARTICLE VII-A  
DISABILITY BENEFITS

7.1A DISTRIBUTION. Upon a Participant's Disability, he shall have a Vesting Percentage of 100% but shall not receive a distribution of the entire value of his Participant's Account attributable to Employer contributions until death, normal retirement or Cessation of Disability without Re-employment, as provided in Articles VIII, VII and IX, respectively.

ARTICLE VIII  
DEATH BENEFITS

8.1 FROM PARTICIPANTS' ACCOUNTS.

- (a) Death before Distribution. Upon the death of any Participant prior to the date of distribution on account of his retirement or his Termination of Employment, his Beneficiary shall receive a distribution of the entire value of the Participant's Account. Such distribution shall be further subject to the terms and conditions of Article VI, except that the Beneficiary shall have the right to elect the manner of distribution, unless designated otherwise by the Participant, or prohibited by further provisions contained in this Plan.
- (b) Death after Distribution. Upon the death of any Participant on or after the date of distribution on account of his retirement or his Termination of Employment, the death benefit, if any, attributable to his Participant's Account will be determined in accordance with the form of annuity, if any, provided for the Participant under the Annuity Contract.

8.2 BENEFIICIARY. Each Participant shall have the right under the Annuity Contract to designate a Beneficiary and to specify the form of death benefit the Beneficiary is to receive. The Participant may change the Beneficiary and/or the form of death benefit at any time. If any distribution hereunder is made to a Beneficiary in the form of an annuity, then such Beneficiary shall also have the right to designate a Beneficiary and to change the Beneficiary from time to time.

If a Beneficiary has not been designated, or if no designated Beneficiary survives the Participant, the Participant's Account shall be distributed to the Participant's spouse, if living; otherwise in equal shares to any surviving children of the Participant. In the event none of the above named individuals survives the Participant, the Participant's Account shall be paid to the executor or administrator of the Participant's estate.

To the extent not inconsistent with the terms of this Plan, any payment made to a Beneficiary shall be further subject to the terms of the Annuity Contract.

ARTICLE IX  
TERMINATION OF EMPLOYMENT

- 9.1 **DISTRIBUTION.** As of a Participant's Termination of Employment, he shall be entitled to receive a distribution of his entire Vested Interest. Such distribution shall be further subject to the terms and conditions of Article VI.

If at the time of Termination the Participant is not 100% vested, the non-vested portion of his Account shall be placed in a separate account and will become a Forfeiture, to be applied in accordance with Section 9.3, upon the date the terminated Participant incurs a 1-Year Break in Service.

- 9.2 **NO FURTHER RIGHTS OR INTEREST.** A Participant shall have no further interest in or any rights to any portion of his Participant's Account that becomes a Forfeiture due to his Termination of Employment once the Participant incurs a 1-Year Break in Service in accordance with Section 2.4.

- 9.3 **FORFEITURE.** Any Forfeiture shall be credited to the Forfeiture account upon the occurrence of a 1-Year Break in Service following the Participant's Termination of Employment.

Any amount in the Forfeiture account shall be used by the Employer to reduce and in lieu of the Employer Contribution next due under Section 4.1 at the earliest opportunity after such Forfeiture becomes available.

ARTICLE X  
WITHDRAWALS

10.1 WITHDRAWALS - VOLUNTARY CONTRIBUTIONS. Provided that an Active Participant has made Voluntary Contributions in accordance with Section ~~4.5~~ 4.4 for at least twenty-four consecutive months, he may elect to withdraw from his Participant's Account an amount which is equal to any whole percentage (not exceeding 100%) of the lesser of the amounts specified in (a) and (b) below, where:

- (a) is equal to the aggregate of his Voluntary Contributions which are at the time credited to his Participant's Account, and
- (b) is equal to the then value of that portion of his Participant's Account attributable to such Voluntary Contributions.

Such an election shall become effective in accordance with the Notification section below.

If a Participant elects a withdrawal under the provisions of this section, he may not elect another withdrawal under this section until he has made Voluntary Contributions under this Plan for an additional period of twenty-four consecutive months.

10.2 NOTIFICATION. The Participant shall notify the Administrator in writing of his election to make a withdrawal under Section 10.1. Any such election shall be effective as of the date specified in such notice, which date must be at least fifteen days after such notice is filed. Payment of the withdrawal shall be subject to the terms and conditions of Article VI.

10.3 NON-REPAYMENT. Withdrawals made in accordance with this Article X may not be repaid.

ARTICLE XI  
FIDUCIARY DUTIES AND RESPONSIBILITIES

- 11.1 GENERAL FIDUCIARY STANDARD OF CONDUCT. Each Fiduciary of the Plan shall discharge his duties hereunder solely in the interest of the Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Each Fiduciary shall act with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character and with like aims, in accordance with the documents and instruments governing this Plan, insofar as such documents and instruments are consistent with this standard.
- 11.2 SERVICE IN MULTIPLE CAPACITIES. Any person or group of persons may serve in more than one Fiduciary capacity with respect to this Plan.
- 11.3 LIMITATIONS ON FIDUCIARY LIABILITY. Nothing in this Plan shall be construed to prevent any Fiduciary from receiving any benefit to which he may be entitled as a Participant or Beneficiary in this Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of this Plan as applied to all other Participants and Beneficiaries. Nor shall this Plan be interpreted to prevent any Fiduciary from receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of his duties with the Plan; except that no Person so serving who already receives full-time pay from an Employer shall receive compensation from this Plan, except for reimbursement of expenses properly and actually incurred.
- 11.4 INVESTMENT MANAGER. When an Investment Manager has been appointed pursuant to Section 12.7 of this Plan, he is required to acknowledge in writing that he has undertaken a fiduciary responsibility with respect to the Plan. The Insurance Company's liability as a Fiduciary is limited to that arising from its management of any assets of the Plan held by the Insurance Company in its Separate Accounts.

ARTICLE XII  
THE ADMINISTRATOR

- 12.1 DESIGNATION AND ACCEPTANCE. The Employer shall designate a Person or Persons to serve as Administrator under the Plan and such Person, by joining in the execution of this Plan accepts such appointment and agrees to act in accordance with the terms of the Plan.
- 12.2 DUTIES AND RESPONSIBILITY. The Administrator shall administer the Plan for the exclusive benefit of the Participants and their Beneficiaries in a nondiscriminatory manner subject to the specific terms of the Plan.

The Administrator shall perform all such duties as are necessary to operate, administer, and manage the Plan in accordance with the terms thereof. This shall include notification to the Insurance Company of any adjustment made to a Participant's Account in accordance with Article IV-A.

Furthermore, the Administrator shall take the necessary steps to notify the appropriate interested parties whenever an application is made to the Secretary of the Treasury for a determination letter in accordance with section 7476 of the Internal Revenue Code as amended.

- 12.3 EXPENSES AND COMPENSATION. The expenses necessary to administer the Plan shall be borne by the Employer, including but not limited to those involved in retaining necessary professional assistance from an attorney, an accountant, an actuary, or an investment adviser. Nothing shall prevent the Administrator from receiving reasonable compensation for services rendered in administering this Plan, provided the Administrator is not a full-time Employee of any Employer adopting this Plan.
- 12.4 INFORMATION FROM EMPLOYER. To enable the Administrator to perform his functions, the Employer shall supply full and timely information to the Administrator on all matters relating to this Plan as the Administrator may require.
- 12.5 ADMINISTRATIVE COMMITTEE; MULTIPLE SIGNATURES. In the event that more than one person has been duly nominated to serve on the Administrative Committee and has signified in writing the acceptance of such designation, the signature(s) of one or more Persons may be accepted by an interested party as conclusive evidence that the Administrative Committee has duly authorized the action therein set forth and as representing the will of and binding upon the whole Administrative Committee. No Person receiving such documents or written instructions and acting in good faith and in reliance thereon shall be obliged to ascertain the validity of such action under the terms of this Plan. The Administrative Committee shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting or in writing without a meeting.
- 12.6 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR. The Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof, unless such notice shall be waived.

The Administrator may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than thirty (30) days after delivery thereof, unless such notice shall be waived.

The Employer, upon receipt of or giving notice of the resignation or removal of the Administrator, shall promptly designate a successor Administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the Board of Directors of the Employer will function as the Administrative Committee until a new Administrator has been appointed and has accepted such appointment.

- 12.7 The Administrator shall have the power, to the extent permitted by law, to delegate the performance of such Fiduciary and non-Fiduciary duties, responsibilities and functions as the Administrator shall deem advisable for the proper management and administration of the Plan in the best interests of the Participants and their Beneficiaries.

ARTICLE XIII  
PARTICIPANTS' RIGHTS

13.1 **GENERAL RIGHTS OF PARTICIPANTS AND BENEFICIARIES.** The Plan is established and the Plan assets are held for the exclusive purpose of providing benefits for such Employees and their Beneficiaries as have qualified to participate under the terms of the Plan.

13.2 **FILING A CLAIM FOR BENEFIT.** A Participant or Beneficiary or the Employer acting in his behalf, shall notify the Administrator of a claim of benefits under the Plan. Such request shall be in writing to the Administrator and shall set forth the basis of such claim and shall authorize the Administrator to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.

A decision by the Administrator shall be made promptly and not later than 90 days after the Administrator's receipt of the claim of benefits under the Plan, unless special circumstances require an extension of the time for processing in which case a decision shall be rendered as soon as possible, but not later than 90 days after receipt of the claim of benefits under the Plan.

13.3 **DENIAL OF CLAIM.** Whenever a claim for benefits by any Participant or Beneficiary has been denied by a Plan Administrator, a written notice, prepared in a manner calculated to be understood by the Participant, must be provided, setting forth (1) the specific reasons for the denial; (2) the specific reference to pertinent Plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (4) an explanation of the Plan's claim review procedure.

13.4 **REMEDIES AVAILABLE TO PARTICIPANTS.** A Participant or Beneficiary (1) may request a review by a Named Fiduciary, other than the Administrator, upon written application to the Plan; (2) may review pertinent Plan documents; and (3) may submit issues and comments in writing to a Named Fiduciary. A Participant or Beneficiary shall have 60 days after receipt by the claimant of written notification of a denial of a claim to request a review of a denied claim.

A decision by a Named Fiduciary shall be made promptly and not later than 60 days after the Named Fiduciary's receipt of a request for review, unless special circumstances require an extension of the time for processing in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of a request for review. The decision on review by a Named Fiduciary shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

A Participant or Beneficiary shall be entitled, either in his own name or in conjunction with any other interested parties, to bring such actions in law or equity or to undertake such administrative actions or to seek such relief as may be necessary or appropriate to compel the disclosure of any required information, to enforce or protect his rights, to recover present benefits due to him or to clarify his rights to future benefits under the Plan.

13.5 **LIMITATION OF RIGHTS.** Participation hereunder shall not grant any Participant the right to be retained in the Service of the Employer or any other rights or interest in the Plan fund other than those specifically herein set forth.

13.6 **PARTICIPANT CONTRIBUTIONS.** Each Participant, regardless of his length of Service with the Employer, shall be fully vested (100%) at all times in any portion of his Participant's Account attributable to (a) and/or (b) below, as applicable:

(a) Voluntary Contributions; or

(b) Tax-free rollovers.

13.7 MERGERS OR TRANSFERS. In the case of any merger with or transfer of assets or liabilities to any other defined contribution plan after September 2, 1974, the following conditions must be met:

- (a) The sum of the Account balances in each plan shall equal the fair market value (determined as of the date of the merger or transfer) of the entire plan assets.
- (b) The assets of each plan shall be combined to form the assets of the plan as merged (or transferred).
- (c) Immediately after the merger (or transfer), each Participant in the plan merged (or transferred) shall have an Account balance equal to the sum of the Account balances the Participant had in the plans immediately prior to the merger (or transfer).

ARTICLE XIV  
THE INSURANCE COMPANY

- 14.1 DUTIES AND RESPONSIBILITIES. The Insurance Company shall issue the Annuity Contract and thereby assumes all the duties and responsibilities set forth therein. The terms of the Annuity Contract may be changed as provided therein without amending this Plan, provided such changes shall conform to the requirements for qualification under Section 401(a) of the Internal Revenue Code, as amended from time to time.
- 14.2 RELATION TO EMPLOYER, ADMINISTRATOR AND PARTICIPANT. The Insurance Company may receive the statement of the Administrator or, if the Administrator so designates, the Employer, as conclusive evidence of any of the matters decided in the Plan and the Insurance Company shall be fully protected in taking or permitting any action on the basis thereof and shall incur no liability or responsibility for so doing. The Insurance Company shall not be required to question any action by the Employer or the Administrator or any Participant nor to determine that such action is properly taken under the Plan. The Insurance Company shall be fully discharged from any and all liability with respect to any payment to any Participant hereunder in accordance with the terms of the Annuity Contract. The Insurance Company shall not be required to take any action contrary to its normal rules and practices.

ARTICLE XV  
AMENDMENT OR TERMINATION OF THE PLAN

- 15.1 AMENDMENT OF PLAN. The Employer shall have the right from time to time to modify or amend, in whole or in part any or all provisions of the Plan, provided that the modification or amendment is signed by the Employer and the Administrator. Upon any such modification or amendment, the Administrator shall be furnished a copy thereof. No amendment shall deprive any Participant or Beneficiary of any Vested Interest hereunder.

The period during which the election must be made in writing by the Participant shall begin no later than the date the Plan amendment is adopted and end no later that after the latest of the following dates

- (a) The date which is 60 days after the day the amendment is adopted;
- (b) The date which is 60 days after the day the amendment becomes effective;
- (c) The date which is 60 days after the day the Participant is issued written notice of the amendment by the Employer or Administrator.

Such written election by a Participant shall be made to the Administrator, who shall then give written notice to the Insurance Company.

The City shall give notice to Participants prior to making any material changes to this Plan, except those required by statutes, and shall be available to receive and consider comments of Participants as to proposed changes. When the City Staff, City Council or a committee of the City Council has formulated the substance of a proposed material change, notice of the substance of the proposed change will be given to Participants at least sixty (60) days before City Council votes on the proposal. This notice will contain a "plain language" explanation of the substance of the proposed changes. Employees will have access to the Staff during such sixty (60) day period. If requested in writing by at least five (5) Participants, a meeting shall be held between the Staff and interested Participants at which time the Staff will explain the proposal and answer any questions. These questions and areas of concern must be submitted in writing by interested Participants at least five (5) days prior to the scheduled meeting. At least seven (7) days notice shall be given of the time and place of such meeting.

- 15.2 CONDITIONS OF AMENDMENT. The Employer shall not make any amendment which would cause the Plan to lose its status as a qualified plan within the meaning of Section 401(a) of the Internal Revenue Code.
- 15.3 TERMINATION OF THE PLAN. The Employer intends to continue the Plan indefinitely for the benefit of its Employees, but reserves the right to terminate the Plan at any time by resolution. Upon such termination, the liability of the Employer to make the Employer Contributions hereunder shall terminate.
- 15.4 FULL VESTING. Upon the termination or partial termination of the Plan, the rights of all affected Participants in and to the amounts credited to each such Participant's Account shall be 100% vested and nonforfeitable. Thereupon, each Participant shall receive a total distribution of his Participant's Account (including any amounts in the Forfeiture Account allocated in accordance with Section 15.5) in accordance with the terms and conditions of Article VI and the Annuity Contract.
- 15.5 APPLICATION OF FORFEITURES. Upon the termination of the Plan, any amount in the Forfeiture account which has not been applied as of such termination to reduce the Employer Contribution shall be credited on a pro rata basis to the Participant's Account of the then Active Participants in the same manner as the last Employer Contribution made under the Plan.

- 15.6 **SUBSEQUENT UNFAVORABLE DETERMINATION.** If the Employer is notified subsequent to initial favorable qualification that the Plan is no longer qualified within the meaning of Section 401(a) of the Internal Revenue Code, and if the Employer shall fail within a reasonable time to make any necessary changes in order that the Plan shall so qualify, the Participants' Accounts under the Annuity Contract shall be fully vested and nonforfeitable and shall be disposed of in the manner set forth in Sections 15.4 and 15.5 above; with respect to a Plan which is no longer qualified, all assets thereunder shall be segregated apart from all other assets held under the Annuity Contract for any other Employer.

ARTICLE XVI  
SUBSTITUTION OF PLANS

- 16.1 SUBSTITUTION OF PLANS. Subject to the provisions of Section 13.7 the Employer may substitute an individually designed plan or a master or prototype plan for this Plan without terminating this Plan as embodied herein and this shall be deemed to constitute an amendment and restatement in its entirety of this Plan as heretofore adopted by the Employer; provided, however that the Employer shall have certified to the Insurance Company that this Plan is being continued on a restated basis which meets the requirements of Section 401(a) of the Internal Revenue Code and ERISA.
- 16.2 TRANSFER OF ASSETS. Upon 90 days written notification from the Employer (unless the Insurance Company shall accept a shorter period of notification) that a different plan meeting the requirements set forth in Section 16.1 above has been executed and entered into by the Administrator and the Employer, and after the Insurance Company has been furnished the Employer's certification in writing that the Employer intends to continue the Plan as a qualified plan under Section 401(a) of the Internal Revenue Code, the Insurance Company shall transfer the value of all Participants' Accounts under the Annuity Contract in accordance with the terms of the Annuity Contract, to the Employer or such person or persons as may be entitled to receive same. The Insurance Company may rely fully on the representations or directions of the Employer with respect to any such transfer made in accordance with such representations, instructions, or directions.

ARTICLE XVII  
MISCELLANEOUS

- 17.1 **NON-REVERSION.** This Plan has been established by the Employer for the exclusive benefit of the Participants and their Beneficiaries. Except as otherwise provided in Section 17.7, under no circumstances shall any funds contributed hereunder at any time revert to or be used by the Employer, nor shall any such funds or assets of any kind be used other than for the benefit of the Participants or their Beneficiaries.
- 17.2 **GENDER AND NUMBER.** When necessary to the meaning hereof, and except when otherwise indicated by the context, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall be deemed to include the plural.
- 17.3 **REFERENCE TO THE CODE.** Any reference to any section of the Internal Revenue Code herein or to any other statute or law shall be deemed to include any successor law of similar import.
- 17.4 **GOVERNING LAW.** The Plan shall be governed and construed in accordance with the laws of the state where the Employer has its principal office.
- 17.5 **COMPLIANCE WITH THE CODE AND ERISA.** This Plan is intended to comply with all requirements for qualification under the Internal Revenue Code, and if any provision hereof is subject to more than one interpretation or any term used herein is subject to more than one construction, such ambiguity shall be resolved in favor of that interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.
- 17.6 **NON-ALIENATION.** It is a condition of the Plan, and all rights of each Participant shall be subject thereto, that no right or interest of any Participant in the Plan shall be assignable or transferable in whole or in part, either directly or by operation of law or otherwise, including, but without limitation, execution, levy, garnishment, attachment, pledge, bankruptcy or in any manner, and no right or interest of any Participant in the Plan shall be liable for or subject to any obligation or liability of such Participant.
- 17.7 **CONTRIBUTION RECAPTURE.** Notwithstanding any other provisions of this Plan, (1) in the case of a contribution which is made by an Employer by a mistake of fact, Section 17.1 shall not prohibit the return of such contribution to the Employer within one year after the payment of the contribution, and (2) if a contribution is conditioned upon the deductibility of the contribution under Section 404 of the Internal Revenue Code of ~~1954~~ 1986, then, to the extent the deduction is disallowed, Section 17.1 shall not prohibit the return to the Employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction. The amount which may be returned to the Employer is the excess of (1) the amount contributed over (2) the amount that would have been contributed had there not occurred a mistake of fact or a mistake in determining the deduction. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had the mistaken amount not been contributed, then the amount to be returned to the Employer would have to be limited so as to avoid such reduction.

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -  
original document : E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR DEPUTY SHERIFFS  
AND EMERGENCY RESCUE - 1995 CIGNA DOCUMENT.DOC  
and revised document: E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR DEPUTY SHERIFF'S  
AND ERTS 2-20-02 DRAFT.DOC

CompareRite found 103 change(s) in the text

Deletions appear as Overstrike text

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**CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR  
DEPUTY SHERIFFS AND EMERGENCY RESCUE TECHNICIANS**

**IMPORTANT NOTE**

~~Neither Connecticut General Life Insurance Company nor any of its employees can provide you with legal advice in connection with the execution of this document. Prior to execution of this document, you should consult your attorney on whether this document is appropriate for you. Amended and Restated Effective as of December 31, 2001~~

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PREAMBLE

The City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians, originally effective as of July 1, 1990, is hereby amended and restated in its entirety.

The terms of the Plan, as amended and restated, shall apply only with respect to Plan Years commencing after December 31, 2001; provided, however, that any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before the effective date of this amended and restated Plan in order to retain the qualification of the Plan under Code Section 401(a) shall, nevertheless, be effective as of its required effective date under the Code.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to employees of the Employer on and after December 31, 2001, and the rights, benefits and interests of any employee who died, retired or otherwise terminated his employment with the Employer prior to December 31, 2001, shall be determined under the provisions of the Plan as in effect on the date such former employee died, retired or otherwise terminated his employment with the Employer.

The Plan, as amended and restated hereby, is intended to qualify as a profit sharing plan under Code Section 401(a) and is a governmental plan as described in Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

ARTICLE I  
DEFINITIONS

- 1.1 ACCRUED BENEFIT. The term Accrued Benefit means the value on any applicable date of the Participant's Account.
- 1.2 ACTIVE PARTICIPANT. The term Active Participant means any Participant who (a) performs duties as an Employee for the Employer, and (b) is not an Inactive Participant.
- 1.3 ANNUITY. The term Annuity means a series of payments made over a specified period of time which, for a fixed annuity are, of equal, specified amounts, and for a variable annuity increase or decrease to reflect changes in investment performance of the underlying portfolio.
- 1.4 ANNUITY CONTRACT. The term Annuity Contract means the Group Annuity Contract issued by the Insurance Company to the Employer to fund the benefits provided under this Plan; as such contract may hereafter be amended from time to time in accordance with the terms hereof.
- 1.5 ANNUITY STARTING DATE. The term Annuity Starting Date means the first day of the first period for which an amount is payable as an Annuity. In the case of a benefit not payable in the form of an Annuity, the term Annuity Starting Date means the first day on which all events have occurred which entitle the Participant to such benefit.
- 1.6 BENEFICIARY. Each Participant shall have the right to designate anyone as their Beneficiary. The Participant may change the Beneficiary and/or the form of death benefit at any time.

If any distribution hereunder is made to a Beneficiary in the form of an Annuity, and if such Annuity provides for a death benefit, then such Beneficiary shall also have the right to designate a Beneficiary and to change that Beneficiary from time to time. As an alternative to receiving the benefit in the form of an Annuity, the Beneficiary may elect to receive a single cash payment or any other form of payment provided for in the Plan.

If a Beneficiary has not been designated, or if no designated Beneficiary survives the Participant, the Participant's entire Vested Interest shall be distributed to the Participant's Spouse, if living; otherwise in equal shares to any surviving children of the Participant. In the event none of the above named individuals survives the Participant, the Participant's entire Vested Interest shall be paid to the executor or administrator of the Participant's estate.

- 1.7 BOARD OF DIRECTORS. The term Board of Directors means the Employer's board of directors or other comparable governing body.
- 1.8 CODE. The term Code means the Internal Revenue Code of 1986, as amended from time to time.
- 1.9 COMPENSATION.
- (A) The term Compensation means the regular or base salary or wages paid by the Employer to the Participant for the period specified in the Plan and excluding overtime payments and bonuses.
- ~~(B) If for any Plan Year the definition of Compensation stated above fails to meet the nondiscrimination requirements set forth in Code section 414(s) and the regulations thereunder, then for such Plan Year the term Compensation shall mean Compensation as set forth in Section 5.1 (B), except that contributions made pursuant to Code section 457 shall be included in determining Compensation.~~
- (C) Compensation shall include only that Compensation which is actually paid to the Participant during the determination period. Except as provided elsewhere in the Plan, the determination

period shall be the Plan Year. However, for the Plan Year in which an Employee begins participation in the Plan and the Plan Year in which an Employee ends participation in the Plan, the determination period is the portion of the Plan Year during which the Employee is a Participant in the Plan.

~~(D)(C)~~ Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the employee under sections 125, ~~132(f)~~, 402(e)(3), 402(h), or 403(b) of the Code; Compensation deferred under an eligible deferred compensation plan within the meaning of section 457(b) of the Code; and employee contributions described in section 414(h)(2) of the Code that are picked up by the employing unit and, thus, are treated as employer contributions.

~~(E) For Employees first becoming Participants during Plan Years beginning on or after January 1, 1996, the annual Compensation of each such Employee taken into account under the Plan shall not exceed the OBRA '93 annual Compensation limit. The OBRA '93 annual Compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Code. The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For Plan Years beginning on or after January 1, 1996, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual Compensation limit set forth in this provision. If Compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual Compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996, the OBRA '93 annual Compensation limit is \$150,000. (D) Effective as of January 1, 1996, Compensation with respect to any Plan Year shall in no event exceed the dollar limit specified in Section 401(a)(17) of the Code (as adjusted from time to time by the Secretary of the Treasury).~~

- 1.10 CONTRIBUTION PERIOD. The term Contribution Period means that regular period specified by the Employer in Article IV for which contributions shall be made.
- 1.11 DISABILITY. The term Disability means a Participant's incapacity to engage in any substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death, or to be of long, continued and indefinite duration. Such determination of Disability shall be made by the Administrator with the advice of competent medical authority. All Participants in similar circumstances will be treated alike.
- 1.12 DISABILITY RETIREMENT DATE. The term Disability Retirement Date means the first day of the month after the Plan Administrator has determined that a Participant's incapacity is a Disability.
- 1.13 EARLY RETIREMENT DATE. The term Early Retirement Date means the first day of the month coinciding with or next following the date a Participant is separated from Service with the Employer on or after the date he attains age 55 and has five Years of Service for any reason other than death or Disability, provided that on such date the Participant has not attained his Normal Retirement Age.
- 1.14 EFFECTIVE DATE. The term Effective Date means July 1, 1990. The effective date of this restatement is December 31, 2001.
- 1.15 EMPLOYEE. The term Employee means an individual who performs services for the Employer and who is a common law employee of the Employer.

- 1.16 EMPLOYER. The term Employer means City of Alexandria and any successor organization to such Employer which elects to continue the Plan.
- 1.17 EMPLOYER CONTRIBUTION. The term Employer Contribution means any contribution made to the Plan by the Employer on behalf of a Participant.
- 1.18 ENTRY DATE. The term Entry Date means either the Effective Date or immediately thereafter when an Employee who has fulfilled the eligibility requirements commences participation in the Plan.

If an Employee is not in the active Service of the Employer as of his initial Entry Date, his subsequent Entry Date shall be the date he returns to the active Service of the Employer, provided he still meets the eligibility requirement. If an Employee does not enroll as a Participant as of his initial Entry Date, his subsequent Entry Date shall be the applicable Entry Date as specified above when the Employee actually enrolls as a Participant.

~~1.19 FAMILY MEMBER. The term Family Member means, with respect to any Employee, such Employee's Spouse and lineal ascendants and descendants and the spouses of such lineal ascendants and descendants.~~

1.20 FIDUCIARY. The term Fiduciary means any, or all, of the following, as applicable:

- (A) Any Person who exercises any discretionary authority or control respecting the management of the Plan or its assets; or
- (B) Any Person who renders investment advice for a fee or other compensation, direct or indirect, respecting any monies or other property of the Plan or has authority or responsibility to do so; or
- (C) Any Person who has discretionary authority or responsibility in the administration of the Plan; or
- (D) Any Person who has been designated by a Named Fiduciary pursuant to authority granted by the Plan, who acts to carry out a fiduciary responsibility.

~~1.21~~ 1.20 FORFEITURE. The term Forfeiture means the amount, if any, by which the value of a Participant's Account exceeds his Vested Interest following such Participant's Termination of Employment, and at the time specified in Section 8.1.

~~1.22 HIGHLY COMPENSATED EMPLOYEE. The term Highly Compensated Employee means any Highly Compensated Active Employee or Highly Compensated Former Employee as further defined herein.~~

~~For purposes of the determination of Highly Compensated Employees, the term Compensation means Compensation as defined in Article V of the Plan, but includes the amount of any elective contributions made by the Employer on the Employee's behalf to a cafeteria plan established in accordance with the provisions of Code section 125, a qualified cash or deferred arrangement in accordance with the provisions of Code section 402(e)(3), a simplified employee pension plan in accordance with the provisions of Code section 402(h), or a tax sheltered annuity plan maintained in accordance with the provisions of Code section 403(b).~~

~~A "Highly Compensated Active Employee" is any Employee who performs services for the Employer during the current Plan Year and who, during the current Plan Year or the 12 month period immediately preceding such Plan Year;~~

~~(A) Receives Compensation in excess of \$75,000 multiplied by the applicable cost of living adjustment factor prescribed under Code section 415(d) and then prorated in the case of a short Plan Year; or~~

~~(B) Receives Compensation in excess of \$50,000, as adjusted for cost of living in accordance with Code section 415(d) and then prorated in the case of a short Plan Year, and is in the top 20% of Employees ranked by Compensation; or~~

~~(C) Is, at any time, an officer of the Employer and receives Compensation in excess of 50% of the amount in effect under Code section 415(b)(1)(A) for the applicable period.~~

~~If no officer receives Compensation in excess of the amount specified above, the highest paid officer for the applicable period shall be a Highly Compensated Employee.~~

~~In no event if there are more than 500 Employees, shall more than 50 Employees or, if there are less than 500 Employees, shall the greater of three Employees or 10% of all Employees, be taken into account as officers.~~

~~In determining both the top 20% of Employees ranked by Compensation for purposes of paragraph (B) above, and officers of the Employer for purposes of paragraph (C) above, Employees who have not completed six months of Service by the end of the applicable period, Employees who normally work less than 17 1/2 hours per week, Employees who normally work less than six months during a year, Employees who have not attained 21, and nonresident aliens who receive no earned income from U.S. sources shall be excluded.~~

~~Notwithstanding the above provisions, an Employee who was not highly compensated during the 12 month period immediately preceding the current Plan Year will not be considered to be a Highly Compensated Employee in the current Plan Year unless such Employee is one of the top 100 Employees ranked by Compensation for the current Plan Year.~~

~~A "Highly Compensated Former Employee" is any former Employee who separated from Service with the Employer in a Plan Year preceding the current Plan Year and was a highly Compensated Active Employee in either:~~

~~(A) the Plan Year in which his separation from Service occurred; or~~

~~(B) any Plan Year ending on or after such former Employee's 55th birthday.~~

~~A former Employee is an Employee who performs no services for the Employer during a Plan Year (for example, by reason of a leave of absence).~~

~~1.23 1.21~~ **INACTIVE PARTICIPANT.** The term Inactive Participant means any Participant who does not currently meet the requirements to be an Active Participant due to a suspension of the performance of duties for the Employer.

In addition, a Participant who ceases to meet the eligibility requirements in accordance with Section 3.1 shall be considered an Inactive Participant.

~~1.24 1.22~~ **INSTALLMENT REFUND ANNUITY.** The term Installment Refund Annuity means an annuity which provides fixed monthly payments for a period certain of not less than three nor more than 15 years. If the Participant dies before the period certain expires, the annuity will be paid to the Participant's beneficiary for the remainder of the period certain. The period certain shall be chosen by the Participant at the time the annuity is purchased, and the Installment Refund Annuity will be the amount of benefit which can be purchased with the Participant's Vested Interest. The Installment Refund Annuity is not a life annuity and in no event shall the period certain extend to a period which equals or exceeds the life expectancy of the Participant.

~~1.25 1.23~~ **INSURANCE COMPANY.** The term Insurance Company means Connecticut General Life Insurance Company, a legal reserve life company of Hartford, Connecticut.

~~1.24~~ **INVESTMENT FUNDS.** The term Investment Funds means the investment accounts made available under the Annuity Contract and designated by the Administrator for the investment of Plan assets.

- ~~1.25~~ ~~1.26~~ LATE RETIREMENT DATE. The term Late Retirement Date means the first day of the month coinciding with or next following the date a Participant is separated from Service with the Employer after his Normal Retirement Age, for any reason other than death.
- ~~1.27~~ ~~1.26~~ NAMED FIDUCIARY. The term Named Fiduciary means the Plan Administrator and any other Fiduciary designated in writing by the Employer, and any successor thereto.
- ~~1.28~~ ~~1.27~~ NONELECTIVE CONTRIBUTIONS. The term Nonelective Contributions means contributions made by the Employer that the Participant may not elect to have paid in cash or other benefits instead of being contributed to the Plan.
- ~~1.29~~ ~~NONHIGHLY COMPENSATED EMPLOYEE.~~ ~~The term Nonhighly Compensated Employee means an Employee who is not a Highly Compensated Employee.~~
- ~~1.30~~ ~~1.28~~ NORMAL RETIREMENT AGE. The term Normal Retirement Age means the date the Participant attains age 60.
- ~~1.31~~ ~~1.29~~ NORMAL RETIREMENT DATE. The term Normal Retirement Date means the first day of the month coinciding with or next following the date a Participant attains his Normal Retirement Age.
- ~~1.32~~ ~~1.30~~ PARTICIPANT. The term Participant means any Employee of the Employer, who is or becomes eligible to participate under this Plan in accordance with its provisions and shall include an Active Participant and an Inactive Participant.
- ~~1.33~~ ~~1.31~~ PARTICIPANT'S ACCOUNT. The term Participant's Account means the sum of the following sub-accounts held on behalf of each Participant:
- Nonelective Contributions, if any, and earnings thereon.
- A Participant's Account shall be invested in accordance with ~~the~~ Sections 11.6, and any rules established thereunder by the Plan Administrator, which shall be applied in a consistent and nondiscriminatory manner.
- ~~1.34~~ ~~1.32~~ PERSON. The term Person means any natural person, partnership, corporation, trust or estate.
- ~~1.35~~ ~~1.33~~ PLAN. The term Plan means City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians, the terms of which are set forth herein as it may be amended from time to time. This Plan is intended to be a Profit Sharing Plan in which profits are not required in order for a contribution to be made.
- ~~1.36~~ ~~1.34~~ PLAN ADMINISTRATOR. The terms Plan Administrator and Administrator are used interchangeably throughout the Plan and shall mean the Employer.
- ~~1.37~~ ~~1.35~~ PLAN YEAR. The term Plan Year means the ~~12-Month~~ month period commencing on January 1 and ending on the following December 31.
- ~~1.38~~ ~~1.36~~ TERMINATION OF EMPLOYMENT. The term Termination of Employment means a severance of the Employer-Employee relationship which occurs prior to a Participant's Normal Retirement Age for any reason other than Early Retirement, Disability or death.
- ~~1.39~~ ~~1.37~~ VESTED INTEREST. The term Vested Interest on any date means the nonforfeitable right to an immediate or deferred benefit in the amount which is equal to the value on that date of that portion of the Participant's Account that is attributable to and derived from Employer Contributions multiplied by his Vesting Percentage determined on the date applicable.
- ~~1.40~~ ~~1.38~~ VESTING PERCENTAGE. The term Vesting Percentage means the percentage used to determine a Participant's Vested Interest in contributions made by the Employer, plus the earnings thereon,

credited to his Participant's Account that are not 100% immediately vested. The Vesting Percentage for each Participant shall be determined in accordance with the following schedule based on Years of Service with the Employer:

<u>Years of Service</u>	<u>Vesting Percentage</u>
Less than five	0%
five or more	100%

However, if an Active Participant dies prior to attaining his Normal Retirement Age, his Vesting Percentage shall be 100%.

ARTICLE II  
SERVICE

- 2.1 SERVICE. The term Service means active employment with the Employer as an Employee who is classified as a Deputy Sheriff or Emergency Rescue Technician.
- 2.2 ABSENCE FROM EMPLOYMENT. Absence from employment on account of a leave of absence authorized by the Employer pursuant to the Employer's established leave policy will be counted as employment with the Employer provided that such leave of absence is of not more than two years duration. Absence from employment on account of active duty with the Armed Forces of the United States will be counted as employment with the Employer. If Subject to Section 2.10. if the Employee does not return to active employment with the Employer, his Service will be deemed to have ceased on the date the Administrator receives notice that such Employee will not return to the active Service of the Employer. The Employer's leave policy shall be applied in a uniform and nondiscriminatory manner to all Participants under similar circumstances.
- 2.3 PERIOD OF SERVICE. The term Period of Service or Service means the Employer-Employee relationship which begins on the Employee's employment date and continues until his Severance from Service Date.

An Employee's Period of Service shall include any Period of Severance beginning on his Severance from Service Date, which is less than 12 months.

If an Employee accrued Service as a Firefighter or Police Officer and subsequently left that job classification to become a Deputy Sheriff or Emergency Rescue Technician, any Service accrued under the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" shall be considered Service under the Plan for the Employee's Vesting Percentage.

- 2.4 PERIOD OF SEVERANCE. The term Period of Severance means a period of time commencing on the Participant's Severance from Service Date and ending on the date such individual is re-employed by the Employer.
- 2.5 SEVERANCE FROM SERVICE DATE. The Severance from Service Date shall be the earliest of (A) or (B) below.
- (A) The date the Employee terminates employment by reason of a quit, discharge, permanent Disability, retirement or death.
- (B) The first anniversary of the first day the Employee separates from Service for any other reason such as an authorized leave of absence, sickness, vacation, etc., after which the Employee does not return to work.
- 2.6 ONE-YEAR BREAK-IN-SERVICE. The term One-Year Break-in-Service shall mean a 12-consecutive-month Period of Severance, beginning on the Employee's Severance from Service Date.

In the case of an individual who is absent from Service for maternity or paternity reasons, the 12-consecutive-month period beginning on the first anniversary of the first date of such absence shall not constitute a One Year Break-in-Service. An absence from Service for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

- 2.7 YEAR(S) OF SERVICE. The term Year(s) of Service means a Period of Service equaling 12 months. Service counted in computing Years of Service need not be consecutive or continuous, and all fractional Periods of Service shall be aggregated.

- 2.8 SERVICE UPON RE-EMPLOYMENT. An Employee shall be considered a re-employed Employee when he is rehired prior to incurring a One-Year Break-in-Service. Upon re-employment, all Service, including Service prior to re-employment, shall be aggregated in determining such re-employed Employee's Vesting Percentage. An Employee who is rehired, after incurring a One-Year Break-in-Service shall be considered a newly hired Employee and any prior Service shall not count toward such re-employed Employee's Vesting Percentage.
- 2.9 PREDECESSOR ORGANIZATION SERVICE. For purposes of this Article, Service with a predecessor organization of the Employer shall be treated as Service with the Employer in any case in which the Employer maintains the Plan of such predecessor organization.
- 2.10 QUALIFIED MILITARY SERVICE. Notwithstanding any provision of this Plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

ARTICLE III  
ELIGIBILITY, ENROLLMENT AND PARTICIPATION

- 3.1 **ELIGIBILITY.** Each Employee, excluding a leased employee, shall be eligible to become a Participant as of the Entry Date when he first meets the following requirement(s):
- classified as a Deputy Sheriff or Emergency Rescue Technician employee for the City of Alexandria.
- 3.2 **ENROLLMENT AND PARTICIPATION.** Each eligible Employee shall become a Participant as of his Entry Date and shall complete and deliver to the Administrator as soon as administratively convenient thereafter, an enrollment form.
- 3.3 **RE-EMPLOYED EMPLOYEE.** In the case of an individual who ceases to be an Employee and is subsequently rehired as an Employee, the following provisions shall apply in determining his eligibility to again participate in the Plan:
- (A) If the Employee had met the eligibility requirement(s) specified in Section 3.1 prior to his separation from employment, he shall become an Active Participant in the Plan as of the date he is re-employed, after completing the applicable form(s), in accordance with Section 3.2.
  - (B) If the Employee had not met the eligibility requirement(s) specified in Section 3.1 prior to his separation from employment, he shall be eligible to participate in the Plan on the first Entry Date following his fulfillment of such eligibility requirement(s).
- 3.4 **ELIGIBLE CLASS.** In the event a Participant become ineligible to participate because he is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his return to an eligible class of Employees.

In the event an Employee who is not a member of the eligible class of Employees becomes a member of the eligible class, such Employee shall participate immediately.

ARTICLE IV  
CONTRIBUTIONS

- 4.1 **NONELECTIVE CONTRIBUTIONS.** The Employer may make a contribution under the Plan for any Contribution Period of an amount which shall be determined by resolution. Such resolution shall either specify a fixed amount or specify a definite formula by which a fixed amount can be determined.

Such Nonelective Contribution shall be allocated as of the last day of the Contribution Period for which such contribution is made to each Participant who:

- is an Active Participant as of any day of the Contribution Period.

Notwithstanding the above provision, an allocation will be made on behalf of a Participant who dies, retires, or becomes disabled during the Contribution Period.

For each Contribution Period the contribution shall be allocated to each Participant in the proportion that the Compensation paid to each Participant during the Contribution Period bears to the Compensation paid to all such Participants, subject to the limitations on Allocations specified in Article V.

The contribution as described above, for any Plan Year, shall be paid to the Insurance Company not less frequently than monthly.

- 4.2 **PAYMENT OF EXPENSES.** The Employer may contribute to the Plan the amount necessary, to pay any applicable expense charges and administration charges. In lieu of the Employer's contributing the amount necessary to pay such charges, these expenses may be paid from Plan assets.
- 4.3 **ALLOCATION OF FORFEITURES.** The contributions made by the Employer shall be reduced by any Forfeitures available as an Employer credit in accordance with Section 8.3.
- 4.4 **CREDITING OF CONTRIBUTIONS MADE BY THE EMPLOYER.** The Contributions made by the Employer shall be credited to the Participant Account of each Participant for whom such contributions are made, in accordance with the provisions of Article ~~XIII~~ XI.

ARTICLE V  
LIMITATIONS ON ALLOCATIONS

5.1 LIMITATIONS ON ALLOCATIONS. Definitions - The following definitions are atypical terms which refer only to terms used in the Limitations Limitation on Allocations Section sections of this Article V.

- (A) ~~(A) Annual Additions.~~ Addition - The term Annual Additions shall mean for any Limitation Year commencing on or after January 1, 1987, the sum of those amounts allocated to the Participant's Account under this Plan and under any other qualified defined contribution plan to which the Employer contributes for any Limitation Year, consisting of (1) Employer Contributions, (2) employee contributions and (3) forfeitures. In addition to the foregoing, Annual Additions shall also include (1) any amounts allocated to such Participant's the sum of the following amounts allocated on behalf of a Participant for a Limitation Year:(1) all contributions made by the Employer which shall include:Nonelective Contributions, if any;(2) all Forfeitures, if any;(3) all Employee Contributions, if any. Also, for the purposes of this Article, Employee Contributions are determined without regard to deductible employee contributions within the meaning of section 72(o)(5) of the Code. Amounts allocated after March 31, 1984, to an individual medical account, as defined in Internal Revenue Section 415(l)(1) of the Code section 415(l)(1), which is part of a defined benefit plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan. Also, amounts derived from and (2) any contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of such Participant (if he is a key employee, as defined in Internal Revenue Code section 419A(d)(3), Section 419A(d)(3) of the Code) under a welfare benefit fund, as defined in Internal Revenue Section 419(e) of the Code section 419(e), maintained by the Employer, are treated as Annual Additions to a defined contribution plan.
- (B) ~~(B) Compensation.~~ The term Compensations means 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 maintaining the Plan to the extent that the amounts are Compensation - The term Compensation shall mean compensation, as defined in Code Section 415(c)(3) and regulations issued thereunder. Effective for Limitation Years beginning on or after January 1, 1998, the term Compensation shall include amounts deferred pursuant to a salary reduction agreement under any plan described in Section 402(h), 132(f) or 125 of the Code. For purposes of applying the Limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income (including, but not limited to, commissions paid salesmen, 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 1.62 2(c)), and foreign earned income (as defined in section 911(b) of the Code) whether or not excludable from gross income under section 911 of the Code. The term Compensation does not include: during such year.
- (C) ~~(l) Employer Contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;(2) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Code (whether or not the contributions are actually excludable from the gross income of the Employee).~~ For Limitation Years beginning after December 31, 1995, Employer - The term Employer shall mean the City of Alexandria and any other employer who is required to be treated as a single employer with the City under Section 414(b), (c), (m) or (o) of the Code. All such employers shall be considered a single employer for purposes of applying the limitations of this article for Participants who join the Plan after December 31, 1995, Compensation for a

~~Limitation Year is the Compensation actually paid or made available during such Limitation Year. Article.~~

- (D) ~~(C) Defined Contribution Dollar Limitation. The term Defined Contribution Dollar Limitation shall mean \$30,000 or, if greater, one fourth of the defined benefit dollar limitation set forth in Internal Revenue Code section 415(b)(1) as in effect for the Limitation Year. (D) Employer. The term Employer shall mean the Employer that adopts this Plan. (E) Excess Amount. The term Excess Amount shall mean the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. (F) Limitation Year. Limitation Year. The term Limitation Year shall mean the Plan calendar year. (G) Maximum Permissible Amount. The term Maximum Permissible Amount shall mean the lesser of (1) the Defined Contribution Dollar Limitation, or (2) 25% of the Participant's Compensation for the Limitation Year.~~

~~If a short Limitation Year is created because of an amendment changing the Limitation Year to a different period of 12 consecutive months, the Maximum Permissible Amount for the short Limitation Year will be the lesser of (1) the Defined Contribution Dollar Limitation multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year, and the denominator of which is 12, or (2) 25% of the Participant's Compensation for the short Limitation Year.~~

5.2 ~~LIMITATIONS ON ALLOCATIONS. If the Employer maintains one or more defined contribution plans in addition to this Plan:~~

~~(A) The amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year, shall not exceed the lesser of:~~

~~(1) The Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Account for the same Limitation Year under this Plan and such other defined contribution plan; or~~

~~(2) Any other limitation contained in this Plan.~~

~~Prior to the determination of the Participant's actual Compensation for the Limitation Year, the amounts referred to in Subsection (1) above may be determined on the basis of the Participant's estimated annual Compensation for such Limitation Year. Such estimated annual Compensation shall be determined for all Participants similarly situated.~~

~~Any contribution made by the Employer based on estimated annual Compensation shall be reduced by any Excess Amounts carried over from prior years, if applicable.~~

~~(B) As soon as is administratively feasible after the end of the Limitation Year, the amounts referred to in Section 5.2(A) shall be determined on the basis of the Participant's actual Compensation for such Limitation Year.~~

~~(C) If amounts are contributed to a Participant's Account under this Plan on an allocation date which does not coincide with the allocation date(s) for all such other plans, and if a Participant's Annual Additions under this Plan and all such other plans result in an Excess Amount, such Excess Amount shall be deemed to have derived from those contributions last allocated.~~

~~(D) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributable to this Plan will be the product of (1) and (2) below:~~

~~(1) The total Excess Amount allocated as of such date (including any amount which would have been allocated but for the limitations of Internal Revenue Code section 415).~~

~~(2) The ratio of (1) the amount allocated to the Participant as of such date under this Plan, divided by (2) the total amount allocated as of such date under all qualified defined contribution plans (determined without regard to the limitations of Internal Revenue Code section 415).~~

~~(E) Any Excess Amounts attributed to this Plan shall be disposed of as follows:~~

- ~~(1) If an Excess Amount exists, the Excess Amount in the Participant's Account shall be held unallocated in a suspense account for the Limitation Year and allocated and reallocated in the next Limitation Year to all Participants in the Plan. The excess amount must be used to reduce Employer Contributions for the next Limitation Year (and succeeding Limitation Years, as necessary) for all of the Participants in the Plan. For purposes of this subparagraph, the Excess Amount may not be distributed to Participants or former Participants.~~
- ~~(2) If a suspense account is in existence at any time during a Limitation Year pursuant to this section, it will not participate in the allocation of investment gains or losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer Contributions which would constitute Annual Additions may be made to the Plan for that Limitation Year.~~

~~5.3 LIMITATIONS ON ALLOCATIONS. If the Employer maintains or has ever maintained a defined benefit plan in addition to this Plan:~~

- ~~(A) If an individual is a Participant at any time in both this Plan and a defined benefit plan maintained by the Employer, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any year may not exceed 1.0. In the event that the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction exceeds 1.0, the Defined Contribution Plan Fraction will be reduced until the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction does not exceed 1.0.~~

~~If an individual was a Participant in this Plan or in any other defined contribution plan maintained by the Employer which was in existence on July 1, 1982, the numerator of the Defined Contribution Plan Fraction will be adjusted if the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the Fractions over 1.0 times (2) the denominator of the Defined Contribution Plan Fraction, will be permanently subtracted from the numerator of the Defined Contribution Plan Fraction. The adjustment is calculated using the Fractions as they would be computed as of the later of the end of the last Limitation Year beginning before January 1, 1983, or June 30, 1983. This adjustment also will be made if at the end of the last Limitation Year beginning before January 1, 1984, the sum of the Fractions exceeds 1.0 because of accruals or additions that were made before the limitations of this Article became effective to any plans of the Employer in existence on July 1, 1982.~~

~~In addition, if an individual was a Participant in this Plan or in any other defined contribution plan maintained by the Employer which was in existence on May 6, 1986, the numerator of the Defined Contribution Plan Fraction will be adjusted if the Employer's defined benefit plan was also in existence on May 6, 1986, and the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the Fractions over 1.0 times (2) the denominator of the Defined Contribution Plan Fraction, will be permanently subtracted from the numerator of the Defined Contribution Plan Fraction. This adjustment is calculated using the Fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987. In the event that a Participant's accrued benefit as of December 31, 1986, under the defined benefit plan exceeds the benefit dollar limitation set forth in Internal Revenue Code section 415(b)(1), the amount of that accrued benefit shall be used in both the numerator and the denominator of the Defined Benefit Plan Fraction in making this adjustment.~~

~~For purposes of this Section 5.3, all defined benefit plans of the Employer, whether or not terminated, will be treated as one defined benefit plan and all defined contribution plans of the Employer, whether or not terminated, will be treated as one defined contribution plan.~~

- ~~(B) The Defined Benefit Plan Fraction for any year is a fraction, the numerator of which is the Participant's Projected Annual Benefit under the defined benefit plan (determined as of the close of the Limitation Year), and the denominator of which is the lesser of (1) or (2) below:~~

- (1) 1.25 times the dollar limitation in effect under Internal Revenue Code section 415(b)(1)(A) on the last day of the Limitation Year; or
- (2) 1.4 times the amount which may be taken into account under Internal Revenue Code section 415(b)(1)(B) with respect to such Participant for the Limitation Year.

Notwithstanding the above, if the Participant was a participant in one or more defined benefit plans maintained by the Employer which were in existence on July 1, 1982, the denominator of the Defined Benefit Plan Fraction will not be less than 125% of the sum of the annual benefits under such plans which the Participant had accrued as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Internal Revenue Code section 415 as in effect at the end of the 1982 Limitation Year.

(C) A Participant's Projected Annual Benefit is equal to the annual benefit to which the Participant would be entitled under the terms of the defined benefit plan based upon the following assumptions:

- (1) The Participant will continue employment until reaching Normal Retirement Age as determined under the terms of the plan (or current age, if that is later);
- (2) The Participant's Compensation for the Limitation Year under consideration will remain the same until the day the Participant attains the age described in sub-division (1) of this subparagraph; and
- (3) All other relevant factors used to determine benefits under the plan for the Limitation Year under consideration will remain constant for all future Limitation Years.

(D) The Defined Contribution Plan Fraction for any Limitation Year is a fraction, the numerator of which is the sum of the Annual Additions to the Participant's Accounts in such Limitation Year and for all prior Limitation Years, and the denominator of which is the lesser of (1) or (2) below for such Limitation Year and for all prior Limitation Years of such Participant's employment (assuming for this purpose, that Internal Revenue Code section 415(c) had been in effect during such prior Limitation Years):

- (1) 1.25 times the dollar limitation in effect under Internal Revenue Code section 415(c)(1)(A) on the last day of the Limitation Year; or
- (2) 1.4 times the amount which may be taken into account under Internal Revenue Code section 415(c)(1)(B) with respect to such Participant for the Limitation Year.

For the purposes of determining these Limitations on Allocations, any non-deductible employee contributions made under a defined benefit plan will be considered to be a separate defined contribution plan and will be considered to be part of the Annual Additions for the appropriate Limitation Year.

Annual Additions for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all Employee Contributions as Annual Additions.

(E) Notwithstanding the foregoing, at the election of the Plan Administrator, in computing the Defined Contribution Plan Fraction with respect to any Plan Year ending after December 31, 1982, the denominator shall be an amount equal to the product of:

- (1) The denominator of the Defined Contribution Plan Fraction, computed in accordance with the rules in effect for the Plan Year ending in 1982; and
  - (2) the transition fraction, which is a fraction
- (a) the numerator of which is the lesser of:

(i) \$51,875, or

(ii) 1.4 times 25% of the Compensation of the Participant for the Plan Year ending in 1981, and

(b) the denominator of which is the lesser of:

(i) \$41,500, or

(ii) 25% of the Compensation of the Participant for the Plan Year ending in 1981. Notwithstanding anything contained herein to the contrary, the total Annual Additions credited to a Participant's Account under this Plan (and under all other defined contribution plans, defined benefit plans and welfare benefit funds to which the Employer contributes) for any Limitation Year commencing on or after January 1, 1995, shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Code Section 415(d)) or (ii) 25 percent of the Participant's Compensation. In the event that the limitations on Annual Additions described above are exceeded with respect to any Participant in any Limitation Year due to forfeiture allocations, a reasonable error in estimating a Participant's annual compensation, or such other circumstances as are permitted by law, then the contributions allocable to the Participant for such Limitation Year shall be reduced to the minimum extent required by such limitations in the following order of priority (unless otherwise determined by the Administrator according to applicable law):

(A) If such Participant is covered by the Plan as of the end of the Limitation Year in which such excess arose, all excess Annual Additions allocated to such Participant's Account shall, be used as soon as possible to reduce Employer Contributions allocable to such Participant in the next and succeeding Limitation Years.

(B) If the Participant is not covered by the Plan as of the end of the Limitation Year in which the excess arose (or any succeeding Limitation Year, if applicable), then such excess amounts shall be credited to an account designated as the limitations account and carried forward to the next and succeeding Limitation Years and shall be used as soon as possible to reduce Employer Contributions for all remaining Participants in the Plan. No investment gains or losses or other income shall be allocated to this limitations account. In the next succeeding Limitation Year, all amounts in the limitations account must be allocated before any Employer Contributions may be made to the Plan for any such Limitation Year.

(C) The Administrator shall determine to what extent the Annual Additions to any Participant's Account must be reduced in each Limitation Year. In the event the Employer maintains any other plan to which Annual Additions may be credited, and a Participant participates in both plans during any Limitation Year, then the Administrator shall reduce the Annual Additions to such other plan before reducing Annual Additions to this Plan.

(D) In the event this Plan is terminated, any amounts credited to the limitations account described above which have not been reallocated as set forth herein shall, upon the Employer's request, be returned to the Employer.

To the extent a Participant's benefit is subject to provisions of Section 415 of the Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

ARTICLE VI  
DISTRIBUTION OF BENEFITS

6.1 DISTRIBUTIONS IN GENERAL. Each Participant may elect a distribution in the form of an Annuity, a single sum cash payment, or a combination of the above.

6.2 COMMENCEMENT OF DISTRIBUTIONS. Distributions to a participant will commence no later than the date determined in accordance with the provisions of this Section. Distribution to The Accrued Benefit of a Participant must shall be distributed (or shall commence being distributed) no later than the first day of April following the later of the calendar year in which the Employee retires, or the calendar year in which the Employee attains age 70½ ("Required Beginning Date").

~~If distribution to any Participant is made in other than a single sum payment, the second payment shall be distributed no later than the December 31 following the April 1 by which the first payment was required to be distributed. Each succeeding payment shall be distributed no later than each December 31 thereafter.~~

6.3 DISTRIBUTION REQUIREMENTS.

(A) ~~Except as otherwise provided in Article VIII, the~~ The requirements of this Section shall apply to any distribution of a Participant's Accrued Benefit.

(B) As of the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date ("Distribution Calendar Year"), distributions ~~All distributions required under this Article shall be determined and made in accordance with the Income Tax Regulations under section 401(a)(9), including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the regulations.~~

(C) ~~Limits on Settlement Options. Distributions, if not made in a lump sum, may only be made over one of the following periods (or a combination thereof):~~

~~(1) the life of the Participant,~~

~~(2) the life payment, may be made only (1) over a term certain not to exceed the life expectancy of the Participant or the joint life expectancies of the Participant and a designated Beneficiary, or (2) over the life of the Participant or the joint lives (3) a period certain not extending beyond the life expectancy of the Participant, or~~

~~(4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary. Notwithstanding the foregoing, distribution shall in no event extend beyond the maximum permissible period described in Treasury Regulation Section 1.401(a)(9)-2.~~ (D) ~~Minimum Amounts to be Distributed.~~

~~If the Participant's entire Vested Interest is to be distributed in other than a lump sum, then the amount to be distributed each year (C) The minimum amount which must be distributed during each calendar year, commencing with the Distribution Calendar Year, must be at least an amount equal to the lesser of (1) the Participant's total distributable interest, or (2) the quotient obtained by dividing the Participant's entire Vested Interest by the life expectancy of the Participant or the joint and last survivor expectancy of the Participant and designated Beneficiary. Life expectancy and joint and last survivor expectancy are computed total distributable interest at the beginning of each such calendar year (valued for this purpose as of the Valuation Date immediately preceding the first day of such calendar year, adjusted for contributions allocated and distributions made subsequent to such Valuation Date but prior to the first day of such calendar year) by the lesser of (A) the applicable life expectancy (as described below), or (B) if the Participant's Beneficiary is not his spouse, by the applicable divisor, as described in Treasury Regulation Section 1.401(a)(9)-2.~~

(D) For purposes of calculating the applicable life expectancy, the following rules shall apply:

- (1) Life expectancies shall be calculated pursuant to Treasury Regulation Section 1.401(a)(9)-1, by the use of the return multiples contained in section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Treasury Regulation Section 1.72-9, or in such other manner as may otherwise be prescribed or permitted by law.
- (2) For the Distribution Calendar Year, the Participant's life expectancy may be recalculated no more frequently than annually; however, shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. For the Distribution Calendar Year, the designated Beneficiary's life expectancy shall be determined based upon his attained age on his birthday during such Distribution Calendar Year.
- (3) Except as provided in subsection (4) below, for each calendar year subsequent to the Distribution Calendar Year, the Participant's life expectancy and his designated Beneficiary's life expectancy, as determined with respect to the Distribution Calendar Year, shall be reduced by one for each calendar year which has begun since the Required Beginning Year.
- (4) Notwithstanding the rules contained in subsection (3) above, the Participant may elect, prior to his Benefit Starting Date, to have his life expectancy, or the joint life expectancies of the Participant and his spouse (if his spouse is his Beneficiary), recalculated on an annual basis, based upon his (and, if applicable, his spouse's) attained age on his birthday (and, if applicable, his spouse's birthday) during the calendar year for which such recalculation is applicable. In no event, however, may the life expectancy of a Beneficiary other than the Participant's Spouse may not be recalculated. non-spouse Beneficiary be recalculated.

~~(1) If the Participant's Spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within (E) Notwithstanding that distributions under the Plan may have commenced to the Participant before the Distribution Calendar Year, the Participant shall receive no credit under this Section 6.3 for such earlier distributions; rather, the total remaining distributable interest of the Participant, calculated as provided above at the beginning of the Distribution Calendar Year, shall be subject to the minimum distribution requirements contained in this Section 6.3.~~

(E) Notwithstanding the rules contained in this Section 6.3, if distribution hereunder is made under an annuity contract purchased from an insurance company, which contract provides for annual (or more frequent) nonincreasing (except as otherwise permitted under applicable Treasury Regulations) payments commencing no later than the April 1<sup>st</sup> following the Distribution Calendar Year and payable over a period permitted by Section 6.3(B), then the life expectancy of the Participant (and his Beneficiary, if applicable) shall be determined based upon the age of the Participant (and his Beneficiary, if applicable) as of the birthday occurring during

~~(2) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first distribution calendar year, shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the applicable life expectancy or (2) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A 4 of section 1.401(a)(9)-2 of the Income Tax Regulations. Distributions after the death of the Participant shall be distributed using the applicable life expectancy in subsection (d)(1) above as the relevant divisor without regard to regulations section 1.401(a)(9)-2.~~

~~(3) The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's required beginning date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the~~

~~Employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar year. benefits commence, even if such calendar year is prior to the Participant's Distribution Calendar Year, and such calendar year shall be treated as the Distribution Calendar Year. In all events, distribution under any such annuity contract shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations).~~

(G) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.5(G) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

6.4 NON-TRANSFERABLE. The Participant's right to any Annuity payments, benefits, and refunds is not transferable and shall be free from the claims of all creditors to the fullest extent permitted by law.

6.5 DEATH DISTRIBUTION COMMENCEMENT DATE. ~~Upon the death of the Participant, the following distribution provisions shall take effect:~~ PROVISIONS. Notwithstanding anything contained herein to the contrary, the payment of death benefits shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), and thus, the following rules shall apply to the extent required thereunder:

~~(A) If the Participant dies after distribution of his entire Vested Interest has commenced, the remaining portion of such Vested Interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.~~

~~In no event shall distribution of the Participant's remaining Vested Interest be made in a lump sum after the Participant's death unless such distribution is consented to, in writing, by the Participant's Surviving Spouse, if any.~~

~~(B) If the Participant dies before distribution of his Vested Interest commences, the Participant's entire Vested Interest will be distributed no later than five years after (A) In the event of a Participant's death prior to the April 1<sup>st</sup> following his Distribution Calendar Year (unless his benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.3(F), in which case the provisions of this Section 6.5(A) shall not apply, but rather, the provisions of Section 6.5(B) shall apply), then death benefits, if any, attributable to such Participant shall be completely distributed to his Beneficiary no later than the last day of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below, subject to the exceptions contained in Sections 6.5(A)(1) and (2) below:~~

~~(1) (1) If any portion of the Participant's Vested Interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated Beneficiary (or over a period not extending beyond If the Participant or Beneficiary has elected that death benefits be paid in installments over a term certain or over the life of the Beneficiary, then such distributions shall be made, as elected, over a term certain not to exceed the life expectancy of such Beneficiary), commencing no later than one year after the Beneficiary or over the life of the Beneficiary, commencing in either case no later than the last day of the calendar year containing the first anniversary of the Participant's death. Such method of distribution must comply with Section 6.5, except that the applicable life expectancy shall be that of the Beneficiary. (2)~~

(2) If the designated Beneficiary is the Participant's ~~Surviving Spouse~~, the date distributions are required to begin in accordance with spouse, then the rules contained in Section 6.5(A)(1) above shall be modified as follows:

(a) The date distributions would otherwise be required to commence in accordance with Section 6.5(A)(1) above shall not be earlier than the date on later of (i) the last day of the calendar year containing the first anniversary of the Participant's death, or (ii) the last day of the calendar year in which the Participant would have attained age 70-1/2. However, the Surviving Spouse may elect, at any time following the Participant's death, to defer the date on which distributions will begin until no later than the date on which the Participant would have attained age 70-1/2 and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant-1/2.

(C) ~~For purposes of (B) above, payments will be calculated by use of the return multiples specified in section 1.72-9 of the Income Tax Regulations. Life expectancy of a Surviving Spouse may be recalculated annually; however, in the case of any other designated beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.~~ (b) In the event of the spouse's death after the Participant but prior to the spouse's required benefit commencement date, as described in Section 6.7(a)(2)(A), (unless such spouse's benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.3(F), but payable over a period permitted by Section 6.5(A), in which case the provisions of this Section 6.5(A)(2)(b) shall not apply, but rather, the provisions of Section 6.5(B) shall apply as if the spouse were the Participant), then subsequent distributions, if any, shall be subject to the 5-year or 1-year rule described above, whichever is applicable, but such rule shall be applied as if the spouse were the Participant; provided, however, that the rules contained in Section 6.5(A)(2)(a) shall not be available to the surviving spouse of the Participant's surviving spouse.

(D) ~~For purposes of this Section (Death Distribution Commencement Date) any amount paid to a child of the Participant will be treated as if it had been paid to the Surviving Spouse if the amount becomes payable to the Surviving Spouse when the child reaches the age of majority.~~ (B) In the event of a Participant's death (1) subsequent to the April 1<sup>st</sup> following his Distribution Calendar Year and subsequent to his actual commencement of benefits under a payment option other than an annuity contract described in Section 6.3(F), or (2) subsequent to the irrevocable commencement of benefits under an annuity contract meeting the requirements of Section 6.3(F), then any death benefits payable to the Participant's Beneficiary shall be distributed at least as rapidly as under the method of distribution being utilized as of the date of the Participant's death.

(C) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.5(C) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

6.6 ALTERNATE PAYEE SPECIAL DISTRIBUTION. Distributions pursuant to Section 15.7 may be made without regard to the age or employment status of the Participant.

ARTICLE VI-A  
DIRECT ROLLOVERS

6A.1 Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, effective as of January 1, 1992, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except as otherwise provided by the Employer's administrative procedures as permitted by regulations. In addition, a Distributee's election of a Direct Rollover shall be subject to the following requirements:

- (A) If the Distributee elects to have only a portion of an Eligible Rollover Distribution paid to an Eligible Retirement Plan in a Direct Rollover, that portion must be equal to at least \$500.
- (B) If the entire amount of a Distributee's Eligible Rollover Distribution is \$500 or less, the distribution may not be divided. Instead, the amount must either be paid to the Distributee or to an Eligible Retirement Plan in a Direct Rollover.
- (C) A Distributee may not elect a Direct Rollover if the Distributee's Eligible Rollover Distributions during a year are reasonably expected by the Plan Administrator to total less than \$200 (or any lower minimum amount specified by the Plan Administrator).
- (D) A Distributee's election to make or not make a Direct Rollover with respect to one payment in a series of periodic payments shall apply to all subsequent payments in the series, except that a Distributee shall be permitted at any time to change, with respect to subsequent payments in the series of periodic payments, a previous election to make or not make a Direct Rollover. A change of election shall be accomplished by the Distributee notifying the Plan Administrator of the change. Such notice must be in the form and manner prescribed by the Plan Administrator.

6A.2 Definitions.

- (A) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (B) Distributee: A Distributee includes 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 who is the alternate payee under a ~~qualified~~ domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse.
- (C) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or an individual retirement annuity.
- (D) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

**ARTICLE VII  
RETIREMENT BENEFITS**

- 7.1 **NORMAL RETIREMENT.** A Participant who attains his Normal Retirement Age shall have a Vesting Percentage of 100%. If a Participant retires from the active Service of the Employer on his Normal Retirement Date, he shall be entitled to receive a distribution of the entire value of his Participant's Account as of his Normal Retirement Date.
- 7.2 **DISABILITY RETIREMENT.** A Participant who retires from the Service of the Employer on account of Disability shall have a Vesting Percentage of 100% and shall be entitled to receive a distribution of the entire value of his Participant's Account as of his Disability Retirement Date.

ARTICLE VIII  
TERMINATION OF EMPLOYMENT

- 8.1 **DISTRIBUTION.** As of a Participant's Termination of Employment, he shall be entitled to receive a distribution of his entire Vested Interest. Such distribution shall be further subject to the terms and conditions of Article VI.

If at the time of his Termination of Employment the Participant's Vesting Percentage is not 100% and the Participant does not take a distribution from the portion of his Vested Interest subject to the Vesting Percentage, the non-vested portion of his Participant's Account will become a Forfeiture upon the date such terminated Participant incurs a One-Year Break-in-Service.

If at the time of his Termination of Employment the Participant's Vesting Percentage is not 100% and such Participant does take a distribution from the portion of his Vested Interest subject to the Vesting Percentage, or if the Participant's Vesting Percentage is 0%, the non-vested portion of his Participant's Account will become a Forfeiture upon the date such terminated Participant incurs a One-Year Break-In-Service.

If the Participant, whose non-vested portion of his Participant's Account became a Forfeiture in accordance with the terms of the preceding paragraph, is later rehired by the Employer and re-enrolls in the Plan before incurring a One-Year Break-in-Service, then the amount of the Forfeiture shall remain forfeited, but the Participant's prior Service shall be restored.

- 8.2 **NO FURTHER RIGHTS OR INTEREST.** A Participant shall have no further interest in or any rights to any portion of his Participant's Account that becomes a Forfeiture due to his Termination of Employment once the Participant incurs a One-Year Break in-Service in accordance with Article II.
- 8.3 **~~APPLICATION~~ APPLICATION OF FORFEITURES.** Any Forfeiture arising in accordance with the provisions of Section 8.1 shall be used by the Employer to reduce and in lieu of the contributions made by the Employer next due under Article IV, or to pay Plan expenses, at the earliest opportunity after such Forfeiture becomes available.

ARTICLE IX  
FIDUCIARY DUTIES AND RESPONSIBILITIES

- 9.1 **GENERAL FIDUCIARY STANDARD OF CONDUCT.** Each Fiduciary of the Plan shall discharge his duties hereunder solely in the interest of the Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Each Fiduciary shall act with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character and with like aims, in accordance with the documents and instruments governing this Plan, insofar as such documents and instruments are consistent with this standard.
- 9.2 **SERVICE IN MULTIPLE CAPACITIES.** Any Person or group of persons may serve in more than one Fiduciary capacity with respect to this Plan.
- 9.3 **LIMITATIONS ON FIDUCIARY LIABILITY.** Nothing in this Plan shall be construed to prevent any Fiduciary from receiving any benefit to which he may be entitled as a Participant or Beneficiary in this Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of this Plan as applied to all other Participants and Beneficiaries. Nor shall this Plan be interpreted to prevent any Fiduciary from receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of his duties with the Plan; except that no Person so serving who already receives full-time pay from an Employer shall receive compensation from this Plan, except for reimbursement of expenses properly and actually incurred.
- 9.4 **INVESTMENT MANAGER.** When an Investment Manager has been appointed he is required to acknowledge in writing that he has undertaken a Fiduciary responsibility with respect to the Plan.

ARTICLE X  
THE ADMINISTRATOR

10.1 DESIGNATION AND ACCEPTANCE. The Employer shall designate a person or persons to serve as Administrator under the Plan and such person, by joining in the execution of this Plan accepts such appointment and agrees to act in accordance with the terms of the Plan.

10.2 DUTIES AND AUTHORITY. The Administrator shall administer the Plan in a nondiscriminatory manner for the exclusive benefit of Participants and their Beneficiaries.

The Administrator shall perform all such duties as are necessary to operate, administer, and manage the Plan in accordance with the terms thereof, including but not limited to the following:

- (A) To determine all questions relating to a Participant's coverage under the Plan;
- (B) To maintain all necessary records for the administration of the Plan;
- (C) To compute and authorize the payment of retirement income and other benefit payments to eligible Participants and Beneficiaries;
- (D) To interpret and construe the provisions of the Plan and to make regulations which are not inconsistent with the terms thereof; and
- (E) To advise or assist Participants regarding any rights, benefits, or elections available under the Plan.

The Administrator shall take all such actions as are necessary to operate, administer, and manage the Plan as a retirement program which is at all times in full compliance with any law or regulation affecting this Plan.

The Administrator may allocate certain specified duties of plan administration to an individual or group of individuals who, with respect to such duties, shall have all reasonable powers necessary or appropriate to accomplish them.

10.3 EXPENSES AND COMPENSATION. All expenses of administration may be paid out of Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Plan. However, the Employer may reimburse the Plan for any administration expense incurred. Any administration expense paid to the Plan as a reimbursement shall not be considered an Employer Contribution. Nothing shall prevent the Administrator from receiving reasonable compensation for services rendered in administering this Plan, unless the Administrator already receives full-time pay from any Employer adopting the Plan.

10.4 INFORMATION FROM EMPLOYER. To enable the Administrator to perform his functions, the Employer shall supply full and timely information to the Administrator on all matters relating to this Plan as the Administrator may require.

10.5 ADMINISTRATIVE COMMITTEE; MULTIPLE SIGNATURES. In the event that more than one person has been duly nominated to serve on the Administrative Committee and has signified in writing the acceptance of such designation, the signature(s) of one or more persons may be accepted by an interested party as conclusive evidence that the Administrative Committee has duly authorized the action therein set forth and as representing the will of and binding upon the whole Administrative Committee. No person receiving such documents or written instructions and acting in good faith and in reliance thereon shall be

obliged to ascertain the validity of such action under the terms of this Plan. The Administrative Committee shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting or in writing without a meeting.

- 10.6 **RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.** The Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than 30 days after the delivery thereof, unless such notice shall be waived.

The Administrator may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than 30 days after delivery thereof, unless such notice shall be waived.

The Employer, upon receipt of or giving notice of the resignation or removal of the Administrator, shall promptly designate a successor Administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the Board of Directors of the Employer will function as the Administrative Committee until a new Administrator has been appointed and has accepted such appointment.

- 10.7 **INVESTMENT MANAGER.** The Administrator may appoint, in writing, an Investment Manager or Managers to whom is delegated the authority to manage, acquire, invest, or dispose of all or any part of the Plan assets. With regard to the assets entrusted to his care, the Investment Manager shall provide written instructions and directions to the Employer, who shall in turn be entitled to rely upon such written direction. This appointment and delegation shall be evidenced by a signed written agreement.

- 10.8 **DELEGATION OF DUTIES.** The Administrator shall have the power, to the extent permitted by law, to delegate the performance of such Fiduciary and non-Fiduciary duties, responsibilities, and functions as the Administrator shall deem advisable for the proper management and administration of the Plan in the best interests of the Participants and their Beneficiaries.

ARTICLE XI  
PARTICIPANTS' RIGHTS

- 11.1 GENERAL RIGHTS OF PARTICIPANTS AND BENEFICIARIES. The Plan is established and the Plan assets are held for the exclusive purpose of providing benefits for such Employees and their Beneficiaries as have qualified to participate under the terms of the Plan.
- 11.2 FILING A CLAIM FOR BENEFITS. A Participant or Beneficiary or the Employer acting in his behalf, shall notify the Administrator of a claim of benefits under the Plan. Such request shall be in writing to the Administrator and shall set forth the basis of such claim and shall authorize the Administrator to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.
- 11.3 REMEDIES AVAILABLE TO PARTICIPANTS. A Participant or Beneficiary shall be entitled, either in his own name or in conjunction with any other interested parties, to bring such actions in law or equity or to undertake such administrative actions or to seek such relief as may be necessary or appropriate to compel the disclosure of any required information, to enforce or protect his rights, to recover present benefits due to him or to clarify his rights to future benefits under the Plan.
- 11.4 LIMITATION OF RIGHTS. Participation hereunder shall not grant any Participant the right to be retained in the Service of the Employer or any other rights or interest in the Plan other than those specifically herein set forth.
- 11.5 PARTICIPANT'S ACCOUNT AND VALUATION. A Participant's Account shall be maintained on behalf of each Participant until such account is distributed in accordance with the terms of this Plan. At least once per year, as of the last day of the Plan Year, each Participant's Account shall be adjusted for any earnings, gains, losses, contributions, and expenses, attributable to such Plan Year, in order to obtain a new valuation of the Participant's Account.
- 11.6 ~~INVESTMENT OF CONTRIBUTIONS. Each Participant shall have the exclusive authority to direct the investment of Nonselective once they have completed 5 Years of Service and have become 100% vested.~~
- ~~The Participant shall elect, by written notice to the Plan Administrator or through use of the automated AnswerLine phone service, to have a specified percentage invested in one or more investment fund(s), as long as the designated percentage for each fund is a whole number, and the sum of the percentages allocated is equal to 100%.~~
- ~~Twice during the Plan Year, on April 1 and October 1, the Participant may change the amount of the contributions pursuant to the above paragraph to be invested in a particular investment fund, subject to the rules of the investment funds in which the Participant's Account is invested or is to be invested. However, effective August 1, 1994, on any day of the Plan Year, the Participant may change the amount of the contributions pursuant to the above paragraph to be invested in a particular investment fund, subject to the rules of the investment fund in which the Participant's Account is invested or is to be invested.~~
- 11.7 ~~TRANSFERS BETWEEN INVESTMENT FUNDS. A Participant may designate the amount of the contributions pursuant to Section 11.6 above to be transferred between the investment funds designated by the Employer twice during the Plan Year, on April 1 and October 1. However, effective August 1, 1994, a Participant may designate the amount of the contributions pursuant to Section 11.6 above to be transferred between the investment funds designated by the Employer on any day during the Plan Year.~~
- ~~Notwithstanding the above, the transfer of amounts between investment funds shall be subject to the rules of the investment funds in which the Participant's Account is invested or is to be invested. PARTICIPANT DIRECTED INVESTMENT OF ACCOUNTS. This Section 11.6 shall apply except to the extent provided in Section 11.7.~~

- (A) Subject to the provisions of Section 5.4, and subject to such limitations as may from time to time be required by law, imposed by the Administrator or contained elsewhere in the Plan, and subject to such operating rules and procedures as may be imposed from time to time by the Administrator (or the Insurance Company), each Participant (including for this purpose former Participants with a deferred vested benefit, Beneficiaries and/or an alternate payee under a domestic relations order in which a Participant's Account has been validly divided into separate accounts for the Participant and alternate payee) shall direct the investment of his Participant's Account in accordance with the following:
- (B) The Administrator shall designate the investment options offered by the Insurance Company from among which each Participant may direct the investment of his Participant's Account. The Administrator may, in its absolute discretion change, modify or limit such Investment Funds and may establish uniform rules and procedures to be followed with respect to the investment of Participants' Accounts in such Investment Funds.
- (C) The Administrator shall determine the manner, period, and frequency of investment elections (e.g., daily, weekly, or monthly). Different terms and conditions may be specified for different Investment Funds (e.g., monthly elections for one Investment Fund and daily elections for another Investment Fund). Any term or condition imposed by the Administrator may apply to an entire Participant's Account or may be applied separately to different subaccounts, different Investment Funds or to different types of contributions (e.g., future contributions versus the current balance of a Participant's Account). Except as the Administrator shall otherwise determine, any initial or subsequent investment designation shall be in writing, on a form supplied by and filed with the Administrator (or the Insurance Company), and shall be effective on such date as may be specified by the Administrator (or the Insurance Company). The Administrator may provide for telephone or other electronic investment designations to the extent that such facilities are made available by the funding agency, and may establish (and thereafter change) a limit on the number of designations that may be made by any Participant during a specified period.
- (D) All contributions and other amounts added to a Participant's Account (except for investment earnings) shall be allocated among the separate Investment Funds in accordance with the then effective investment designation. Except as the Administrator shall otherwise determine, any distributions shall be taken proportionately from each separate Investment Fund in which the Participant's Account is invested at the time of the distribution. As of the effective date of any new investment designation, the entire balance of the Participant's Account at that date shall be reallocated among the designated investment media according to the percentages specified in the investment designations (unless the Administrator permits, and the Participant has designated, different allocations as between existing balances and future contributions), but no reallocations of the Participant's Account are to be made merely to adjust for disproportionate investment growth among such funds (other than in response to a subsequent investment designation filed with respect to the Participant's Account).
- (E) In the event the Administrator (or the Insurance Company) receives an initial or revised investment designation which it deems to be incomplete, unclear, not in accordance with procedures established pursuant to this Section or otherwise improper, the Participant's investment designation then in effect shall remain in effect (or, in the case of a deficiency in an initial designation, the Participant shall be deemed to have filed no designation) until a complete investment designation is filed in accordance with the rules and procedures established by the Administrator (or the Insurance Company).
- (F) Subject to the limitation contained in Section 11.7, it is intended that each Participant be required to direct the investment of his Participant's Account to the extent set forth in this Section. In the event that the Administrator (or the Insurance Company) possesses at any time instructions

as to the investment of less than all of a Participant's Account, the Participant shall be deemed to have designated that the non-directed portion of his Participant's Account be invested in an Insurance Company separate account that invests primarily in money market instruments (or if no such separate account is available, then in the Investment Fund which most closely resembles a money market or stable asset fund). To the extent that the Administrator finds it to be administratively appropriate to hold a portion of the assets of the Plan out of the operation of this Section, or to the extent that the operation of this Section is suspended or terminated with respect to any portion of the assets of the Plan as aforesaid, then the Administrator shall direct the Insurance Company with respect to the investment.

- (G) The Administrator may determine at any time to vary the rules provided above to accord with the requirements of any Investment Fund, for ease in administration, or for any other reason.

11.7 AUTOMATIC INVESTMENT IN MONEY MARKET FUND. Until April 30, 2002, in the case of a Participant with less than five Years of Service, the portion of the Participant's Account that is attributable to Employer Contributions and earnings thereon shall be invested in an Insurance Company separate account that invests primarily in money market instruments (or if no such separate account is available, then in the Investment Fund which most closely resembles a money market or stable asset fund). Effective as of May 1, 2002, a Participant with less than five Years of Service shall direct the investment of his entire Participant Account in accordance with, and subject to, the provisions of Section 11.6.

ARTICLE XII  
THE INSURANCE COMPANY

- 12.1 DUTIES AND RESPONSIBILITIES. The Insurance Company shall issue the Annuity Contract and thereby assume all the duties and responsibilities set forth therein. The terms of the Annuity Contract may be changed as provided therein without amending this Plan, provided such changes shall conform (1) to the requirements for qualification under section 401(a) of the Internal Revenue Code, as amended from time to time and (2) to ERISA, as amended from time to time.
- 12.2 RELATION TO EMPLOYER, ADMINISTRATOR AND PARTICIPANTS. The Insurance Company may receive the statement of the Administrator or, if the Administrator so designates, the Employer, as conclusive evidence of any of the matters decided in the Plan and the Insurance Company shall be fully protected in taking or permitting any action on the basis thereof and shall incur no liability or responsibility for so doing. The Insurance Company shall not be required to question any action by the Employer or the Administrator or any Participant nor to determine that such action is properly taken under the Plan. The Insurance Company shall be fully discharged from any and all liability with respect to any payment to any Participant hereunder in accordance with the terms of the Annuity Contract. The Insurance Company shall not be required to take any action contrary to its normal rules and practices.

ARTICLE XIII  
AMENDMENT OR TERMINATION OF THE PLAN

- 13.1 **AMENDMENT OF PLAN.** The Employer shall have the right from time to time to modify or amend, in whole or in part, any or all provisions of the Plan, provided that a resolution pursuant to such modification or amendment shall first be adopted and provided further that the modification or amendment is signed by the Employer and the Administrator. Upon any such modification or amendment the Administrator shall be furnished a copy thereof. No amendment shall deprive any Participant or Beneficiary of any Vested Interest hereunder.

No amendment to the Plan shall decrease a Participant's Account balance. Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's Vested Interest determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective.

- 13.2 **CONDITIONS OF AMENDMENT.** The Employer shall not make any amendment which would cause the Plan to lose its status as a qualified plan within the meaning of section 401(a) of the Code.

- 13.3 **TERMINATION OF THE PLAN.** The Employer intends to continue the Plan indefinitely for the benefit of its Employees, but reserves the right to terminate the Plan at any time by resolution of its Board of Directors or other governing body. Upon such termination, the liability of the Employer to make contributions hereunder shall terminate.

- 13.4 **FULL VESTING.** Upon the termination or partial termination of the Plan, or upon complete discontinuance of Employer contributions, the rights of all affected Participants in and to the amounts credited to each such Participant's Account shall be 100% vested and nonforfeitable.

- 13.5 **DISTRIBUTIONS UPON PLAN TERMINATION.** If this Plan is terminated and the Employer does not maintain or establish another defined contribution plan, each Participant shall receive a total distribution, in the form of a lump-sum distribution of his Participant's Account in accordance with the terms and conditions of Article VI.

However, if this Plan is terminated and the Employer does maintain or establish another defined contribution plan as discussed in the above paragraph, or if the Plan is only partially terminated, each Participant shall receive a total distribution of his Participant's Account, excluding any amounts attributable to contributions made by the Employer, in accordance with the terms and conditions of Article VI. In such a situation, any amounts in a Participant's Account attributable to contributions made by the Employer may be distributed only upon the occurrence of an event described in Article VI.

- 13.6 **APPLICATION OF FORFEITURES.** Upon the termination of the Plan, any Forfeitures which have not been applied as of such termination to reduce the contribution made by the Employer shall be credited on a pro rata basis to the Participant's Account of the then Active Participants in the same manner as the last contribution made by the Employer under the Plan.

- 13.7 **APPROVAL BY THE INTERNAL REVENUE SERVICE.** Notwithstanding any other provisions of this Plan, the Employer's adoption of this Plan is subject to the condition precedent that the Employer's Plan shall be approved and qualified by the Internal Revenue Service as meeting the requirements of section 401(a) of the Internal Revenue Code. In the event the Plan initially fails to qualify and the Internal Revenue Service issues a final ruling that the Employer's Plan fails to so qualify as of the Effective Date, all liability of the Employer to make further contributions hereunder shall cease. The Plan Administrator and any other Named Fiduciary shall be notified immediately by the Employer, in writing, of such failure to qualify. Upon such notification, the value of the Participants' Accounts shall be distributed in cash to the Employer, subject to the terms and conditions of Article VI.

That portion of such distribution which is attributable to Participant Contributions as specified in Section 11.5, if any, shall be paid to the Participant, and the balance of such distribution shall be paid to the Employer.

- 13.8 **SUBSEQUENT UNFAVORABLE DETERMINATION.** If the Employer is notified subsequent to initial favorable qualification that the Plan is no longer qualified within the meaning of section 401(a) of the Internal Revenue Code, and if the Employer shall fail within a reasonable time to make any necessary changes in order that the Plan shall so qualify, the Participants' Accounts shall be fully vested and nonforfeitable and shall be disposed of as if the Plan had terminated, in the manner set forth in this Article ~~XIV~~ XIII.

ARTICLE XIV  
SUBSTITUTION OF PLANS

- 14.1 **SUBSTITUTION OF PLANS.** The Employer may substitute an individually designed plan or a master or prototype plan for this Plan without terminating this Plan as embodied herein and this shall be deemed to constitute an amendment and restatement in its entirety of this Plan as heretofore adopted by the Employer; provided, however, that the Employer shall have certified to the Insurance Company that this Plan is being continued on a restated basis which meets the requirements of section 401(a) of the Internal Revenue Code.
- 14.2 **TRANSFER OF ASSETS.** Upon 90 days' written notification from the Employer (unless the Insurance Company shall accept a shorter period of notification) that a different plan meeting the requirements set forth in Section 14.1 above has been executed and entered into by the Administrator and the Employer, and after the Insurance Company has been furnished the Employer's certification in writing that the Employer intends to continue the Plan as a qualified Plan under section 401(a) of the Internal Revenue Code, the Insurance Company shall transfer the value of all Participant's Accounts to the Employer or such person or persons as may be entitled to receive the same. The Insurance Company may rely fully on the representations or directions of the Employer with respect to any such transfer and shall be fully protected and discharged with respect to any such transfer made in accordance with such representations, instructions, or directions.

ARTICLE XV  
MISCELLANEOUS

- 15.1 **NON-REVERSION.** This Plan has been established by the Employer for the exclusive benefit of the Participants and their Beneficiaries. Except as otherwise provided in Section 13.7 and 15.7, under no circumstances shall any funds contributed hereunder, at any time, revert to or be used by the Employer, nor shall any such funds or assets of any kind be used other than for the benefit of the Participants or their Beneficiaries.
- 15.2 **GENDER AND NUMBER.** When necessary to the meaning hereof, and except when otherwise indicated by the context, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall be deemed to include the plural.
- 15.3 **REFERENCE TO THE CODE.** Any reference to any section of the Internal Revenue Code or to any other statute or law shall be deemed to include any successor law of similar import.
- 15.4 **GOVERNING LAW.** The Plan shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.
- 15.5 **COMPLIANCE WITH THE CODE.** This Plan is intended to comply with all requirements for qualification under the Internal Revenue Code, and if any provision hereof is subject to more than one interpretation or any term used herein is subject to more than one construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.
- 15.6 **CONTRIBUTION RECAPTURE.** Notwithstanding any other provisions of this Plan, in the case of a contribution which is made by an Employer by a mistake of fact, Section 15.1 shall not prohibit the return of such contribution to the Employer within one year after the payment of the contribution. The amount which may be returned to the Employer is the excess of (1) the amount contributed over (2) the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had the mistaken amount not been contributed, then the amount to be returned to the Employer would have to be limited so as to avoid such reduction.
- 15.7 **DOMESTIC RELATIONS ORDERS.** Notwithstanding any other provisions of this Plan, the Participant's Account may be segregated and distributed pursuant to a domestic relations order which creates or recognizes the existence of an alternate payee's right to receive all or a portion of the benefits payable to a Participant under the Plan. The Plan Administrator shall establish procedures for processing a domestic relations order.

**CITY OF ALEXANDRIA  
SUPPLEMENTAL RETIREMENT PLAN  
January 1, 1999 Restatement**

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## PREAMBLE

The City of Alexandria Supplemental Retirement Plan, originally effective as of August 1, 1970, is hereby amended and restated in its entirety. The Plan, as amended and restated hereby, is intended to qualify as a defined benefit pension plan under Code Section 401(a) and is a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended. The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

Except as otherwise specifically provided in the Plan, this amended and restated Plan shall be effective as of January 1, 1999, and the rights of any person who did not have an Hour of Service under the Plan on or after January 1, 1999, shall generally be determined in accordance with the terms of the Plan as in effect on the date for which he was last credited with an Hour of Service.

Notwithstanding the foregoing, the following special effective dates shall apply:

- (a) The provision protecting veterans re-employment rights in Article XVI is effective December 12, 1994.
- (b) The limitations on retirement benefits in Article XI are effective for limitation years beginning on or after January 1, 1995.
- (c) The change in the definition of "leased employee" in the definition of "Employee" in Article I is effective for Plan Years beginning on or after January 1, 1997.
- (d) Part-time employees were eligible to participate effective July 1, 1999.
- (e) Provisions relating to direct rollovers as set forth in Section 10.5 were added effective January 1, 1992.

Any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before January 1, 1999, in order to retain the qualification of the Plan under Section 401(a) of the Code shall, nevertheless, be effective as of its required effective date under the Code.

## ARTICLE I DEFINITIONS

### 1.1 Plan Definitions

As used herein, the following words and phrases, when they appear with initial letters capitalized as indicated below, have the meanings hereinafter set forth:

- (a) An "**Active Participant**" means a Participant who is accruing Credited Service under the Plan in accordance with the provisions of Article II.
- (b) A Participant's "**Accrued Benefit**" shall mean, as of any date prior to the Participant's Normal Retirement Date, a monthly benefit, commencing on the Participant's Normal Retirement Date and continuing for his life, calculated in the same manner as a normal retirement benefit and based upon the Credited Service earned by such Participant and the Participant's Average Earnings as of the date of determination. As of the Participant's Normal Retirement Date, the Participant's Accrued Benefit shall be the monthly retirement benefit described in Section 4.2.
- (c) A Participant's "**Accumulated Contributions**" as of any date means the sum of the following:
  - (1) the total of the Participant's Mandatory Employee Contributions, plus interest;
  - (2) the total of the Participant's Pick Up Contributions, plus interest; and
  - (3) the total of the Participant's Supplemental Employee Contributions, plus interest.

A Participant's Accumulated Contributions shall include any amount contributed by the City as a Pick-Up Contribution, notwithstanding that the amount of such Pick-Up Contribution was funded by the City and was not withheld from the Employee's compensation.

Interest on a Participant's Mandatory Employee Contributions and Pick Up Contributions shall be compounded annually from the end of the Plan Year for which the contribution was made to the first day of the month coinciding with or immediately preceding the date of determination as follows:

- (1) For contributions made prior to July 1, 1982, at two percent.
- (2) For contributions made on or after July 1, 1982, with respect to periods prior to July 1, 1990, at five percent.

- (3) For contributions made on or after July 1, 1982, with respect to periods after June 30, 1990, at 120 percent of the Federal mid-term rate as in effect under Code Section 1274 for the first month of the Plan Year.

Interest on a Participant's Supplemental Employee Contributions shall be compounded annually from the end of the Plan Year for which the contribution was made to the first day of the month coinciding with or immediately preceding the date of determination at two percent.

- (d) The "**Actuarial Equivalent**" of a value means the actuarial equivalent determined using the UP 1984 Group Mortality Table, with no set backs, and PBGC interest rates used at the beginning of each Plan Year, except that in determining the present value of a Participant's Accrued Benefit under the Plan for purposes of a single sum payment, the following factors shall be used: (i) the table prescribed by the Secretary of the Treasury, which shall be based on the prevailing commissioners' standard table, described in Code Section 807(d)(5)(A), used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code Section 807(d)(5)) and (ii) the annual rate of interest on 30-year Treasury securities for the second calendar month preceding the Plan Year in which the distribution is made.

Notwithstanding the foregoing, for a Participant whose Annuity Starting Date occurs during the period beginning on January 1, 2000, and ending one year after the later of (i) January 1, 2000 or (ii) the date this amendment and restatement is adopted, the present value of a Participant's Accrued Benefit the following factors shall be used: (i) the UP-1984 Group Mortality Table and (ii) the "PBGC interest rate" in effect for such Annuity Starting Date under the terms of the Plan immediately prior to January 1, 2000, if those factors provide a larger present value.

For purposes of this paragraph, the "PBGC interest rate" means the immediate or deferred rates utilized by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination as in effect at the beginning of the Plan Year in which the present value of the Participant's benefit is being determined. For Participants who have reached Normal Retirement Date at the time present value is being determined, the PBGC interest rate shall be the immediate rate. For Participants who have not yet reached Normal Retirement Date at the time present value is being determined, the PBGC rate shall be the deferred rate.

- (e) The "**Actuary**" means an independent actuary selected by the City, who is an enrolled actuary as defined in Code Section 7701(a)(35), or a firm or corporation of actuaries having such a person on its staff, which person, firm, or corporation is to serve as the actuarial consultant for the Plan.

- (f) The "**Administrator**" means the Director of Personnel of the City, as provided in Section 2-5-54(d) of the City of Alexandria Code of Ordinances.
- (g) An "**Affiliate**" means any agency, instrumentality or other entity which must be aggregated with the City for a relevant purpose under Code Section 414.
- (h) A Participant's, or Beneficiary's, if the Participant has died, "**Annuity Starting Date**" means the first day of the first period for which an amount is paid as an annuity or, in the case of a single sum payment, the first day on which all events have occurred which entitle the Participant, or his Beneficiary, if applicable, to such benefit.

If a Participant whose Annuity Starting Date has occurred is reemployed by the City resulting in a suspension of benefits in accordance with the provisions of Section 10.1, for purposes of determining the form of payment of such Participant's benefit upon his subsequent retirement, such prior Annuity Starting Date shall apply to benefits accrued both before and after the Participant's reemployment.

- (i) A Participant's "**Average Earnings**" means his highest average Earnings received for any three consecutive December 1sts (or such Consecutive December 1sts in which he was an Active Participant, if fewer than three) during his period of employment with the City divided by twelve.
- (j) A Participant's "**Beneficiary**" means the person designated by the Participant (or otherwise entitled under the terms of the Plan) to receive benefits after the death of a Participant in accordance with and subject to the terms of the Plan.
- (k) "**City**" means the City of Alexandria. Where required by the context of the Plan, the term City shall also include the Commonwealth of Virginia Department of Health, Division of Community Health Services with respect to employees who work for the Alexandria Health Department.
- (l) "**City Council**" means the Alexandria City Council.
- (m) The "**Code**" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a Code section shall include (i) such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section and (ii) all rulings, regulations, notices, announcements, and other pronouncements issued by the U.S. Treasury Department, the Internal Revenue Service, and any court of competent jurisdiction that relate to such section and that are applicable to governmental plans.
- (n) A Participant's "**Credited Service**" means his period of service for purposes of determining the amount of any benefit for which he is eligible under the Plan, as computed in accordance with the provisions of Article III.

- (o) The "**Earnings**" for a Full-Time Participant means his rate of annual basic compensation from the City for services as an Employee as of the latest December 1, excluding overtime, commissions, bonuses, and other additional compensation. If a Participant is not employed on such date, his Earnings is his fixed rate of compensation on his Entry Date, translated to an annual basis. Earnings for a Part-Time Employee means the annual rate of basic compensation (excluding overtime, commissions, bonuses, and other additional compensation) applicable to a Full-Time employee in the same position for services as an Employee as of the latest December 1.

Effective as of January 1, 1996, Compensation with respect to any Plan Year shall in no event exceed the dollar limit specified in Code Section 401(a)(17) (as adjusted from time to time by the Secretary of the Treasury).

- (p) An "**Employee**" means

- (1) Any individual who is treated by the City as a regular Full-Time or Part-Time employee of the City for payroll purposes other than (i) a police officer or firefighter covered by another pension plan to which the City makes contributions or (ii) any employee of the city school system (a "**City Employee**").
- (2) Any individual employed by the Commonwealth of Virginia Department of Health, Division of Community Health Services who works for the Alexandria Health Department on a full-time basis (a "**Health Department Employee**").

For this purpose, a "Full-Time Employee" is any City Employee who is classified and treated by the City as a full-time employee and a "Part-Time Employee" is any City Employee who is classified and treated by the City as a part-time employee and who is scheduled to work at least twenty (20) hours per week.

Seasonal employees and employees who are not classified and treated by the City or the Commonwealth of Virginia, Department of Health as regular employees are not considered "Employees" for purposes of the Plan and are not eligible to participate in the Plan.

For purposes of the Plan, any "leased employee," other than an excludable leased employee, shall be treated as an employee of the City; provided, however, that no "leased employee" shall become an Employee or shall accrue a benefit hereunder based on service as a "leased employee".

A "leased employee" means any person who performs services for the City (the "recipient") (other than an employee of the recipient) pursuant to an agreement between the recipient and

any other person (the "leasing organization") on a substantially full-time basis for a period of at least one (1) year, provided that such services are performed under the primary direction or control of the recipient. An "excludable leased employee" means any leased employee of the recipient who is covered by a money purchase pension plan maintained by the leasing organization which provides for (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of compensation, (ii) full and immediate vesting, and (iii) immediate participation by employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization or whose compensation from the leasing organization in each plan year during the four-year period ending with the plan year is less than \$1,000); provided, however, that leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force. For purposes of this Section, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient shall be treated as provided by the recipient.

Notwithstanding anything to the contrary, the term Employee shall not include any individual classified by the City as working or providing services in a capacity other than as an Employee (including, without limitation, a person classified as an independent contractor or any person performing services for the City under a contract between the City and a leasing or other third party organization), notwithstanding the later reclassification, by a court or any governmental agency, of the person as a common law employee of the City.

- (q) A Participant's "**Employee Derived Benefit**" as of any date means an amount equal to the Participant's Accumulated Contributions expressed in the normal form of benefit as a monthly benefit commencing at Normal Retirement Date. A Participant's Employee Derived Benefit shall be deemed to include Pick-Up Contributions funded by the City notwithstanding that such amount was not withheld from the Employee's compensation.
- (r) A Participant's "**Employer Derived Benefit**" as of any date means the excess, if any, of his Accrued Benefit as of such date over his Employee Derived Benefit as of such date.
- (s) An Employee's "**Employment Commencement Date**" means the date he first completes an Hour of Service or, in the case of an Employee who has incurred an Employment Severance Date, the first date following his Employment Severance Date on which he again completes an Hour of Service.
- (t) An Employee's "**Employment Severance Date**" means the date on which he retires, dies, or his active employment as an Employee is otherwise terminated. An Employee's Employment Severance Date is deemed to have occur on the last day on which he is actively at work for the City; provided, however, that his Employment Severance Date shall not occur due to absence from active work because of sickness, injury, leave of absence, or layoff, unless or until he retires, dies, or his employment is otherwise terminated. Notwithstanding the foregoing, an Employee's Employment Severance Date shall not occur if he is absent from

work with the City on account of service with the armed forces of the United States, he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, and he returns to work with the City within the period during which he retains such reemployment rights, but, if he does not return to work within such period, his Employment Severance Date shall be the date his absence commenced.

- (u) An "**Entry Date**" means the first day of each calendar month.
- (v) The "**Funding Agent**" means the person or persons which at the time shall be designated, qualified, and acting under the Funding Agreement and shall include (i) any trustee for a trust established pursuant to the Funding Agreement, (ii) any insurance company that issues an annuity or insurance contract pursuant to the Funding Agreement, or (iii) any person holding assets in a custodial account pursuant to the Funding Agreement. The City may designate a person or persons other than the Funding Agent to perform any responsibilities of the Funding Agent under the Plan, and the Funding Agent shall not be liable for the performance of such person in carrying out such responsibilities. The term Funding Agent shall include any delegate of the Funding Agent as may be provided in the Funding Agreement.
- (w) The "**Funding Agreement**" means the agreement entered into between the City and the Funding Agent relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto and shall include any agreement establishing a trust, a custodial account, an annuity contract, or an insurance contract (other than a life, health or accident, property, casualty, or liability insurance contract) for the investment of assets; provided, however, that any custodial account or contract established hereunder meets the requirements of Code Section 401(f).
- (x) An "**Hour of Service**" with respect to any Employee means each hour for which he is paid, or entitled to payment, for the performance of duties for the City as an Employee.
- (y) A Participant's "**Mandatory Employee Contributions**" mean
  - (1) with respect to Participants who are Health Department Employees, the after-tax contributions required to be made by a Participant to accrue a benefit hereunder.
  - (2) with respect to Participants who are City Employees, the after-tax contributions made by the Participant prior to July 1, 1982 to accrue a benefit under the Plan as in effect prior to such date.
- (z) A Participant's "**Normal Retirement Date**" means,
  - (1) with respect to Full-Time Employees, for purposes of benefit eligibility, the earlier of (i) date he attains age 65, or (ii) the date he attains age 55 with 30 years of Service,

and for all other purposes, the first day of the month coinciding with or immediately following such date.

- (2) with respect to Part-Time Employees, for purposes of benefit eligibility, the later of (i) the date he attains age 65, or (ii) the fifth anniversary of his "participation commencement date" and for all other purposes, the first day of the month coinciding with or immediately following such date.
- (aa) A Participant's "**Past Service Compensation**" means 1/12th of his fixed annual pay as of July 22, 1970, excluding bonuses, commissions, overtime and other special compensation.
- (bb) A "**Participant**" means any person who becomes eligible to participate in the Plan in accordance with the provisions of Article III and who retains an Accrued Benefit under the Plan.
- (cc) The "**Pension Fund**" means the fund or funds maintained under the Funding Agreement for purposes of accumulating contributions made by the City and Employees and paying benefits under the Plan.
- (dd) A Participant's "**Pick Up Contributions**" mean the contributions contributed by the City to the Plan on behalf of the Participant and which are treated as employer contributions pursuant to Code Section 414(h)(2).
- (ee) The "**Plan**" means this City of Alexandria Supplemental Retirement Plan, established effective August 1, 1970, as amended and restated by this instrument, with all amendments, modifications, and supplements hereafter made.
- (ff) A "**Plan Year**" means the 12-consecutive-month period ending each December 31.
- (gg) A Participant's "**Required Beginning Date**" means the April 1 following the calendar year in which occurs the later of the Participant's (i) attainment of age 70 1/2 or (ii) the date the Participant retires.
- (hh) A Participant's "**Service**" means his period of service for purposes of determining his eligibility for a benefit under the Plan, as computed in accordance with the provisions of Article II.
- (ii) A Participant's "**Supplemental Employee Contributions**" mean the after-tax contributions he made to the Plan in addition to his Mandatory Employee Contributions prior to February 1, 1972, pursuant to his election filed with the City prior to February 1, 1971.
- (jj) A Participant's "**Spouse**" means the person who is the Participant's lawful spouse.

## **1.2 Construction**

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular. The Plan is intended to comply with all applicable requirements for qualification of a governmental plan under Code Section 401(a) and if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the plan being so qualified.

**ARTICLE II**  
**SERVICE & CREDITED SERVICE**

**2.1 Service and Credited Service**

Each person who is an Employee shall be credited with Service and Credited Service for purposes of the Plan as follows:

- (a) Service shall be computed in completed full years treating each 365 days of Service as a completed full year of Service.
- (b) If he is a Full-Time Employee, he shall be credited with Service and Credited Service for the period beginning on his Employment Commencement Date and ending on his Employment Severance Date. Credited Service shall be computed in completed full years and fractions of years treating each full month for which he is credited with Credited Service as 1/12th year of Credited Service. If a Full-Time Employee is credited with Credited Service for a portion of a month that is equal to at least 15 days, his Credited Service shall be rounded up to the next highest 1/12th.
- (c) If he is a Part-Time Employee, he shall be credited with Service and Credited Service for the period beginning on the later to occur of (i) July 1, 1999 or (ii) his Employment Commencement Date and ending on his Employment Severance Date. Credited Service for a Part-Time Employee will be based on the Employee's regularly scheduled hours as of December 1 divided by 2,080. Monthly Credited Service for a Part-Time Employee shall be determined by further dividing the Employee's pro-rated Credited Service by 12; provided however, if a Part-Time Employee is credited with Credited Service for a portion of a month that is equal to at least 15 days, he shall be deemed to have worked for the entire month his Credited Service (so that the divisor for such month will be 1/12<sup>th</sup> notwithstanding that the Employee was not credited with Credited Service for the entire month). If an employee who is regularly scheduled to work less than 20 hours a week becomes regularly scheduled to work 20 or more hours a week after December 1 of a year and enters the Plan at that time, such Employee's Credited Service for his initial year of participation will be based on the number of hours the Employee is regularly scheduled to work on his Entry Date.
- (d) A Part-Time Employee who suspends his regular position to accept a temporary summer, seasonal position with the City at an increased rate of compensation or additional hours of work and who returns to his regular part-time position will receive credit for Service completed in such temporary summer, seasonal position. However, the Part-Time Employee shall not accrue Credited Service with respect to such temporary summer, seasonal position.
- (e) A Part-Time Employee who becomes a Full-Time Employee shall receive credit for Service as a Part-Time Employee from the later to occur of (i) July 1, 1999 or (ii) his Employment

Commencement Date through his Employment Severance Date without regard to the pro-ration requirement contained in Section 2.1 (c). However, Credited Service completed as a Part-Time Employee shall continue to be computed in accordance with the pro-ration rules contained in Section 2.1(c).

- (f) Notwithstanding the foregoing, no Service shall be credited to an Employee for periods in which he was required to, but did not, make Mandatory Employee Contributions to the Plan.

## **2.2 Transfers**

Notwithstanding the foregoing, the determination of a Participant's Service and Credited Service shall be subject to the following:

- (a) Any person who transfers or retransfers to employment with the City as an Employee directly from other employment with the City in a capacity other than as an Employee, shall be credited with Service and Credited Service beginning on his transfer date.
- (b) Any person who transfers from employment with the City as an Employee directly to other employment with the City in a capacity other than as an Employee, shall be deemed to have terminated employment with the City for purposes of determining his Service or Credited Service. However, such person shall not be deemed to have terminated his employment as an Employee for other purposes of the Plan until such time as he is no longer in the employment of the City, at which time he shall become entitled to benefits if he is otherwise eligible therefore under the provisions of the Plan.

## **2.3 Retirement or Termination and Reemployment**

If an Employee retires or otherwise terminates employment with the City, his eligibility for and the amount of any benefit to which he may be entitled under the Plan shall be determined based upon the Service and Credited Service with which he is credited at the time of such retirement or other termination of employment. If such retired or former Employee is reemployed by the City, the Service and Credited Service with which he was credited at the time of such prior retirement or other termination of employment shall be aggregated with the Service and Credited Service with which he is credited following his reemployment for purposes of determining his eligibility for and the amount of any benefit to which he may be entitled under the Plan upon his subsequent retirement or other termination of employment if he had a vested interest in his Employer Derived Benefit at the time of his previous retirement or other termination of employment.

Notwithstanding the foregoing, if the Participant received a single sum payment of the present value of his vested Accrued Benefit as provided in Section 8.2 or 10.4 or a distribution of his Accumulated Contributions as provided in Section 9.1, in connection with his prior retirement or termination of employment, his Service and Credited Service credited at the time of such prior retirement or

termination of employment shall be lost and shall not be aggregated with the Service and Credited Service credited to the Participant following his reemployment.

Notwithstanding any other provision of this Section, if a retired or former Employee returns to employment in a capacity other than as an Employee, his period of employment shall be treated for the purposes of the Plan solely in accordance with the transfer provisions of this Article II.

#### **2.4 Finality of Determinations**

All determinations with respect to the crediting of Service and Credited Service under the Plan shall be made on the basis of the records of the City, and all determinations so made shall be final and conclusive upon Employees, former Employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Article, there shall be no duplication of Service and Credited Service.

## **ARTICLE III ELIGIBILITY FOR PARTICIPATION**

### **3.1 Participation**

Each Employee who was an Active Participant immediately prior to January 1, 1999, shall continue as an Active Participant hereunder. Each other person shall become an Active Participant as of the Entry Date coinciding with or immediately following the date on which he becomes an Employee.

Notwithstanding the foregoing, no person who is a Health Department Employee shall become an Active Participant hereunder unless he makes Mandatory Employee Contributions to the Plan as provided in Section 3.3. A Health Department Employee who would otherwise have become an Active Participant hereunder as of an Entry Date but for his failure to make the required Mandatory Employee Contributions to the Plan shall become an Active Participant as of any subsequent Entry Date as of which he actually begins to make the required Mandatory Employee Contributions to the Plan.

### **3.2 Pick Up Contributions**

Each City Employee who was hired on or after July 1, 1982, or who was hired prior to July 1, 1982 and made a one-time election to continue as an Active Participant hereunder, shall automatically participate in the Plan. The City shall make a Pick Up Contribution on behalf of each City Employee equal to two percent of their Earnings for the Plan Year.

No further Pick Up Contributions shall be made to the Plan on a Participant's behalf on or after the earliest of (1) the Participant's Employment Severance Date, (2) the date the Participant ceases to be an Employee, or (3) the Participant's Annuity Starting Date.

### **3.3 Mandatory Employee Contributions**

A Health Department Employee shall make Mandatory Employee Contributions to the Plan equal to two percent of his Earnings for the Plan Year. A Health Department Employee must authorize the Commonwealth of Virginia to withhold the required Mandatory Employee Contributions to the Plan from his Earnings and to contribute such amounts to the Plan.

Notwithstanding the foregoing, a Health Department Employee shall no longer be required or eligible to make Mandatory Employee Contributions to the Plan beginning on the earliest of (1) the Participant's Employment Severance Date, (2) the date the Participant ceases to be an Employee, or (3) the Participant's Annuity Starting Date.

### **3.4 Suspension of Mandatory Employee Contributions**

A Participant's Mandatory Employee Contributions shall automatically be suspended for any period during which he is not eligible to accrue Credited Service under the Plan. Such Participant's Mandatory Employee Contributions shall automatically resume as of the date he is once more eligible to accrue Credited Service under the Plan.

A Participant whose Mandatory Employee Contributions are suspended pursuant to this Section shall not accrue a benefit hereunder for the period such suspension is in effect.

### **3.5 Termination of Participation**

A Participant shall remain an Active Participant as long as he continues in employment as an Employee and, if he is a Health Department Employee, he continues to make Mandatory Employee Contributions to the Plan. A person shall remain a Participant as long as he retains an Accrued Benefit under the Plan.

### **3.6 Participation Upon Reemployment**

If a former Employee who was a Participant hereunder is reemployed as an Employee, he shall again become an Active Participant hereunder as of (i) his reemployment date if he is a City Employee or, (ii) the date as of which he begins making the required Mandatory Employee Contributions to the Plan in accordance with the provisions of Section 3.3, if he is a Health Department Employee. If a former Employee who was not a Participant hereunder is reemployed as an Employee, he shall become an Active Participant hereunder on the next Entry Date if he is a City Employee or if he is a Health Department Employee, the date as of which he begins to make Mandatory Employee Contributions to the Plan in accordance with the provisions of Section 3.3.

### **3.7 Finality of Determinations**

All determinations with respect to the eligibility of an Employee to become a Participant under the Plan shall be made by the Administrator on the basis of the records of the City, and all determinations so made by the Administrator shall be final and conclusive for all Plan purposes. Each Employee who becomes a Participant shall be entitled to the benefits, and be bound by all the terms, provisions, and conditions of the Plan and the Funding Agreement.

**ARTICLE IV  
NORMAL RETIREMENT**

**4.1 Eligibility**

Each Participant who retires from employment with the City on or after his Normal Retirement Date shall be eligible for a normal retirement benefit. A Participant who continues in employment with the City after his Normal Retirement Date shall not be entitled to receive any benefits hereunder until his actual retirement date.

**4.2 Amount**

An eligible Participant's monthly normal retirement benefit shall be equal to the sum of his basic pension benefit determined under paragraph (a) below and, if applicable, his supplemental pension benefit determined under paragraph (b) below.

- (a) An eligible Participant's basic pension benefit is equal to the sum of (1) and (2) below:
- (1) For Credited Service earned prior to January 1, 1988, the sum of (i) and (ii), increased by the percentage in (iii) below:
- (i) 1.625 percent of the Participant's Past Service Compensation up to \$100.00, plus 0.250 percent of the Participant's Past Service Compensation in excess of \$100.00, multiplied by his number of years of Credited Service earned after July 31, 1960, but prior to August 1, 1970; plus
- (ii) 1.625 percent of the Participant's Average Earnings up to 100.00, plus 0.250 percent of the Participant's Average Earnings in excess of \$100.00, multiplied by his number of years of Credited Service earned after July 31, 1970, but prior to January 1, 1988;
- increased by
- (iii) 50 percent.
- plus
- (2) 0.80 percent of his Average Earnings multiplied by his years of Credited Service earned after December 31, 1987.
- (b) A supplemental pension benefit shall only be payable with respect to a Participant who made Supplemental Employee Contributions to the Plan. An eligible Participant's supplemental

pension benefit is equal to: (1) 1.625 percent of the Participant's Past Service Compensation up to \$100.00, plus 0.250 percent of the Participant's Past Service Compensation in excess of \$100.00, multiplied by (2) his number of years of Credited Service earned immediately prior to August 1, 1960.

In no event will a reduction in a Participant's Average Earnings reduce the normal retirement benefit payable to him below the amount that would have been payable to him under the same form of payment had he retired prior to his Normal Retirement Date when eligible for an early retirement benefit.

#### **4.3 Minimum Benefits**

Notwithstanding any other provision of the Plan to the contrary, in the case of a Participant who does not receive a return of his Accumulated Contributions, in no event will the monthly normal retirement benefit payable to a Participant be less than his Employee Derived Benefit.

#### **4.4 Adjustment to Normal Retirement Benefit for Employment After Normal Retirement Date**

The monthly retirement benefit payable with respect to each Participant who continues in employment with the City after Normal Retirement Date shall be determined as provided in paragraph (a), and if applicable paragraph (b) below:

- (a) the Participant's Accrued Benefit as of the date such benefit is being determined in accordance with paragraph (a) of Section 4.1; plus
- (b) if he is eligible for a supplemental pension benefit, the sum of item (1) plus item (2):
  - (1) 50 percent of his supplemental pension benefit determined under paragraph (b) of Section 4.2 as of his Normal Retirement Date multiplied by the late retirement factor shown in the Table attached to the Plan based on the number of years by which his Annuity Starting Date follows his Normal Retirement Date.
  - (2) The balance of his supplemental pension determined under paragraph (b) of Section 4.2 as of his Normal Retirement Date.

No further adjustments shall be made to a Participant's monthly normal retirement benefit after his Annuity Starting Date, and, if he continues to accrue benefits under the Plan, such continued accruals shall be reduced as provided in Section 10.7.

#### **4.5 Payment**

A monthly normal retirement benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of the month in which he retires or the first day of the month for which he applies for the benefit to commence, but not later than the date specified in Section 10.6.

**ARTICLE V  
EARLY RETIREMENT**

**5.1 Eligibility**

Each Participant who retires from employment with the City at or after age 55 with 5 or more years of Service, but prior to his Normal Retirement Date, shall be eligible for an early retirement benefit.

**5.2 Amount**

An eligible Participant's monthly early retirement benefit shall be equal to his Accrued Benefit on the date of his early retirement; provided, however, that if the Participant has fewer than 30 years of Service at retirement, the amount of such benefit shall be reduced by multiplying such amount by the appropriate early commencement factor determined as provided in the Table attached to the Plan.

**5.3 Payment**

A monthly early retirement benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of the month in which he retires or the month in which he makes written application for the benefit, but not later than his Normal Retirement Date.

**ARTICLE VI  
VESTED RIGHTS**

**6.1 Vesting**

A Participant's vested interest in his Employee Derived Benefit shall be at all times 100 percent.

A Participant's vested interest in his Employer Derived Benefit shall be determined in accordance with the following schedule, based upon the number of full years of Service credited to him; provided, however, that a Participant's vested interest in his Employer Derived Benefit shall be 100 percent if he is employed by the City on his Normal Retirement Date; or, if he is a Full-Time Employee, if he is employed by the City on the date he attains age 60.

Years of Service	Vested Interest
less than five	0%
five or more	100%

**6.2 Eligibility for Deferred Vested Retirement Benefit**

Each Participant who terminates employment with the City, who has a vested interest in his Employer Derived Benefit, and who is not eligible for any other retirement benefit under the Plan shall be eligible for a deferred vested retirement benefit.

**6.3 Amount of Deferred Vested Retirement Benefit**

An eligible Participant's deferred vested retirement benefit shall be equal to his Accrued Benefit determined as of the date of his termination of employment and payable commencing on his Normal Retirement Date.

**6.4 Payment**

A monthly deferred vested retirement benefit shall be paid to an eligible Participant commencing as of his Normal Retirement Date; provided, however, that a Participant may elect to begin benefit payments as of the first day of any month following the month in which he attains age 55; and further provided that if the Participant has fewer than 30 years of Service at retirement, the amount of such benefit shall be reduced by multiplying such amount by the appropriate early commencement factor determined as provided in the Table attached to the Plan.

## **ARTICLE VII DISABILITY BENEFIT**

### **7.1 Eligibility**

Each Participant who suffers permanent and total disability while actively employed by the City but prior to his Normal Retirement Date and who has at least five years of Service shall be eligible for a disability benefit. For purposes of this Article, "permanent and total disability" means any physical or mental condition that prevents the Participant from engaging in any substantial gainful activity, as determined by the Administrator, in its discretion, on the basis of medical evidence satisfactory to the Administrator, and who is entitled to disability benefits under Title II of the Social Security Act.

### **7.2 Amount**

An eligible Participant's monthly disability benefit shall be equal to his Accrued Benefit on the date his disability commenced.

### **7.3 Payment**

A monthly disability benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of:

- (a) the expiration of five months from the date on which his permanent and total disability commenced; or
- (b) the month in which he makes written application for the benefit.

A Participant's Annuity Starting Date will not be deemed to have occurred simply because payment of disability benefits have commenced to him hereunder.

Payment of a monthly disability benefit shall continue to a Participant until his Normal Retirement Date, or until otherwise terminated as hereinafter provided. Any Participant who continuously up to his Normal Retirement Date receives a disability benefit under the Plan shall be deemed for all Plan purposes to have retired upon the occurrence of his Normal Retirement Date and shall be eligible for a normal retirement benefit in an amount determined as provided in Section 4.2, but based on his years of Credited Service and the provisions of the Plan in effect on the date his disability commenced. Upon the occurrence of his Normal Retirement Date, a Participant receiving disability benefits may elect (subject to the rules prescribed by the Administrator) to receive payment of his normal retirement benefit in one of the optional forms of payment provided in Section 8.2

#### **7.4 Termination of Disability Benefit Prior to Normal Retirement Date**

Disability benefit payments shall terminate if, prior to the Participant's Normal Retirement Date, the Participant

- (a) ceases to be disabled;
- (b) dies; or
- (c) refuses to undergo a medical examination requested by the Administrator.

If a Participant's disability benefit ceases prior to his Normal Retirement Date, and if he does not return promptly to work with the City, his employment thereupon shall be deemed terminated for all Plan purposes, and he shall be eligible for an early retirement benefit in an amount determined in the same manner as specified in Section 5.2, or a deferred vested retirement benefit in an amount determined in the same manner as specified in Section 6.3, but based on his years of Credited Service and the provisions of the Plan in effect on the date his disability commenced and only if he meets the eligibility requirements for such benefit as in effect on the date his disability commenced. If such Participant's disability benefit ceases prior to his Normal Retirement Date, and if he returns promptly to work with the City, he shall continue as an Employee in accordance with and subject to the remaining provisions of the Plan.

#### **7.5 Medical Examination**

In determining whether or not a Participant is or continues to be permanently and totally disabled, the Administrator may require the Participant to submit to a medical examination by a physician acceptable to it. The Administrator may not require a Participant to submit to such an examination more than two times during a 12-month period. If the Participant refuses to submit to such a medical examination, he shall be deemed to have ceased to be disabled hereunder and shall no longer be entitled to disability benefits hereunder.

#### **7.6 Service Crediting While Receiving Disability Benefit**

A Participant who is receiving disability benefits hereunder shall not be credited with Service or Credited Service for periods for which he is paid disability benefits hereunder.

## ARTICLE VIII FORMS OF PAYMENT

### 8.1 Normal Form of Payment

A Participant who is eligible to receive any retirement benefit under Section 4.1, 5.1, or 6.2 of the Plan shall receive payment of such benefit in the form of a single life annuity with cash refund. Such Participant shall receive a monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. Upon the Participant's death, the excess of his Accumulated Contributions determined as of his Annuity Starting Date over the total payments made to the Participant shall be paid to the Participant's surviving Beneficiary in a single sum payment.

Subject to the rules prescribed by the Administrator, a Participant may elect to receive payment of his benefit in one of the optional forms of payment provided in Section 8.2.

### 8.2 Optional Forms of Payment

Within the election period prescribed by the Administrator, a Participant who is eligible to receive a normal, early, or deferred vested retirement benefit may elect to receive payment of such benefit in accordance with any one of the following options.

If the Participant's Beneficiary under an optional form of payment dies prior to the Participant's Annuity Starting Date, the election shall become inoperative and ineffective, and benefit payments, if any, shall be made under the normal form of payment provided in Section 8.1, unless the Participant elects another optional form of payment prior to his Annuity Starting Date. Once a Participant's Annuity Starting Date occurs, however, the form of payment elected by the Participant will not change even if the Participant's Beneficiary predeceases him.

The monthly payments made under any optional form of payment hereunder shall be the Actuarial Equivalent of the monthly benefit otherwise payable to the Participant in the normal single life annuity with cash refund form described in Section 8.1.

- (a) **Single Life Annuity (no cash refund).** The Participant shall receive an increased monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. No further benefits shall be payable following the Participant's death.
- (b) **100% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall

receive a monthly benefit for his or her remaining lifetime equal to the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.

- (c) **66 2/3% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall receive a monthly benefit for his or her remaining lifetime equal to 66 2/3rds percent of the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.
- (d) **50% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Spouse shall receive a monthly benefit for his or her remaining lifetime equal to one-half of the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.
- (e) **15-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the 15-year period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such 15-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the 15-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 8.3.
- (f) **Ten-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the ten-year period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such ten-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the ten-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 8.3.
- (g) **Five-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the five-year

period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such five-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the five-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 8.3.

- (h) **Single Sum Payment.** The Participant may elect to receive a single sum payment of the full present value of his vested Accrued Benefit in lieu of the form of benefit described in Section 8.1, which is the Actuarial Equivalent thereof. In the case of a Participant who does not receive a return of his Accumulated Contributions, in no event will the single sum payment payable to a Participant be less than his Employee Derived Benefit.

Notwithstanding any other provision of the Plan to the contrary, distribution under an optional form of payment shall be made in accordance with Code Section 401(a)(9) and regulations issued thereunder, including the minimum distribution incidental benefit requirement. If a Participant designates a person other than his Spouse as his Beneficiary under an optional form of payment, and if payments under the optional form elected would not meet the minimum distribution incidental benefit requirement, the payment period (and the monthly amount payable) shall be reduced to the extent necessary to satisfy such requirement.

### **8.3 Designation of Beneficiary and Beneficiary in Absence of Designated Beneficiary**

A Participant's Beneficiary may be any individual or, in the case of a Beneficiary to receive payments for the remainder of a period-certain under the form of payment elected by the Participant, any individuals, trust, or estate, selected by the Participant.

If payment is to be made to a Participant's surviving Beneficiary for the remainder of a period-certain under the form of payment elected by the Participant and no Beneficiary survives or the Participant has not designated a Beneficiary, the Participant's Beneficiary shall be the Participant's surviving Spouse or, if none, the Participant's surviving children in equal shares or, if none, the Participant's estate.

### **8.4 Notice Regarding Forms of Payment**

Subject to the rules prescribed by the Administrator, the Administrator shall provide a Participant with a written description of (i) the terms and conditions of the normal form of payment provided in Section 8.1, (ii) the optional forms of payment provided in Section 8.2, (iii) the Participant's right to elect an optional form of payment and the effect thereof. Subject to the provisions of Code Section 402(f), the Administrator shall provide such explanation within a reasonable period before a Participant's Annuity Starting Date.

### **8.5 Death Prior to Annuity Starting Date**

If a Participant dies prior to his Annuity Starting Date, the only death benefit payable under this Plan is the benefit payable under Section 9.2 and no Beneficiary or any person claiming under or through the Participant shall be entitled to any other benefit under the Plan.

### **8.6 Effect of Reemployment on Form of Payment**

If a Participant who has commenced benefit payments under the Plan is subsequently reemployed, then, following his resumption of participation in this Plan, the determination of his future benefit shall be actuarially reduced or offset, if and as necessary, to avoid duplication of any benefits paid with respect to his prior employment.

**ARTICLE IX  
RETURN OF ACCUMULATED CONTRIBUTIONS**

**9.1 Distribution of Accumulated Contributions**

Subject to the provisions of Section 10.4, a Participant who terminates employment for reasons other than death may elect to receive, in lieu of any other benefit provided under the Plan, a cash distribution of his Accumulated Contributions at any time prior to the date payment of his retirement benefit begins.

The payment of a Participant's Accumulated Contributions shall be in full satisfaction of any benefit to which the Participant may be entitled to receive under the terms of the Plan.

**9.2 Death Benefit**

Upon a Participant's death, his Beneficiary may be eligible for a death benefit as provided herein.

- (a) **Death Prior to Commencement of Benefit Payments.** If a Participant dies prior to his Annuity Starting Date and has not previously received distribution of his Accumulated Contributions as provided in Section 9.1, his Beneficiary shall receive a death benefit, payable in a single sum, that is equal to the Participant's Accumulated Contributions determined as of the Participant's date of death.
- (b) **Death After Commencement of Benefit Payments.** If a Participant dies after his Annuity Starting Date and the form of payment elected by the Participant under the provisions of Article VIII does not provide for continued benefits in the event of the Participant's death, the Participant's Beneficiary shall receive a death benefit, payable in a single sum, that is equal to the excess, if any, of (i) the Participant's Accumulated Contributions, determined as of the date benefit payments commenced under the Plan, over (ii) the amount of all benefit payments made under the terms of the Plan either to the Participant and/or his Beneficiary or Spouse under the provisions of Article VIII. No death benefit shall be payable hereunder if the Participant elected the optional single sum life annuity described in paragraph (a) of Section 8.2.
- (c) **Designation of Beneficiary under Section 9.2:** Each Participant may designate in writing any one or more persons as his death beneficiary to receive payment of the death benefit provided under this Section 9.2. Such designation shall be filed with the Administrator and shall be in such form as the Administrator shall require. A Participant at any time and from time to time, whether before or after his retirement or other termination of employment, may change the Beneficiary previously designated by him by filing with the Administrator a new designation in such form as it shall require.

If no Beneficiary shall have been designated by a Participant under this Section, or if all persons designated by him as Beneficiary shall die before becoming entitled to a death benefit hereunder, then such Participant's Beneficiary shall be his surviving Spouse or, if none, his surviving children in equal shares or, if none, his estate. A Beneficiary designation under this Section shall be separate from any Beneficiary designation under the provisions of Article VIII.

**ARTICLE X  
GENERAL PROVISIONS & LIMITATIONS  
REGARDING BENEFITS**

**10.1 Suspension of Benefits**

Subject to the provisions of Section 10.6, if a Participant who is receiving benefits under this Plan resumes employment with the City as an Employee, his benefits shall be suspended until his subsequent retirement, termination of employment or death.

**10.2 Non-Alienation of Retirement Rights or Benefits**

Except as otherwise required by law, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have the power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void. Notwithstanding the foregoing, retirement benefits hereunder may be reduced pursuant to a domestic relations order approved by the Administrator in accordance with the procedures set forth in Section 13.3.

**10.3 Payment of Benefits to Others**

If any person to whom a retirement benefit is payable is unable to care for his affairs because of illness or accident, any payment due (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative) may be paid to the Spouse, parent, brother or sister, or any other individual deemed by the Administrator to be maintaining or responsible for the maintenance of such person. The monthly payment of a retirement benefit to a person for the month in which he dies shall, if not paid to such person prior to his death, be paid to his Spouse, parent, brother, sister, or estate as the Administrator shall determine. Any payment made in accordance with the provisions of this Section shall be a complete discharge of any liability of the Plan with respect to the benefit so paid.

**10.4 Payment of Small Benefits; Deemed Cashout**

If the Actuarially Equivalent present value of any retirement benefit payable under Section 4.1, 5.1, or 6.2 or any survivor benefit is \$5,000 or less, such Actuarially Equivalent present value shall be paid to the Participant, or his Beneficiary, if applicable, in a single sum payment, in lieu of all other benefits under the Plan, as soon as practicable following the date of the Participant's retirement, death, or other termination of employment and he shall cease to be a Participant under the Plan as of the date of such payment.

A former Participant who received a distribution hereunder, because of his retirement or other termination of employment shall lose the Service and Credited Service with which he was credited at the time of his prior termination of employment or retirement. If such former Participant is reemployed, such prior Service and Credited Service shall not be reinstated.

## **10.5 Direct Rollovers**

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving a single sum payment as provided in Section 8.2 or Section 10.4, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Administrator, to have any portion or all of such payment that is an "eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee"; provided, however, that this provision shall not apply if the total distribution is less than \$200 and that a "qualified distributee" may not elect this provision with respect to any partial distribution that is less than \$500. Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover. For purposes of this Section, the following terms have the following meanings:

- (a) An "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts rollovers; provided, however, that, in the case of a direct rollover by a surviving Spouse, an eligible retirement plan does not include a qualified trust described in Code Section 401(a).
- (b) An "eligible rollover distribution" means any distribution of all or any portion of a Participant's Accrued Benefit or a distribution of all or any portion of a survivor benefit under Article VIII or IX to a qualified distributee; provided, however, that an eligible rollover distribution does not include: any distribution of a Participant's Mandatory Employee Contributions; any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the qualified distributee or the joint lives or joint life expectancies of the qualified distributee and the qualified distributee's designated beneficiary, or for a specified period of ten years or more; and any distribution to the extent such distribution is required under Code Section 401(a)(9).
- (c) A "qualified distributee" means a Participant, his surviving Spouse, or his Spouse or former Spouse who is an alternate payee under a domestic relations order, as defined in Code Section 414(p).

## **10.6 Limitations on Commencement**

Notwithstanding any other provision of the Plan to the contrary, payment of a Participant's retirement benefit shall commence not later than the Participant's Required Beginning Date.

Distributions required to commence under this Section shall be made in accordance with Code Section 401(a)(9) and regulations issued thereunder. If payment of a Participant's retirement benefit does not commence until his Required Beginning Date, his Required Beginning Date shall be considered his Annuity Starting Date for all purposes of the Plan.

If the Participant dies after his Annuity Starting Date, but prior to distribution of his entire interest, the remaining portion of such interest shall be distributed to his Beneficiary in a method which is at least as rapid as the method being used at the date of the Participant's death. If the Participant dies prior to his Annuity Starting Date, the entire interest attributable to the Participant shall be distributed within five years after the date of his death, unless such interest is payable to a designated beneficiary (as defined in Code Section 401(a)(9)) for a period which does not exceed the life or life expectancy of such designated beneficiary, in which event distribution of such interest shall commence no later than the date the Participant would have attained age 70 1/2 if the designated beneficiary is the surviving Spouse of such Participant, or the date which is one year after the date of such Participant's death if the designated beneficiary is not the surviving Spouse of such Participant.

Subject to the requirements of Code Sections 401(a)(9), no benefit payments shall commence under the Plan until the Participant, or his Beneficiary, if applicable, makes written application therefor on a form satisfactory to the Administrator.

**ARTICLE XI  
MAXIMUM RETIREMENT BENEFITS**

**11.1 Definitions**

For purposes of this Article, the following terms have the following meanings.

- (a) A Participant's "annual retirement benefit" means the amount of retirement benefit attributable to City contributions which is payable to him annually under the Plan multiplied by the appropriate factor prescribed by the Secretary of the Treasury if such benefit is to be paid in a manner other than to the Participant for his life only. A Participant's "aggregate annual retirement benefit" includes his "annual retirement benefit" and his annual retirement benefit, if any, under any and all other defined benefit plans (whether or not terminated) maintained by the City or any Affiliate.
- (b) The "limitation year" means the Plan Year.
- (c) "Defined benefit plan" and "defined contribution plan" have the meanings given such terms in Code Section 415(k).

**11.2 Maximum Limitation on Annual Benefits**

The "annual retirement benefit" and the "aggregate annual retirement benefit" that may be paid to a Participant may not at any time within any "limitation year" exceed the limitations contained in Code Section 415(b). The maximum limitations will be determined in accordance with Code Section 415 and the applicable regulations for governmental plans thereunder.

**11.3 Maximum Limitation on Mandatory Employee Contributions and Pick-Up Contributions**

Notwithstanding any other provision of the Plan to the contrary, "annual additions" credited to a Participant's Accumulated Contributions with respect to a "limitation year" shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Code Section 415(d)) or (ii) 25 percent of the Participant's compensation, as defined in Code Section 415(c)(3) and regulations issued thereunder; provided, however, that the limit in clause (i) shall be pro-rated for any short "limitation year". The "annual addition" with respect to a Participant for a "limitation year" means the sum of his Mandatory Employee Contributions and Pick-Up Contributions contributed to the Plan, employer contributions, employee contributions, and forfeitures allocated to his accounts for the "limitation year" under any other qualified defined contribution plan (whether or not terminated) maintained by

the City or an Affiliate concurrently with the Plan, and amounts described in Code Sections 415(l)(2) and 419A(d)(2) allocated to his account for the "limitation year".

#### **11.4 Manner of Reduction**

If the Participant's "aggregate annual retirement benefit" exceeds the limitations specified in this Article, the reduction in the amount of his "annual retirement benefit" shall be equal to the amount by which his "aggregate annual retirement benefit" exceeds the limitations of this Article multiplied by a fraction, the numerator of which is his "annual retirement benefit" (determined without regard to this Article) and the denominator of which is his "aggregate annual retirement benefit" (determined without regard to the limitations of this Article or any corresponding limitation in any other defined benefit plan maintained by the City or any Affiliate).

If the "annual addition" to the Plan of a Participant in any "limitation year" would otherwise exceed the amount that may be applied for his benefit under the limitation contained in Section 11.3, the limitation shall be satisfied by reducing the Mandatory Employee Contributions or Pick-Up Contributions to the Participant's account to the extent necessary. If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by the City or a Affiliate concurrently with the Plan, and if the "annual addition" for the "limitation year" would otherwise exceed the amount that may be applied for the Participant's benefit under the limitation contained in the preceding Section, such excess shall be reduced first by returning the employee contributions made by the Participant for the "limitation year" under all defined contribution plans other than the Plan, and the income attributable thereto, to the extent necessary in the order prescribed by the Administrator. If the limitation contained in the preceding Section still is not satisfied after returning all of the employee contributions made by the Participant under all such other plans, the excess shall be reduced by returning or forfeiting, as provided in each such defined contribution plan, the elective contributions made on the Participant's behalf for the "limitation year" under all such other plans, and, if elective contributions are returned, the income attributable thereto, to the extent necessary in the order prescribed by the Administrator. If the limitation contained in the preceding Section still is not satisfied after returning or forfeiting all of the elective contributions made on the Participant's behalf under all such other plans, the portion of the employer contributions and of forfeitures for the "limitation year" under all such other plans that has been allocated to the Participant thereunder, but which exceeds the limitation set forth in the preceding Section, shall be deemed a forfeiture for the "limitation year" and shall be disposed of as provided in such other plans; provided, however, that the amount of the employer contributions and forfeitures that is a deemed forfeiture under this Section shall be effected in the order prescribed by the Administrator, but first under any other defined contribution plan that is not a money purchase pension plan and, if the limitation still is not satisfied, then under such money purchase pension plan. If the limitation contained in the preceding Section still is not satisfied after all employer contributions and forfeitures under all such other defined contributions plans are deemed forfeited for the "limitation year", the limitation shall be satisfied by reducing "annual additions" under the Plan as provided in this Section.

#### **11.5 Maximum Defined Benefit and Defined Contribution Limitation**

For limitation years commencing prior to the year 2000, if a Participant also is or was covered by one or more defined contribution plans maintained by the City or any Affiliate, the sum of the defined benefit plan fraction described in Code Section 415(e)(2) and the defined contribution plan fraction described in Code Section 415(e)(3) in no event shall exceed 1.0 in any limitation year. At the election of the City, the denominator of the defined contribution plan fraction may be computed in accordance with the special transition rule provided in Code Section 415(e)(6) and applicable regulations thereunder.

In the event that the sum of the defined benefit plan fraction and the defined contribution plan fraction would exceed the limitation of 1.0, annual additions under the defined contribution plan shall be reduced to the extent necessary to meet such limitation.

## **ARTICLE XII PENSION FUND**

### **12.1 Pension Fund**

The Pension Fund is maintained by the Funding Agent for the Plan under a Funding Agreement with the City. Benefits under the Plan shall be only as can be provided by the assets of the Pension Fund, and no liability for payment of benefits shall be imposed upon the City, or any of its elected or appointed officials or employees.

### **12.2 Contributions by the City**

So long as the Plan continues, contributions will be made by the City at such times and in such amounts as the City in its sole discretion shall from time to time determine, based on the advice of the Actuary and consistent with the funding policy for the Plan. Subject to the provisions of Section 12.5, all such contributions shall be delivered to the Funding Agent for deposit in the Pension Fund.

### **12.3 Expenses of the Plan**

The expenses of administration of the Plan, including the expenses of the Administrator and fees of the Funding Agent and any investment advisor, shall be paid from the Pension Fund, unless the City or the City elects to make payment.

### **12.4 No Reversion**

The Pension Fund shall be for the exclusive benefit of Participants and persons claiming under or through them.

All such contributions shall be irrevocable and such contributions as well as the Pension Fund, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the City or any Affiliate except that:

- (a) the residual amounts specified in Article XIV may be returned to the City;
- (b) any contributions which are made under a mistake of fact may be returned to the City within one year after the contributions were made;

The Administrator shall determine, in its sole discretion, whether the contributions described above shall be returned to the City. If any such contributions are to be returned, the Administrator shall so direct the Funding Agent, in writing, no later than ten days prior to the last day upon which they may be returned.

### **12.5 Forfeitures Not to Increase Benefits**

Any forfeitures arising from the termination of employment or death of an Employee, or for any other reason, shall be used to reduce City contributions to the Pension Fund, and shall not be applied to increase the benefits any Participant otherwise would receive under the Plan at any time prior to the termination of the Plan.

### **12.6 Change of Funding Medium**

The City shall have the right to change at any time the means through which benefits under the Plan shall be provided. No such change shall constitute a termination of the Plan or result in the diversion to the City of any funds previously contributed in accordance with the Plan.

## **ARTICLE XIII ADMINISTRATION**

### **13.1 Authority of the Administrator**

The Administrator shall have all the powers and authority expressly conferred upon it herein and further shall have the sole discretionary right, authority, and power to interpret and construe the Plan, and to determine any disputes arising thereunder, subject to the provisions of Section 13.3. In exercising such powers and authority, the Administrator at all times shall exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Administrator may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist it in carrying out its duties hereunder.

### **13.2 Action of the Administrator**

All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Administrator under the Plan shall be in writing and signed by or on behalf of the Administrator.

### **13.3 Domestic Relations Order Approval Procedures**

The Administrator shall approve a domestic relations order and direct that payment of a Participant's benefit be made in accordance with the terms of such order provided that all of the following requirements are met:

- (a) The order creates or recognizes the existence of an "alternate payee's" right to, or assigns to an "alternate payee" the right to, receive all or a portion of the Participant's Accrued Benefit under the Plan.
- (b) The order clearly specifies the following:
  - (1) the name and last known mailing address, if any, of the Participant and of each "alternate payee" covered by the order;
  - (2) the amount or percentage of the Participant's Accrued Benefit to be paid to each "alternate payee", or the manner in which such amount or percentage is to be determined;
  - (3) the number of payments or the period to which such order applies; and
  - (4) the name of the Plan.

- (c) The order does not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan.
- (d) The order does not require the Plan to provide increased benefits (determined on the basis of actuarial value).
- (e) The order does not require the payment of benefits to an "alternate payee" which are required to be paid to another "alternate payee" under another order previously approved by the Administrator.
- (f) The order does not provide for payment to the "alternate payee" in the form of a joint and survivor annuity with the "alternate payee's" subsequent spouse as beneficiary.

A domestic relations order may provide for payment prior to the date the Participant has separated from service if it provides that such payment shall be made on or after the date the Participant would have attained "earliest retirement age" under the Plan as if the Participant had retired on the date payments commence under the order (based only on the Participant's Accrued Benefit as of that date and subject to reduction for early commencement in accordance with the terms of the Plan).

The Administrator shall promptly notify the Participant and "alternate payee" of its receipt of the domestic relations order and of the Plan's procedures for approval of domestic relations orders. Within a reasonable period of receipt of such order, the Administrator shall determine whether the order meets the requirements established under this Section and shall notify the Participant and each "alternate payee" of its determination.

During the period of time following the Administrator's receipt of a domestic relations order and prior to the Administrator's determination as to whether the order meets the requirements of this Section, the Administrator shall separately account for those amounts that would have been payable to the "alternate payee" if the order had been approved (the "segregated amounts"). If within 18 months of the date the first payment would have been made under the domestic relations order, such order is approved by the Administrator, the Administrator shall pay the segregated amounts to the appropriate "alternate payee", with interest thereon. If within such 18-month period the order is disapproved by the Administrator, or the Administrator has not yet resolved whether the order meets the requirements of this Section, the Administrator shall pay the segregated amounts to the person or persons to whom payment would have been made if there had been no order. If the Administrator later approves the order, such order shall be applied prospectively only.

For purposes of this Section, the following terms shall have the following meanings:

- (g) An "alternate payee" means any Spouse, former Spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, a Participant's benefit under the Plan.

- (h) A "domestic relations order" means any judgment, decree, or order (including approval of a property settlement) that:
  - (1) relates to the provision of child support, alimony payments, or marital property rights to a Spouse, former Spouse, child, or other dependent of a Participant; and
  - (2) is made pursuant to a state domestic relations law (including a community property law).
- (i) A Participant's "earliest retirement age" means the earlier of (1) the date on which the Participant is entitled to a distribution under the Plan, or (2) the date the Participant would have attained age 55.

#### **13.4 Actions Binding**

Subject to the provisions of Section 13.3, any action taken by the Administrator which is authorized, permitted, or required under the Plan shall be final and binding upon the City, the Funding Agent, all persons who have or who claim an interest under the Plan, and all third parties dealing with the City or the Funding Agent.

**ARTICLE XIV  
AMENDMENT & TERMINATION OF PLAN**

**14.1 Right of Amendment**

The City reserves the right at any time and from time to time, by means of a written instrument executed in the name of the City by its duly authorized representatives, to amend or modify the Plan and, to the extent provided therein, to amend or modify the Funding Agreement. No pension or other benefit granted prior to the time of any amendment or modification of the Plan shall be reduced, suspended, or discontinued as a result thereof, except to the extent necessary to enable the Plan to meet the requirements for qualification under the Code or the requirements of any governmental authority. Moreover, no such action shall operate to recapture for the City any contributions made to the Pension Fund.

**14.2 Termination of the Plan**

The City reserves the right, by means of a written resolution adopted by the City Council, at any time to terminate the Plan. In the event of termination, no further benefits shall accrue, no further contributions shall be made, and all assets remaining in the Pension Fund, after provision has been made for payment of the expenses of administration and liquidation in connection with the termination, shall be allocated by the Funding Agent upon the advice of the Actuary, among the Participants and Beneficiaries of the Plan, in the following manner and order of precedence:

- (a) First to that portion of a Participant's or Beneficiary's Accrued Benefit that is derived from the Participant's Mandatory Employee Contributions, Supplemental Employee Contributions, and Pick Up Contributions.
- (b) In the case of benefits payable as an annuity,
  - (1) in the case of the benefit of a Participant or Beneficiary which was in pay status as of the beginning of the three-year period ending on the termination date of the Plan, to 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; and
  - (2) in the case of a Participant's or Beneficiary's benefit (other than a benefit described in subparagraph (1) of this paragraph) which would have been in pay status as of the beginning of such three-year period if the Participant had retired prior to the beginning of such three-year period and if his benefits had commenced (in the normal form of annuity under the Plan) as of the beginning of such period, to 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) of this paragraph, the lowest benefit in pay status during a three-year period shall be considered the three-year benefit in pay status for such period.

- (c) Next,
  - (1) to Participants age 60 or over; and
  - (2) to Participants age 50 to 59; and
  - (3) to Participants age 45 to 54, inclusive; and
  - (4) to Participants under age 45.

Notwithstanding any other provision of the Plan to the contrary, other than Sections 14.3 through 14.8, the amount allocated to any Participant under this Section 14.2 shall be fully vested and nonforfeitable. The City shall furnish all information reasonably required for the purposes of making such allocations. The Funding Agent shall implement the allocations determined under this Section among the persons for whose benefit such allocations are made through distribution of the assets of the Pension Fund, through application of the amounts allocated to the purchase from an insurance company of immediate or deferred annuities, or through creation of one or more new funds for the purpose of distributing the assets of the Pension Fund (to the extent so allocated), or by a combination of the foregoing.

#### **14.3 Adjustment of Allocation**

The amount allocated under any paragraph of Section 14.2 with respect to any benefit shall be properly adjusted for any allocations of assets with respect to that benefit under a prior paragraph of Section 14.2.

#### **14.4 Assets Insufficient for Allocation**

If the assets available for allocation under any paragraph of Section 14.2 (other than paragraphs (c)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the date of termination of the Plan) of their respective benefits described in that paragraph.

#### **14.5 Assets Insufficient for Allocation Under Paragraph (c) of Section 14.2**

This Section applies if the assets available for allocation under paragraph (c) of Section 14.2 are not sufficient to satisfy in full the benefits of individuals described in such paragraph.

- (a) If this Section applies, except as provided in paragraph (b), the assets shall be allocated to the benefits of individuals described in paragraph (c) of Section 14.2 on the basis of the benefits

of individuals which would have been described in such paragraph under the Plan as in effect at the beginning of the five-year period ending on the date of termination of the Plan.

- (b) If the assets available for allocation under paragraph (a) of this Section are sufficient to satisfy in full the benefits described in such paragraph (without regard to this paragraph (b)), then for purposes of paragraph (a), benefits of individuals described in such paragraph shall be determined on the basis of the Plan as amended by the most recent Plan amendment effective during such five-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in paragraph (a), and any assets remaining to be allocated under such paragraph (a) on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

#### **14.6 Residual Assets**

Subject to the provisions of Section 14.10, any residual assets of the Plan shall be distributable to the City if:

- (a) all liabilities of the Plan to Participants and their beneficiaries have been satisfied; and
- (b) the distribution does not contravene any provision of law.

#### **14.7 Meanings of Terms**

The terms used in Sections 14.2 through 14.4 shall have, where required, the same meaning as the same terms have as used in Section 4044 of the Employee Retirement Income Security Act of 1974, as amended; provided, however, that any term specifically defined in the Plan shall retain its meaning as defined thereunder.

#### **14.8 Payments by the Funding Agent**

The Funding Agent shall make the payments specified in a written direction of the Administrator in accordance with the provisions of Section 14.2 until the same shall be superseded by a further written direction. The obligation of the Funding Agent to make any payment hereunder in all events shall be limited to the amount of the Pension Fund at the time any such payment shall become due.

#### **14.9 Residual Assets Distributable to the City**

Upon written notice from the Administrator that any residual assets of the Plan are distributable to the City in accordance with the provisions of Section 14.6, then the Funding Agent shall pay over such residual assets, or an amount equal to the fair market value of that portion of such residual assets which are not so paid, to the City; provided, however, that, under no circumstances or conditions other than as set forth in this Section 14.9 and in Section 12.4, shall any contribution of the City, or any portion of the proceeds or avails thereof, ever revert, be paid, or inure to the benefit,

directly or indirectly, of the City or any Affiliate; nor shall any portion of the principal or the income from the Pension Fund ever be used for or diverted to any purpose other than for the exclusive benefit of Participants and persons claiming under or through them pursuant to the Plan.

**ARTICLE XV  
MISCELLANEOUS**

**15.1 No Commitment as to Employment**

Nothing contained herein shall be construed as a commitment or agreement on the part of any person to continue his employment with the City, or as a commitment on the part of the City to continue the employment, compensation, or benefits of any person for any period, and all employees of the City shall remain subject to discharge, layoff, or disciplinary action to the same extent as if the Plan had never been put into effect.

**15.2 Governing Law**

Except as provided under Federal law, the provisions of the Plan shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia..

**15.3 Funding Agreement**

The Funding Agreement and the Pension Fund maintained thereunder shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Funding Agreement are hereby incorporated by reference into the Plan.

**15.4 Benefit Offsets for Overpayments**

If a Participant or Beneficiary receives benefits hereunder for any period in excess of the amount of benefits to which he was entitled under the terms of the Plan as in effect for such period, such overpayment shall be offset against current or future benefit payments, as applicable, until such time as the overpayment is entirely recouped by the Plan.

**15.5 Veterans Reemployment Rights**

Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

## ADDENDUM

Re: Adjustment Factors

### Early Commencement Reduction Factors

<b>Number of Years and Months from Annuity Starting Date to Normal Retirement Date:</b>	<b>Factors:</b>
1	.9333%
2	.8667%
3	.8000%
4	.7333%
5	.6667%
6	.6333%
7	.6000%
8	.5667%
9	.5333%
10	.5000%

Note: When a partial year is involved, the factor will be appropriately adjusted.

**Late Commencement Adjustment Factors**

<b>Number of Years and Months from Normal Retirement Date to Annuity Starting Date:</b>	<b>Factors:</b>
<b>1</b>	.106%
<b>2</b>	1.12%
<b>3</b>	1.19 %
<b>4</b>	1.26%
<b>5</b>	1.34%
<b>6</b>	1.42%
<b>7</b>	1.50%
<b>8</b>	1.58%
<b>9</b>	1.67%
<b>10</b>	1.76%

Factors for other years and months will be determined in a manner consistent with the manner used in determining these factors

**RESOLUTION NO. 2017**

**WHEREAS**, the City of Alexandria maintains the City of Alexandria Pension Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians and the City of Alexandria Supplemental Retirement Plan (collectively, the "Retirement Plans"); and

**WHEREAS**, the Retirement Plans are intended to meet the requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, the City of Alexandria desires to adopt amended and restated plan documents for the Retirement Plans in order to incorporate those changes necessary for the Retirement Plans to retain their qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, a copy of the restated plan documents for the Retirement Plans is attached to this Resolution;

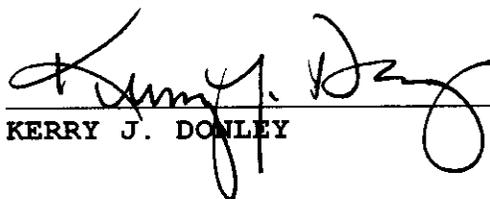
**NOW, THEREFORE, BE IT RESOLVED THAT** the Alexandria City Council, does hereby recognize, adopt and approve the amended and restated plan documents for the City of Alexandria Pension Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians and the City of Alexandria Supplemental Retirement Plan, copies of which are attached to this Resolution.

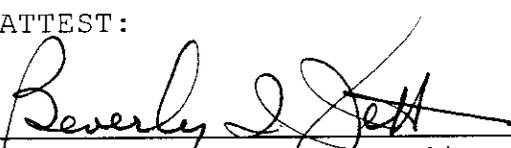
**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to make on behalf of the City of Alexandria any other changes to the Retirement Plans as are requested by the Internal Revenue Service, or, based on advice of counsel, as are necessary or desirable for the Retirement Plans to continue qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to execute such other forms, notices, instruments or other documents and to take such further action as may be necessary or desirable (1) to fully implement the Retirement Plans, (2) to ensure that the Retirement Plans are qualified under Section 401(a) of the Internal Revenue Code and (3) to obtain from the Internal Revenue Service a determination letter to the effect that the retirement plans continue to meet the requirements for qualification under Section 401(a) of the Internal Revenue Code; and

**BE IT FURTHER RESOLVED** that this Resolution shall be effective immediately.

ADOPTED: February 26, 2002

  
KERRY J. DONLEY MAYOR

ATTEST:  
  
Beverly I. Jett, CMC City Clerk

**SUMMARY OF CITY OF ALEXANDRIA  
RETIREMENT PLANS**

**NOTE 18. EMPLOYEE RETIREMENT SYSTEMS**

The following schedules reflect a description of the plan provisions and membership information, actuarial assumptions, accounting and funding policies, and contribution requirements. Six-year schedules of funding progress and trend information for defined benefit pension plans are provided in Exhibit XV.

**PLAN DESCRIPTION**

	<u>1</u> VRS	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
	<u>City</u>	<u>City Supplemental</u>	<u>Public Safety Pension</u>	<u>Public Safety Retirement Income</u>	<u>Disability Income</u>	<u>Sheriff Retirement Income</u>
Administrator	State of Virginia	Cigna	Cigna	Cigna	SunTrust	Cigna
Employees Covered	General Body	General Body	Public Safety	Public Safety	Public Safety	Sheriff/ERT
Authority for Plan Provisions and Contributions	State Statute	City Ordinance	City Ordinance	City Ordinance	City Ordinance	City Ordinance
Plan Type	Agent Multi- Employer	Single- Employer	Single- Employer	Single- Employer	Single- Employer	Single- Employer
	Defined Benefit	Defined Benefit	Defined Benefit	Defined Contribution	Defined Contribution	Defined Contribution
Stand Alone Financial Report	Yes	No	No	No	No	No
Actuarial Valuation Date	06/30/2000	06/30/2001	07/01/2000	N/A	N/A	N/A

**CITY OF ALEXANDRIA, VIRGINIA**  
**Notes to Financial Statements**  
**June 30, 2001**

**NOTE 18. EMPLOYEE RETIREMENT SYSTEMS**

**DESCRIPTION OF BENEFITS:**

**VRS – City** - Employees are eligible for an unreduced retirement benefit at age 65 with 5 years of service and at age 50 with 30 years of service. Employees who retire with a reduced benefit at age 55 with at least 5 years of credited service are entitled to an annual retirement benefit payable monthly for life in an amount equal to 1.7 percent of their average final salary (AFS) for each year of credited service. An optional reduced retirement benefit is available as early as age 50 with 10 years of credited service. In addition, retirees qualify for annual cost-of-living (COLA) increases on July 1 of the second calendar year after retirement. These benefit provisions and all other requirements are established and may be amended by State statutes.

**City Supplemental** - City employees who retire at or after age 65 or after age 55 with 30 years credited service are entitled to an annual retirement benefit, payable monthly for life, in an amount equal to .80 percent of effective compensation multiplied by service on and after January 1, 1988, and 1.625 percent of effective compensation not to exceed \$100 plus .25 percent of such compensation over \$100 times years service provided subsequent to August 1, 1970, and prior to January 1, 1988, and 1.625 percent of past service compensation not to exceed \$100, plus .25 percent of such compensation over \$100 times years service provided subsequent to August 1, 1960, and prior to August 1, 1970. The pension benefit is reduced by 6 2/3 percent for each year up to five years and 3 1/3 percent for each year between five and ten years preceding normal retirement date. Benefit provisions are established and may be amended by City Ordinance.

**Public Safety Pension** - Employees who retire on or after age 60 are entitled to an annual retirement benefit, payable monthly for life, in an amount equal to 2 percent of final average earnings multiplied by years of credited service, up to a maximum of 30 years. The plan also provides early retirement on or after age 50 with 20 years of credited service or on or after age 56 with 10 years of credited service. This plan further provides early retirement on or after age 50 with 10 years of service with actuarially reduced benefit. Benefit provisions are established and may be amended by City Ordinance.

**Public Safety Retirement Income** - The employees are entitled to contributions made on their behalf after 100 percent vesting. Employee contribution is voluntary and they are allowed to withdraw from their gross voluntary dollars after two years of participation in the plan. They may also cancel their voluntary portion of account. However, if they cancel they will receive a full refund of all voluntary contributions and interest earned to that point and would subsequently be suspended from making any further voluntary contributions for a period of twenty-four months. Benefit provisions are established and may be amended by City Ordinance.

**Disability Income** - This plan is part of the Public Safety Retirement Income Plan. The benefits for service-connected total and permanent disability are 70 percent of final average earnings, 66 2/3 percent for non-service connected total and permanent disability and service-connected partial disability, and 50 percent for non-service connected partial disability. Disability benefits are limited by the assets of the trust fund. If the plan administrator, after consultation with the plan's actuary, foresees the plan becoming insolvent, the administrator may reduce all participants' benefits on a pro rata basis as of the first day of any month after giving each participant receiving benefits under the plan adequate written notice. Benefit provisions are established and may be amended by City Ordinance.

**Sheriff Retirement Income** - This plan provides for benefits to be distributed in the case of termination, retirement, death, or disability to deputy sheriffs and emergency rescue technicians. Distribution options include cash distribution, annuities, or a combination of the two. Benefit provisions are established and may be amended by City Ordinance.

**CITY OF ALEXANDRIA, VIRGINIA**  
**Notes to Financial Statements**  
**June 30, 2001**

**NOTE 18. EMPLOYEE RETIREMENT SYSTEMS**

**MEMBERSHIP AND PLAN PROVISIONS**

As of:	6/00 (1) VRS	6/01 (2)	7/00 (3)	6/01 (4)	6/01 (5)	6/01 (6)
	City	City Supplemental	Public Safety Pension	Public Safety Retirement Income	Disability Income	Sheriff Retirement Income
Active Participants	1,692	1,897	1	444	444	199
Retirees & Beneficiaries	467	80	187	0	44	0
Terminated Vested & Non-vested	464	395	-	49	N/A	13
<b>Normal Retirement Benefits:</b>						
Age	65 50 (30Yrs)	65 55 (30Yrs)	60 50 (20Yrs)	60	N/A	60
Benefits Vested	5	5	10	5	N/A	5
Disability & Death Benefits	Disability Death	Disability Death	Disability Death	N/A Death	Disability N/A	N/A Death
<b>SIGNIFICANT ACTUARIAL ASSUMPTIONS</b>						
Investment Earnings	8.0%	8.0%	8.0%	N/A	N/A	N/A
<b>Projected Salary Increases</b>						
<b>Attributable to:</b>						
Inflation	3.0%	4.0%	N/A	N/A	N/A	N/A
Seniority/Merit	1.25 – 3.10%	2.86%	N/A	N/A	N/A	N/A
Projected Postretirement Increases	3.0%	None	3.0%	N/A	N/A	N/A
Actuarial Cost Method	Entry Age Normal Cost	Aggregate Actuarial Cost	Projected Unit Credit With Zero Normal Cost	N/A	N/A	N/A
Amortization Method	Level Percentage Closed	Level Percentage N/A	Level dollar Closed	N/A	N/A	N/A
Open/Closed	Closed	N/A	Closed	N/A	N/A	N/A
Remaining Amortization Period	24	15	15	N/A	N/A	N/A
Asset Valuation Method	Modified Market	Market Value	Book Value	N/A	N/A	N/A

**CITY OF ALEXANDRIA  
PENSION PLAN  
FOR FIREFIGHTERS AND POLICE OFFICERS**

**SUMMARY OF APPLICABLE CHANGES IN THE LAW  
THAT MUST BE INCLUDED IN THE PLAN DOCUMENT**

The City of Alexandria Pension Plan for Firefighters and Police Officers has previously received a determination letter from the Internal Revenue Service indicating that the Plan met the requirements for qualification under Section 401(a) of the Internal Revenue Code. Since that time, there have been a number of changes in the requirements for qualification under Section 401(a) and the City intends to request an updated determination letter from the Internal Revenue Service. In order for the determination letter to relate back to the last determination letter, the City must amend the Plan to incorporate the changes in the qualification requirements in the plan document and request a new determination letter from the Internal Revenue Service by February 28, 2002. The Plan has been administered in accordance with these new provisions since the date that they became applicable to the Plan.

This memorandum is intended to summarize those changes that must be included in the updated plan document that could affect the Plan in any significant respect. It is not intended to be a definitive list of each and every change that must be incorporated in the new plan document. Also, this summary does not discuss the changes included in the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), which are discussed in a separate memorandum.

Note that the changes described do not affect individuals who retired before the changes became effective.

Tax Reform Act of 1986 ("TRA 86")

- Modification of Limit on Benefits – TRA 86 did not change the general rules regarding the limitation on benefits for qualified police/firefighter plans (such as the Plan). However, TRA 86 provided that the Section 415(b) dollar limitation would not need to be reduced below \$50,000 on account of early benefit commencement by a participant in a qualified police/firefighter plan. Subsequent legislation eliminated altogether the requirement to reduce the Section 415(b) dollar limit on account of early benefit commencement by a participant in a qualified police or firefighter plan.

- Modification of Limit on Annual Additions – The limitation on annual additions applies to the mandatory employee contribution portion of the Plan. TRA 86 changed the limits on annual additions to the Plan that are contained in Section 415(c) of the Internal Revenue Code to the greater of \$30,000 or 25% of the defined benefit dollar limit under Section 415(b) of the Internal Revenue Code. The Section 415(c) limit has since been changed to eliminate the reference to the defined benefit dollar limit.

- TRA 86 provided that *all* employee contributions are treated as annual additions for purposes of the Code section 415(c) limitations.

- Limitation on Compensation Taken into Account – TRA 86 imposed a limitation of \$200,000 on compensation that may be recognized by the Plan. This limit was later reduced to \$150,000 (as indexed for inflation). As of December 31, 2001, the compensation limit was \$170,000. EGTRRA increased the limit to \$200,000 effective January 1, 2002.

- Modification of Minimum Distribution Rules – TRA 86 changed the time at which minimum distributions are required to begin (“Required Beginning Date”) to April 1 of the calendar year following the calendar year in which an employee attained age 70-1/2, even if the employee was still employed at that time. The Required Beginning Date was subsequently changed to the April 1 of the calendar year following the later of (i) the calendar year in which the participant attained age 70-1/2, or (ii) the calendar year in which the participant retired.

- Modification of Rollover Rules – TRA 86 provided that minimum distributions cannot be rolled over to an IRA or another qualified retirement plan.

- TRA 86 provided that eligible rollover distributions made to a surviving spouse are eligible for rollover to an IRA, but not a qualified plan.

- TRA 86 provided that a detailed tax notice is required to be provided when any eligible rollover distribution is made.

#### Unemployment Compensation Act of 1992

- Direct Rollovers – The 1992 Act required the Plan to permit a participant receiving an eligible rollover distribution to have the distribution transferred in a direct rollover to an eligible retirement plan.

#### Uniformed Services Employment and Reemployment Rights Act of 1994

- The Act provided that the Plan is required to provide contributions and service credit to participants who return to the City following a period of qualified military service.

#### Small Business Job Protection Act of 1996 (“SBJPA”)

- Repeal of Combined 415 Limit – The SBJPA repealed the combined limitation under Section 415(e) of the Internal Revenue Code on contributions and benefits applicable to employers who sponsor both defined contribution and defined benefit plans.

- Repeal of the Section 415(b) Limit Based on Compensation – The SBJPA eliminated the “100% of compensation” limit under Section 415(b) for governmental plans.

- Inclusion of Elective Contributions in Compensation for 415 Purposes – The SBJPA provided that pre-tax contributions to qualified retirement plans and cafeteria plans are included in “compensation” for purposes of applying the Section 415 limits. Later legislation also provided that pre-tax contributions to transportation fringe benefit plans are included in “compensation” for Section 415 purposes.

#### Taxpayer Relief Act of 1997

- Exemption of Governmental Plans from Minimum Participation and Nondiscrimination Rules – The Act repealed the minimum participation rules for governmental plans sponsored by state and local governments and made permanent the exemption of these plans from the nondiscrimination rules.

- Elimination of the Reduction of the Section 415(b) Dollar Limit for Early Commencement – The Act repealed the requirement that the Section 415(b) dollar limit be reduced for early benefit commencement by participants in a qualified police/firefighter plan.

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CITY OF ALEXANDRIA  
PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS

As Amended and Restated Effective 4/1/84 12/31/2001

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## History of the Plan

As of July 1, 1956 the City of Alexandria (hereinafter referred to as the "City") established a ~~program for providing the City of Alexandria Pension Plan for Firefighters, and Police Officers (the "Plan") to provide~~ retirement income and other benefits for certain of its employees and their beneficiaries. ~~This program~~ The Plan was set forth in Group Annuity Contract GR-574 issued by Connecticut General Life Insurance Company.

~~Subsequently, this program~~ The Plan has been amended ~~and re-stated in its entirety over the years in order~~ to reflect certain changes and improvements in the retirement program.

Effective January 1, 1984, ~~this program (hereinafter referred to as the "Prior Plan") is again the Plan was~~ amended and restated to reflect further certain legislative changes and amendments to the Program. ~~The name of such amended program is the City of Alexandria Pension Plan for Firefighters, and Police Officers and shall be referred to as the "Plan".~~

Effective September 1, 1983, the Plan ~~has been~~ was amended to incorporate gender-neutral Adjustment Factors for contributions made or benefits accrued after August 1, 1983 ~~in accordance with a U.S. Supreme Court decision governing the purchase of benefits under retirement income plans.~~

Effective January 1, 1984, the Plan ~~has been~~ was amended to comply with Internal Revenue Rulings 79-90 and 81-12 which require ~~required~~ retirement income plans to describe the actuarial assumptions used in computing optional benefits and to provide protection of accrued benefits from rate basis changes.

~~Also, the~~ The Plan has been was also amended to comply with the Tax Equity Fiscal Responsibility Act of 1982 ~~which governs the amount and distribution of plan benefits to Participants and beneficiaries ("TEFRA"), the Deficit Reduction Act of 1984 ("DEFRA") and the Retirement Equity Act of 1984 ("REA").~~ In conjunction with ~~this amendment, these amendments,~~ the Plan ~~will now reflect~~ incorporated the updated regulations governing the Internal Revenue Code's Section 415 limitations determining the minimum and maximum amounts of retirement benefits that may be provided for or paid to a Participant under a qualified defined benefit and/or defined contribution plan.

Effective as of December 31, 2001, the Plan has been amended and restated in order to comply with further legislative changes including the Tax Reform Act of 1986 (TRA '86), the Uruguay Round Agreements Act ("GATT"), the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), the Small Business Jobs Protection Act of 1996 ("SBJPA") and the Taxpayer Relief Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act (RRA '98), and the Community Renewal Tax Relief Act of 2000 (CRA).

## Preservation of Rights

Each Participant under the ~~Prior~~ Plan who is in the active employ of the City on December 31, ~~1983~~ 2001, shall continue to be a Participant under this Plan on and after ~~January 1, 1984~~ December 31, 2001, in accordance with its terms.

Except as hereinafter provided each former employee who is was receiving benefits under the ~~Prior~~ Plan on prior to December 31, ~~1983~~ 2001, shall continue to receive such payments on

January 1, 1984 in accordance with the terms of the ~~Prior Plan~~ Plan as in effect prior to December 31, 2001.

Except as hereinafter provided each former employee who terminated employment prior to January 1, 1984 December 31, 2001, shall not be eligible for coverage hereunder.

No provisions of this Plan, other than those required to maintain this Plan as one that is qualified under Section 401(a) of the Code, shall operate to diminish or otherwise adversely affect the amount or terms of retirement income accrued in respect to a Participant's coverage under the ~~Prior Plan~~.

Plan as in effect prior to December 31, 2001.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to Plan Years (or other applicable 12-month periods, as the case may be) commencing after December 31, 2001.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to Employees of the City on and after December 31, 2001, and the rights, benefits and interests of any Employee who died, retired or otherwise terminated his employment with the City prior to December 31, 2001, shall be determined under the provisions of the Plan as in effect on the date such former Employee died, retired or otherwise terminated his employment with the City.

CITY OF ALEXANDRIA PENSION PLAN

FOR FIREFIGHTERS AND POLICE OFFICERS

AS AMENDED AND RESTATED EFFECTIVE ~~JANUARY 1, 1984~~ DECEMBER 31, 2001

ARTICLE I

DEFINITIONS

1. "PLAN" means the City of Alexandria Pension Plan for Firefighters and Police Officers, as described herein or as hereinafter amended.
2. "CITY" means City of Alexandria, Virginia.
3. "EFFECTIVE DATE" means ~~January 1, 1984~~ December 31, 2001, the effective date of this amended and restated Plan; provided, however, that any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before December 31, 2001, in order to retain the qualification of the Plan under Section 401(a) of the Code shall, nevertheless, be effective as of its required effective date under the Internal Revenue Code.
4. "EMPLOYEE" means any individual in the employ of the City who is classified as a firefighter or police officer, other than an individual who is classified as a meter patrol officer. The term Employee shall include any Leased Employee as described in ~~Section 414(n)~~ Section 414(n) of the Code, unless such Leased Employee is covered by a money purchase pension plan sponsored by the lessor under which:
  - (1) non-integrated lessor contributions equal or exceed ~~7 1/2%~~ 7 1/2% of compensation; and
  - (2) the plan provides for immediate participation and for full and immediate vesting.If no such plan exists, any retirement income accrued under this Plan by a Leased Employee will be reduced by the amount of retirement income funded by the lessor which is attributable to the same period of employment.
5. "PARTICIPANT" means an Employee who becomes covered under this Plan.
6. "SPOUSE" means the lawful wife of a male Participant, or the lawful husband of a female Participant.
7. "BENEFICIARY" means the Beneficiary designated in accordance with the further terms of this Plan.
8. "CONTINGENT ANNUITANT" means the person designated as the Contingent Annuitant in accordance with the further terms of this Plan.
9. "NORMAL RETIREMENT DATE" of each Participant shall be the first day of the month coinciding with or next following his 60th birthday.

10. "MANDATORY RETIREMENT DATE" of a Participant shall be (a) the first day of the month coinciding with or next following his 65th birthday in the case of a Participant holding at least the rank of Fire Deputy Chief or Police Captain or (b) the first day of the month coinciding with or next following his 60th birthday in the case of a Participant holding a rank lower than Fire Deputy Chief or Police Captain.
11. "EARLY RETIREMENT DATE" means the date that a Participant is entitled to a pension in accordance with Sections B or C of Article IV.
12. "POSTPONED RETIREMENT DATE" means the date that a Participant is entitled to a pension in accordance with Section D of Article IV.
13. "DISABILITY RETIREMENT DATE" means the date that a Participant is entitled to receive a disability benefit in accordance with Article VI.
14. "EARNINGS" – prior to January 1, 1976, Earnings shall refer to basic earnings, overtime, holiday pay, and educational incentive pay. On and after January 1, 1976, Earnings shall refer to basic earnings and educational incentive pay. However, Earnings shall not include overtime pay, holiday pay or any other additional compensation, unless otherwise specified. Effective as of January 1, 1996, Earnings with respect to any Plan Year shall in no event exceed the dollar limit specified in Section 401(a)(17) of the Code (as adjusted from time to time by the Secretary of the Treasury.
15. "FINAL AVERAGE EARNINGS" shall refer to the highest average Earnings received during any 36 consecutive months while the Participant is actively employed by the City and is covered under the Plan.
16. "TERMINATION OF EMPLOYMENT" means a severance of the relationship between the City and the Employee other than a severance on account of death, disability or retirement.
17. "CREDITED INTEREST" shall refer to interest added to a Participant's Pension Contributions at the rate of 2% per annum prior to January 1, 1977 and 3% per annum thereafter, compounded annually, for the number of completed months from the ~~January~~ + January 1 following the date such Participant's Pension Contribution was made to whichever of the following dates is earliest.
  - (a) the date on which the Participant elects a refund of his Pension Contributions,
  - (b) the date of a Participant's death,
  - (c) the date that the Participant's pension commences, or to the date specified hereinafter; provided, however, that with respect to a Participant's Pension Contributions made prior to July 1, 1967, Credited Interest shall be computed on each Participant's Pension Contribution for the number of completed months from the July 1 following the date such Participant's Pension Contribution was received to January 1, 1968, and then interest will be compounded annually thereon from January 1, 1968 to the appropriate date specified above.
18. "CREDITED SERVICE" is as defined in Article III.

19. "INSURANCE COMPANY" means Connecticut General Life Insurance Company, or any other legal reserve life insurance company with whom the City may contact for the issuance of a group annuity contract or contracts for the purpose of providing the benefits specified and provided for in this Plan.
20. Unless the context otherwise requires, the singular number shall include the plural and the masculine gender shall include the feminine.
21. "ADJUSTMENT FACTOR" – the appropriate adjustment factor(s) which may be applicable to a Participant's retirement income in accordance with the further terms of the Plan.

With respect to each Participant whose retirement date occurs after August 1, 1983, the appropriate Adjustment Factors are the applicable gender-neutral Adjustment Factors as shown in the Tables attached hereto, subject to the following:

- (a) With respect to participants whose retirement dates are other than the Normal Retirement Date, the Early Retirement Adjustment Factors as in effect in accordance with the terms of this Plan as constituted on August 1, 1983 shall continue to be of full force and effect after August 1, 1983.
  - (b) In no event will the pension payable to a Participant on his retirement date, as adjusted by the applicable Adjustment Factor(s) as in effect after August 1, 1983, be less than the amount of pension the Participant had accrued on August 1, 1983, as adjusted by the applicable Adjustment Factor(s) as in effect in accordance with the terms of this Plan as constituted on August 1, 1983.
22. "PARTICIPANT DISABILITY CONTRIBUTION" means an amount of Participant contributions which shall be deducted by the City from his Earnings and shall be used to offset the cost as determined by the Insurance Company to provide for the Non-Service-Connected Partial Disability Benefit of this Plan. The initial amount of Participant Disability Contribution shall be ½% of each Participant's Earnings; however, this amount may be changed on any January 1 that the Insurance Company determines that such change is necessary to maintain proper funding.
  23. "VALUE" – the present value of a Participant's retirement income based upon the male annuity factors in the Pension Benefit Guaranty Corporations' Prospective Actuarial and Mortality Tables, Publication Number PBGC 509, as in effect at the beginning of the Plan Year in which the Value is determined. In no event shall the interest rate used be greater than the Pension Benefit Guaranty Corporation's immediate annuity interest rate in effect at the beginning of the Plan Year in which the Value is determined.

## ARTICLE II

### PARTICIPATION AND FUNDING

#### Section A – Participation

1. Each Employee who was a Participant on ~~December 31, 1983~~ December 30, 2001, will continue to be a Participant under this Plan on ~~January 1, 1984~~ December 31, 2001, provided that he did not elect a transfer of the assets attributable to his coverage under this Plan in accordance with Section D of this Article II.
2. Each Participant who continues to be covered hereunder shall continue to contribute 7½% of his Earnings received during each month thereafter in accordance with ~~Section B~~ Section B, below.
3. No other Employee shall become a Participant on or after ~~February 13~~ February 13, 1979.

#### Section B – Funding

1. Participant's Pension Contributions shall be deducted by the City from his Earnings and shall be used to help fund for any retirement benefits or death benefits that become payable hereunder.

Each Participant shall also be required to contribute Participant Disability Contributions in accordance with Section D of Article VI and Definition 22 of Article I.

The Participant's obligation to make said contributions shall continue to the earliest of the date he completes 30 years of Credited Service, his retirement date or date of Termination of Employment.

A rehired Employee shall be considered to be a new employee; provided, however, that an employee who terminates his employment with the City and who is rehired within 24 months of his termination date, may obtain retirement credit for his prior service by repaying the amount of his Participant's Pension Contributions with Credited Interest refunded to him on or after his Termination of Employment plus 6% interest per annum on this amount from the date such refund was made until the date of repayment. The date of repayment of the refunded Participant's Pension Contributions with Credited Interest must be completed within 24 months after reemployment, provided, however, that with respect to any Participant who was reemployed prior to July 1, 1975 and who had not previously elected to repay his Participant's Pension Contributions with Credited Interest will have until April 1, 1978 to elect to repay such previously refunded contributions with interest in accordance with this paragraph 3. This reinstated Participant must complete a new payroll deductions order and contribute the same as a Participant in paragraph 2 of Section A, above.

2. The City will make the remainder of the contributions necessary to provide the benefits hereunder and to pay the cost of administering the Plan.
3. Forfeitures resulting from the Termination of Employment shall be used as soon as possible to reduce the City's cost of the Plan.

### Section C – Establishment of Pension Fund

1. All contributions made to the fund for the benefits to be provided under this Plan shall be paid to the Insurance Company for application under the group annuity contract or contracts. The assets of said contract or contracts shall constitute the Pension Fund.

### Section D – Transfer of Assets

1. Each Employee who was a Participant on ~~February 12~~ February 12, 1979 may elect to have the assets attributable to his coverage under this Plan as of such date transferred from this Plan to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers. If a Participant makes such an election, no benefits will be payable to him, his Spouse, Contingent Annuitant or Beneficiary as a result of his coverage under this Plan. All benefits payable with respect to such a Participant will be determined in accordance with the terms of the City of Alexandria Retirement Income Plan for Firefighters and Police Officers.
2. The amount of assets to be transferred in accordance with paragraph 1 above will be equal to:
  - (a) the actuarial equivalent of the Participant's annual pension accrued under this Plan as of ~~January 1~~ January 1, 1978 (but not less than the aggregate of the Participant's Pension Contributions made prior to ~~January 1~~ January 1, 1978 with Credited Interest as of such date), plus
  - (b) 20% of the Participant's basic earnings (excluding overtime, holiday pay, educational and incentive pay) received during the period from January 1, 1978 through May 30, 1979, plus
  - (c) if the Participant so elects, the aggregate of his Participant's Pension Contributions made during the period from ~~January 1~~ January 1, 1978 through ~~May 30~~ May 30, 1979 together with Credited Interest to ~~May 30~~ May 30, 1979 on the amount of such Participant's Pension Contributions made during calendar year 1978. Participant's Pension Contributions transferred to the City of Alexandria Retirement Income Plan Firefighters and Police Officers will be treated as Voluntary Employee Contributions under the terms of that Plan.
3. In lieu of an election in accordance with paragraph 2(c) above, a Participant who elects to have assets transferred in accordance with this Section D of Article II may elect to receive a refund of the amount of his ~~participant's~~ Participant's Pension Contributions with Credited Interest determined in accordance with paragraph 2(c) above.
4. An election under this Section D of Article II shall be made in writing on forms provided by the City and returned to the Personnel Department of the City no later than ~~May 15~~ May 15, 1979.
5. Each Employee who was a Participant on ~~May 24~~ May 24, 1983 may elect within three weeks of receiving actuarial data from the Connecticut General Life Insurance Company providing him with information as to the amount that may be transferred from this Plan (but in any event, prior to ~~September 1~~ September 1, 1983) to have the assets attributable to his coverage under this Plan as defined herein transferred from this Plan to the City of

Alexandria Retirement Income Plan for Firefighters and Police Officers and, to the extent set forth herein, to the City of Alexandria Firefighters and Police Officers Disability Income Plan. Such transfer shall be subject to the provisions of paragraphs 5 through 9 of this Article II, Section D. If a Participant makes such an election and assets attributable to his coverage under this Plan as defined herein are transferred from this Plan, no benefits will be payable to him, his Spouse, Contingent Annuitant or Beneficiary as a result of his coverage under this Plan. All benefits payable with respect to such a Participant will be determined in accordance with the terms of the City of Alexandria Retirement Income Plan for Firefighters and Police Officers and the City of Alexandria Firefighters and Police Officers Disability Income Plan.

6. The amount of assets to be transferred in accordance with paragraph 5 above to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers (and, in the case of subparagraph (d) hereof, the City of Alexandria Firefighters and Police Officers Disability Income Plan) will be equal to:

(a) the actuarial equivalent of the Participant's annual pension accrued under this Plan as of ~~January 1~~ January 1, 1978 and calculated in the same manner as prior transfers as of ~~January 1~~ January 1, 1978 (but not less than the aggregate of the Participant's Pension Contributions made prior to ~~January 1~~ January 1, 1978 with Credited Interest as of such date and with interest equal to that sum which would have been credited by the Insurance Company had such amount been transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers on ~~June 1~~ June 1, 1979), plus

(b) 20% of the Participant's basic earnings (excluding overtime, holiday pay, educational and incentive pay) received during the period from ~~January 1~~ January 1, 1978 through the date of transfer, including interest equal to that sum which would have been credited by the Insurance Company had such amount been transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers on ~~June 1~~ June 1, 1979, plus

(c) if the Participant so elects, the aggregate of his

(i) Participant's Pension Contributions made during the period from ~~January 1~~ January 1, 1978 through the date of transfer; and

(ii) Participant's Disability Contributions made during the period from ~~January 1~~ January 1, 1978 through ~~May 31~~ May 31, 1979

together with interest equal to that sum which would have been credited by the Insurance Company had such amounts been transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers on ~~June 1~~ June 1, 1979 to the date of transfer. Participant's Pension Contributions and Disability Contributions transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers will be treated as Voluntary Employee Contributions under the terms of that plan.

(d) Participant's Disability Contributions made during the period from ~~June 1~~ June 1, 1979, through the date of transfer, without interest.

7. In lieu of an election in accordance with paragraph 6(c) above, a Participant who elects to have assets transferred in accordance with this Section D of Article II may elect to receive a refund of the amount of his Participant's Pension and Disability Contributions with interest determined in accordance with paragraph 6(c) above.
8. An election under this Section D of Article II shall be made in writing on forms provided by the City and returned to the Personnel Department of the City no later than ~~September~~ September 1, 1983.
9. In the event that the amount to be transferred to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers pursuant to paragraph 6(b) exceeds \$200,000, elections to transfer will be accepted, but transfers of funds will be effectuated in 1983 only with respect to those employees with the greatest number of years of Credited Service, the transfer of whom would require an aggregate amount determined under paragraph 6(b) not to exceed \$200,000. All other Participants who had submitted an election to transfer on or before ~~September 1~~ September 1, 1983 shall have transfers of their assets under paragraph 6(b) effectuated in 1984 or thereafter, not to exceed \$200,000 per year. Interest calculations on assets transferred will be to the date of transfer as to any deferred asset transfers. Effective as of the date of transfer, for those Participants on whose behalf transfers of funds have been effectuated, all benefits shall be determined solely under the City of Alexandria Retirement Income Plan for Firefighters and Police Officers or the City of Alexandria ~~Retirement Income Plan for Firefighters and Police Officers~~ Disability Income Plan, as appropriate. No benefits for such Participants shall be determined pursuant to the terms of this Plan. If there is a delay in asset transfers for a Participant because of the \$200,000 per year limitation on the amount to be transferred pursuant to paragraph 6(b), such Participant shall continue to make Pension Contributions and Disability Contributions to this Plan, and his benefits shall be determined solely pursuant to the terms of this Plan until the effective date of the transfer of assets attributable to his coverage under this Plan.
10. Any Employee who is a Participant in this Plan as of ~~March 11~~ March 11, 1986 may advise the City no later than ~~April 11~~ April 11, 1986 that he desires to be considered for transfer from this Plan to the City of Alexandria Retirement Income Plan for Firefighters and Police Officers (the 'New Pension Plan'). The City, in its discretion, may either grant or reject all such requests. If the City proposes to grant all such requests, it shall promptly request Connecticut General Life Insurance Company ('CG') to make calculations in the same manner as was done in 1979 and 1983, as more particularly set forth in paragraphs 6 and 7 of Article II, Section D, as set forth in the first change in the amendments to this Plan effective ~~May 24~~ May 24, 1983, as determined by CG, and advise the City of such calculations and the proposed transfer amounts. If the City then continues to approve all such requests, in its sole discretion, it shall then advise all such Participants and furnish each such Participant with CG calculations. Each such Participant shall then have a period of three weeks to notify the City in writing of his election to have the assets thus calculated as being attributable to his coverage under this Plan transferred to the New Pension Plan. The City may effectuate such transfer from existing funds in the Plan or from new City contributions or a ~~combinations~~ combination, in its sole discretion. If a Participant makes such election to transfer, and assets attributable to his coverage under this Plan as defined herein are transferred from this Plan, no benefits will be payable to him, his Spouse, Contingent Annuitant or Beneficiary as a result of his coverage under this Plan.

ARTICLE III

CREDITED SERVICE

Section A. Credited Service

1. The term "Credited Service" means continuous employment with the City while classified as an Employee, and, for the purpose of determining eligibility for benefits hereunder, shall include the periods of time specified in paragraphs 2, 3 and 4 below; however for the purpose of determining the amount of benefits hereunder, Credited Service shall not include the period of time specified in paragraphs 3 and 4 below.
2. Absence from employment with the City on account of active duty in the Armed Forces will be counted as continuous employment with the City in accordance with the City's Administrative Regulations.
3. Absence from employment with the City on account of authorized leave of absence will be counted as continuous employment with the City in accordance with the City's Administrative Regulations.
4. The period of time while he is disabled in accordance with Article VI.

In determining Credited Service all Participants under similar circumstances will be treated alike.

Notwithstanding any provision of this Plan to the contrary, effective on and after December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

ARTICLE IV

BENEFITS UPON RETIREMENT

Section A. Normal Retirement

1. Each Participant who retires on his Normal Retirement Date on and after ~~January 1~~ January 1, 1984 will be entitled to an annual pension commencing on his Normal Retirement Date equal to 2½% of his Final Average Earnings multiplied by his years of Credited Service up to a maximum of 30 years. In determining the Participant's annual pension, Credited Service shall be computed to the nearest 1/12 year.
  
2. Each Participant who was receiving a disability benefit in accordance with Article VI immediately prior to his Normal Retirement Date shall be entitled to an annual pension equal to his disability benefit payable immediately prior to his Normal Retirement Date without regard to any reduction in accordance with paragraph 5, Section F of Article VI, if applicable. However, each Participant who was receiving a partial disability benefit in accordance with Article VI immediately prior to his Normal Retirement Date and whose Disability Retirement Date commenced on and after ~~May 24~~ May 24, 1983 shall be entitled only to an annual pension equal to his accrued retirement benefit immediately prior to his Disability Retirement Date, determined in accordance with paragraph 1, Section A of Article IV. ~~Provided; provided~~ provided that the benefit payable ~~under the preceding sentence~~ at such Participant's Normal Retirement Date shall not be less than 50% of the Participant's Final Average Earnings.

Section B. Early Retirement – Voluntary

1. Unreduced

Each Participant who has attained his 50<sup>th</sup> birthday and completed at least 20 years of Credited Service or who has attained his 56<sup>th</sup> birthday and completed at least 10 years of Credited Service may elect to receive an early pension, commencing on his Early Retirement Date, by filing a written notice to the City. Such Early Retirement Date shall be the first day ~~or~~ of any month between the date such election is made and the Participant's Normal Retirement Date. The annual pension, commencing on a Participant's Early Retirement Date, shall be determined in accordance with paragraph 1 Section A of this Article IV.

2. Reduced

Each Participant who has attained his 50<sup>th</sup> birthday and completed at least 10 years of Credited Service may elect to receive an early pension commencing on his Early Retirement Date by filing notice with the City. Such Early Retirement Date shall be the first date of any month between the date such election is made and the Participant's Normal Retirement Date. The annual pension, commencing on a Participant's Early Retirement Date shall be determined in accordance with ~~Paragraph~~ paragraph 1, Section A of this Article IV based on the Participant's Credited Service completed prior to his Early Retirement Date computed to the nearest 1/12 of year, with the annual amount so determined adjusted by multiplying by the appropriate early retirement Adjustment Factor in Table B-1.

### Section C. Early Retirement – Involuntary

1. The City may require early retirement in any case with respect to a Participant who has attained his 50<sup>th</sup> birthday and completed at least 20 years of Credited Service where it is deemed necessary due to lack of work or the inability of the Participant to perform his occupation in a satisfactory manner of efficiency, provided that the City shall exercise this right to retire a Participant early in a nondiscriminatory manner. The Early Retirement Date of such a Participant will be the first of the month coinciding with or next following his retirement. The annual pension, commencing on such Early Retirement Date, shall be determined in accordance with paragraph 1, Section A of this Article IV.

### Section D. Postponed Retirement

With the consent of the City, a Participant may continue to be employed after his Normal Retirement Date, but in no event may he continue to be so employed beyond his Mandatory Retirement Date. The Participant's Postponed Retirement Date shall be the first day of the month coinciding with or next following his date of actual retirement. The Participant's annual pension, commencing on his Postponed Retirement Date shall be calculated in accordance with Section A of this Article IV with Service being credited to his actual retirement date and using his Earnings in effect at his retirement date.

### Section E. Minimum Annual Pension

In no event will the annual pension payable to a Participant under this Article be less than the annual pension that can be provided by applying the aggregate of the Participant's Pension Contributions with Credited Interest to the appropriate factor contained in Table E-2 used to provide the benefits specified and attached to this Plan.

### Section F. Cost-of-Living Benefit

1. For the purposes of this Section, the Terms "Consumer Price Index," "Current Pension," "Base Pension," and "Base Index," shall have the following meanings:
  - (a) Consumer Price Index means the Consumer Price Index (U.S. All Items Index) published by the United States Department of Labor, Bureau of Labor Statistics.
  - (b) The Current Pension of any Participant, Contingent Annuitant, Spouse or Beneficiary shall mean the annual pension which is payable on the date specified on the form of pension which is applicable to said individual; except that with respect to a Participant whose annual pension is payable under the Social Security option, the amount of Current Pension shall mean the amount of annual pension which will be payable to the Participant after his Social Security Commencement Date if he is then living.
  - (c) Base Pension means the annual pension which becomes payable to a ~~participant~~ Participant on his Early Retirement Date or his Normal Retirement Date or Postponed Retirement Date, whichever is applicable. With respect to a Participant whose annual pension commences on his Normal Retirement Date in accordance with paragraph 2, Section A, Article IV, the Base Pension shall be

equal to the Current Disability Benefit payable to such Participant during the month immediately preceding his Normal Retirement Date. The amount of the Base Pension shall be redetermined on the following later dates, if applicable:

- (i) the date an optional form of pension becomes effective with respect to such annual pension; or
- (ii) the date a reduced amount of annual pension become payable to the Participant's Contingent Annuitant as a result of the Participant's death,

and shall be equal to the annual pension then payable. If an annual pension is payable to a Participant under the Social Security Option, the term Base Pension shall mean the annual pension, if any, which will continue to be payable after the Participant's Social Security Commencement Date if he is then living.

- (d) Current Disability Benefit means the annual amount of disability benefit which is payable on the date specified to said Participant in (e), below.
- (e) Base Disability Benefit means the annual amount of disability benefit initially payable in accordance with Article IV, as applicable below:
  - (i) For a Participant whose Disability Retirement Date commenced prior to May 24, 1983 in accordance with Section D of Article ~~IV~~, VI, such Participant's Base Disability Benefit means the amount of disability benefit payable to the Participant as of the January 1 immediately following his 50<sup>th</sup> birthday.
  - (ii) For a Participant whose Disability Retirement Date commenced on and after May 24, 1983 in accordance with Sections C and D of Article VI, such Participant's Base Disability Benefit means the amount of disability benefit payable to the Participant as of January 1 immediately following his 60<sup>th</sup> birthday.
- (f) With respect to an amount of Base Pension or Base Disability Benefit, the term Base Index shall mean the Consumer Price Index for the month of January in the calendar year in which such Base Pension or Base Disability Benefit became payable or January 1, 1970, whichever is later. (Notwithstanding anything herein to the contrary, for Participants whose Disability Retirement Dates commenced prior to May 24, 1983, in accordance with Section D of Article ~~IV~~ VI, the Base Index shall be determined as of January 1 immediately following his 50<sup>th</sup> birthday. For Participants whose Disability Retirement Dates commenced on and after May 24, 1983 in accordance with Sections C and D of Article ~~IV~~ VI, the Base Index shall be determined as of January 1 immediately following his 60<sup>th</sup> birthday.) If the Bureau of Labor Statistics subsequently adjusts the basis on which the Consumer Price Index is determined, the Base Index shall be adjusted as of the next following January by multiplying it by the ratio that the Consumer Price Index for said January on the new basis bears to the Consumer Price Index for said January on the prior basis.

- (g) Current Index means the Consumer Price Index for January of the current calendar year.
2. On May 1, 1971 and on May 1 thereafter, there shall be determined a cost of living benefit for each Participant, Contingent Annuitant, Spouse and Beneficiary to whom an annual pension, or a disability benefit which is determined in accordance with Sections A, B, C or D ~~of~~ of Article VI is then payable. (Notwithstanding anything herein to the contrary, for Participants whose Disability Retirement Dates commenced prior to ~~May 24~~ May 24, 1983, in accordance with Section D of Article VI, the Base Index shall be determined as of January 1 immediately following his 50<sup>th</sup> birthday. For Participants whose Disability Retirement Dates commenced on and after May 24, 1983 in accordance with Sections C and D of Article VI, the Base Index shall be determined as of January 1 immediately following his 60<sup>th</sup> birthday.) The cost of living benefit on any May 1 for a Participant, Contingent Annuitant, or Beneficiary shall be equal to the excess of (a) over (b) where:
- (a) is equal to his Base Pension or Base Disability Benefit, whichever is applicable, multiplied by the quotient obtained by dividing the Current Index by the Base Index applicable to such Base Pension or Base Disability Benefit; and
- (b) is his Current Pension or Current Disability Benefit, whichever is applicable.

Each such payee shall be eligible for an additional amount of annual pension or disability benefit equal to the Cost of Living Benefit so determined, if any, provided that such additional annual pension may be cancelled or such additional disability benefit reduced in accordance with the terms of paragraph 3, below and provided further that such cost of living benefit shall not exceed 3% of his Current Pension or Current Disability Benefit whichever is applicable, prior to the determination of the cost of living benefit nor shall it increase his Current Pension or Current Disability Benefit to more than 200% of his Base Pension.

3. If on any May 1, the Current Pension of a Participant, Contingent Annuitant, Spouse or Beneficiary or the Current Disability Benefit exceeds the amount described in subparagraph (a) of paragraph 2, above, for him as a result of a decline in the Consumer Price Index, a portion of the annual pension payable to such payee equal to the excess shall be cancelled or a portion of the disability benefit reduced; provided, however, that the amount cancelled or reduced shall not exceed 3% of his Current Pension or Current Disability Benefit prior to such cancellation nor shall it reduce his Current Pension or Current Disability Benefit to less than his Base Pension.
4. Notwithstanding anything herein to the contrary, the cost of living benefit shall be applicable only to those Participants whose annual pension is determined in accordance with Article IV, V, IX or whose disability benefits are determined in accordance with Sections A, B, C or D of Article VI.
5. Each Participant who was receiving an annual pension or disability benefit prior to ~~March 21~~ March 21, 1967, who is still receiving such type of payment as of January 1, 1982, will be eligible for a one-time Cost-of-Living Benefit increase as of such latter date. This Benefit increase will be payable with each benefit payment made to such Participant on

and after January 1, 1982, and shall remain payable unless the City deems the increase should be eliminated due to a sufficient decline in the Consumer Price Index. This one-time increase will be determined by the following formula:

Participant's Base Pension (without regard to any Social Security Yearly Amount reduction) multiplied by 75% of the ratio the cost-of-living benefit being paid immediately prior to January 1, 1982 bears to the Participant's Base Pension; such resulting amount then reduced by the cost-of-living benefit payable.

## ARTICLE V

### TERMINATION OF EMPLOYMENT

#### Section A. Refund of Participant's Pension and Disability Contributions

1. A Participant may elect, on or after his date of Termination of Employment, to receive a cash refund equal to his Participant's Pension and Disability Contributions made under the Plan together with Credited Interest thereon to the date he makes such an election. Such cash refund shall be in lieu of all other rights and benefits of the Participant under the Plan.

#### Section B. Retirement Benefit

1. If a Participant does not make the election of a cash refund in accordance with Section A, above, a Participant will be entitled to receive an annual pension commencing on his 56<sup>th</sup> birthday. The amount of such Participant's pension shall be determined by (a) or, if applicable, (b) below:
  - (a) If the Participant has ~~les~~ less than 10 years of Credited Service his annual pension shall be determined by applying his Participant's Pension Contributions together with Credited Interest to an appropriate factor contained in Table E-2 attached to this Plan.
  - (b) If the Participant has 10 or more years of Credited Service he will be 100% vested in his accrued retirement benefit. Such benefit will be determined in accordance with paragraph 1 Section A of Article IV.

A Participant who has 10 or more years of Credited Service may elect to have his pension commence prior to age 56 but not earlier than age 50. If a Participant elects to receive his pension prior to age 56 he shall receive an amount of pension determined in accordance with subparagraph (b) above, adjusted by multiplying by the appropriate early retirement Adjustment Factor in Table B-1.

2. Any Participant who is on leave of absence prior to January 1, 1974 must return to active service with the City of Alexandria for a period of at least 12 months to become eligible to vest in his accrued retirement benefit.

#### Section C. Repayment of Refund

1. A Participant, who is ~~re-employed~~ reemployed with 24 months of his termination of employment, whose accrued retirement benefit was forfeited in accordance with the preceding ~~section~~ Section may repay the Plan within 24 months of his re-employment an amount equal to the cash refund he received plus 6% interest per annum on this amount from the date the refund was made until the date of repayment. Upon repayment of this amount, the Participant shall have his prior accrued retirement benefit restored to him.

## ARTICLE VI

### DISABILITY BENEFITS

#### Section A. Eligibility for a Disability Benefit on Account of Service-Connected Total and Permanent Disability

1. A Participant will be eligible for a disability benefit commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties of all jobs for which he is otherwise qualified or any job for which he could become qualified by rehabilitation or retraining, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician(s) selected by the City, and
  - (b) he has been so disabled for a period ~~of~~ of six consecutive months, and
  - (c) his disability has been ruled by the Virginia State Industrial Commission as total and permanent and is compensable as Workmens' Compensation, and the Participant must be receiving Social Security disability benefits.

#### Section B. Eligibility for a Disability Benefit on Account of Non-Service-Connected Total and Permanent Disability

1. A Participant will be eligible for a disability benefit commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties of all jobs for which he is otherwise qualified or any job for which he could become qualified through rehabilitation or retraining, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician(s) selected by the City, and
  - (b) he has been so disabled for a period of six consecutive months,
  - (c) the Participant must be receiving Social Security disability benefits.

#### Section C. Eligibility for a Disability Benefit on Account of Service-Connected Partial Disability

1. A Participant will become eligible for a disability benefit as a result of a service-connected partial disability commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties he was assigned by the City at the time of suffering such illness or injury, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician(s) selected by the City,

- (b) his disability has been ruled by the Virginia State Industrial Commission as partial and is compensable as Workmen's Compensation, and
- (c) his disability is certified by the City as a service-connected partial disability, and
- (d) the City determines that such disability is not reasonably correctable nor subject to rehabilitation, the cost of which will be borne by the City.

Section D. Eligibility for a Disability Benefit on Account of Non-Service-Connected Partial Disability

1. A Participant will become eligible for a disability benefit as a result of a non-service-connected partial disability commencing on the first day of the month when he meets all of the following conditions:
  - (a) he has suffered an illness or injury which prevents him from performing the duties of the job he was assigned by the City at the time of suffering such illness or injury, as determined by the City on the basis of a medical examination performed by an independent diagnostic clinic/physician selected by the City,
  - (b) he has been a Participant under this Plan (including any participation under the ~~Pre-Existing~~ Prior Plan) for at least five years at the commencement of his partial disability, and
  - (c) his disability is certified by the City as a non-service-connected partial disability, ~~and~~
  - (d) the City determines that such disability is not reasonably correctable nor subject to rehabilitation, the cost of which will be borne by the City, and
  - (e) he is contributing Participant Disability Contributions,

Section E. Certain Excluded Disabilities

1. Notwithstanding anything in this Plan to the contrary, a Participant shall not become eligible for a disability benefit under this Article VI if this total and permanent disability or his partial disability results from, or consists of addiction to narcotics or conviction of participation in a felonious act.

Section F. Amount of Disability Benefits

1. The annual amount of disability benefit payable to a Participant in accordance with Section A, above, will be equal to the greater of 70% of the Participant's final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV.
2. The annual amount of disability benefit payable to a Participant in accordance with Section B, above, will be equal to the greater of 66-2/3% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV.

3. The annual amount of disability benefit payable to a Participant in accordance with Section C, above, will be equal to the greater of 66-2/3% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV reduced by an amount determined in 5 below. Such reduction shall be applied on a monthly basis in an amount equal to 1/12 of the yearly amount so determined.
4. The annual amount of disability benefit payable to a Participant in accordance with Section D, above, will be equal to the greater of 50% of the Participant's Final Average Earnings ~~of~~ or his accrued benefit as determined in Sections A and E of Article IV, reduced as of July 1, each year, by a yearly amount determined in 5 below.

Such reduction shall be applied on a monthly basis in an amount equal to 1/12 of the yearly amount so determined.

5. The total of (a) and, if applicable, (b), where
  - (a) is equal to one-half of the amount of income received which exceeds the difference between (i) and (ii):
    - (i) the amount of pay to which he would have been entitled had his employment progressed in the same rank and grade he had attained had he not been disabled, and
    - (ii) the amount of his Disability Benefits otherwise receivable but for this reduction.

Incurred cost-of-living adjustments will be reflected in determining the amount of pay to which such person would have been entitled had his employment progressed in the same rank and grade he had attained. No step increases for such rank and grade shall be considered for purposes of this program. Such a reduction in benefits shall continue until his Normal Retirement Date, had he remained uninjured and continued his employment. For purposes of this ~~section~~ Section, 'income' means "earned income received from employment (including any voluntary salary reductions for retirement of fringe benefit plans) and/or self-employment income less deduction for social security taxes only."

- (b) for a Participant disabled in accordance with Section C is the annual amount of periodic payments payable if any, under the Workmen's Compensation Act of the Commonwealth of Virginia.

#### Section G. Gainful Employment

1. Any occupation or employment engaged in by a Participant who is disabled, except for purposes of rehabilitation as approved by the City, shall be considered as gainful employment.
2. If any person is entitled to and receives a Disability Benefit hereunder and becomes subsequently gainfully employed, whether part time or full time, his Disability Benefit shall be reduced by one-half of the amount of income received which exceeds the difference between (i) the amount of pay to which he would have been entitled had his employment progressed in the same rank and grade he had attained had he not been

disabled, and (ii) the amount of his Disability Benefit. Incurred cost-of-living adjustments will be reflected in determining the amount of pay to which such person would have been entitled had his employment progressed in the same rank and grade he had attained. No step increases for such rank and grade shall be considered for purposes of this program. Such a reduction in benefits ~~hall~~ shall continue until his Normal Retirement Date, had he remained uninjured and continued his employment.

For purposes of this ~~section~~ Section, 'income' means "earned income received from employment (including any voluntary salary reductions for retirement or fringe benefit plans) and/or self-employment income less deduction for social security taxes only.

Notwithstanding the foregoing, any person who was receiving disability retirement benefits on the date immediately prior to the adoption of the amendments to this Plan effective May 24, 1983 shall have a one-time affirmative election to return to the provisions of Article VI, Section F, Paragraph 5(a) and Article VI, Section G, ~~Paragraph 2 Paragraph 2~~ Paragraph 2 in effect at such date, as those ~~sections~~ Sections are restated in Appendix 1 attached hereto. Such election, to be effective, must be within thirty (30) days after receipt of the notification of the right to make the election from the Personnel Department. For disability retirees after May 24, 1983 (and those who do not elect to return to such pre-amendment provisions), the offset shall be one-half of the income receive which exceeds the difference between (i) and (ii) as set forth above.

Any Participant entitled to additional benefits for the period May 24, 1983 to the date of this Amendment as a result of this change shall promptly receive a lump-sum payment from CG for such amount.

Any person receiving a Disability Benefit under this Plan shall, on or before May 1 of each year, provide to the Plan Administrator a true and correct copy of all IRS Forms W-2, 1099 MISC and K-1, showing income received, or a statement under oath as to whether he has received compensation for services performed as an employee, sole proprietor, partner or independent contractor in the previous calendar year. Upon request such Participant will be required to submit a true and accurate copy of his federal income tax return for such taxable year. Refusal to provide such documents shall be grounds for termination of benefits, until such documents are produced. Production of the documents shall be required only until such time as the person would have been eligible for Normal Retirement, had he remained uninjured and continued his employment. Nothing contained in this ~~section~~ Section shall limit or restrict the right of any person to receive Workmen's Compensation benefits under Title 65.1 of the Code of Virginia as amended.

3. Effective For Disability Retirement Dates On or After May 24, 1983 – Notwithstanding any other provision of this Plan, any Participant receiving benefits or eligible to receive benefits under this Plan as a result of a disability shall be required to accept employment in any position offered by an employer for which the Participant is qualified or for which the City is willing to assume the costs for the ~~restraining~~ retraining and rehabilitation necessary to enable the Participant to qualify, if the City, in its sole judgment, determines that such employment is appropriate under the circumstances and if the locus of employment is suitable to the Participant's residence.

The provisions of the preceding paragraph shall be subject to the following conditions:

- (a) Prior to any action to provide such alternative employment,
  - (i) the Personnel Department shall present a detailed job description to an independent physician selected by the City (who shall be the treating physician if the disability was covered by the Workmen's Compensation Act) for review and a determination that the Participant is medically able to undertake such employment;
  - (ii) the Personnel Department shall notify the Participant of the particulars of the alternative employment (including the job location and a copy of the job description) and a copy of the physician's determination that the Participant is able to undertake the offered employment;
  - (iii) if the Participant believes he has just cause to refuse to accept such alternate employment, he shall notify the Personnel Department in writing of such reason or reasons for refusal, no later than ten (10) days from receipt of the notification required by the preceding subparagraph;
  - (iv) should the Personnel Director, after reviewing the Participant's written statement, still believe the alternative employment is appropriate and suitable, he shall respond in writing to the Participant, stating the reasons supporting the determination of appropriateness and suitability, particularly responding to the Participant's written statement of reasons;
  - (v) should the Participant continue to refuse to accept the alternate employment, the issue shall be determined in accordance with the procedures of paragraph (b)(i) or (ii).
- (b) (i) In the event the Participant who refuses employment is, in addition, entitled to receive benefits under the Workmen's Compensation Act, the decision as to whether his refusal is justifiable shall be presented to the Industrial Commission of Virginia for determination under the provisions of Section 65.1-63, Code of Virginia, and the decision of the Industrial Commission shall also be binding on the question of termination of disability retirement benefits, as set forth in Article VI, Section H, Paragraphs 2(e) and 3(d). If the Industrial Commission should fail or refuse to act on this question, then the determination shall be made pursuant to sub-paragraph (ii) below.
- (ii) If a Participant entitled to disability benefits under this Plan is not entitled to receive benefits under the Workmen's Compensation Act of the Commonwealth of Virginia, the decision as to whether his refusal of alternative employment is justifiable shall be presented to the City Attorney who shall act as an impartial arbitrator, based upon the entire record, under the standards utilized by the Industrial Commission under the provisions of Section 65.1-63, Code of Virginia. The City Attorney shall issue a written opinion specifying his reasoning and precedential support, if any, for his decision. The City Attorney may request either the Participant or the Personnel Director, or both, to present additional information prior to rendering his decision.

Section H. Commencement and Cessation of Disability Benefit.

1. - Disability benefits will be paid in monthly installments equal to 1/12 of the annual amount commencing on the Participant's Disability Retirement Date.
2. With respect to a Participant who is permanently and totally disabled in accordance with Section A or B of this Article, disability benefits will cease on the first day of the month coinciding with or next following the earliest of the dates specified below:
  - (b) the date the City determines, on the basis of a medical examination by an independent diagnostic clinic/physician(s) selected by the City, that the Participant is no longer permanently and totally disabled,
  - (c) the date the Participant refuses to undergo medical examination requested by the City, provided that the Participant may not be required to undergo such medical examination more often than twice a year,
  - (d) the Participant's Normal Retirement Date (see Article IV),
  - (e) the date that the Participant's disability payments under Social Security cease or
  - (f) the date the Participant refuses any employment which the Participant is required to accept pursuant to Article VI. G.3 of this Plan,
  - (g) the date the Participant returns to regular occupation or employment.
3. With respect to a Participant who is partially disabled in accordance with Sections C or D of this Article, disability benefits will cease on the first day of the month coinciding with or next following the earliest of the dates specified below:
  - (a) the date the City determines, on the basis of a medical examination by an independent diagnostic clinic/physician(s) selected by the City, that the Participant is no longer partially disabled.
  - (b) the date the Participant refuses to undergo a medical examination requested by the City, provided the Participant may not be required to undergo such a medial examination more often than twice a year,
  - (c) the date the Participant refuses to submit a report of his total earnings from gainful employment in accordance with Section G of this article, ~~or~~
  - (d) the date the Participant refuses any employment which the Participant is required to accept pursuant to Article VI.G.3 of this Plan, or
  - (e) ~~The~~ the Participant's Normal Retirement Date (see Article IV).

Section I. Cash Settlement Option

1. The Participant may at the option of the City, receive a cash settlement in an amount agreed upon by the Participant and the Employer prior to his Disability Requirement Date

in lieu of the disability benefit which he would otherwise be entitled to, provided such disability is due to a partial or total service-connected disability. Any such cash settlement shall not be in excess of the Value of the Participant's disability benefit on his Retirement Date, as determined in accordance with definition 23, Article I assuming the normal form of pension described in Article IX is effective.

ARTICLE VII

SPOUSE BENEFITS

Section A. Eligibility

Upon the death of a Participant, his Spouse will receive a Spouse Benefit as described below if the following conditions are met when the Participant dies:

- (A) The Participant had a Spouse to whom the Participant had been married at least one full year prior to his death.
- (B) The Participant's Termination of Employment Date, Early Retirement Date, Disability Retirement Date or Normal Retirement Date had not yet occurred.
- (C) One of the following must be applicable:
  - (1) The Participant dies in the line of duty, or
  - (2) The Participant has accrued at least 5 years of Service.

Section B. Amount of Spouse Benefit

If benefit payments become payable to a Spouse in accordance with this Section, the yearly amount will be equal to the greater of (A) or (B):

- (A) 50% of the pension that the deceased Participant had accrued to his date of death reduced by any Social Security benefits that become payable to his Spouse, provided, however, that such Social Security reduction shall be limited solely to the Social Security widow's benefit – no deduction will be made for any burial allowance or for any benefits received for dependent children. Any change in the Social Security status of a Spouse receiving such widow's benefit will cause a redetermination of the Spouse's benefit.
- (B) \$100 per month

Section C. Payment of Spouse Benefit

Spouse Benefit payments will be payable monthly with each payment equivalent to 1/12 of the yearly amount. The initial monthly payment will be made as of the first of the month next following the Participant's death, with subsequent monthly payments being made as of the first day of each month thereafter until the earlier of:

- (1) the Spouse's death,
- (2) the Spouse's remarriage.

In the event of remarriage there will be a lump sum payment made to the Spouse equal to 12 monthly payments, less any payments made after the date of remarriage, and no further payments will be made.

When the final Spouse Benefit payment has been made, an amount, equal to the excess, if any, of the Participant's Pension Contributions with Credited Interest thereon to his date of death over, the sum of the Spouse Benefit payments plus any lump sum payments made under this Section C, will become payable to the Spouse if still living, or if not, to the Participant's Beneficiary.

No such refund, however, will be paid if the Participant had previously elected a refund of his Participant's Pension Contributions with Credited Interest.

## ARTICLE VIII

### DEATH BENEFITS

#### Section A. Death Benefits Prior to Retirement

1. Upon the death of a Participant prior to the date his annuity pension commences, a death benefit will be payable in accordance with (A) or (B) below whichever applies,
  - (A) If if a married Participant's Spouse was eligible to receive a Spouse Benefit in accordance with Article VII then the death benefit will be paid in accordance with that Article,
  - (B) If if a Participant is not eligible for a Death Benefit in accordance with (A) above then the Participant's Beneficiary will become eligible to receive a death benefit, in a lump sum, in an amount equal to the Participant's Pension and Disability Contributions together with Credited Interest thereon to the date of the Participant's death,

provided, however, that in the case of a Participant who, as of the date of his death, was receiving a disability benefit, had a Contingent Annuitant option in effect in accordance with Section B of Article IX and whose death occurs prior to his Normal Retirement Date, any death benefit payable will be made in accordance with the terms of such option.

2. No such death benefit, however, will be payable if the Participant dies on or after his Normal Retirement Date and before his annual pension commences if either the Contingent Annuitant option or the Ten Year Certain and Life Annuity option is in effect on the date of death. In such event, any death benefit will be determined in accordance with either Section B or Section C of Article IX, whichever is applicable.

#### Section B. Death Benefits After Retirement

1. Upon the death of the Participant (or, if the Contingent Annuitant option set forth in Section B of Article IX is in effect, upon the death of the survivor of the Participant and his Contingent Annuitant) on or after the date as of which the Participant's annual pension commences, a death benefit will be paid to the Participant's Beneficiary, in a lump sum, in an amount equal to the excess, if any, of the Participant's Pension and Disability Contributions together with Credited Interest thereon to the date the Participant's annual pension commenced over the sum of the pension payments that have become payable.
2. In no event will the death benefit described in paragraph 1, above, become payable if the Ten Year Certain and Life Annuity option set forth in Section C of Article IX is in effect on the date of the Participant's death. In such event, any death benefit will be determined in accordance with Section C of Article IX.

### Section C. Beneficiary

1. The Participant will designate a Beneficiary and may change from time to time his designation of Beneficiary by filing with the City written notice thereof on a form satisfactory to the City. Such designation or change of designation of Beneficiary shall take effect as of the date of execution of such notice thereof whether or not the Participant be living at the time of such filing but without prejudice to this Plan on account of any payments made hereunder before receipt of such notice by the City.
2. In case of death any benefits hereunder payable to a Beneficiary will be paid to the payee most recently designated by the Participant as Beneficiary provided the name of the Beneficiary has been filed with the City. If no name has been filed or if the named Beneficiary does not survive the Participant, the benefits which would have otherwise been paid to the named Beneficiary shall, at the option of the City, be paid to one of the following: the Participant's widow or widower, surviving children in equal shares, or the executor or administrator of the Participant.
3. Payment made to any person set out in the preceding paragraph will release the Pension Fund from all further liability to the extent of such payment.
4. If the Beneficiary designated is the executor or administrator of the Participant or a corporation, association, partnership or trustee, any pension payments to which the Beneficiary becomes entitled will be commuted and paid in one sum. If a Beneficiary dies after having become entitled to receive pension payments, any remainder of such will, unless otherwise provided by the Participant, be commuted and paid in one sum to the executor or administration of the Beneficiary. A Participant may elect that any pension payments to which his Beneficiary becomes entitled will be commuted and paid in one sum; or in the absence of such election and unless otherwise provided by the participant, a Beneficiary who is entitled to receive the pension payments may elect that the remainder of such payments be commuted and paid in one sum. Any such commutation will be made in accordance with the terms of Definition 23 of Article I.

### Section D. Death Benefits: Limitations

1. In the event of a Participant's death after the commencement of benefits hereunder in accordance with a method of distribution permitted under Article IX, Section F, the death benefit, if any, payable to his Beneficiary shall be distributed in accordance with the method of distribution already in effect.
2. Notwithstanding anything contained herein to the contrary, all death benefits paid pursuant to this Article VIII shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), which requirements are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. The preceding sentence shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

3. Notwithstanding anything contained herein to the contrary, in the event a Participant has validly elected a method of distribution other than one permitted under Article VIII, Section 2, payments hereunder shall be made according to such method of distribution, provided that (1) such method was elected by the Participant prior to January 1, 1984, and (2) such method was permitted by law and by the terms of the Plan as of December 31, 1983.

## ARTICLE IX

### NORMAL AND OPTIONAL FORMS OF PENSION

#### Section A. Normal Form of Pension

1. Except in the case of a disability benefit payable prior to the Participant's Normal Retirement Date, the normal form of pension under this Plan is a modified cash refund annuity which provides that lifetime pension payments in equal monthly installments will be payable to a Participant commencing on his retirement date (commencing on the Participant's Normal Retirement Date in the case of a Participant receiving disability benefits under the Plan) and terminating with the last payment payable preceding his death, ~~the~~ The Participant's Beneficiary will receive a lump sum death benefit in an amount ~~equal to the excess, if any, of the Participant's Pension and~~ equal to the excess, if any, of the Participant's Pension and Disability Contributions together with Credited Interest thereon to the Participant's retirement date over the sum of the pension payments that have become payable.
2. In lieu of receiving his pension on the normal form of payment described above, the Participant may elect to receive a pension of equal value under an optional form of pension in accordance with the further terms of this Article provided, however, that a Participant who becomes eligible for a disability benefit may elect, prior to his Disability Retirement Date, to receive a disability benefit of equal value in accordance with ~~Section B~~ Section B below.
3. The Participant may elect, or revoke an option at any time before his Retirement Date by filing written notice with the Employer. However, a Participant may not elect more than one option to be effective at the same time. No such election or revocation can be made after the Participant's Retirement Date.

If a Participant elects an optional form of payment, the amount of pension benefit payable to him must be more than 50% of the present value of the pension benefit payable to the Participant had the option not been elected, unless the alternate recipient is the Participant's spouse; otherwise, such election will be inoperative.

#### Section B. Contingent Annuitant Option

1. Prior to his Early Retirement Date or Normal Retirement Date, whichever is earlier, or in the case of a Participant who is disabled, prior to his Disability Retirement Date, a Participant may elect the Contingent Annuitant option and designate a Contingent Annuitant. Such Contingent Annuitant shall not be more than 30 years younger than the Participant. Under this option, the Participant will receive a reduced annual pension (or disability benefit whichever applies) which, after his death, will be continued in the same amount or two-thirds or one-half thereof (as specified in the election) and paid to the Contingent Annuitant for life.
2. On the date a Participant's annual pension commences, if the Contingent Annuitant option is then in effect, the amount of annual pension (or disability pension) to which the Participant is entitled will be determined by multiplying the amount which would otherwise be payable to him by the appropriate Adjustment Factor attached to this Plan.

3. Upon the death of a Participant on or after his annual pension (or disability pension) commences, if the Contingent Annuitant option is in effect and if the Contingent Annuitant survives the Participant, the annual pension (or disability pension) in the amount that was payable to the Participant, or two-thirds or one-half thereof if so specified in the election, will be continued and paid to the Contingent Annuitant as long as he lives.
4. If either the Participant or the Contingent Annuitant dies before the Participant's annual pension (or disability pension) commences, this option will be inoperative except as may be provided in the following paragraph.
5. In the event of the death of a Participant on or after his Normal Retirement Date, and before his Postponed Retirement Date, if the Contingent Annuitant survives to the first day of the month next following the Participant's death, the Contingent Annuitant will become eligible to have an annual pension provided for him, under which an annual pension will be payable to the Contingent Annuitant commencing on such first day of the month and continuing as long as he lives. Such annual pension will be in the same amount as that which would have been payable to the Contingent Annuitant had the Participant's Postponed Retirement Date been such first day of the month and had the Contingent Annuitant survived him.
6. If in the case of a disabled Participant such Participant ceases to be eligible for disability benefits for reasons other than death, this option will be inoperative.
7. If the Contingent Annuitant dies before the Participant, or, if in accordance with the terms of divorce decree or legal separation, the Contingent Annuitant has waived all rights to benefits under the Plan, this option will become inoperative and the Participant's annual pension (or disability benefit) will be adjusted back to the full amount.
8. In the case of a Contingent Annuitant who is receiving payments hereunder on account of a disabled Participant's death, upon the death of the Contingent Annuitant a death benefit will be paid to the Participant's Beneficiary, in a lump sum, in an amount equal to the excess, if any, of the Participant's Pension and Disability Contributions with Credited Interest thereon to the earlier of the date of the Participant's death or the Participant's Normal Retirement Date over the sum of the payments that have become payable.
9. The Insurance Company reserves the right to make this option inoperative with respect to any Participant if the annual pension to the Contingent Annuitant would be less than \$60.00.
10. A Participant's election, revocation or change under this ~~section~~ Section shall be made by written notice filed with the City. Only one option described in this Article IX may be elected by the Participant.

#### Section C. Ten Year Certain Option

1. Prior to his Early Retirement Date or Normal Retirement Date, whichever is earlier, a Participant may elect the Ten Year Certain option. Under this option the Participant will receive a reduced annual pension with the provision, however, that the annual pension in such reduced amount will be payable for a period of at least ten years.

2. On the date a Participant's annual pension commences, if the Ten Year Certain option is in effect, the annual pension to which the Participant is entitled will be determined by multiplying the amount which would otherwise be payable to him by the appropriate Adjustment Factor attached to this Plan.
3. Upon the death of a Participant within the ten-year period beginning on the date his annual pension commences, if the Ten Year Certain option was in effect on the date his annual pension commenced, the annual pension in the amount that was payable to the Participant will be continued and paid to his Beneficiary during the remainder of such period.
4. This option will be inoperative if the Participant dies before his Early Retirement Date or Normal Retirement Date, whichever is earlier.
5. In the event of the death of a Participant on or after his Normal Retirement Date and before his Postponed Retirement Date, if the Ten Year Certain option is in effect, his Beneficiary will become eligible to have an annual pension provided for him, under which Retirement Annuity payments will be payable to the Beneficiary during the ten-year period commencing on the first day of the month next following the Participant's death. Such annual pension will be in the same amount as the annual pension that would have been payable to the Participant had his Postponed Retirement Date been on such first day of the month.
6. A Participant's election and revocation under this ~~section~~ Section shall be made by written notice filed with the City. Only one option described in this Article IX may be elected by the Participant.

Section D. Social Security Option

1. For the purposes of this option, the following terms are defined:
  - (a) Social Security Yearly Amount. A ~~participant's~~ Participant's Social Security Yearly Amount is the yearly Primary Insurance Amount, or portion thereof, which the Participant is expected to receive under the Social Security Act.
  - (b) Social Security Commencement Date. A Participant's Social Security Commencement Date is the first day of the month coinciding with or next following the date his Social Security Yearly Amount is expected to commence or the first day of the month next following his 65<sup>th</sup> birthday, whichever is earlier.

When a Participant elects this option, his Social Security Yearly Amount and Social Security Commencement Date will be determined conclusively by the City on the basis of the Social Security Act as then constituted.

2. Prior to the date a Participant's annual pension commences, if such date precedes his Social Security Commencement Date, he may elect the Social Security option. Under this option, the amount of the annual pension payable to the Participant before his Social Security Commencement Date will be increased and the amount of the annual pension payable to the Participant on and after such date will be reduced.

3. The yearly amount of such increased Retirement Annuity payments will be equal to the yearly amount of Retirement Annuity payments which would have been payable to the Participant if this option had not been elected plus his Social Security Yearly Amount multiplied by the appropriate Adjustment Factor attached to this Plan.
4. The yearly amount of such reduced Retirement Annuity payments will be equal to the increased yearly amount of Retirement Annuity payments payable to the Participant before his Social Security Commencement Date minus his Social Security Yearly Amount.
5. Prior to the date his annual pension commences, a Participant may revoke this option.
6. The Insurance Company reserves the right to modify the terms of this option with respect to any Participant if the reduced annual pension payable to him would be less than \$60.
7. A Participant's election and revocation under this ~~section~~ Section shall be made by written notice filed with the City. Only one option described in this Article IX may be elected by the Participant.

Section E. Payment of Retirement Income to Participant

A Participant's retirement income will be payable monthly with each payment equivalent to 1/12 of the yearly amount. The first of such monthly payments will be made at the Participant's Retirement Date, with subsequent monthly payments being made at the first of each month thereafter until the Participant's death occurs.

Unless the Participant elects otherwise, the payment of retirement income shall commence not later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:

- (A) the Participant attains the earlier of age 65 or the normal retirement age specified, if different, or
- (B) the tenth anniversary of the year in which the Participant commenced participation in the Plan occurs, or
- (C) the Participant terminates his Service with the Employer.

Section F. Minimum Distribution Requirements.

Notwithstanding anything contained herein to the contrary, all benefits paid pursuant to this Article IX shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), and thus, the following rules shall apply to the extent required thereunder:

1. Except as provided in subsection 8, the accrued benefit of a Participant shall be distributed (or shall commence being distributed) no later than the April 1<sup>st</sup>  
~~Notwithstanding any provision to the contrary, payment of retirement income must commence no later than the first day of April of the~~  
~~calendar year~~ following the later of (1) ~~the~~ (A) the calendar year in which the such Participant attains age 70  $4/2, 1/2$  or (2) ~~the~~ (B) the calendar year in which the Participant retires; such Participant terminates employment with the Employer ("Required Beginning Date").

2. Section F. Limits on Payment Options ~~Payments~~ As of the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date ("Distribution Calendar Year"), distributions, if not made in a lump sum payment, may be made only (1) over-sum, may only be made over one of the following periods (or a combination thereof): (1) the life of the Participant or, (2) the life joint lives of the Participant and a designated Beneficiary, or (2) over a term beneficiary, (3) a period certain not extending beyond to exceed the life expectancy of the Participant, or (4) a period certain not extending beyond the joint and last survivor expectancy or the joint life expectancies of the Participant and a designated beneficiary. Beneficiary. Notwithstanding the foregoing, distribution shall in no event extend beyond the maximum permissible period described in Treasury Regulation Section 1.401(a)(9)-2.
3. Section G. Minimum Amounts to be Paid ~~For purposes of calculating the applicable life expectancy, the following rules shall apply:~~
- (A) ~~If the Participant's entire interest is to be paid in other than a lump sum, then the amount to be paid each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire interest by the life expectancy of the Participant or joint and last survivor expectancy of the Participant and designated beneficiary. Life expectancy and joint and last survivor expectancy are computed~~ Life expectancies shall be calculated pursuant to Treasury Regulation Section 1.401(a)(9)-1, by the use of the return multiples contained in section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Treasury Regulation Section 1.72-9, or in such other manner as may otherwise be prescribed or permitted by law.
- (B) ~~For the Distribution Calendar Year, the Participant's life expectancy may be recalculated no more frequently than annually, however, the life expectancy of a non-spouse beneficiary may not be recalculated shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. For the Distribution Calendar Year, the designated Beneficiary's life expectancy shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. Notwithstanding the foregoing, however, if annuity payments commence before a Participant's Required Beginning Date, life expectancies shall be determined on the Participant's or Beneficiary's (as the case may be) attained age in the year such payments commence.~~
4. ~~If the Participant's spouse is not the designated beneficiary, the method of payment selected must assure that at least 50 percent of the present value of the amount available for payment would be payable within the life expectancy of the Participant. accrued benefit is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:~~
- (A) ~~If the Participant dies after payment of his interest has commenced, the remaining portion of such interest shall be paid at least as rapidly as under the method of payment being used prior to the Participant's death. The annuity distributions must be paid in periodic payments made at intervals not longer than one year.~~

- (B) If the Participant dies before payment of his interest commences, the Participant's entire interest must be paid no later than 5 years after The distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in Section 401(a)(9)(A)(ii) or Section 401(a)(9)(A)(iii) of the Code, whichever is applicable.
- (C) The life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy.
- (D) Once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted.
- (E) Payments must be nonincreasing or, alternatively, must increase only as follows to provide cash refunds of employee contributions, if any, upon the Participant's death except to the extent that an election is made to receive payment in accordance with (a) or (b) below:
- (F) (a) if any portion The amount which must be distributed on or before the Participant's Required Beginning Date shall be the payment which 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., bimonthly, monthly, semiannually or annually.
5. Any part of the Participant's interest is payable to a designated beneficiary, such payments shall be made in substantially equal installments over the life or life expectancy of the designated beneficiary and shall commence no later than 1 year after the Participant's death; which is in the form of an individual account shall be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and accompanying Treasury Regulations.
6. (b) if, however, the designated beneficiary is the Participant's surviving spouse, the date on which payments are required to begin in accordance with (a) above is not required to be earlier than the date on which the Participant would have attained age 70 1/2; but, if the spouse dies before such payments begin, subsequent payments shall be made as if the spouse had been the Participant. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.3(h) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.
7. Section H. TEFRA Transaction Rule Elections Notwithstanding anything contained herein to the contrary, in the event that the distribution of benefit payments to a Participant commences after he has attained age 70½, the Participant's accrued benefit shall be actuarially increased to take into account the period after age 70½ during which

benefit payments were not made. The actuarial increase shall begin on the April 1<sup>st</sup> following the calendar year in which the Participant attains age 70½ and shall end on the date on which benefits commence after retirement in an amount sufficient to satisfy the requirements of Section 401(a)(9) of the Code.

8. ~~Notwithstanding the other requirements of this article and subject~~ Notwithstanding anything contained herein to the contrary, in the event that a Participant has validly elected a method of distribution other than one permitted under this Article IX, Section F, payments hereunder shall be made according to the Joint and Survivor annuity requirements, distribution on behalf of any Participant may be made in accordance with all of the following requirements (regardless of when such distribution commences):(A) The distribution by the Plan is one which would not have disqualified such Plan under section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.(B) The distribution is in accordance with a method of distribution, provided that (1) such method was elected by the Participant prior to January 1, 1984, and (2) such method was permitted by law and by the terms of designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a beneficiary of such Participant.(C) Such designation was in writing, was signed by the Participant or the beneficiary, and was made before January 1, 1984.(D) Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority. The method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution would be payable within the life expectancy of the Participant. Section G. Direct Rollover Option

~~A distribution upon death will not be covered by this transition rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.~~(a) This Section I applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

~~For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant or the beneficiary, to whom~~(b) Definitions

- (1) "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 being made, will be presumed to have designated the method of distribution required

~~under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (A) and (E) above.~~

~~If a designation is revoked any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code as amended. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life); any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Code received after December 31, 1998; and 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).~~

- (2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) “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 Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) “Direct rollover” means payment by the Plan to the eligible retirement plan specified by the distributee.

## ARTICLE X

### PAYMENT AND FORFEITURE OF BENEFITS

#### Section A. Frequency of Payment

1. Except as may be otherwise provided under this Plan, the Participant's annual pension will be paid in monthly installments equal to 1/12 of the annual amount commencing on his Early Retirement Date, Normal Retirement Date or Postponed Retirement Date, as the case may be, with subsequent payments payable on the first day of each month thereafter, terminating with the last monthly payment prior to the Participant's death.

#### Section B. Small Payments

1. If the Value of a Participant's benefit at his cessation of employment or death prior to commencement of benefits is \$3,500 or less, the Plan Administrator may authorize a lump sum payment of such value in lieu of all future benefits.

#### Section C. Non-Assignability

1. All payments, benefits, and refunds hereunder to a Participant or other payee are for the support and maintenance of such payee and shall not be assigned, commuted or anticipated and shall be free from the claims of all creditors to the fullest extent permitted by law.

#### Section D. Facility of Payment

1. If, in the judgment of the City, any payee is legally, physically or mentally incapable of personally receiving and receipting for any payment due him, such payment or any part thereof may be paid to any person or institution who, in the opinion of the City is then maintaining or has custody of the payee until claim is made by the duly appointed guardian or other legal representative of the payee. Such payments will constitute a full discharge of the liability of the ~~pension fund~~ Pension Fund to the extent thereof.

#### Section E. Misstatements

1. If the date of birth, sex, or any other fact pertaining to a Participant's coverage under this Plan has been misstated, the annual pension will be adjusted to that provided by the City's contributions made on behalf, on the basis of the correct facts, or, at the option of the City, adjustment may be made in the liability under the group annuity contract or contracts. Overpayments will be charged against (to the extent possible), and underpayments will be added to, any further payments with respect to the Participant's coverage under this Plan.

ARTICLE XI

ADMINISTRATION

Section A. Administration

1. The Plan shall be administered by the City.
2. The City shall have such powers as are necessary for proper administration of the Plan, including but not restricted to the following:
  - (a) To prescribe procedures to be followed by Employees in filing application for benefits and for furnishing of evidence necessary to establish Employee's rights to such benefits.
  - (b) To make determinations as to the rights of an Employee applying for or receiving retirement benefits and to afford a mechanism for adjusting the complaint of any individual dissatisfied with any such determination
  - (c) To develop procedures for determining service of Employees and, after affording Employees an opportunity after written notice to make objection with respect thereto, to establish such service in advance of retirement.
  - (d) To authorize all disbursements from the ~~pension fund~~ Pension Fund in accordance with the provisions of this ordinance and to establish necessary procedures therefor.
  - (e) To establish policies and standards and make determinations concerning disability for the purpose of this Plan.
  - (f) To notify Employees at least 90 days prior to Normal Retirement Date of their right to elect the Contingent Annuitant option or Ten Year Certain and Life Annuity option hereunder and the terms thereof.

Section B. Inconsistency with Group Annuity Contract

1. In the case of any inconsistency between the provisions of this Plan and those of any group annuity contract or contracts issued by the Insurance Company, the latter shall govern to the extent required by the Insurance Company in order to provide for effective administration of the Plan

## ARTICLE XII

### AMENDMENT AND TERMINATION OF PLAN

#### Section A. Amendment and Termination

1. While it is the intent of the City that this Plan be permanent, the City necessarily reserves the right to amend from time to time or terminate this Plan, but any such amendment or termination shall not affect in any way the amount or terms of any benefits accrued prior to the effective date of such amendment, unless it is deemed advisable to make such amendment of retroactive effect in order to conform the Plan to the requirements of the appropriate Sections of the ~~federal Internal Revenue~~ Code, or any benefits accrued prior to the effective date of termination of the Plan ~~except as may be required in Section C of this Article~~. In the event this Plan is terminated, the liability of the City under this Plan shall only be to the extent of all Participant's Pension and Disability Contributions which have not been refunded or used to provide benefits plus all benefits under the Plan to the extent funded as of the date of termination for all Participants who are active, retired or disabled or for other payees receiving benefits hereunder.
2. The City shall give notice to Participants prior to making any material changes to this Plan, except those required by statutes, and shall be available to receive and consider comments of Participants as to proposed changes. When the City Staff, City Council or a committee of the City Council has formulated the substance of a proposed material change, notice of the substance of the proposed change will be given Participants at least sixty (60) days before City Council votes on the proposal. This notice will contain a 'plain language' explanation of the substance of the proposed changes. Employees will have access to the Staff during such sixty (60) day period. If requested in writing by at least five (5) Participants, a meeting shall be held between the Staff and interested Participants at which time the Staff will explain the proposal and answer any questions. These questions and areas of concern must be submitted in writing by interested Participants at least five (5) days prior to the scheduled meeting. At least seven (7) days notice shall be given of the time and place of such meeting.
3. In addition to the foregoing, the City shall not hereafter adopt any amendment to this Plan (except where required by law or for tax qualification) which adversely effects benefits to Participants unless the City determines that such amendment includes offsetting benefit improvements of at least actuarially determined equal values. Provided, further that any disability formula benefit changes reflected in any amendment to this Plan shall not affect persons then retired on disability, except where required by law or for tax qualification.

#### Section B. Distribution at Termination

1. In the event this Plan is terminated, the ~~pension fund~~ Pension Fund shall be distributed among the Participants in a manner determined by the City precluding individual discrimination by the purchase of annuities or other equitable means of distribution, provided that if the balance in the ~~pension fund~~ Pension Fund exceeds the amount required to fully fund the benefits accrued to the date of termination for all Participants who are then active, retired or disabled or for other payees who are then receiving benefits hereunder, any such excess shall be returned to the City.

2. In the event there is a termination or a complete discontinuance of contributions under the Plan within the meaning of Section 401(a) of the Federal Internal Revenue Code, each ~~participant~~ Participant shall have a vesting percentage of 100%.

Section C. Restriction of Benefits Upon Early Termination of the Plan

This Section is included in the Plan to conform to the requirements of Treasury Regulation 1.401-4(e):

1. For the purposes of this Section the term Plan Date means the date an Employer becomes covered under the Plan and each later date when the Employer's Plan is changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in the event of subsequent discontinuance of contributions to this Plan.

2. With respect to each Plan Date of an Employer, the term Restricted Participant means any of the Participants whose anticipated yearly amount of retirement income provided by Employer contributions exceeds \$1,500, who were among the 25 highest paid Employees on such Plan Date (including any such high paid Employees who are not Participants at such time but may become Participants):

3. If at any time during the ten year period beginning on a Plan Date the Plan is terminated, the Employer contributions which may be used for the benefit of a Restricted Participant shall not exceed the greatest of the applicable following amounts:

(a) \$20,000.

(b) An amount computed by multiplying 20% of the first \$50,000 of the Participant's average regular annual compensation during his last five years of Service by the number of years for which the full current costs of the Plan have been met since the latest Plan Date, plus, if there is more than one Plan Date to be taken into account, the Employer contributions which would have been applied to provide benefits for the Participant if the Plan had terminated on the day before the latest Plan Date.

(c) If there is more than one Plan Date to be taken into account, the Employer contributions which would have been applied to provide benefits for the Participant if the Plan was in effect on the day before the latest Plan Date had been continued without change.

(d) If the Restricted Participant is an Employee other than a substantial owner (as defined in Section 4022(b)(5) of ERISA) and this is a qualified plan covered by section 4021(a) of ERISA, the dollar amount equal to the Value of the maximum benefit described in section 4022 (b)(3)(B) of ERISA without regard to any other limitations in section 4022 of ERISA.

(e) If the Restricted Participant is a substantial owner and this is a qualified plan covered by section 4021(a) of ERISA, the dollar amount equal to the Value of the maximum benefit described in section 4022 of ERISA.

4. The foregoing conditions shall not restrict the current payment of the full benefits called for by the Plan with respect to a Restricted Participant while the Plan remains in effect and the full current costs have been met, except as provided below with respect to the Cash Option:

5. If a Restricted Participant elects the Cash Option, the portion of the cash settlement payable to the Restricted Participant on his Retirement Date shall not exceed the maximum payment to the Restricted Participant if the Plan were then terminated, as described above. If less than the full cash settlement is paid to the Restricted Participant on his Retirement Date, the Restricted

~~Participant may receive an additional payment each year thereafter on account of any increase in the maximum payment to the Restricted Participant if the Plan were then terminated, as determined by the Plan Administrator, until the full cash settlement has been paid, subject to the following:~~

~~(a) If the Participant ceases to be a Restricted Participant or dies before the earlier of the date of termination of the Plan or the failure to meet the current costs of the Plan, the remainder of the cash settlement will be payable.~~

~~(b) Upon termination of the Plan or the failure to meet the full current costs of the Plan, no further payments will be payable in respect to the Restricted Participant's coverage and any unpaid portion of the cash settlement will be cancelled.~~

~~6. As an alternative to such method of payment for the Cash Option, the full amount of the cash settlement may be paid on the Restricted Participant's Retirement Date if provision for repayment to the Plan of any part of the cash settlement which would not have been made on the Restricted Participant's Normal Retirement Date had the cash payment been made as described in (B) above, is made in a manner satisfactory to the Plan Administrator.~~

~~7. The terms of this Section shall prevail over any other terms of the Plan that may be inconsistent herewith.~~

~~8. The limitations described in this Section shall automatically become inoperative and of no effect upon a ruling by the Internal Revenue Service that they are not required.~~

### ARTICLE XIII

#### MISCELLANEOUS PROVISIONS

1. This Plan shall not be construed to give any Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge such ~~participant~~ Participant at any time, nor shall it be deemed to give the City the right to require such Participant to remain in its employ, nor shall this Plan interfere with the City's right to terminate the Participant's employment with the City at any time.
2. It shall be impossible at any time prior to the satisfaction of all liabilities with respect to Participants and Beneficiaries for any part of the corpus or income to be used for, or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries.

#### Section A. Special Maximum Pension Benefit Provisions

1. ~~The statutory maximum amount of~~ Notwithstanding anything contained herein to the contrary, the yearly pension payable ~~during in~~ during any Limitation Year shall be determined in accordance with the further provisions of this Section A to a Participant under this Plan (and under any other defined benefit plan maintained by the City), when expressed in the form of a straight-life annuity for the life of the Participant (with no ancillary benefits, but without adjustment for that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity under Section 417(b) of the Code), shall comply with limitations placed thereon by Section 415 of the Code. For the purposes of this Section A, the term "Limitation Year" shall mean a calendar year, ~~and the term "Compensation" shall mean Compensation as defined in Section (A)(9).(1) Basic~~

~~Limitation~~Regardless of any other provisions of this Plan, other than paragraphs (2)(e), (3) and (4) below, the amount of pension benefits (including disability benefits) payable hereunder for any Limitation Year shall not exceed the lesser of (1) \$90,000 or (2) 100% of the Participant's average annual Compensation determined with reference to the three consecutive Limitation Years of participation in the Plan in which he received the highest aggregate Compensation from the Employer (referred to hereinafter in this Section A as "Highest Average Compensation").

~~(2) Secondary Limitations~~The basic limitation in paragraph (1) shall be reduced or increased, as applicable, for the following situations if they are applicable:

~~(a) Form of Pension other than Life No Death Benefit, Joint and Survivor, or Contingent Pensioner (with Spouse as Contingent Pensioner)~~If the pension is payable on a form other than Life No Death Benefit, or Joint and Survivor, or Contingent Pensioner with the Participant's Spouse designated as Contingent Pensioner with Life No Death Benefit as the basic form of payment, the basic limitation in paragraph (1) shall be adjusted to its actuarial equivalent based upon the age at which such retirement income commences and an interest rate assumption of the greater of the rate of interest used to develop the Adjustment Factors in this Plan or 5%.

~~(b) Less Than 10 Years of Service~~If the Participant has less than 10 full years of Service, the basic limitations in paragraph (1) shall be reduced by multiplying such limitation by a fraction, the numerator of which is the Participant's years of Service (computed to the nearest full month) and the denominator of which is 10.

~~(c) Commencement of Pension Prior to Age 62~~If a Participant's retirement income commences prior to age 62, the dollar limitation in paragraph (1) shall be reduced to its actuarial equivalent based upon the age at which such retirement income commences and an interest rate assumption of the greater of the rate of interest used to develop the Adjustment Factors in this Plan or 5%, provided, however, that if such retirement income commences on or after age 55, the dollar limitation in paragraph (1) shall not be reduced to less than \$75,000. If the retirement income commences before age 55, the dollar limitation shall not be reduced to be less than the amount which is the equivalent of \$75,000 at age 55.

~~(d) Commencement of Pension After Age 65~~If a Participant's retirement income commences after age 65, the dollar limitation in paragraph (1) shall not exceed its actuarial equivalent based upon the age at which such retirement income commences and an interest rate which is the lesser of the rate of interest used to develop the Adjustment Factors in the Plan or 5%.

~~(e) Protection of Prior Accrued Benefit~~The dollar limit described in paragraph (1) will not reduce any Participant's benefit accrued as of December 31, 1982, subject to the provision of Section 415 of the Code as then in effect.

~~(3) Minimum Pension~~If the Participant's yearly pension is not more than \$10,000, as adjusted in accordance with paragraph (2)(b) above, the Participant may receive such \$10,000 without regard to the other secondary limitations, provided the Participant did not at any time participate in a defined contribution plan maintained by the Employer.

~~(4) Cost of Living Limitation Adjustment~~Effective January 1, 1988, and each January 1 thereafter, the \$90,000 limitation of paragraph (1) above will be automatically adjusted to the new dollar limitation determined by the Commissioner of Internal Revenue for that calendar year. The new limitation will apply to Limitation Years in which the dollar limitation is changed.

~~(5) Participation in More Than One Defined Benefit Plan~~If the Participant participated in more than one defined benefit plan maintained by the Employer regardless of whether any such plans are terminated, the statutory maximum retirement benefit shall be determined as if there were just one defined benefit plan, but the retirement income so determined will apply on a pro rata basis between, or among, such plans.

~~(6) Annual Additions~~The sum of:

~~(a) amounts defined as Annual Additions under applicable defined contribution plans; and~~

~~(b) the Participant's non-deductible contributions to this and all~~

~~other defined benefit plans maintained by the Employer, regardless of whether any such plan is terminated; and (c) amounts allocated in Plan Years commencing after March 31, 1984 to an individual medical account, as defined in Section 415 (1)(1) of the Code, which is a part of this or any other defined benefit plan maintained by the Employer; and (d) amounts derived from contributions paid or accrued after December 31, 1985 attributable to post-retirement medical benefits allocated to the separate account of a Key Employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer. (7) Participation in One or More Defined Contribution Plans If any Participant is or has been a Participant in a defined contribution plan maintained by the Employer regardless of whether any such plans are terminated, the Participant may not accrue pension under this Plan which would cause the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction to exceed 1.0. This shall be accomplished by reducing the pension otherwise determined under this Plan to the extent necessary to preclude such excess. (a) Defined Benefit Fraction A fraction, the numerator of which is the sum of the Participant's Projected Annual Benefit under each defined benefit plan maintained by the Employer regardless of whether any such plans are terminated, and the denominator of which is the lesser of 125 percent of the dollar limitation in effect for the Limitation Year under Section 415(b)(1)(A) of the Code or 140 percent of the Highest Average Compensation. Notwithstanding the above, if the Participant was a Participant in one or more defined benefit plans maintained by the Employer which were in existence on July 1, 1982, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of December 31, 1982. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Section 415 of the Code as in effect at the end of the 1982 Limitation Year. The Projected Annual Benefit shall be the yearly pension to which a Participant is entitled under the terms of each applicable defined benefit plan assuming continued employment until normal retirement age, or current age if later, and Compensation and all other relevant factors used to determine benefits under the plan remaining constant until normal retirement age, or current age if later. (b) Defined Contribution Fraction A fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under all the defined contribution plans maintained by the Employer regardless of whether any such plans are terminated for the current and all prior Limitation Years and the denominator of which is the sum of the Maximum Aggregate Amounts for the current and all prior Limitation Years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The Maximum Aggregate Amount in any Limitation Year is the lesser of 125 percent of the dollar limitation in effect under Section 415 (c)(1)(A) of the Code or 35 percent of the Participant's Compensation for such year. If the Employee was a participant in one or more defined contribution plans maintained by the Employer which were in existence on July 1, 1982, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 multiplied by (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. This adjustment also will be made if, at the end of the last Limitation Year beginning at the end of the last Limitation Year beginning before January 1, 1984, the sum of the fractions exceeds 1.0 because of accruals or additions that were made before the~~

~~limitations of this Article became effective to any Plan of the Employer in existence on July 1, 1982.(8) EmployerThe term Employer as referred to in this section shall mean the City of Alexandria.(9) CompensationFor the purpose of this Section A., a Participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:(a) Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;(b) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk or forfeiture;(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;(d) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).Compensation for any Limitation Year is the compensation actually paid or included in gross income during such year.(10) Discrepancy With CodeThe limitations set forth in this Section A. are intended to comply with the provisions of Section 415 of the Code and any regulations issued pursuant thereto, so that the maximum pension benefit shall be exactly equal to the maximum amount allowed under said Section 415, and any regulations issued pursuant thereto. Should there be any discrepancy between the provisions of this Section A. and those of said Section 415 and any regulations issued pursuant thereto, such discrepancy shall be resolved by giving full effect to the provisions of said Section 415 and any regulations issued pursuant thereto.~~

2. Whenever otherwise allowed by law, the maximum yearly pension allowable under Section 415 of the Code shall be automatically increased, without any amendment to this Plan, to reflect cost of living increases announced by the Internal Revenue Service pursuant to Section 415(d) of the Code and the increase which is effective as of the January 1st contained within the Limitation Year shall be effective for the entire Limitation Year.
3. To the extent a Participant's benefit is subject to provisions of Section 415 of the Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

IN WITNESS THEREOF, the City has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_,

By

Title

(Seal)

Witness

IMPORTANT NOTE

~~Neither Connecticut General Life Insurance Company nor any of its employees can provide you with legal advice in connection with the execution of this document. Prior to execution of this document, you should consult your attorney on whether this document is appropriate for you.~~  
February, 2002.

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

Witness: \_\_\_\_\_

## EARLY RETIREMENT ADJUSTMENT FACTORS

### Number of Years and Months from Retirement Date to Age 56

<u>Months</u>	Years:	0	1	2	3
0			94.0	90.4	86.8
1		99.5	93.7	90.1	86.5
2		99.0	93.4	89.8	86.2
3		98.5	93.1	89.5	85.9
4		98.0	92.8	89.2	85.6
5		97.5	92.5	88.9	85.3
6		97.0	92.2	88.6	85.0
7		96.5	91.9	88.3	84.7
8		<u>96.5</u> <u>96.0</u>	91.6	88.0	84.4
9		95.5	91.3	87.7	84.1
10		95.0	91.0	87.4	83.8
11		94.5	90.7	87.1	83.5

<u>Months</u>	Years:	4	5	6
0		83.2	79.6	76.0
1		82.9	79.3	
2		82.6	79.0	
3		82.3	78.7	
4		82.0	78.4	
5		81.7	78.1	
6		81.4	77.8	
7		81.1	77.5	
8		80.8	77.2	
9		80.5	76.9	
10		80.2	76.6	
11		79.9	76.3	

Table B-1

YEARS CERTAIN ADJUSTMENT FACTORS

AGE*	5 CC	6 CC	10 CC	15 CC	20 CC
41	99.9	99.8	99.4	98.6	97.6
42	99.8	99.8	99.3	98.5	97.3
43	99.8	99.7	99.2	98.3	96.9
44	99.8	99.7	99.1	98.0	96.6
45	99.8	99.6	99.0	97.8	96.2
46	99.7	99.6	98.9	97.5	95.8
47	99.7	99.5	98.7	97.2	95.3
48	99.6	99.5	98.6	96.9	94.8
49	99.6	99.4	98.4	96.6	94.3
50	99.5	99.3	98.2	96.2	93.7
51	99.5	99.3	98.0	95.9	93.1
52	99.4	99.2	97.8	95.4	92.4
53	99.4	99.1	97.6	94.9	91.6
54	99.3	99.0	97.3	94.4	90.8
55	99.2	98.9	97.1	93.8	89.9
56	99.1	98.8	96.7	93.2	88.9
57	99.0	98.6	96.4	92.5	87.9
58	98.9	98.5	96.0	91.7	86.7
59	98.8	98.3	95.5	90.8	85.4
60	98.6	98.1	95.0	89.8	84.1
61	98.5	97.8	94.4	88.7	82.6
62	98.3	97.6	93.7	87.5	81.1
63	<del>97.3</del> <u>98.1</u>	97.3	93.0	86.2	79.4
64	<del>96.9</del> <u>97.8</u>	96.9	92.1	84.8	77.7
65	<del>96.5</del> <u>97.5</u>	96.5	91.1	83.3	75.8
66	97.2	96.0	90.1	81.7	73.9
67	96.8	95.5	89.0	80.0	72.0
68	96.3	94.9	87.8	78.2	69.9
69	<del>96.8</del> <u>95.8</u>	94.2	86.5	76.3	67.9
70	95.3	93.5	85.1	74.4	65.8
71	94.7	92.7	83.6	72.4	63.8
72	94.1	92.0	82.1	70.4	61.7
73	93.5	91.1	80.5	68.4	59.6
74	92.8	90.2	78.7	66.3	57.5
75	92.0	89.1	76.8	64.1	55.4

\*Age nearest birthday on Retirement Date, or on date Years Certain and Life option becomes effective, if later.

effective, if later.

Factors for other ages will be determined in a manner consistent with the manner used in determining these factors.

71GAM, 6%  
6/6-0/6  
LA to NYC Option

Table B-2

## SOCIAL SECURITY ADJUSTMENT FACTORS

Number of Years From Retirement Date to Social Security Commencement Date	Participant's Age Nearest Birthday on Social Security Commencement Date			
	62	63	64	65
10	41.0	40.2	39.4	38.5
9	44.5	43.7	42.9	42.0
8	48.3	47.5	46.7	45.8
7	52.6	<del>48.8</del> <u>51.8</u>	51.0	50.1
6	57.3	56.6	55.8	54.9
5	62.6	61.9	61.1	60.3
4	68.4	67.8	67.1	66.4
3	75.0	74.4	73.9	73.2
2	82.4	81.9	81.5	81.0

If the number of years is not an integer, the percentage will be determined by a straight line interpolation between the percentage for the next higher integer and the percentage for the next lower integer.

Other factors will be determined in a manner consistent with the manner used in determining these factors.

71GAM, 6%  
6/6-0/6  
LA/MCRA to LA/MCRA  
SS Option

Table B-2

## APPENDIX 1

### Gainful Employment Provisions Applicable to Disability Retirees at May 24, 1983 Making Affirmative Election to Return to Old Provisions

#### Article VI, Section F 5(a)

(a) is equal to the amount of earnings received from gainful employment in the preceding calendar year which is in excess of the greater of (i) or (ii)

(i) the Participant's Earnings received from the City in the 12-month period immediately preceding his disability,

(ii) the current average entry level Earnings for either a police officer or firefighter, whichever applies, and

(b) for a Participant disabled in accordance with Section C is the annual amount of periodic payments payable if any, under the Workmen's Compensation Act of the Commonwealth of Virginia.

#### Article VI, Section G 2

In order for a disability benefit to be paid to a Participant who is partially disabled in accordance with Sections C or D of this Article when such Participant is engaged in gainful employment, the Participant will be required to report his total earnings received during each calendar year when he is so gainfully employed and provide the City with such documents that will substantiate the earnings being reported including the following acceptable documents: ~~1. federal~~ 1. federal income tax return, or 2. notarized statement from a Certified Public Accountant stating that such earnings did not exceed the limitation set forth in F 5(a) above. These earnings shall include any salary, wages, commissions or fees, but excluding income from investments or savings for which the Participant is contributing neither time nor talent. It will be expected that these documents will be made available to the City by April 15, but, in the event of delay, consideration will be given to suspending payment of disability benefits after May 1.

**CITY OF ALEXANDRIA  
RETIREMENT INCOME PLAN  
FOR FIREFIGHTERS AND POLICE OFFICERS**

**SUMMARY OF APPLICABLE CHANGES IN THE LAW  
THAT MUST BE INCLUDED IN THE PLAN DOCUMENT**

The City of Alexandria Retirement Income Plan for Firefighters and Police Officers received a determination letter from the Internal Revenue Service dated May 12, 1987 indicating that the Plan met the requirements for qualification under Section 401(a) of the Internal Revenue Code. Since that time, there have been a number of changes in the requirements for qualification under Section 401(a) and the City intends to request an updated determination letter from the Internal Revenue Service. In order for the determination letter to relate back to the last determination letter, the City must amend the Plan to incorporate the changes in the qualification requirements in the plan document and request a new determination letter from the Internal Revenue Service by February 28, 2002. The Plan has been administered in accordance with these new provisions since the date that they became applicable to the Plan.

This memorandum is intended to summarize those changes that must be included in the updated plan document that could affect the Plan in any significant respect. It is not intended to be a definitive list of each and every change that must be incorporated in the new plan document. Also, this summary does not discuss the changes included in the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), which are discussed in a separate memorandum.

Tax Reform Act of 1986 ("TRA 86")

- Modification of Limit on Annual Additions – TRA 86 changed the limits on annual additions to the Plan that are contained in Section 415(c) of the Internal Revenue Code to the greater of \$30,000 or 25% of the defined benefit dollar limit under Section 415(b) of the Internal Revenue Code. The Section 415(c) limit has since been changed to eliminate the reference to the defined benefit dollar limit.
- TRA 86 provided that *all* employee contributions are treated as annual additions for purposes of the Code section 415(c) limitations.
- Limitation on Compensation Taken into Account – TRA 86 imposed a limitation of \$200,000 on compensation that may be recognized by the Plan. This limit was later reduced to \$150,000 (as indexed for inflation). As of December 31, 2001, the compensation limit was \$170,000. EGTRRA increased the limit to \$200,000 effective January 1, 2002.
- Modification of Minimum Distribution Rules – TRA 86 changed the time at which minimum distributions are required to begin ("Required Beginning Date") to

April 1 of the calendar year following the calendar year in which an employee attained age 70-1/2, even if the employee was still employed at that time. The Required Beginning Date was subsequently changed to the April 1 of the calendar year following the later of (i) the calendar year in which the participant attained age 70-1/2, or (ii) the calendar year in which the participant retired.

- Modification of Rollover Rules – TRA 86 provided that minimum distributions cannot be rolled over to an IRA or another qualified retirement plan.

- TRA 86 provided that eligible rollover distributions made to a surviving spouse was eligible for rollover to an IRA, but not a qualified plan.

- TRA 86 provided that a detailed tax notice is required to be provided when any eligible rollover distribution is made.

#### Unemployment Compensation Act of 1992

- Direct Rollovers – The 1992 Act required the Plan to permit a participant receiving an eligible rollover distribution to have the distribution transferred in a direct rollover to an eligible retirement plan.

#### Uniformed Services Employment and Reemployment Rights Act of 1994

- The Act provided that the Plan is required to provide contributions and service credit to participants who return to the City following a period of qualified military service.

#### Small Business Job Protection Act of 1996 (“SBJPA”)

- Repeal of Combined 415 Limit – The SBJPA repealed the combined limitation under Section 415(e) of the Internal Revenue Code on contributions and benefits applicable to employers who sponsor both defined contribution and defined benefit plans.

- Inclusion of Elective Contributions in Compensation for 415 Purposes – The SBJPA provided that pre-tax contributions to qualified retirement plans and cafeteria plans are included in “compensation” for purposes of applying the Section 415 limits. Later legislation also provided that pre-tax contributions to transportation fringe benefit plans are included in “compensation” for Section 415 purposes.

#### Taxpayer Relief Act of 1997

- Exemption of Governmental Plans from Minimum Participation and Nondiscrimination Rules – The Act repealed the minimum participation rules for governmental plans sponsored by state and local governments and made permanent the exemption of these plans from the nondiscrimination rules.

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between  
-  
original document : E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN (FIREFIGHTERS  
AND POLICE) - CURRENT WORKING COPY.DOC  
and revised document: E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR  
FIREFIGHTERS AND POLICE OFFICERS 2-21-02 DRAFT.DOC

CompareRite found 80 change(s) in the text

Deletions appear as Overstrike text

Additions appear as Double Underline text

## **SUMMARY OF CHANGES ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 CHANGES AFFECTING PLAN**

This summary discusses the changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) affecting the Plan. The Plan will be administered in accordance with these provisions and the plan document will be amended to incorporate the required changes within the timeframe required for the Plan to maintain its qualification under Section 401(a) of the Internal Revenue Code.

- **Increase in Section 415 Limits** – EGTRRA increases the limitation on annual additions under Section 415(c) of the Internal Revenue Code to the lesser of 100% of compensation or \$40,000. This change will permit employees to begin contributing up to 10% of their compensation to the Plan in the form of after-tax contributions. Previously, after-tax contributions were limited to 5% of compensation because Section 415(c) limited “annual additions” to 25% of compensation (which only left 5% after subtracting the 20% contribution made by the City).
- **Increase in Compensation Limit** – EGTRRA increases the limitation on compensation that may be recognized by the Plan to \$200,000.
- **Modification of Rollover Rules** – In addition to rolling over a distribution from the Plan to another qualified (Section 401(a)) plan or an IRA, eligible rollover distributions may now be transferred, in a direct rollover, to a tax sheltered annuity or custodial account under Section 403(b) or a eligible deferred compensation plan sponsored by a governmental organization under Section 457(b).
- EGTRRA allows the surviving spouse of a deceased participant to elect to transfer, in a direct rollover, the participant’s account under the Plan, to a qualified retirement plan, a tax sheltered annuity or custodial account under Section 403(b) or a eligible deferred compensation plan sponsored by a governmental organization under Section 457(b) (in addition to a transfer to an IRA, as permitted under present law).
- EGTRRA permits (but does not require) the Plan to accept contributions made pursuant to the expanded types of rollovers described above.
- Involuntary cash-out distributions of more than \$1,000 are required to be transferred to an IRA of a designated trustee or issuer, unless the participant elects to have the distribution rolled over to a different eligible retirement plan or paid in cash.

**CITY OF ALEXANDRIA RETIREMENT INCOME PLAN  
FOR FIREFIGHTERS AND POLICE OFFICERS**

This is an informal working copy of the Plan incorporating ~~Amendment Number One which is effective March 11, 1986.~~ Amended and Restated Effective as of December 31, 2001

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PREAMBLE

The City of Alexandria Retirement Income Plan for Firefighters and Police Officers, originally effective as of February 13, 1979, is hereby amended and restated in its entirety.

The terms of the Plan, as amended and restated, shall apply only with respect to Plan Years commencing after December 31, 2001; provided, however, that any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before the effective date of this amended and restated Plan in order to retain the qualification of the Plan under Code Section 401(a) shall, nevertheless, be effective as of its required effective date under the Code.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to employees of the Employer on and after December 31, 2001, and the rights, benefits and interests of any employee who died, retired or otherwise terminated his employment with the Employer prior to December 31, 2001, shall be determined under the provisions of the Plan as in effect on the date such former employee died, retired or otherwise terminated his employment with the Employer.

The Plan, as amended and restated hereby, is intended to qualify as a money purchase pension plan under Code Section 401(a) and is a governmental plan as described in Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

ARTICLE I  
DEFINITIONS

- 1.1 ACCRUED BENEFIT. The term Accrued Benefit means the value on any applicable date of the Participant's Account.
- 1.2 ACTIVE PARTICIPANT. The term Active Participant means any Participant who (a) performs duties as an Employee for the Employer, and (b) is not an Inactive Participant.
- 1.3 ADMINISTRATOR. The term Administrator means the Person or Persons designated by the Employer and any successor(s) thereto. If more than one Person shall be designated, the committee thus formed shall be known as the Administrative Committee and all references in the Plan to the Administrator shall be deemed to apply to the Administrative Committee. The Administrator shall signify in writing his acceptance of his responsibility as a Named Fiduciary.
- 1.4 ANNUITY CONTRACT. The term Annuity Contract means the group annuity contract issued by the Insurance Company to the Employer to fund the benefits provided under this Plan, as such contract may hereafter be amended from time to time in accordance with the terms thereof.
- 1.5 BENEFICIARY. The term Beneficiary means the beneficiary or beneficiaries entitled to any benefits under a Participant's Account hereunder upon the death of a Participant or a Beneficiary.
- 1.6 COMPENSATION. The term Compensation means the basic earnings paid by the Employer to the Employee for the period specified in the Plan. Effective as of January 1, 1996, Compensation with respect to any Plan Year shall in no event exceed the dollar limit specified in Section 401(a)(17) of the Code (as adjusted from time to time by the Secretary of the Treasury).
- 1.7 CONTRIBUTION PERIOD. The term Contribution Period means that regular period specified by the Employer for which Employer Contributions and Voluntary Contributions, if any, shall be made. No change in the Contribution Period may be made except as of a Renewal Date.
- 1.8 DISABILITY. The term Disability means a Participant's inability to perform the duties of his occupation because of a medically determinable physical or mental impairment. Such determination of Disability shall be made by the Administrator with the advice of a competent medical authority selected by the City and such determination shall correspond with the determination of disability under the Firefighters and Police Officers Disability Income Plan. All Participants in similar circumstances will be treated alike.
- 1.9 DISABILITY DATE. The term Disability Date means the first day of the month after the Administrator has determined that a Participant's inability to perform the duties of his occupation is a Disability.
- 1.10 EFFECTIVE DATE. The term Effective Date means ~~January 1, 1984~~ February 13, 1979. The effective date of this restatement is December 31, 2001.
- 1.11 EMPLOYEE. The term Employee means any individual, other than a sole-proprietor or partner, in the employ of the Employer.
- 1.12 EMPLOYEE CONTRIBUTIONS. The term Employee Contributions means the amount for any Plan Year which is equal to his Voluntary Contributions.
- 1.13 EMPLOYER. The term Employer means the City of Alexandria and any successor organization to such Employer which elects to continue the Plan.
- 1.14 ENTRY DATE. The term Entry Date means either the Effective Date or any date thereafter when an Employee who has fulfilled the eligibility requirements commences participation in the Plan.

- 1.15 **FIXED ANNUITY.** The term Fixed Annuity means an annuity providing a series of payments that are payable in specified dollar amounts.
- 1.16 **FORFEITURE.** The term Forfeiture means the amount, if any, by which the value of a Participant's Account exceeds his Vested Interest upon the occurrence of a 1-Year Break in Service following such Participant's Termination of Employment.
- 1.17 **INACTIVE PARTICIPANT.** The term Inactive Participant means any Participant who does not currently meet the requirements to be an Active Participant due to ~~+~~ a suspension of the performance of duties for the Employer.
- 1.18 **INSURANCE COMPANY.** The term Insurance Company means Connecticut General Life Insurance Company, a legal reserve life insurance company of Hartford, Connecticut.
- 1.19 **JOINT AND SURVIVOR ANNUITY.** The term Joint and Survivor Annuity means a monthly Fixed Annuity payable for the life of the Participant with a survivor annuity for the life of the Participant's spouse. The monthly annuity payment to the spouse shall be equal to 50% (or 100% if so elected by the Participant) of the amount which was payable to the Participant.
- 1.20 **LATE RETIREMENT DATE.** The term Late Retirement Date means the first day of the month coinciding with or next following the date a Participant is separated from Service with the Employer after his Normal Retirement Age, for any reason other than death.
- 1.21 **NORMAL RETIREMENT AGE.** The term Normal Retirement Age means the date the Participant attains age 60.
- 1.22 **NORMAL RETIREMENT DATE.** The team Normal Retirement Date means the first day of the month coinciding with or next following the date a Participant attains his Normal Retirement Age.
- 1.23 **PARTICIPANT.** The term Participant means any Employee of the Employer, who is or becomes eligible to participate under this Plan in accordance with its provisions and shall include an Active Participant and an Inactive Participant.
- 1.24 **PARTICIPANT'S ACCOUNT.** The term Participant's Account means each Participant's individual account maintained under the Annuity Contract by the Insurance Company in accordance with the terms of this Plan and the Annuity Contract. Each Participant's Account will be maintained so as to reflect the amount attributable to Employer Contributions and earnings thereon and the amount, if any, attributable to Employee Contributions and earnings thereon. Each Participant's Account shall be equal to the sum of the Participant's Guaranteed Long Term Account, if any, the participant's Variable Account, if any, and the participant's Guaranteed Short Term Account, if any.
- 1.25 **PARTICIPANT'S GUARANTEED LONG TERM ACCOUNT.** The term Participant's Guaranteed Long Term Account means that portion, if any, of the Participant's Account which is invested in the Insurance Company's general portfolio. The amount in the Guaranteed Long Term Account is invested primarily in bonds, mortgages and real estate. Such Participant's Guaranteed Long Term Account shall be credited with interest monthly in accordance with the terms of the Annuity Contract.
- 1.26 **PARTICIPANT'S GUARANTEED SHORT TERM ACCOUNT.** The term Participant's Guaranteed Short Term Account means that portion, if any, of the Participant's Account which is invested in the Insurance Company's Separate Account 20 (SA-20). Separate Account 20 may be invested in short-term money market instruments having maturities considered appropriate by Connecticut General. Such Participant's Guaranteed Short Term Account shall be credited with interest daily in accordance with the terms of the Annuity Contract.

- 1.27 PARTICIPANT'S VARIABLE ACCOUNT. The term Participant's Variable Account means that portion, if any, of the Participant's Account which is invested in the Insurance Company's Separate Account (SA-3). Separate Account 3 is invested primarily in common stocks. Such Participant's Variable Account shall be valued on each date that the New York Stock Exchange is for open for unrestricted trading and the Insurance Company is open to transact its normal business.
- 1.28 PERSON. The term Person means any natural person, partnership, corporation, trust or estate.
- 1.29 PLAN. The term Plan means the City of Alexandria Retirement Income Plan for Firefighters and Police Officers, the terms of which are set forth herein as it may be amended from time to time.
- 1.30 PLAN YEAR. The term Plan Year means the twelve-month period commencing on January 1 and ending the following December 31.
- 1.31 PRIOR PLAN. The term Prior Plan means the City of Alexandria Pension Plan for Firefighters and Police Officers.
- 1.32 RENEWAL DATE. The term Renewal Date means each January 1 as of which changes in the amount of any Voluntary Contributions may be made. Certain other determinations, transactions, and calculations shall also be made as of each Renewal Date, as more fully indicated in the body of the Plan.
- 1.33 SEPARATE ACCOUNT. The term Separate Account means either Separate Account 3 (Variable Account or SA-3) or Separate Account 20 (Guaranteed Short Term Account or SA-20) which are pooled separate accounts maintained by the Insurance Company with respect to a portion of its assets and which are included in the Annuity Contract.
- 1.34 TERMINATION OF EMPLOYMENT. The term Termination of Employment means a severance of the Employer-Employee relationship which occurs prior to a Participant's Normal Retirement Age for any reason other than Disability or death.
- 1.35 VARIABLE ANNUITY. The term Variable Annuity means an annuity providing a series of payments that increase or decrease to reflect changes in investment performance of the underlying portfolio.
- 1.36 VESTED INTEREST. The term Vested Interest on any date means the nonforfeitable right to an immediate or deferred benefit in the amount which is equal to the sum of (a) and (b) below:
- (a) The value on that date of that portion of the Participant's Account that is attributable to and derived from a Participant's own contributions, if any.
  - (b) The value on that date of that portion of the Participant's Account attributable to assets transferred pursuant to Section 3.5, if any.
  - (c) The value on that date of that portion of the Participant's Account that is attributable to and derived from Employer Contributions multiplied by his Vesting Percentage determined on the date applicable.
- 1.37 VESTING PERCENTAGE. The term Vesting Percentage means that Participant's nonforfeitable interest in Employer Contributions credited to his account plus the earnings thereon computed as of the date of determining such percentage because of the occurrence of some event in accordance with the following schedule based on Years of Service with the Employer:

Years of Service

Vesting Percentage

Less than 1	0%
1 but less than 2	20%
2 but less than 3	40%
3 but less than 4	60%
4 but less than 5	80%
5 or more	100%

Amounts attributable to the City of Alexandria Pension Plan for Firefighters and Police Officers which have been transferred from GR-574 to the Plan will at all times be 100% vested.

ARTICLE II  
SERVICE

- 2.1 PERIOD OF SERVICE. The term Period of Service or Service means the Employer-Employee relationship which begins on the Employee's employment date and continues until his Severance from Service Date.
- 2.2 PERIOD OF SEVERANCE. The term Period of Severance means a period of time commencing on the Participant's Severance from Service Date and ending on the date such individual is re-employed by the Employer.
- 2.3 SEVERANCE FROM SERVICE DATE. The Severance from Service Date shall be the latest of (a), (b), or (c) below.
- (a) The date the Employee terminates employment by reason of a quit, discharge, Disability, retirement or death.
  - (b) The Except to the extent provided in Section 2.7, the expiration date from Service on account of an authorized leave to join the United States Armed Forces provided the Employee does not return to work within 90 days of this date.
  - (c) The expiration date of an authorized leave.
- 2.4 1-YEAR BREAK IN SERVICE. The term 1-Year Break In Service shall mean a 12 consecutive month Period of Severance, beginning on the Employee's Severance from Service Date.
- 2.5 YEAR OF SERVICE. For the purpose of determining a Participant's Vesting Percentage, the term Year of Service shall mean Period of Service equaling 12 months. Service counted in computing Years of Service need not be consecutive or continuous, and all fractional Periods of Service shall be aggregated.
- 2.6 RE-EMPLOYMENT. An Employee who is rehired following a Disability shall be eligible to participate in the Plan immediately, provided he is still a member of an eligible class of employees. If such employee again becomes a Participant, all Years of Service shall be taken into account.

An Employee who is rehired following a Termination of Employment shall be considered a new Employee for all purposes of the Plan.

- 2.7 QUALIFIED MILITARY SERVICE. Notwithstanding any provision of this Plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

ARTICLE III  
ELIGIBILITY, ENROLLMENT AND PARTICIPATION

- 3.1 **ELIGIBILITY.** Each Employee who was a Participant prior to the Effective Date and who is in the Service of the Employer on the Effective Date shall continue as a Participant in the Plan. Each other Employee shall be eligible to become a Participant as of the Effective Date or the Entry Date thereafter when he first meets the following requirements:
- classified as a Firefighter or Police Officer (excluding meter patrol officers) for the City of Alexandria and remains in a sworn police officer or firefighter classification.
- 3.2 **ENROLLMENT AND PARTICIPATION.** Each eligible Employee shall become a Participant as of his Entry Date and shall complete and deliver to the Administrator as soon as administratively convenient thereafter, an enrollment form provided by the Insurance Company.
- 3.3 **RE-EMPLOYED EMPLOYEE.** In the case of an individual who ceases to be an Employee and is subsequently rehired as an Employee, the following provisions shall apply in determining his eligibility to again participate in the ~~plan~~ Plan:
- (a) If the Employee had met the eligibility requirements specified in Section 3.1 prior to his separation from employment, he shall become an Active Participant in the Plan in accordance with Section 3.2 as of the date he is re-employed.
  - (b) If the Employee had not met the eligibility requirements specified in Section 3.1 prior to his separation from employment, he shall be eligible to participate in the Plan on the first Entry Date following his fulfillment of such eligibility requirements.
- 3.4 In the event a Participant becomes ineligible to participate because he is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his return to an eligible class of Employees.
- 3.5 **PRIOR PLAN PARTICIPANTS.** Each employee who was a Participant under the Prior Plan as of February 13, 1979, may elect to transfer his coverage to this Plan, subject to the transfer provisions as set forth in the Prior Plan.

ARTICLE IV  
CONTRIBUTIONS

- 4.1 EMPLOYER CONTRIBUTIONS. The Employer shall contribute on behalf of each Participant who was an Active Participant on any day of the Contribution Period, an amount equal to 20% of his Compensation for each Contribution Period, subject to the limitation on allocations in accordance with Article IV-A.

The Employer Contribution shall be paid to the Insurance Company at the end of the Contribution Period and shall be reduced by the amount of any Forfeitures available in accordance with Section 9.3.

Unless elected otherwise in accordance with the terms of the Annuity Contract the Employer will contribute to the Plan the amount necessary to pay the expense charges and administration charges described in the Annuity Contract.

- 4.2 CREDITING OF EMPLOYER CONTRIBUTIONS. The Employer Contribution, exclusive of any Annuity Contract charges, shall be credited to the Participant Account of each Participant for whom such Contribution was made, in accordance with the provisions of Article V.

- 4.3 ROLLOVERS AND TRANSFERS. With the written permission of the Administrator and without regard to the limitations imposed under Article IV-A, the Employer may receive ~~on behalf of a Participant all or part of the entire amount of (a) any distribution from a terminated pension or profit sharing plan meeting the requirements of Internal Revenue Code Section 401(a); or (b) any lump sum distribution theretofore received by such Participant from a pension or profit sharing plan meeting the requirements of Internal Revenue Code Section 401(a), either directly from the Participant within 60 days after receipt by such Participant, or through the medium of an Individual Retirement Account, provided that the amounts to be rolled over are in no way attributable to employment as a self employed person and are attributable solely to Employer contributions and earnings thereon, earnings on Employer contributions, and Employee contributions which were eligible for a tax deduction under Internal Revenue Code section 219 and earnings thereon. Also, with the written permission of the Administrator and without regard to the limitations imposed under Article IV A, the Employer may receive directly from a terminated pension or profit sharing plan meeting the requirements of Internal Revenue Code section 401(a) all or a part of the entire amount distributable on behalf of the Participant from such plan. The Employer, notwithstanding the provisions of Article IV A, may receive the assets of any predecessor Plan and invest such assets in any manner authorized under the provisions of this~~ assets to be held under the Annuity Contract for the benefit of a Participant which were (1) received by the Participant from another qualified retirement plan or conduit individual retirement account or annuity and were transferred by the Participant to the Fund, provided that such assets qualify under all of the requirements for a rollover contribution as described in any applicable provisions of the Code, or (2) transferred directly from the trustee or other fiduciary of another qualified retirement plan, or in a conduit individual retirement account or annuity, to the Trustee of this Plan. In no event shall the Administrator be required to approve any direct transfer of assets from a plan to be held under this Plan if the Administrator, in its discretion, determines that the acceptance of any such assets may adversely affect the continued qualification of the Plan.

- 4.4 VOLUNTARY CONTRIBUTIONS BY PARTICIPANTS. Each Active Participant may elect to make periodic Voluntary Contributions under the Plan twice each Plan Year by completing and delivering to the Administrator a payroll deduction order provided by the Insurance Company. An Active Participant may elect to make Voluntary Contributions as of his Entry Date or as of any Renewal Date thereafter, and he may designate an amount equal to a percentage (not more than 10% but not less than \$10.00 per pay period) of his Compensation for the Contribution Period as his Voluntary Contribution under the Plan.

Voluntary Contributions shall be deducted by the Employer from the Participant's earnings while he has a payroll deduction order in effect and shall be paid by the Employer to the Insurance Company not less frequently than monthly or four weekly.

Each Participant's Voluntary Contributions to all qualified plans of the Employer shall not exceed 10% of said Participant's aggregate Compensation computed from his Entry Date.

- 4.5 **ADDITIONAL VOLUNTARY CONTRIBUTIONS.** An Active Participant who is making Voluntary Contributions under the Plan may elect to make an additional Voluntary Contribution in a lump sum. Such additional Voluntary Contributions may be made (1) as of the Effective Date; or (2) as of any Renewal Date thereafter provided election is made as of any date which is thirty days before such Renewal Date, in an amount up to, but not in excess of, the difference between (a) 10% of the aggregate of his Compensation while an Active Participant under the Plan, and (b) the aggregate of his Voluntary Contributions made under the Plan prior to such date. For the purposes of determining such amount, Compensation paid to the Participant during the twenty-four month period following a cancellation of Voluntary Contributions shall not be taken into account.

Additional Voluntary Contributions shall be paid by the Employer to the Insurance Company within thirty days after the date such additional Voluntary Contribution is made by the Participant and shall be reported on the appropriate form furnished by the Insurance Company. Additional Voluntary Contributions shall be considered Voluntary Contributions for all other purposes of the Plan, and shall be subject to the terms thereof.

- 4.6 **CREDITING VOLUNTARY CONTRIBUTIONS.** Each Participant's Voluntary Contributions, if any, shall be credited to his Participant's Account in accordance with the provisions of Article V.

- 4.7 **SUSPENSION OF VOLUNTARY CONTRIBUTIONS BY PARTICIPANTS.** The following provisions shall apply with respect to suspension of Voluntary Contributions, if any, by Participants:

- (a) **Voluntary Suspension.** An Active Participant may elect to suspend his payroll deduction order for Voluntary Contributions by filing a written notice thereof with the Administrator at any time. Such notice shall be effective, and his Voluntary Contributions shall be suspended, on the date specified in such notice, which date must be at least fifteen days after such notice is filed. The notice shall specify the period for which such suspension shall be effective, but such period shall be for not less than three months nor more than twenty-four months. A longer period of suspension of Voluntary Contributions may be approved by the Administrator.
- (b) **Suspension for Leave.** A Participant who is absent from employment on account of an authorized leave of absence or military leave shall, except as otherwise provided in Section 2.7, be an Inactive Participant and have his payroll deduction order for Voluntary Contributions suspended during such leave. Such suspension of Contributions shall be effective on the date that payment of Compensation by the Employer to him ceases and shall remain in effect until payment of Compensation is resumed.
- (c) **Involuntary Suspension.** An Active Participant who ceases to meet the eligibility requirements as specified in Section 3.1 but who remains in the employ of the Employer, shall become an Inactive Participant and have his payroll deduction order for his Voluntary Contributions suspended, effective as of the date he ceases to meet the eligibility requirements. Such suspension shall remain in effect until he again meets such eligibility requirements.

At the expiration of the suspension period described in (a), (b) or (c) above, the Participant's payroll deduction order for Voluntary Contributions shall automatically become effective again

and the Participant shall resume making Voluntary Contributions. If, however, the Participant does not resume making Voluntary Contributions at the expiration of the suspension period, the terms of Cancellation of Voluntary Contributions shall apply.

- 4.8 CANCELLATION OF VOLUNTARY CONTRIBUTIONS. A Participant may cancel his payroll deduction order for Voluntary Contributions by filing written notice thereof with the Administrator at any time. With the written permission of the Participant, such cancellation of his Voluntary Contributions shall be effective on the date specified in such notice, which date must be at least fifteen days after such notice is filed.

On the effective date of such cancellation, an amount equal to the then value of that portion of his Participant's Account attributable to his Voluntary Contributions, including any gains thereon, shall be distributed to the Participant in accordance with the terms and conditions of Article VI.

Any Participant who has cancelled his payroll deduction order for Voluntary Contributions may elect to again make Voluntary Contributions under this Plan by completing and delivering to the Administrator a new payroll deduction order as if it were an original election in accordance with the terms of Section 4.4. Such election shall be effective on the date specified in such notice, which date must be at least fifteen days after such notice is filed and at least twenty-four months after the date the Participant's Voluntary Contributions were last previously cancelled.

ARTICLE IV-A  
LIMITATIONS ON ALLOCATIONS

4A.1 LIMITATIONS ON ALLOCATIONS. Definitions - The following definitions are atypical terms which refer only to terms used in the Limitation on Allocations sections of this Article IV-A.

- (a) ~~(a) Annual Addition - The term Annual Additions shall mean for any Limitation Year commencing on or after January 1, 1987, the sum of those amounts allocated to the Participant's Account under this Plan and under any other qualified defined contribution plan to which the Employer contributes for any Limitation Year, consisting of (1) Employer Contributions, (2) Employee Contributions and (3) forfeitures. In addition to the foregoing, Annual Additions shall also include (1) any amounts allocated to the sum of the following amounts allocated on behalf of a Participant for a Limitation Year: (i) all Employer Contributions, and (ii) all Forfeitures, and (iii) the lesser of (1) one-half of all Employee Contributions, and (2) the amount of all Employee Contributions in excess of 6 percent of such Participant's actual Compensation. For the purposes of this Article, Excess Amounts re-applied to reduce Employer Contributions under Section 4A.2(d) shall also be included as Annual Additions. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Internal Revenue Section 415(l)(1) of the Code Section 415(l)(1), which is part of a defined benefit plan maintained by the Employer, are treated as annual additions to a defined contribution plan. Also, amounts derived from and (2) any contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of such Participant (if he is a key employee, as defined in Internal Revenue Code Section 419(d)(3), Section 419A(d)(3) of the Code) under a welfare benefit fund, as defined in Internal Revenue Section 419(e) of the Code Section 419(e), maintained by the Employer, are treated as annual additions to a defined contribution plan.~~
- (b) ~~(b) Compensation - The term Compensation shall mean compensation, as defined in Code Section 415(c)(3) and regulations issued thereunder. Effective for Limitation Years beginning on or after January 1, 1998, the term Compensation shall include amounts deferred pursuant to a salary reduction agreement under any plan described in Section 402(h), 132(f) or 125 of the Code a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following: (i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; (ii) amounts realized from the exercise of a non-qualified stock option, 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; (iii) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (iv) other amounts which received special tax benefits, or Contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Internal Revenue Code section 403(b) (whether or not the amounts are actually excludable from the gross income of the Employee). For purposes of applying the Limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such year.~~
- (c) ~~(c) Employer - The term Employer shall mean the employer that adopts this Plan. In the case of a group of employers which constitutes a controlled group of~~

~~corporations (as defined in Internal Revenue Code Section 414(b) as modified by section 415(h)), or which constitutes trades or business (whether or not incorporated) which are under common control (as defined in Section 414(c) as modified by section 415(h)), or affiliated service groups (as defined in Section 414(m)) of which the adopting employer is a part, all City of Alexandria and any other employer who is required to be treated as a single employer with the City under Section 414(b), (c), (m) or (o) of the Code. All such employers shall be considered a single employer for purposes of applying the limitations of this Article.~~

~~(d) Excess Amount—The term Excess Amount shall mean the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.~~

~~(d)~~ (e) Limitation Year - The term Limitation Year shall mean the Plan Year.

~~(f) Maximum Permissible Amount—The term Maximum Permissible Amount shall mean the lesser of (1) \$30,000 (or such other amount as may be determined by the Secretary of the Treasury or his delegate), or (2) 25 percent of the Participant's Compensation for the Limitation Year.~~

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the Maximum Permissible Amount for the short Limitation Year will be the lesser of (1) \$30,000 multiplied by the following fraction: Number of months in the short Limitation Year divided by 12 or (2) 25 percent of the Participant's Compensation for the short Limitation Year.

4A.2 LIMITATIONS ON ALLOCATIONS. ~~Employers who do not maintain any qualified plan in addition to this Plan:~~

~~(a) If an Employer does not maintain any other qualified plan, the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan.~~

~~(b) Prior to the determination of the Participant's actual Compensation for a Limitation Year, the Maximum Permissible Amount may be determined on the basis of the Participant's estimated annual Compensation. Such Compensation shall be determined on a reasonable basis and shall be uniformly determined for all Participants similarly situated. Any Employer Contributions based on estimated annual Compensation shall be reduced by any Excess Amounts carried over from prior years.~~

~~(c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for such Limitation Year shall be determined on the basis of the Participant's actual Compensation for such Limitation Year. In the event a Participant separates from the Service of the Employer prior to the end of the Limitation Year, the Maximum Permissible Amount for such Participant shall be determined prior to any distribution of his Account on the basis of his actual Compensation. Any Excess Amounts shall be disposed of in accordance with Section 4A.2(d).~~

~~(d) If, pursuant to Section 4A.2(c), there is an Excess Amount with respect to a Participant for a Limitation Year, such Excess Amount shall be disposed of as follows:~~

~~(i) First, any Voluntary Employee Contributions shall be returned to the Participant, to the extent that the return would reduce the Excess Amount.~~

~~(ii) Second, any remaining Excess Amount must not be distributed to the Participant, but shall be reapplied to reduce Employer Contributions under this Plan for the next Limitation Year (and for succeeding Limitation Years, as necessary). In each such succeeding Limitation Year the sum of actual Employer Contributions, plus the reapplied amount resulting from Excess Amount, if any, shall equal the amount of Employer Contributions that would otherwise be allocated to each Participant's Account.~~

~~4A.3 LIMITATIONS ON ALLOCATIONS. Employers who, in addition to this Plan, maintain one or more defined contribution plans:~~

- ~~(a) If, in addition to this Plan, the Employer maintains any other qualified defined contribution plans, the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year, shall not exceed the lesser of:~~
- ~~(i) The Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Account for the same Limitation Year under this Plan and such other defined contribution plan; or~~
- ~~(ii) Any other limitation contained in this Plan.~~

~~Prior to the determination of the Participant's actual Compensation for the Limitation Year, the amounts referred to in (i) above may be determined on the basis of the Participant's estimated annual Compensation for such Limitation Year. Such estimated annual Compensation shall be determined for all Participants similarly situated.~~

~~Any Employer Contribution based on estimated annual Compensation shall be reduced by any Excess Amounts carried over from prior years, if applicable.~~

~~(b) As soon as is administratively feasible after the end of the Limitation Year, the amounts referred to in Section 4A.3(a) shall be determined on the basis of the Participant's actual Compensation for such Limitation Year.~~

~~(c) If amounts are contributed to a Participant's Account under this Plan on an allocation date which does not coincide with the allocation date(s) for all such other plans, and if a Participant's Annual Additions under this Plan and all such other plans result in an Excess Amount, such Excess Amount shall be deemed to have derived from those Contributions last allocated.~~

~~(d) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributable to this Plan will be the product of (i) and (ii) below:~~

~~(i) The total Excess Amount allocated as of such date (including any amount which would have been allocated but for the limitations of Internal Revenue Code Section 415).~~

~~(ii) The ratio of (1) the amount allocated to the Participant as of such date under this Plan, divided by (2) the total amount allocated as of such date under all qualified defined contribution plans (determined without regard to the limitations of Internal Revenue Code Section 415).~~

~~(e) Any excess Amounts attributed to this Plan shall be disposed of as provided in Section 4A.2(d).~~

~~4A.4 LIMITATIONS ON ALLOCATIONS. Participants participating in both a Defined Benefit plan and a Defined Contribution plan:~~

~~(a) If an individual is a Participant at any time in both a defined benefit plan and a defined contribution plan maintained by the Employer, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any year may not exceed 1.0. In the event that the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction exceeds 1.0, the Defined Contribution Plan Fraction will be reduced in accordance with Section 4A.2(d) until the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction does not exceed 1.0, or, if appropriate, the numerator of the Defined Contribution Fraction will be adjusted if the sum of the Defined Contribution Fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the Fractions over 1.0 times (2) the denominator of this Fraction, will be permanently~~

~~subtracted from the numerator of this Fraction. The adjustment is calculated using the Fractions as they would be computed as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. This adjustment also will be made if at the end of the last Limitation Year beginning before January 1, 1984 the sum of the Fractions exceeds 1.0 because of accruals or additions that were made before the limitations of this Article became effective to any plans of the Employer in existence on July 1, 1982.~~

~~For purposes of this Section 4A.4, all defined benefit plans of the Employer, whether or not terminated, are to be treated as one defined benefit plan and all defined contributions plans of the Employer, whether or not terminated, are to be treated as one defined contribution plan.~~

~~(b) The Defined Benefit Plan Fraction for any year is a fraction, the numerator of which is the Participant's Projected Annual Benefit under the defined benefit plan (determined as of the close of the Limitation Year), and the denominator of which is the lesser of (i) or (ii) below:~~

~~(i) 1.25 times the dollar limitation in effect under Internal Revenue Code Section 415(b)(1)(A) on the last day of the Limitation Year; or~~

~~(ii) 1.4 times the amount which may be taken into account under Internal Revenue Code Section 415(b)(1)(B) with respect to such Participant for the Limitation Year.~~

~~Notwithstanding the above if the participant was a participant in one or more defined benefit plans maintained by the Employer which were in existence on July 1, 1982, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the participant had accrued as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. The preceding sentence applies only if the defined benefit plan individually and in the aggregate satisfied the requirements of Internal Revenue Code Section 415 as in effect at the end of the 1982 Limitation Year.~~

~~(c) A Participant's Projected Annual Benefit is equal to the annual benefit to which the Participant would be entitled under the terms of the defined benefit plan based upon the following assumptions:~~

~~(i) The Participant will continue employment until reaching normal retirement age as determined under the terms of the plan (or current age, if that is later).~~

~~(ii) The Participant's Compensation for the Limitation Year under consideration will remain the same until the date the Participant attains the age described in sub-division (i) of this subparagraph.~~

~~(iii) All other relevant factors used to determine benefits under the plan for the Limitation Year under consideration will remain constant for all future Limitation Years.~~

~~(d) The Defined Contribution Plan Fraction for any Limitation Year is a fraction, the numerator of which is the sum of the Annual Additions to the Participant's Accounts in such Limitation Year and for all prior Limitation Years, and the denominator of which is the lesser of (i) or (ii) below for such Limitation Year and for all prior Limitation Years of such Participant's Employment (assuming for this purpose, that Internal Revenue Code Section 415(e) had been in effect during such prior Limitation Years).~~

~~(i) 1.25 times the dollar limitation in effect under Internal Revenue Code section 415(e)(1)(A) on the last day of the Limitation Year; or~~

~~(ii) 1.4 times the amount which may be taken into account under Internal Revenue Code Section 415(e)(1)(B) with respect to such Participant for the Limitation Year.~~

~~(e) Notwithstanding the forgoing, at the election of the Plan Administrator, in computing the Defined Contribution Plan Fraction with respect to any Plan Year ending after December 31, 1982, the denominator shall be an amount equal to the product of:~~

~~(i) The denominator of the Defined Contribution Plan Fraction, computed in accordance with the rules in effect for the Plan Year ending in 1982; and~~

~~(ii) the transition fraction, which is a fraction—~~

~~(1) the numerator of which is the lesser of:~~

~~(A) \$51,875, or~~

~~(B) 1.4 times 25% of the compensation of the Participant for the Plan Year ending in 1981, and~~

~~(2) the denominator of which is the lesser of:~~

~~(A) \$41,500, or~~

~~(B) 25% of the Compensation of the Participant for the Plan Year ending in 1981. Notwithstanding anything contained herein to the contrary, the total Annual Additions credited to a Participant's Account under this Plan (and under all other defined contribution plans, defined benefit plans and welfare benefit funds to which the Employer contributes) for any Limitation Year commencing on or after January 1, 1995, shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Section 415(d) of the Code) or (ii) 25 percent of the Participant's Compensation. In the event that the limitations on Annual Additions described above are exceeded with respect to any Participant in any Limitation Year due to forfeiture allocations, a reasonable error in estimating a Participant's annual compensation, or such other circumstances as are permitted by law, then the contributions allocable to the Participant for such Limitation Year shall be reduced to the minimum extent required by such limitations in the following order of priority (unless otherwise determined by the Administrator according to applicable law):~~

~~(a) All excess Annual Additions attributable first to Employee Contributions (plus attributable earnings) shall be distributed to such Participant.~~

~~(b) If such Participant is covered by the Plan as of the end of the Limitation Year in which such excess arose, all excess Annual Additions allocated to such Participant's Account shall, be used as soon as possible to reduce Employer Contributions allocable to such Participant in the next and succeeding Limitation Years.~~

~~(c) If the Participant is not covered by the Plan as of the end of the Limitation Year in which the excess arose (or any succeeding Limitation Year, if applicable), then such excess amounts shall be credited to an account designated as the limitations account and carried forward to the next and succeeding Limitation Years and shall be used as soon as possible to reduce Employer Contributions for all remaining Participants in the Plan. No investment gains or losses or other income shall be allocated to this limitations account. In the next succeeding Limitation Year, all amounts in the limitations account must be allocated before any Employer Contributions may be made to the Plan for any such Limitation Year.~~

~~(d) The Administrator shall determine to what extent the Annual Additions to any Participant's Account must be reduced in each Limitation Year. In the event the Employer maintains any other plan to which Annual Additions may be credited, and a Participant participates in both plans during any Limitation Year, then the Administrator shall reduce the Annual Additions to such other plan before reducing Annual Additions to this Plan.~~

- (e) In the event this Plan is terminated, any amounts credited to the limitations account described above which have not been reallocated as set forth herein shall, upon the Employer's request, be returned to the Employer.

To the extent a Participant's benefit is subject to provisions of Section 415 of the Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

ARTICLE V  
ANNUITY CONTRACT AND PARTICIPANT'S ACCOUNT

5.1 ANNUITY CONTRACT. The Employer shall apply for and take the necessary steps to obtain the Annuity Contract from the Insurance Company. All Contributions under the terms of this Plan shall be paid to the Insurance Company in accordance with the further terms of this Plan. All payments to Participants and/or Beneficiaries, payable under the terms of the Plan out of Participants' Accounts, will be paid by the Insurance Company in accordance with the terms of Article VI.

5.2 PARTICIPANT'S ACCOUNT. A Participant's Account shall be maintained on behalf of each Participant until such account is used to provide an annuity, or distributed in accordance with the further terms of this Plan and the terms of the Annuity Contract.

With respect to Employer Contributions, the Administrator shall have the responsibility to decide the portion of the amount of contributions made under this Plan for each Participant that shall be paid to the Participant's Guaranteed Long Term Account, the portion that shall be paid to the Participant's Variable Account and the portion that shall be paid to the Participant's Guaranteed Short Term Account. Such responsibility shall be applied in a uniform manner to all Participants. However, the Administrator may delegate this responsibility to each Participant, provided that this is done in a consistent and nondiscriminatory manner.

With respect to Employee Contributions, the Participant shall have the right to decide the amount that shall be paid to the Participant's Guaranteed Long Term Account, the amount that shall be paid to the Participant's Variable Account, and the amount that shall be paid to the Participant's Guaranteed Short Term Account.

The Administrator or the Participant, as the case may be, may change such amounts once during a Plan Year, in accordance with the terms of the Annuity contract.

5.3 TRANSFERS BETWEEN THE GUARANTEED LONG TERM, VARIABLE AND GUARANTEED SHORT TERM ACCOUNTS. Where permitted by the terms and limitations of the Annuity Contract, amounts in a Participant's Account may be transferred between the Participant's Guaranteed Long Term Account and the Participant's Variable Account, and from the Participant's Guaranteed Short Term Account to the Participant's Guaranteed Long Term Account and/or the Participant's Variable Account once during a calendar year, where applicable. With respect to that portion of the Participant's Account attributable to Employer Contributions, the Administrator shall have the responsibility to designate that portion of such Account to be transferred between the Participant's Guaranteed Long Term Account and the Participant's Variable Account and the portion of the Guaranteed Short Term Account to be transferred to the Guaranteed Long Term Account and/or the Variable Account. Such responsibility shall be applied in a uniform manner to all Participants. However, the Administrator may delegate this responsibility to each Participant provided that this is done in a consistent and nondiscriminatory manner.

With respect to the portion of a Participant's Account attributable to his Employee Contributions, the Participant may designate the portion to be transferred between the Participant's Guaranteed Long Term Account and the Participant's Variable Account and the portion to be transferred from the Guaranteed Short Term Account to the Guaranteed Long Term Account and/or the Variable Account.

5.4 Once during each year the Insurance Company shall furnish the Administrator and each Participant with a written report of (a) the value of each such Participant's Guaranteed Long Term Account, (b) the fair market value of each such Participant's Variable Account, and (c) the value of each such Participant's Guaranteed Short Term Account.

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ARTICLE VI  
DISTRIBUTION OF BENEFITS

- 6.1 DISTRIBUTIONS IN GENERAL. All distributions hereunder, whether in the form of an annuity or cash, or a combination thereof, shall be made by the Insurance Company as of the date specified, in accordance with the terms and conditions set forth in the Annuity Contract. The Insurance Company shall be entitled to receive written instructions and proper notice from the Administrator with respect to any distribution and shall not be required to make such distribution until such instructions have been received in a form which in the opinion of the Insurance Company is sufficiently clear with respect to the distributions required.
- 6.2 PAYMENT OF BENEFITS. Unless the Participant elects otherwise, the payment of benefits under this Plan to the Participant shall begin not later than the 60<sup>th</sup> day after the close of the Plan Year in which the later of (a) or (b) occurs.
- (a) The date on which the Participant attains his Normal Retirement Age; or
  - (b) The date on which the Participant terminates his Service (including Termination of Employment, death or Disability) with the Employer.

~~In the event the benefit payment on account of a Participant's separation from Service is to be made in the form of a cash distribution, the Participant may make an irrevocable written election, prior to receipt of the payment, to defer such payment until the date he incurs a 1 Year Break in Service.~~

~~Notwithstanding subsections (a) and (b) above, distribution to a Participant will commence no later than the date determined in accordance with the provisions of the following paragraph.~~

~~Distribution to a Participant must commence no later than the first day of April following the calendar year in which the later of Termination of Employment or age 70½ occurs.~~

~~If distribution is made in other than a lump sum, the second payment shall be distributed no later than December 31 following the April 1 by which the first payment was required to be distributed. Each succeeding payment shall be distributed no later than each December 31, thereafter.~~

~~In order that the Insurance Company may provide each benefit in accordance with this Section the Administrator will furnish the Insurance Company with the necessary forms and information at least 30 days prior to the date payment is due to begin.~~

- 6.3 The rules and procedures for electing the timing and form of distribution effective for each Participant or Beneficiary shall be formulated and administered by the Administrator in a consistent manner for all Participants in similar circumstances. The distribution shall normally be made in the form of an annuity. However, with respect to that portion of the distribution attributable to Employer Contributions, the Administrator shall have the right to specify that each Participant may elect a distribution in the form of cash or a combination of cash and an annuity. With respect to that portion of the distribution attributable to Employee Contributions, the Participant shall have the right to elect the manner of distribution. Any annuity elected in accordance with this Section may be a Fixed Annuity, or a Variable Annuity, or a combination of both.

Notwithstanding the foregoing paragraph, if the value of the Participant's Account available for the purchase of a retirement annuity is less than three thousand five hundred dollars (\$3,500), the distribution shall be in the form of cash.

- 6.4 DIRECT ROLLOVER OPTION. Effective as of January 1, 1992, any distribution or portion thereof payable to a Participant (or any other eligible distributee, if applicable) which is an "eligible rollover distribution" (as defined in Section 401(a)(31)(C) of the Code) shall be rolled

over directly to another "eligible retirement plan" (as defined in Section 401(a)(31)(D) of the Code), if elected by the Participant (or such other eligible distributee, if applicable) according to rules and procedures adopted by the Administrator from time to time, so long as such rules and procedures comply with Section 401(a)(31) of the Code and any regulations promulgated thereunder.

## 6.5 DISTRIBUTION REQUIREMENTS.

- (a) ~~(a)~~ The requirements of this Section shall apply to any distribution of a Participant's Accrued Benefit.
- (b) The vested Accrued Benefit of a Participant shall be distributed (or shall commence being distributed) no later than the April 1<sup>st</sup> following the later of (1) the calendar year in which such Participant attains age 70½ or (2) the calendar year in which such Participant terminates employment with the Employer ("Required Beginning Date").
- (c) As of the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date ("Distribution Calendar Year"), distributions, (b) Limits on Settlement Options. Distributions if not made in a lump sum payment, may be made only (1) over a term certain not to exceed the life expectancy of the Participant or the joint life expectancies sum, may only be made over one of the following periods (or a combination thereof): (1) the life of the Participant, (2) the life of the Participant and a designated Beneficiary, or (2) over the life of the Participant or the joint lives (3) a period certain not extending beyond the life expectancy of the Participant, or (4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary. Notwithstanding the foregoing, distribution shall in no event extend beyond the maximum permissible period described in Treasury Regulation Section 1.401(a)(9)-2.
- (d) The minimum amount which must be distributed during each calendar year, commencing with the Distribution Calendar Year, (e) Minimum Amounts to be Distributed. If the Participant's entire Vested Interest is to be distributed in other than a lump sum, then the amount to be distributed each year must be at least an amount equal to the lesser of (1) the Participant's total distributable interest, or (2) the quotient obtained by dividing the Participant's entire Vested Interest by the life expectancy of the Participant or joint and last survivor expectancy of the Participant and designated beneficiary. Life Expectancy and joint and last survivor expectancy are computed total distributable interest at the beginning of each such calendar year (valued for this purpose as of the Valuation Date immediately preceding the first day of such calendar year, adjusted for contributions allocated and distributions made subsequent to such Valuation Date but prior to the first day of such calendar year) by the lesser of (A) the applicable life expectancy (as described below), or (B) if the Participant's Beneficiary is not his spouse, by the applicable divisor, as described in Treasury Regulation Section 1.401(a)(9)-2.
- (e) For purposes of calculating the applicable life expectancy, the following rules shall apply:
- (1) Life expectancies shall be calculated pursuant to Treasury Regulation Section 1.401(a)(9)-1, by the use of the return multiples contained in section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Treasury Regulation Section 1.72-9, or in such other manner as may otherwise be prescribed or permitted by law.

- (2) For the Distribution Calendar Year, the Participant's life expectancy of a nonspouse Beneficiary may not be recalculated, shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. For the Distribution Calendar Year, the designated Beneficiary's life expectancy shall be determined based upon his attained age on his birthday during such Distribution Calendar Year.
- (3) If the Participant's spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution is paid within Except as provided in subsection (4) below, for each calendar year subsequent to the Distribution Calendar Year, the Participant's life expectancy and his designated Beneficiary's life expectancy, as determined with respect to the Distribution Calendar Year, shall be reduced by one for each calendar year which has begun since the Required Beginning Year.
- (4) Notwithstanding the rules contained in subsection (3) above, the Participant may elect, prior to his Benefit Starting Date, to have his life expectancy, or the joint life expectancies of the Participant and his spouse (if his spouse is his Beneficiary), recalculated on an annual basis, based upon his (and, if applicable, his spouse's) attained age on his birthday (and, if applicable, his spouse's birthday) during the calendar year for which such recalculation is applicable. In no event, however, may the life expectancy of a non-spouse Beneficiary be recalculated.
- (f) Notwithstanding that distributions under the Plan may have commenced to the Participant before the Distribution Calendar Year, the Participant shall receive no credit under this Section 6.5 for such earlier distributions; rather, the total remaining distributable interest of the Participant, calculated as provided above at the beginning of the Distribution Calendar Year, shall be subject to the minimum distribution requirements contained in this Section 6.5.
- (g) Notwithstanding the rules contained in this Section 6.5, if distribution hereunder is made under an annuity contract purchased from an insurance company, which contract provides for annual (or more frequent) nonincreasing (except as otherwise permitted under applicable Treasury Regulations) payments commencing no later than the April 1<sup>st</sup> following the Distribution Calendar Year and payable over a period permitted by Section 6.5(c), then the life expectancy of the Participant (and his Beneficiary, if applicable) shall be determined based upon the age of the Participant (and his Beneficiary, if applicable) as of the birthday occurring during the calendar year in which benefits commence, even if such calendar year is prior to the Participant's Distribution Calendar Year, and such calendar year shall be treated as the Distribution Calendar Year. In all events, distribution under any such annuity contract shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations).
- (h) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.5(h) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

- (i) Notwithstanding anything contained herein to the contrary, in the event that a Participant has validly elected a method of distribution other than one permitted under this Section 6.5, payments hereunder shall be made according to such method of distribution, provided that (1) such method was elected by the Participant prior to January 1, 1984, and (2) such method was permitted by law and by the terms of the Plan as of December 31, 1983.

6.6

6.5

NON-TRANSFERABLE. The Participant's right to any annuity payments, benefits and refunds is not transferable and shall be free from the claims of all creditors to the fullest extent permitted by law.

6.6 6.7

DEATH DISTRIBUTION PROVISIONS. ~~Upon the death of the Participant, the following distribution provisions shall take effect:~~ Notwithstanding anything contained herein to the contrary, the payment of death benefits shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), and thus, the following rules shall apply to the extent required thereunder:

- (a) ~~(a) If the Participant dies after distribution of his or her entire Vested Interest has commenced, the remaining portion of such Vested Interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.~~ (b) If the Participant dies before distribution of his Vested Interest commences, the Participant's entire Vested Interest will be distributed no later than 5 years after In the event of a Participant's death prior to the April 1<sup>st</sup> following his Distribution Calendar Year (unless his benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.5(g), in which case the provisions of this Section 6.7(a) shall not apply, but rather, the provisions of Section 6.7(b) shall apply), then death benefits, if any, attributable to such Participant shall be completely distributed to his Beneficiary no later than the last day of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below, subject to the exceptions contained in Sections 6.7(a)(1) and (2) below:

- (1) ~~(1) If any portion of the Participant's Vested Interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or If the Participant or Beneficiary has elected that death benefits be paid in installments over a term certain or over the life of the Beneficiary, then such distributions shall be made, as elected, over a term certain not to exceed the life expectancy of the designated Beneficiary commencing no later than 1 year after Beneficiary or over the life of the Beneficiary, commencing in either case no later than the last day of the calendar year containing the first anniversary of the Participant's death. Such method of distribution must comply with Section 6.5, except that the applicable life expectancy shall be that of the Beneficiary.~~ (2)

- (2) ~~If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with spouse, then the rules contained in Section 6.7(a)(1) above shall be modified as follows:~~

- (A) The date distributions would otherwise be required to commence in accordance with Section 6.7(a)(1) above shall not be earlier than the date on later of (i) the last day of the calendar year containing the first anniversary of the Participant's death, or (ii) the last day of the calendar year in which the Participant would have attained age 70½.

(B) ~~However, the surviving spouse may elect, at any time following the Participant's death to defer the date on which distributions will begin until no later than the date on which the Participant would have attained age 70½ and, if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the Participant.~~(c) ~~For purposes of (b) above, payments will be calculated by use of the return multiples specified in section 1.72-9 of the Income Tax Regulations. Life expectancy of a surviving spouse may be recalculated annually, however, in the case of any other designated Beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.~~(d) ~~For purposes of this Section (Death Distribution Provisions) any amount paid to a child of the Participant will be treated as if it had been paid In the event of the spouse's death after the Participant but prior to the spouse's required benefit commencement date, as described in Section 6.7(a)(2)(A), (unless such spouse's benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.5(g), but payable over a period permitted by Section 6.7(a), in which case the provisions of this Section 6.7(a)(2)(B) shall not apply, but rather, the provisions of Section 6.7(b) shall apply as if the spouse were the Participant), then subsequent distributions, if any, shall be subject to the 5-year or 1-year rule described above, whichever is applicable, but such rule shall be applied as if the spouse were the Participant; provided, however, that the rules contained in Section 6.7(a)(2)(A) shall not be available to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority. of the Participant's surviving spouse.~~

(b) 6.7 TRANSITIONAL RULE. In the event of a Participant's death (A) subsequent to the April 1<sup>st</sup> following his Distribution Calendar Year and subsequent to his actual commencement of benefits under a payment option other than an annuity contract described in Section 6.5(g), or (B) subsequent to the irrevocable commencement of benefits under an annuity contract meeting the requirements of Section 6.5(g), then any death benefits payable to the Participant's Beneficiary shall be distributed at least as rapidly as under the method of distribution being utilized as of the date of the Participant's death.

(c) ~~(a) Notwithstanding the other requirements of this Article distribution on behalf of any Employee, may be made in accordance with all of the following requirements (regardless of when such distribution commences):~~ With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.7(c) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

(d) ~~(1) The distribution by the Plan is one which would not have disqualified such Plan under Internal Revenue Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.(2) The distribution is in accordance with~~ Notwithstanding anything contained herein to the contrary, in the event a Participant or Beneficiary has validly elected a method of distribution other than one permitted under this Section 6.7, payments hereunder shall be made according to such method of

~~distribution, provided that (1) such method was elected by the Participant or Beneficiary prior to January 1, 1984, and (2) such method was permitted by law and by the terms of the Plan as of December 31, 1983, designated by the Employee whose interest in the trust is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.(3) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.(4) The Employee had accrued a benefit under the Plan as of December 31, 1983.(5) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.(b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distribution to be made upon the death of the Employee.(c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a)(1) and (5).(d) If a designation is revoked any subsequent distribution must satisfy the requirements of Section 401(a)(9) as amended. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).~~

ARTICLE VII  
RETIREMENT BENEFITS

- 7.1 NORMAL RETIREMENT. A Participant who attains his Normal Retirement Age shall have a Vesting Percentage of 100%. If a Participant retires from the active Service of the Employer on his Normal Retirement Date he shall receive a distribution of the entire value of his Participant's Account as of his Normal Retirement Date.
- 7.2 LATE RETIREMENT. A Participant may continue in the Service of the Employer after his Normal Retirement Age, and in such event he shall retire on his Late Retirement Date. Such Participant shall continue as a Participant under this Plan until such Late Retirement Date. The Participant shall have a Vesting Percentage of 100% and shall receive a distribution of the entire value of his Participant's Account as of his Late Retirement Date.
- 7.3 All distributions on account of retirement described in this Article shall be further subject to the terms and conditions of Article VI.

ARTICLE VII-A  
DISABILITY BENEFITS

7.1A DISTRIBUTION. Upon a Participant's Disability, he shall have a Vesting Percentage of 100% but shall not receive a distribution of the entire value of his Participant's Account attributable to Employer contributions until death, normal retirement or Cessation of Disability without Re-employment, as provided in Articles VIII, VII and IX, respectively.

ARTICLE VIII  
DEATH BENEFITS

8.1 FROM PARTICIPANTS' ACCOUNTS.

- (a) Death before Distribution. Upon the death of any Participant prior to the date of distribution on account of his retirement or his Termination of Employment, his Beneficiary shall receive a distribution of the entire value of the Participant's Account. Such distribution shall be further subject to the terms and conditions of Article VI, except that the Beneficiary shall have the right to elect the manner of distribution, unless designated otherwise by the Participant, or prohibited by further provisions contained in this Plan.
- (b) Death after Distribution. Upon the death of any Participant on or after the date of distribution on account of his retirement or his Termination of Employment, the death benefit, if any, attributable to his Participant's Account will be determined in accordance with the form of annuity, if any, provided for the Participant under the Annuity Contract.

8.2 BENEFIICIARY. Each Participant shall have the right under the Annuity Contract to designate a Beneficiary and to specify the form of death benefit the Beneficiary is to receive. The Participant may change the Beneficiary and/or the form of death benefit at any time. If any distribution hereunder is made to a Beneficiary in the form of an annuity, then such Beneficiary shall also have the right to designate a Beneficiary and to change the Beneficiary from time to time.

If a Beneficiary has not been designated, or if no designated Beneficiary survives the Participant, the Participant's Account shall be distributed to the Participant's spouse, if living; otherwise in equal shares to any surviving children of the Participant. In the event none of the above named individuals survives the Participant, the Participant's Account shall be paid to the executor or administrator of the Participant's estate.

To the extent not inconsistent with the terms of this Plan, any payment made to a Beneficiary shall be further subject to the terms of the Annuity Contract.

ARTICLE IX  
TERMINATION OF EMPLOYMENT

- 9.1 **DISTRIBUTION.** As of a Participant's Termination of Employment, he shall be entitled to receive a distribution of his entire Vested Interest. Such distribution shall be further subject to the terms and conditions of Article VI.

If at the time of Termination the Participant is not 100% vested, the non-vested portion of his Account shall be placed in a separate account and will become a Forfeiture, to be applied in accordance with Section 9.3, upon the date the terminated Participant incurs a 1-Year Break in Service.

- 9.2 **NO FURTHER RIGHTS OR INTEREST.** A Participant shall have no further interest in or any rights to any portion of his Participant's Account that becomes a Forfeiture due to his Termination of Employment once the Participant incurs a 1-Year Break in Service in accordance with Section 2.4.

- 9.3 **FORFEITURE.** Any Forfeiture shall be credited to the Forfeiture account upon the occurrence of a 1-Year Break in Service following the Participant's Termination of Employment.

Any amount in the Forfeiture account shall be used by the Employer to reduce and in lieu of the Employer Contribution next due under Section 4.1 at the earliest opportunity after such Forfeiture becomes available.

ARTICLE X  
WITHDRAWALS

10.1 WITHDRAWALS - VOLUNTARY CONTRIBUTIONS. Provided that an Active Participant has made Voluntary Contributions in accordance with Section ~~4.5~~ 4.4 for at least twenty-four consecutive months, he may elect to withdraw from his Participant's Account an amount which is equal to any whole percentage (not exceeding 100%) of the lesser of the amounts specified in (a) and (b) below, where:

- (a) is equal to the aggregate of his Voluntary Contributions which are at the time credited to his Participant's Account, and
- (b) is equal to the then value of that portion of his Participant's Account attributable to such Voluntary Contributions.

Such an election shall become effective in accordance with the Notification section below.

If a Participant elects a withdrawal under the provisions of this section, he may not elect another withdrawal under this section until he has made Voluntary Contributions under this Plan for an additional period of twenty-four consecutive months.

10.2 NOTIFICATION. The Participant shall notify the Administrator in writing of his election to make a withdrawal under Section 10.1. Any such election shall be effective as of the date specified in such notice, which date must be at least fifteen days after such notice is filed. Payment of the withdrawal shall be subject to the terms and conditions of Article VI.

10.3 NON-REPAYMENT. Withdrawals made in accordance with this Article X may not be repaid.

ARTICLE XI  
FIDUCIARY DUTIES AND RESPONSIBILITIES

- 11.1 GENERAL FIDUCIARY STANDARD OF CONDUCT. Each Fiduciary of the Plan shall discharge his duties hereunder solely in the interest of the Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Each Fiduciary shall act with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character and with like aims, in accordance with the documents and instruments governing this Plan, insofar as such documents and instruments are consistent with this standard.
- 11.2 SERVICE IN MULTIPLE CAPACITIES. Any person or group of persons may serve in more than one Fiduciary capacity with respect to this Plan.
- 11.3 LIMITATIONS ON FIDUCIARY LIABILITY. Nothing in this Plan shall be construed to prevent any Fiduciary from receiving any benefit to which he may be entitled as a Participant or Beneficiary in this Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of this Plan as applied to all other Participants and Beneficiaries. Nor shall this Plan be interpreted to prevent any Fiduciary from receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of his duties with the Plan; except that no Person so serving who already receives full-time pay from an Employer shall receive compensation from this Plan, except for reimbursement of expenses properly and actually incurred.
- 11.4 INVESTMENT MANAGER. When an Investment Manager has been appointed pursuant to Section 12.7 of this Plan, he is required to acknowledge in writing that he has undertaken a fiduciary responsibility with respect to the Plan. The Insurance Company's liability as a Fiduciary is limited to that arising from its management of any assets of the Plan held by the Insurance Company in its Separate Accounts.

ARTICLE XII  
THE ADMINISTRATOR

- 12.1 DESIGNATION AND ACCEPTANCE. The Employer shall designate a Person or Persons to serve as Administrator under the Plan and such Person, by joining in the execution of this Plan accepts such appointment and agrees to act in accordance with the terms of the Plan.
- 12.2 DUTIES AND RESPONSIBILITY. The Administrator shall administer the Plan for the exclusive benefit of the Participants and their Beneficiaries in a nondiscriminatory manner subject to the specific terms of the Plan.

The Administrator shall perform all such duties as are necessary to operate, administer, and manage the Plan in accordance with the terms thereof. This shall include notification to the Insurance Company of any adjustment made to a Participant's Account in accordance with Article IV-A.

Furthermore, the Administrator shall take the necessary steps to notify the appropriate interested parties whenever an application is made to the Secretary of the Treasury for a determination letter in accordance with section 7476 of the Internal Revenue Code as amended.

- 12.3 EXPENSES AND COMPENSATION. The expenses necessary to administer the Plan shall be borne by the Employer, including but not limited to those involved in retaining necessary professional assistance from an attorney, an accountant, an actuary, or an investment adviser. Nothing shall prevent the Administrator from receiving reasonable compensation for services rendered in administering this Plan, provided the Administrator is not a full-time Employee of any Employer adopting this Plan.
- 12.4 INFORMATION FROM EMPLOYER. To enable the Administrator to perform his functions, the Employer shall supply full and timely information to the Administrator on all matters relating to this Plan as the Administrator may require.
- 12.5 ADMINISTRATIVE COMMITTEE; MULTIPLE SIGNATURES. In the event that more than one person has been duly nominated to serve on the Administrative Committee and has signified in writing the acceptance of such designation, the signature(s) of one or more Persons may be accepted by an interested party as conclusive evidence that the Administrative Committee has duly authorized the action therein set forth and as representing the will of and binding upon the whole Administrative Committee. No Person receiving such documents or written instructions and acting in good faith and in reliance thereon shall be obliged to ascertain the validity of such action under the terms of this Plan. The Administrative Committee shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting or in writing without a meeting.
- 12.6 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR. The Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof, unless such notice shall be waived.

The Administrator may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than thirty (30) days after delivery thereof, unless such notice shall be waived.

The Employer, upon receipt of or giving notice of the resignation or removal of the Administrator, shall promptly designate a successor Administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the Board of Directors of the Employer will function as the Administrative Committee until a new Administrator has been appointed and has accepted such appointment.

- 12.7 The Administrator shall have the power, to the extent permitted by law, to delegate the performance of such Fiduciary and non-Fiduciary duties, responsibilities and functions as the Administrator shall deem advisable for the proper management and administration of the Plan in the best interests of the Participants and their Beneficiaries.

ARTICLE XIII  
PARTICIPANTS' RIGHTS

13.1 **GENERAL RIGHTS OF PARTICIPANTS AND BENEFICIARIES.** The Plan is established and the Plan assets are held for the exclusive purpose of providing benefits for such Employees and their Beneficiaries as have qualified to participate under the terms of the Plan.

13.2 **FILING A CLAIM FOR BENEFIT.** A Participant or Beneficiary or the Employer acting in his behalf, shall notify the Administrator of a claim of benefits under the Plan. Such request shall be in writing to the Administrator and shall set forth the basis of such claim and shall authorize the Administrator to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.

A decision by the Administrator shall be made promptly and not later than 90 days after the Administrator's receipt of the claim of benefits under the Plan, unless special circumstances require an extension of the time for processing in which case a decision shall be rendered as soon as possible, but not later than 90 days after receipt of the claim of benefits under the Plan.

13.3 **DENIAL OF CLAIM.** Whenever a claim for benefits by any Participant or Beneficiary has been denied by a Plan Administrator, a written notice, prepared in a manner calculated to be understood by the Participant, must be provided, setting forth (1) the specific reasons for the denial; (2) the specific reference to pertinent Plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (4) an explanation of the Plan's claim review procedure.

13.4 **REMEDIES AVAILABLE TO PARTICIPANTS.** A Participant or Beneficiary (1) may request a review by a Named Fiduciary, other than the Administrator, upon written application to the Plan; (2) may review pertinent Plan documents; and (3) may submit issues and comments in writing to a Named Fiduciary. A Participant or Beneficiary shall have 60 days after receipt by the claimant of written notification of a denial of a claim to request a review of a denied claim.

A decision by a Named Fiduciary shall be made promptly and not later than 60 days after the Named Fiduciary's receipt of a request for review, unless special circumstances require an extension of the time for processing in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of a request for review. The decision on review by a Named Fiduciary shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

A Participant or Beneficiary shall be entitled, either in his own name or in conjunction with any other interested parties, to bring such actions in law or equity or to undertake such administrative actions or to seek such relief as may be necessary or appropriate to compel the disclosure of any required information, to enforce or protect his rights, to recover present benefits due to him or to clarify his rights to future benefits under the Plan.

13.5 **LIMITATION OF RIGHTS.** Participation hereunder shall not grant any Participant the right to be retained in the Service of the Employer or any other rights or interest in the Plan fund other than those specifically herein set forth.

13.6 **PARTICIPANT CONTRIBUTIONS.** Each Participant, regardless of his length of Service with the Employer, shall be fully vested (100%) at all times in any portion of his Participant's Account attributable to (a) and/or (b) below, as applicable:

(a) Voluntary Contributions; or

(b) Tax-free rollovers.

13.7 MERGERS OR TRANSFERS. In the case of any merger with or transfer of assets or liabilities to any other defined contribution plan after September 2, 1974, the following conditions must be met:

- (a) The sum of the Account balances in each plan shall equal the fair market value (determined as of the date of the merger or transfer) of the entire plan assets.
- (b) The assets of each plan shall be combined to form the assets of the plan as merged (or transferred).
- (c) Immediately after the merger (or transfer), each Participant in the plan merged (or transferred) shall have an Account balance equal to the sum of the Account balances the Participant had in the plans immediately prior to the merger (or transfer).

ARTICLE XIV  
THE INSURANCE COMPANY

- 14.1 DUTIES AND RESPONSIBILITIES. The Insurance Company shall issue the Annuity Contract and thereby assumes all the duties and responsibilities set forth therein. The terms of the Annuity Contract may be changed as provided therein without amending this Plan, provided such changes shall conform to the requirements for qualification under Section 401(a) of the Internal Revenue Code, as amended from time to time.
- 14.2 RELATION TO EMPLOYER, ADMINISTRATOR AND PARTICIPANT. The Insurance Company may receive the statement of the Administrator or, if the Administrator so designates, the Employer, as conclusive evidence of any of the matters decided in the Plan and the Insurance Company shall be fully protected in taking or permitting any action on the basis thereof and shall incur no liability or responsibility for so doing. The Insurance Company shall not be required to question any action by the Employer or the Administrator or any Participant nor to determine that such action is properly taken under the Plan. The Insurance Company shall be fully discharged from any and all liability with respect to any payment to any Participant hereunder in accordance with the terms of the Annuity Contract. The Insurance Company shall not be required to take any action contrary to its normal rules and practices.

ARTICLE XV  
AMENDMENT OR TERMINATION OF THE PLAN

- 15.1 AMENDMENT OF PLAN. The Employer shall have the right from time to time to modify or amend, in whole or in part any or all provisions of the Plan, provided that the modification or amendment is signed by the Employer and the Administrator. Upon any such modification or amendment, the Administrator shall be furnished a copy thereof. No amendment shall deprive any Participant or Beneficiary of any Vested Interest hereunder.

The period during which the election must be made in writing by the Participant shall begin no later than the date the Plan amendment is adopted and end no later that after the latest of the following dates

- (a) The date which is 60 days after the day the amendment is adopted;
- (b) The date which is 60 days after the day the amendment becomes effective;
- (c) The date which is 60 days after the day the Participant is issued written notice of the amendment by the Employer or Administrator.

Such written election by a Participant shall be made to the Administrator, who shall then give written notice to the Insurance Company.

The City shall give notice to Participants prior to making any material changes to this Plan, except those required by statutes, and shall be available to receive and consider comments of Participants as to proposed changes. When the City Staff, City Council or a committee of the City Council has formulated the substance of a proposed material change, notice of the substance of the proposed change will be given to Participants at least sixty (60) days before City Council votes on the proposal. This notice will contain a "plain language" explanation of the substance of the proposed changes. Employees will have access to the Staff during such sixty (60) day period. If requested in writing by at least five (5) Participants, a meeting shall be held between the Staff and interested Participants at which time the Staff will explain the proposal and answer any questions. These questions and areas of concern must be submitted in writing by interested Participants at least five (5) days prior to the scheduled meeting. At least seven (7) days notice shall be given of the time and place of such meeting.

- 15.2 CONDITIONS OF AMENDMENT. The Employer shall not make any amendment which would cause the Plan to lose its status as a qualified plan within the meaning of Section 401(a) of the Internal Revenue Code.
- 15.3 TERMINATION OF THE PLAN. The Employer intends to continue the Plan indefinitely for the benefit of its Employees, but reserves the right to terminate the Plan at any time by resolution. Upon such termination, the liability of the Employer to make the Employer Contributions hereunder shall terminate.
- 15.4 FULL VESTING. Upon the termination or partial termination of the Plan, the rights of all affected Participants in and to the amounts credited to each such Participant's Account shall be 100% vested and nonforfeitable. Thereupon, each Participant shall receive a total distribution of his Participant's Account (including any amounts in the Forfeiture Account allocated in accordance with Section 15.5) in accordance with the terms and conditions of Article VI and the Annuity Contract.
- 15.5 APPLICATION OF FORFEITURES. Upon the termination of the Plan, any amount in the Forfeiture account which has not been applied as of such termination to reduce the Employer Contribution shall be credited on a pro rata basis to the Participant's Account of the then Active Participants in the same manner as the last Employer Contribution made under the Plan.

- 15.6 **SUBSEQUENT UNFAVORABLE DETERMINATION.** If the Employer is notified subsequent to initial favorable qualification that the Plan is no longer qualified within the meaning of Section 401(a) of the Internal Revenue Code, and if the Employer shall fail within a reasonable time to make any necessary changes in order that the Plan shall so qualify, the Participants' Accounts under the Annuity Contract shall be fully vested and nonforfeitable and shall be disposed of in the manner set forth in Sections 15.4 and 15.5 above; with respect to a Plan which is no longer qualified, all assets thereunder shall be segregated apart from all other assets held under the Annuity Contract for any other Employer.

ARTICLE XVI  
SUBSTITUTION OF PLANS

- 16.1 SUBSTITUTION OF PLANS. Subject to the provisions of Section 13.7 the Employer may substitute an individually designed plan or a master or prototype plan for this Plan without terminating this Plan as embodied herein and this shall be deemed to constitute an amendment and restatement in its entirety of this Plan as heretofore adopted by the Employer; provided, however that the Employer shall have certified to the Insurance Company that this Plan is being continued on a restated basis which meets the requirements of Section 401(a) of the Internal Revenue Code and ERISA.
- 16.2 TRANSFER OF ASSETS. Upon 90 days written notification from the Employer (unless the Insurance Company shall accept a shorter period of notification) that a different plan meeting the requirements set forth in Section 16.1 above has been executed and entered into by the Administrator and the Employer, and after the Insurance Company has been furnished the Employer's certification in writing that the Employer intends to continue the Plan as a qualified plan under Section 401(a) of the Internal Revenue Code, the Insurance Company shall transfer the value of all Participants' Accounts under the Annuity Contract in accordance with the terms of the Annuity Contract, to the Employer or such person or persons as may be entitled to receive same. The Insurance Company may rely fully on the representations or directions of the Employer with respect to any such transfer made in accordance with such representations, instructions, or directions.

ARTICLE XVII  
MISCELLANEOUS

- 17.1 **NON-REVERSION.** This Plan has been established by the Employer for the exclusive benefit of the Participants and their Beneficiaries. Except as otherwise provided in Section 17.7, under no circumstances shall any funds contributed hereunder at any time revert to or be used by the Employer, nor shall any such funds or assets of any kind be used other than for the benefit of the Participants or their Beneficiaries.
- 17.2 **GENDER AND NUMBER.** When necessary to the meaning hereof, and except when otherwise indicated by the context, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall be deemed to include the plural.
- 17.3 **REFERENCE TO THE CODE.** Any reference to any section of the Internal Revenue Code herein or to any other statute or law shall be deemed to include any successor law of similar import.
- 17.4 **GOVERNING LAW.** The Plan shall be governed and construed in accordance with the laws of the state where the Employer has its principal office.
- 17.5 **COMPLIANCE WITH THE CODE AND ERISA.** This Plan is intended to comply with all requirements for qualification under the Internal Revenue Code, and if any provision hereof is subject to more than one interpretation or any term used herein is subject to more than one construction, such ambiguity shall be resolved in favor of that interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.
- 17.6 **NON-ALIENATION.** It is a condition of the Plan, and all rights of each Participant shall be subject thereto, that no right or interest of any Participant in the Plan shall be assignable or transferable in whole or in part, either directly or by operation of law or otherwise, including, but without limitation, execution, levy, garnishment, attachment, pledge, bankruptcy or in any manner, and no right or interest of any Participant in the Plan shall be liable for or subject to any obligation or liability of such Participant.
- 17.7 **CONTRIBUTION RECAPTURE.** Notwithstanding any other provisions of this Plan, (1) in the case of a contribution which is made by an Employer by a mistake of fact, Section 17.1 shall not prohibit the return of such contribution to the Employer within one year after the payment of the contribution, and (2) if a contribution is conditioned upon the deductibility of the contribution under Section 404 of the Internal Revenue Code of ~~1954~~ 1986, then, to the extent the deduction is disallowed, Section 17.1 shall not prohibit the return to the Employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction. The amount which may be returned to the Employer is the excess of (1) the amount contributed over (2) the amount that would have been contributed had there not occurred a mistake of fact or a mistake in determining the deduction. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had the mistaken amount not been contributed, then the amount to be returned to the Employer would have to be limited so as to avoid such reduction.

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -  
original document : E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR DEPUTY SHERIFFS  
AND EMERGENCY RESCUE - 1995 CIGNA DOCUMENT.DOC  
and revised document: E:\CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR DEPUTY SHERIFF'S  
AND ERTS 2-20-02 DRAFT.DOC

CompareRite found 103 change(s) in the text

Deletions appear as Overstrike text

Additions appear as Double Underline text

**CITY OF ALEXANDRIA RETIREMENT INCOME PLAN FOR  
DEPUTY SHERIFFS AND EMERGENCY RESCUE TECHNICIANS**

**IMPORTANT NOTE**

~~Neither Connecticut General Life Insurance Company nor any of its employees can provide you with legal advice in connection with the execution of this document. Prior to execution of this document, you should consult your attorney on whether this document is appropriate for you. Amended and Restated Effective as of December 31, 2001~~

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PREAMBLE

The City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians, originally effective as of July 1, 1990, is hereby amended and restated in its entirety.

The terms of the Plan, as amended and restated, shall apply only with respect to Plan Years commencing after December 31, 2001; provided, however, that any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before the effective date of this amended and restated Plan in order to retain the qualification of the Plan under Code Section 401(a) shall, nevertheless, be effective as of its required effective date under the Code.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated, shall apply only with respect to employees of the Employer on and after December 31, 2001, and the rights, benefits and interests of any employee who died, retired or otherwise terminated his employment with the Employer prior to December 31, 2001, shall be determined under the provisions of the Plan as in effect on the date such former employee died, retired or otherwise terminated his employment with the Employer.

The Plan, as amended and restated hereby, is intended to qualify as a profit sharing plan under Code Section 401(a) and is a governmental plan as described in Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

ARTICLE I  
DEFINITIONS

- 1.1 ACCRUED BENEFIT. The term Accrued Benefit means the value on any applicable date of the Participant's Account.
- 1.2 ACTIVE PARTICIPANT. The term Active Participant means any Participant who (a) performs duties as an Employee for the Employer, and (b) is not an Inactive Participant.
- 1.3 ANNUITY. The term Annuity means a series of payments made over a specified period of time which, for a fixed annuity are, of equal, specified amounts, and for a variable annuity increase or decrease to reflect changes in investment performance of the underlying portfolio.
- 1.4 ANNUITY CONTRACT. The term Annuity Contract means the Group Annuity Contract issued by the Insurance Company to the Employer to fund the benefits provided under this Plan; as such contract may hereafter be amended from time to time in accordance with the terms hereof.
- 1.5 ANNUITY STARTING DATE. The term Annuity Starting Date means the first day of the first period for which an amount is payable as an Annuity. In the case of a benefit not payable in the form of an Annuity, the term Annuity Starting Date means the first day on which all events have occurred which entitle the Participant to such benefit.
- 1.6 BENEFICIARY. Each Participant shall have the right to designate anyone as their Beneficiary. The Participant may change the Beneficiary and/or the form of death benefit at any time.

If any distribution hereunder is made to a Beneficiary in the form of an Annuity, and if such Annuity provides for a death benefit, then such Beneficiary shall also have the right to designate a Beneficiary and to change that Beneficiary from time to time. As an alternative to receiving the benefit in the form of an Annuity, the Beneficiary may elect to receive a single cash payment or any other form of payment provided for in the Plan.

If a Beneficiary has not been designated, or if no designated Beneficiary survives the Participant, the Participant's entire Vested Interest shall be distributed to the Participant's Spouse, if living; otherwise in equal shares to any surviving children of the Participant. In the event none of the above named individuals survives the Participant, the Participant's entire Vested Interest shall be paid to the executor or administrator of the Participant's estate.

- 1.7 BOARD OF DIRECTORS. The term Board of Directors means the Employer's board of directors or other comparable governing body.
- 1.8 CODE. The term Code means the Internal Revenue Code of 1986, as amended from time to time.
- 1.9 COMPENSATION.
- (A) The term Compensation means the regular or base salary or wages paid by the Employer to the Participant for the period specified in the Plan and excluding overtime payments and bonuses.
- ~~(B) If for any Plan Year the definition of Compensation stated above fails to meet the nondiscrimination requirements set forth in Code section 414(s) and the regulations thereunder, then for such Plan Year the term Compensation shall mean Compensation as set forth in Section 5.1 (B), except that contributions made pursuant to Code section 457 shall be included in determining Compensation.~~
- (C) Compensation shall include only that Compensation which is actually paid to the Participant during the determination period. Except as provided elsewhere in the Plan, the determination

period shall be the Plan Year. However, for the Plan Year in which an Employee begins participation in the Plan and the Plan Year in which an Employee ends participation in the Plan, the determination period is the portion of the Plan Year during which the Employee is a Participant in the Plan.

~~(D)(C)~~ Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the employee under sections 125, ~~132(f)~~, 402(e)(3), 402(h), or 403(b) of the Code; Compensation deferred under an eligible deferred compensation plan within the meaning of section 457(b) of the Code; and employee contributions described in section 414(h)(2) of the Code that are picked up by the employing unit and, thus, are treated as employer contributions.

~~(E) For Employees first becoming Participants during Plan Years beginning on or after January 1, 1996, the annual Compensation of each such Employee taken into account under the Plan shall not exceed the OBRA '93 annual Compensation limit. The OBRA '93 annual Compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Code. The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For Plan Years beginning on or after January 1, 1996, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual Compensation limit set forth in this provision. If Compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual Compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996, the OBRA '93 annual Compensation limit is \$150,000. (D) Effective as of January 1, 1996, Compensation with respect to any Plan Year shall in no event exceed the dollar limit specified in Section 401(a)(17) of the Code (as adjusted from time to time by the Secretary of the Treasury).~~

- 1.10 CONTRIBUTION PERIOD. The term Contribution Period means that regular period specified by the Employer in Article IV for which contributions shall be made.
- 1.11 DISABILITY. The term Disability means a Participant's incapacity to engage in any substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death, or to be of long, continued and indefinite duration. Such determination of Disability shall be made by the Administrator with the advice of competent medical authority. All Participants in similar circumstances will be treated alike.
- 1.12 DISABILITY RETIREMENT DATE. The term Disability Retirement Date means the first day of the month after the Plan Administrator has determined that a Participant's incapacity is a Disability.
- 1.13 EARLY RETIREMENT DATE. The term Early Retirement Date means the first day of the month coinciding with or next following the date a Participant is separated from Service with the Employer on or after the date he attains age 55 and has five Years of Service for any reason other than death or Disability, provided that on such date the Participant has not attained his Normal Retirement Age.
- 1.14 EFFECTIVE DATE. The term Effective Date means July 1, 1990. The effective date of this restatement is December 31, 2001.
- 1.15 EMPLOYEE. The term Employee means an individual who performs services for the Employer and who is a common law employee of the Employer.

- 1.16 EMPLOYER. The term Employer means City of Alexandria and any successor organization to such Employer which elects to continue the Plan.
- 1.17 EMPLOYER CONTRIBUTION. The term Employer Contribution means any contribution made to the Plan by the Employer on behalf of a Participant.
- 1.18 ENTRY DATE. The term Entry Date means either the Effective Date or immediately thereafter when an Employee who has fulfilled the eligibility requirements commences participation in the Plan.

If an Employee is not in the active Service of the Employer as of his initial Entry Date, his subsequent Entry Date shall be the date he returns to the active Service of the Employer, provided he still meets the eligibility requirement. If an Employee does not enroll as a Participant as of his initial Entry Date, his subsequent Entry Date shall be the applicable Entry Date as specified above when the Employee actually enrolls as a Participant.

~~1.19 FAMILY MEMBER. The term Family Member means, with respect to any Employee, such Employee's Spouse and lineal ascendants and descendants and the spouses of such lineal ascendants and descendants.~~

1.20 FIDUCIARY. The term Fiduciary means any, or all, of the following, as applicable:

- (A) Any Person who exercises any discretionary authority or control respecting the management of the Plan or its assets; or
- (B) Any Person who renders investment advice for a fee or other compensation, direct or indirect, respecting any monies or other property of the Plan or has authority or responsibility to do so; or
- (C) Any Person who has discretionary authority or responsibility in the administration of the Plan; or
- (D) Any Person who has been designated by a Named Fiduciary pursuant to authority granted by the Plan, who acts to carry out a fiduciary responsibility.

~~1.21~~ 1.20 FORFEITURE. The term Forfeiture means the amount, if any, by which the value of a Participant's Account exceeds his Vested Interest following such Participant's Termination of Employment, and at the time specified in Section 8.1.

~~1.22 HIGHLY COMPENSATED EMPLOYEE. The term Highly Compensated Employee means any Highly Compensated Active Employee or Highly Compensated Former Employee as further defined herein.~~

~~For purposes of the determination of Highly Compensated Employees, the term Compensation means Compensation as defined in Article V of the Plan, but includes the amount of any elective contributions made by the Employer on the Employee's behalf to a cafeteria plan established in accordance with the provisions of Code section 125, a qualified cash or deferred arrangement in accordance with the provisions of Code section 402(e)(3), a simplified employee pension plan in accordance with the provisions of Code section 402(h), or a tax sheltered annuity plan maintained in accordance with the provisions of Code section 403(b).~~

~~A "Highly Compensated Active Employee" is any Employee who performs services for the Employer during the current Plan Year and who, during the current Plan Year or the 12 month period immediately preceding such Plan Year;~~

~~(A) Receives Compensation in excess of \$75,000 multiplied by the applicable cost of living adjustment factor prescribed under Code section 415(d) and then prorated in the case of a short Plan Year; or~~

~~(B) Receives Compensation in excess of \$50,000, as adjusted for cost of living in accordance with Code section 415(d) and then prorated in the case of a short Plan Year, and is in the top 20% of Employees ranked by Compensation; or~~

~~(C) Is, at any time, an officer of the Employer and receives Compensation in excess of 50% of the amount in effect under Code section 415(b)(1)(A) for the applicable period.~~

~~If no officer receives Compensation in excess of the amount specified above, the highest paid officer for the applicable period shall be a Highly Compensated Employee.~~

~~In no event if there are more than 500 Employees, shall more than 50 Employees or, if there are less than 500 Employees, shall the greater of three Employees or 10% of all Employees, be taken into account as officers.~~

~~In determining both the top 20% of Employees ranked by Compensation for purposes of paragraph (B) above, and officers of the Employer for purposes of paragraph (C) above, Employees who have not completed six months of Service by the end of the applicable period, Employees who normally work less than 17 1/2 hours per week, Employees who normally work less than six months during a year, Employees who have not attained 21, and nonresident aliens who receive no earned income from U.S. sources shall be excluded.~~

~~Notwithstanding the above provisions, an Employee who was not highly compensated during the 12 month period immediately preceding the current Plan Year will not be considered to be a Highly Compensated Employee in the current Plan Year unless such Employee is one of the top 100 Employees ranked by Compensation for the current Plan Year.~~

~~A "Highly Compensated Former Employee" is any former Employee who separated from Service with the Employer in a Plan Year preceding the current Plan Year and was a highly Compensated Active Employee in either:~~

~~(A) the Plan Year in which his separation from Service occurred; or~~

~~(B) any Plan Year ending on or after such former Employee's 55th birthday.~~

~~A former Employee is an Employee who performs no services for the Employer during a Plan Year (for example, by reason of a leave of absence).~~

~~1.23 1.21~~ **INACTIVE PARTICIPANT.** The term Inactive Participant means any Participant who does not currently meet the requirements to be an Active Participant due to a suspension of the performance of duties for the Employer.

In addition, a Participant who ceases to meet the eligibility requirements in accordance with Section 3.1 shall be considered an Inactive Participant.

~~1.24 1.22~~ **INSTALLMENT REFUND ANNUITY.** The term Installment Refund Annuity means an annuity which provides fixed monthly payments for a period certain of not less than three nor more than 15 years. If the Participant dies before the period certain expires, the annuity will be paid to the Participant's beneficiary for the remainder of the period certain. The period certain shall be chosen by the Participant at the time the annuity is purchased, and the Installment Refund Annuity will be the amount of benefit which can be purchased with the Participant's Vested Interest. The Installment Refund Annuity is not a life annuity and in no event shall the period certain extend to a period which equals or exceeds the life expectancy of the Participant.

~~1.25 1.23~~ **INSURANCE COMPANY.** The term Insurance Company means Connecticut General Life Insurance Company, a legal reserve life company of Hartford, Connecticut.

~~1.24~~ **INVESTMENT FUNDS.** The term Investment Funds means the investment accounts made available under the Annuity Contract and designated by the Administrator for the investment of Plan assets.

- ~~1.25~~ ~~1.26~~ LATE RETIREMENT DATE. The term Late Retirement Date means the first day of the month coinciding with or next following the date a Participant is separated from Service with the Employer after his Normal Retirement Age, for any reason other than death.
- ~~1.27~~ ~~1.26~~ NAMED FIDUCIARY. The term Named Fiduciary means the Plan Administrator and any other Fiduciary designated in writing by the Employer, and any successor thereto.
- ~~1.28~~ ~~1.27~~ NONELECTIVE CONTRIBUTIONS. The term Nonelective Contributions means contributions made by the Employer that the Participant may not elect to have paid in cash or other benefits instead of being contributed to the Plan.
- ~~1.29~~ ~~NONHIGHLY COMPENSATED EMPLOYEE.~~ ~~The term Nonhighly Compensated Employee means an Employee who is not a Highly Compensated Employee.~~
- ~~1.30~~ ~~1.28~~ NORMAL RETIREMENT AGE. The term Normal Retirement Age means the date the Participant attains age 60.
- ~~1.31~~ ~~1.29~~ NORMAL RETIREMENT DATE. The term Normal Retirement Date means the first day of the month coinciding with or next following the date a Participant attains his Normal Retirement Age.
- ~~1.32~~ ~~1.30~~ PARTICIPANT. The term Participant means any Employee of the Employer, who is or becomes eligible to participate under this Plan in accordance with its provisions and shall include an Active Participant and an Inactive Participant.
- ~~1.33~~ ~~1.31~~ PARTICIPANT'S ACCOUNT. The term Participant's Account means the sum of the following sub-accounts held on behalf of each Participant:
- Nonelective Contributions, if any, and earnings thereon.
- A Participant's Account shall be invested in accordance with ~~the~~ Sections 11.6, and any rules established thereunder by the Plan Administrator, which shall be applied in a consistent and nondiscriminatory manner.
- ~~1.34~~ ~~1.32~~ PERSON. The term Person means any natural person, partnership, corporation, trust or estate.
- ~~1.35~~ ~~1.33~~ PLAN. The term Plan means City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians, the terms of which are set forth herein as it may be amended from time to time. This Plan is intended to be a Profit Sharing Plan in which profits are not required in order for a contribution to be made.
- ~~1.36~~ ~~1.34~~ PLAN ADMINISTRATOR. The terms Plan Administrator and Administrator are used interchangeably throughout the Plan and shall mean the Employer.
- ~~1.37~~ ~~1.35~~ PLAN YEAR. The term Plan Year means the ~~12-Month~~ month period commencing on January 1 and ending on the following December 31.
- ~~1.38~~ ~~1.36~~ TERMINATION OF EMPLOYMENT. The term Termination of Employment means a severance of the Employer-Employee relationship which occurs prior to a Participant's Normal Retirement Age for any reason other than Early Retirement, Disability or death.
- ~~1.39~~ ~~1.37~~ VESTED INTEREST. The term Vested Interest on any date means the nonforfeitable right to an immediate or deferred benefit in the amount which is equal to the value on that date of that portion of the Participant's Account that is attributable to and derived from Employer Contributions multiplied by his Vesting Percentage determined on the date applicable.
- ~~1.40~~ ~~1.38~~ VESTING PERCENTAGE. The term Vesting Percentage means the percentage used to determine a Participant's Vested Interest in contributions made by the Employer, plus the earnings thereon,

credited to his Participant's Account that are not 100% immediately vested. The Vesting Percentage for each Participant shall be determined in accordance with the following schedule based on Years of Service with the Employer:

<u>Years of Service</u>	<u>Vesting Percentage</u>
Less than five	0%
five or more	100%

However, if an Active Participant dies prior to attaining his Normal Retirement Age, his Vesting Percentage shall be 100%.

ARTICLE II  
SERVICE

- 2.1 SERVICE. The term Service means active employment with the Employer as an Employee who is classified as a Deputy Sheriff or Emergency Rescue Technician.
- 2.2 ABSENCE FROM EMPLOYMENT. Absence from employment on account of a leave of absence authorized by the Employer pursuant to the Employer's established leave policy will be counted as employment with the Employer provided that such leave of absence is of not more than two years duration. Absence from employment on account of active duty with the Armed Forces of the United States will be counted as employment with the Employer. If Subject to Section 2.10. if the Employee does not return to active employment with the Employer, his Service will be deemed to have ceased on the date the Administrator receives notice that such Employee will not return to the active Service of the Employer. The Employer's leave policy shall be applied in a uniform and nondiscriminatory manner to all Participants under similar circumstances.
- 2.3 PERIOD OF SERVICE. The term Period of Service or Service means the Employer-Employee relationship which begins on the Employee's employment date and continues until his Severance from Service Date.

An Employee's Period of Service shall include any Period of Severance beginning on his Severance from Service Date, which is less than 12 months.

If an Employee accrued Service as a Firefighter or Police Officer and subsequently left that job classification to become a Deputy Sheriff or Emergency Rescue Technician, any Service accrued under the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" shall be considered Service under the Plan for the Employee's Vesting Percentage.

- 2.4 PERIOD OF SEVERANCE. The term Period of Severance means a period of time commencing on the Participant's Severance from Service Date and ending on the date such individual is re-employed by the Employer.
- 2.5 SEVERANCE FROM SERVICE DATE. The Severance from Service Date shall be the earliest of (A) or (B) below.
- (A) The date the Employee terminates employment by reason of a quit, discharge, permanent Disability, retirement or death.
  - (B) The first anniversary of the first day the Employee separates from Service for any other reason such as an authorized leave of absence, sickness, vacation, etc., after which the Employee does not return to work.
- 2.6 ONE-YEAR BREAK-IN-SERVICE. The term One-Year Break-in-Service shall mean a 12-consecutive-month Period of Severance, beginning on the Employee's Severance from Service Date.

In the case of an individual who is absent from Service for maternity or paternity reasons, the 12-consecutive-month period beginning on the first anniversary of the first date of such absence shall not constitute a One Year Break-in-Service. An absence from Service for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

- 2.7 YEAR(S) OF SERVICE. The term Year(s) of Service means a Period of Service equaling 12 months. Service counted in computing Years of Service need not be consecutive or continuous, and all fractional Periods of Service shall be aggregated.

- 2.8 SERVICE UPON RE-EMPLOYMENT. An Employee shall be considered a re-employed Employee when he is rehired prior to incurring a One-Year Break-in-Service. Upon re-employment, all Service, including Service prior to re-employment, shall be aggregated in determining such re-employed Employee's Vesting Percentage. An Employee who is rehired, after incurring a One-Year Break-in-Service shall be considered a newly hired Employee and any prior Service shall not count toward such re-employed Employee's Vesting Percentage.
- 2.9 PREDECESSOR ORGANIZATION SERVICE. For purposes of this Article, Service with a predecessor organization of the Employer shall be treated as Service with the Employer in any case in which the Employer maintains the Plan of such predecessor organization.
- 2.10 QUALIFIED MILITARY SERVICE. Notwithstanding any provision of this Plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

ARTICLE III  
ELIGIBILITY, ENROLLMENT AND PARTICIPATION

- 3.1 **ELIGIBILITY.** Each Employee, excluding a leased employee, shall be eligible to become a Participant as of the Entry Date when he first meets the following requirement(s):
- classified as a Deputy Sheriff or Emergency Rescue Technician employee for the City of Alexandria.
- 3.2 **ENROLLMENT AND PARTICIPATION.** Each eligible Employee shall become a Participant as of his Entry Date and shall complete and deliver to the Administrator as soon as administratively convenient thereafter, an enrollment form.
- 3.3 **RE-EMPLOYED EMPLOYEE.** In the case of an individual who ceases to be an Employee and is subsequently rehired as an Employee, the following provisions shall apply in determining his eligibility to again participate in the Plan:
- (A) If the Employee had met the eligibility requirement(s) specified in Section 3.1 prior to his separation from employment, he shall become an Active Participant in the Plan as of the date he is re-employed, after completing the applicable form(s), in accordance with Section 3.2.
  - (B) If the Employee had not met the eligibility requirement(s) specified in Section 3.1 prior to his separation from employment, he shall be eligible to participate in the Plan on the first Entry Date following his fulfillment of such eligibility requirement(s).
- 3.4 **ELIGIBLE CLASS.** In the event a Participant become ineligible to participate because he is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his return to an eligible class of Employees.

In the event an Employee who is not a member of the eligible class of Employees becomes a member of the eligible class, such Employee shall participate immediately.

ARTICLE IV  
CONTRIBUTIONS

- 4.1 **NONELECTIVE CONTRIBUTIONS.** The Employer may make a contribution under the Plan for any Contribution Period of an amount which shall be determined by resolution. Such resolution shall either specify a fixed amount or specify a definite formula by which a fixed amount can be determined.

Such Nonelective Contribution shall be allocated as of the last day of the Contribution Period for which such contribution is made to each Participant who:

- is an Active Participant as of any day of the Contribution Period.

Notwithstanding the above provision, an allocation will be made on behalf of a Participant who dies, retires, or becomes disabled during the Contribution Period.

For each Contribution Period the contribution shall be allocated to each Participant in the proportion that the Compensation paid to each Participant during the Contribution Period bears to the Compensation paid to all such Participants, subject to the limitations on Allocations specified in Article V.

The contribution as described above, for any Plan Year, shall be paid to the Insurance Company not less frequently than monthly.

- 4.2 **PAYMENT OF EXPENSES.** The Employer may contribute to the Plan the amount necessary, to pay any applicable expense charges and administration charges. In lieu of the Employer's contributing the amount necessary to pay such charges, these expenses may be paid from Plan assets.
- 4.3 **ALLOCATION OF FORFEITURES.** The contributions made by the Employer shall be reduced by any Forfeitures available as an Employer credit in accordance with Section 8.3.
- 4.4 **CREDITING OF CONTRIBUTIONS MADE BY THE EMPLOYER.** The Contributions made by the Employer shall be credited to the Participant Account of each Participant for whom such contributions are made, in accordance with the provisions of Article ~~XIII~~ XI.

ARTICLE V  
LIMITATIONS ON ALLOCATIONS

5.1 LIMITATIONS ON ALLOCATIONS. Definitions - The following definitions are atypical terms which refer only to terms used in the Limitations Limitation on Allocations Section sections of this Article V.

- (A) ~~(A) Annual Additions.~~ Addition - The term Annual Additions shall mean for any Limitation Year commencing on or after January 1, 1987, the sum of those amounts allocated to the Participant's Account under this Plan and under any other qualified defined contribution plan to which the Employer contributes for any Limitation Year, consisting of (1) Employer Contributions, (2) employee contributions and (3) forfeitures. In addition to the foregoing, Annual Additions shall also include (1) any amounts allocated to such Participant's ~~the sum of the following amounts allocated on behalf of a Participant for a Limitation Year:(1) all contributions made by the Employer which shall include:Nonelective Contributions, if any;(2) all Forfeitures, if any;(3) all Employee Contributions, if any.Also, for the purposes of this Article, Employee Contributions are determined without regard to deductible employee contributions within the meaning of section 72(o)(5) of the Code.Amounts allocated after March 31, 1984, to an individual medical account, as defined in Internal Revenue Section 415(l)(1) of the Code section 415(l)(1), which is part of a defined benefit plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan. Also, amounts derived from and (2) any contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of such Participant (if he is a key employee, as defined in Internal Revenue Code section 419A(d)(3), Section 419A(d)(3) of the Code) under a welfare benefit fund, as defined in Internal Revenue Section 419(e) of the Code section 419(e), maintained by the Employer, are treated as Annual Additions to a defined contribution plan.~~
- (B) ~~(B) Compensation.~~ The term Compensation means 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 maintaining the Plan to the extent that the amounts are Compensation - The term Compensation shall mean compensation, as defined in Code Section 415(c)(3) and regulations issued thereunder. Effective for Limitation Years beginning on or after January 1, 1998, the term Compensation shall include amounts deferred pursuant to a salary reduction agreement under any plan described in Section 402(h), 132(f) or 125 of the Code. For purposes of applying the Limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income (including, but not limited to, commissions paid salesmen, 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 1.62 2(c)), and foreign earned income (as defined in section 911(b) of the Code) whether or not excludable from gross income under section 911 of the Code. The term Compensation does not include: during such year.
- (C) ~~(l) Employer Contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;(2) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Code (whether or not the contributions are actually excludable from the gross income of the Employee).For Limitation Years beginning after December 31, 1995, Employer -~~ The term Employer shall mean the City of Alexandria and any other employer who is required to be treated as a single employer with the City under Section 414(b), (c), (m) or (o) of the Code. All such employers shall be considered a single employer for purposes of applying the limitations of this article for Participants who join the Plan after December 31, 1995, Compensation for a

~~Limitation Year is the Compensation actually paid or made available during such Limitation Year. Article.~~

- (D) ~~(C) Defined Contribution Dollar Limitation. The term Defined Contribution Dollar Limitation shall mean \$30,000 or, if greater, one fourth of the defined benefit dollar limitation set forth in Internal Revenue Code section 415(b)(1) as in effect for the Limitation Year. (D) Employer. The term Employer shall mean the Employer that adopts this Plan. (E) Excess Amount. The term Excess Amount shall mean the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. (F) Limitation Year. Limitation Year. The term Limitation Year shall mean the Plan calendar year. (G) Maximum Permissible Amount. The term Maximum Permissible Amount shall mean the lesser of (1) the Defined Contribution Dollar Limitation, or (2) 25% of the Participant's Compensation for the Limitation Year.~~

~~If a short Limitation Year is created because of an amendment changing the Limitation Year to a different period of 12 consecutive months, the Maximum Permissible Amount for the short Limitation Year will be the lesser of (1) the Defined Contribution Dollar Limitation multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year, and the denominator of which is 12, or (2) 25% of the Participant's Compensation for the short Limitation Year.~~

5.2 ~~LIMITATIONS ON ALLOCATIONS. If the Employer maintains one or more defined contribution plans in addition to this Plan:~~

~~(A) The amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year, shall not exceed the lesser of:~~

~~(1) The Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Account for the same Limitation Year under this Plan and such other defined contribution plan; or~~

~~(2) Any other limitation contained in this Plan.~~

~~Prior to the determination of the Participant's actual Compensation for the Limitation Year, the amounts referred to in Subsection (1) above may be determined on the basis of the Participant's estimated annual Compensation for such Limitation Year. Such estimated annual Compensation shall be determined for all Participants similarly situated.~~

~~Any contribution made by the Employer based on estimated annual Compensation shall be reduced by any Excess Amounts carried over from prior years, if applicable.~~

~~(B) As soon as is administratively feasible after the end of the Limitation Year, the amounts referred to in Section 5.2(A) shall be determined on the basis of the Participant's actual Compensation for such Limitation Year.~~

~~(C) If amounts are contributed to a Participant's Account under this Plan on an allocation date which does not coincide with the allocation date(s) for all such other plans, and if a Participant's Annual Additions under this Plan and all such other plans result in an Excess Amount, such Excess Amount shall be deemed to have derived from those contributions last allocated.~~

~~(D) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributable to this Plan will be the product of (1) and (2) below:~~

~~(1) The total Excess Amount allocated as of such date (including any amount which would have been allocated but for the limitations of Internal Revenue Code section 415).~~

~~(2) The ratio of (1) the amount allocated to the Participant as of such date under this Plan, divided by (2) the total amount allocated as of such date under all qualified defined contribution plans (determined without regard to the limitations of Internal Revenue Code section 415).~~

(E) Any Excess Amounts attributed to this Plan shall be disposed of as follows:

- (1) If an Excess Amount exists, the Excess Amount in the Participant's Account shall be held unallocated in a suspense account for the Limitation Year and allocated and reallocated in the next Limitation Year to all Participants in the Plan. The excess amount must be used to reduce Employer Contributions for the next Limitation Year (and succeeding Limitation Years, as necessary) for all of the Participants in the Plan. For purposes of this subparagraph, the Excess Amount may not be distributed to Participants or former Participants.
- (2) If a suspense account is in existence at any time during a Limitation Year pursuant to this section, it will not participate in the allocation of investment gains or losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer Contributions which would constitute Annual Additions may be made to the Plan for that Limitation Year.

5.3 LIMITATIONS ON ALLOCATIONS. If the Employer maintains or has ever maintained a defined benefit plan in addition to this Plan:

- (A) If an individual is a Participant at any time in both this Plan and a defined benefit plan maintained by the Employer, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any year may not exceed 1.0. In the event that the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction exceeds 1.0, the Defined Contribution Plan Fraction will be reduced until the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction does not exceed 1.0.

If an individual was a Participant in this Plan or in any other defined contribution plan maintained by the Employer which was in existence on July 1, 1982, the numerator of the Defined Contribution Plan Fraction will be adjusted if the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the Fractions over 1.0 times (2) the denominator of the Defined Contribution Plan Fraction, will be permanently subtracted from the numerator of the Defined Contribution Plan Fraction. The adjustment is calculated using the Fractions as they would be computed as of the later of the end of the last Limitation Year beginning before January 1, 1983, or June 30, 1983. This adjustment also will be made if at the end of the last Limitation Year beginning before January 1, 1984, the sum of the Fractions exceeds 1.0 because of accruals or additions that were made before the limitations of this Article became effective to any plans of the Employer in existence on July 1, 1982.

In addition, if an individual was a Participant in this Plan or in any other defined contribution plan maintained by the Employer which was in existence on May 6, 1986, the numerator of the Defined Contribution Plan Fraction will be adjusted if the Employer's defined benefit plan was also in existence on May 6, 1986, and the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the Fractions over 1.0 times (2) the denominator of the Defined Contribution Plan Fraction, will be permanently subtracted from the numerator of the Defined Contribution Plan Fraction. This adjustment is calculated using the Fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987. In the event that a Participant's accrued benefit as of December 31, 1986, under the defined benefit plan exceeds the benefit dollar limitation set forth in Internal Revenue Code section 415(b)(1), the amount of that accrued benefit shall be used in both the numerator and the denominator of the Defined Benefit Plan Fraction in making this adjustment.

For purposes of this Section 5.3, all defined benefit plans of the Employer, whether or not terminated, will be treated as one defined benefit plan and all defined contribution plans of the Employer, whether or not terminated, will be treated as one defined contribution plan.

- (B) The Defined Benefit Plan Fraction for any year is a fraction, the numerator of which is the Participant's Projected Annual Benefit under the defined benefit plan (determined as of the close of the Limitation Year), and the denominator of which is the lesser of (1) or (2) below:

- (1) 1.25 times the dollar limitation in effect under Internal Revenue Code section 415(b)(1)(A) on the last day of the Limitation Year; or
- (2) 1.4 times the amount which may be taken into account under Internal Revenue Code section 415(b)(1)(B) with respect to such Participant for the Limitation Year.

Notwithstanding the above, if the Participant was a participant in one or more defined benefit plans maintained by the Employer which were in existence on July 1, 1982, the denominator of the Defined Benefit Plan Fraction will not be less than 125% of the sum of the annual benefits under such plans which the Participant had accrued as of the later of the end of the last Limitation Year beginning before January 1, 1983 or June 30, 1983. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Internal Revenue Code section 415 as in effect at the end of the 1982 Limitation Year.

(C) A Participant's Projected Annual Benefit is equal to the annual benefit to which the Participant would be entitled under the terms of the defined benefit plan based upon the following assumptions:

- (1) The Participant will continue employment until reaching Normal Retirement Age as determined under the terms of the plan (or current age, if that is later);
- (2) The Participant's Compensation for the Limitation Year under consideration will remain the same until the day the Participant attains the age described in sub-division (1) of this subparagraph; and
- (3) All other relevant factors used to determine benefits under the plan for the Limitation Year under consideration will remain constant for all future Limitation Years.

(D) The Defined Contribution Plan Fraction for any Limitation Year is a fraction, the numerator of which is the sum of the Annual Additions to the Participant's Accounts in such Limitation Year and for all prior Limitation Years, and the denominator of which is the lesser of (1) or (2) below for such Limitation Year and for all prior Limitation Years of such Participant's employment (assuming for this purpose, that Internal Revenue Code section 415(c) had been in effect during such prior Limitation Years):

- (1) 1.25 times the dollar limitation in effect under Internal Revenue Code section 415(c)(1)(A) on the last day of the Limitation Year; or
- (2) 1.4 times the amount which may be taken into account under Internal Revenue Code section 415(c)(1)(B) with respect to such Participant for the Limitation Year.

For the purposes of determining these Limitations on Allocations, any non-deductible employee contributions made under a defined benefit plan will be considered to be a separate defined contribution plan and will be considered to be part of the Annual Additions for the appropriate Limitation Year.

Annual Additions for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all Employee Contributions as Annual Additions.

(E) Notwithstanding the foregoing, at the election of the Plan Administrator, in computing the Defined Contribution Plan Fraction with respect to any Plan Year ending after December 31, 1982, the denominator shall be an amount equal to the product of:

- (1) The denominator of the Defined Contribution Plan Fraction, computed in accordance with the rules in effect for the Plan Year ending in 1982; and
- (2) the transition fraction, which is a fraction
  - (a) the numerator of which is the lesser of:

(i) \$51,875, or

(ii) 1.4 times 25% of the Compensation of the Participant for the Plan Year ending in 1981, and

(b) the denominator of which is the lesser of:

(i) \$41,500, or

(ii) 25% of the Compensation of the Participant for the Plan Year ending in 1981. Notwithstanding anything contained herein to the contrary, the total Annual Additions credited to a Participant's Account under this Plan (and under all other defined contribution plans, defined benefit plans and welfare benefit funds to which the Employer contributes) for any Limitation Year commencing on or after January 1, 1995, shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Code Section 415(d)) or (ii) 25 percent of the Participant's Compensation. In the event that the limitations on Annual Additions described above are exceeded with respect to any Participant in any Limitation Year due to forfeiture allocations, a reasonable error in estimating a Participant's annual compensation, or such other circumstances as are permitted by law, then the contributions allocable to the Participant for such Limitation Year shall be reduced to the minimum extent required by such limitations in the following order of priority (unless otherwise determined by the Administrator according to applicable law):

(A) If such Participant is covered by the Plan as of the end of the Limitation Year in which such excess arose, all excess Annual Additions allocated to such Participant's Account shall, be used as soon as possible to reduce Employer Contributions allocable to such Participant in the next and succeeding Limitation Years.

(B) If the Participant is not covered by the Plan as of the end of the Limitation Year in which the excess arose (or any succeeding Limitation Year, if applicable), then such excess amounts shall be credited to an account designated as the limitations account and carried forward to the next and succeeding Limitation Years and shall be used as soon as possible to reduce Employer Contributions for all remaining Participants in the Plan. No investment gains or losses or other income shall be allocated to this limitations account. In the next succeeding Limitation Year, all amounts in the limitations account must be allocated before any Employer Contributions may be made to the Plan for any such Limitation Year.

(C) The Administrator shall determine to what extent the Annual Additions to any Participant's Account must be reduced in each Limitation Year. In the event the Employer maintains any other plan to which Annual Additions may be credited, and a Participant participates in both plans during any Limitation Year, then the Administrator shall reduce the Annual Additions to such other plan before reducing Annual Additions to this Plan.

(D) In the event this Plan is terminated, any amounts credited to the limitations account described above which have not been reallocated as set forth herein shall, upon the Employer's request, be returned to the Employer.

To the extent a Participant's benefit is subject to provisions of Section 415 of the Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

ARTICLE VI  
DISTRIBUTION OF BENEFITS

6.1 DISTRIBUTIONS IN GENERAL. Each Participant may elect a distribution in the form of an Annuity, a single sum cash payment, or a combination of the above.

6.2 COMMENCEMENT OF DISTRIBUTIONS. Distributions to a participant will commence no later than the date determined in accordance with the provisions of this Section. Distribution to The Accrued Benefit of a Participant must shall be distributed (or shall commence being distributed) no later than the first day of April following the later of the calendar year in which the Employee retires, or the calendar year in which the Employee attains age 70½ ("Required Beginning Date").

~~If distribution to any Participant is made in other than a single sum payment, the second payment shall be distributed no later than the December 31 following the April 1 by which the first payment was required to be distributed. Each succeeding payment shall be distributed no later than each December 31 thereafter.~~

6.3 DISTRIBUTION REQUIREMENTS.

(A) ~~Except as otherwise provided in Article VIII, the~~ The requirements of this Section shall apply to any distribution of a Participant's Accrued Benefit.

(B) As of the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date ("Distribution Calendar Year"), distributions ~~All distributions required under this Article shall be determined and made in accordance with the Income Tax Regulations under section 401(a)(9), including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the regulations.~~

(C) ~~Limits on Settlement Options. Distributions, if not made in a lump sum, may only be made over one of the following periods (or a combination thereof):~~

~~(1) the life of the Participant,~~

~~(2) the life payment, may be made only (1) over a term certain not to exceed the life expectancy of the Participant or the joint life expectancies of the Participant and a designated Beneficiary, or (2) over the life of the Participant or the joint lives (3) a period certain not extending beyond the life expectancy of the Participant, or~~

~~(4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary. Notwithstanding the foregoing, distribution shall in no event extend beyond the maximum permissible period described in Treasury Regulation Section 1.401(a)(9)-2.~~ (D) ~~Minimum Amounts to be Distributed.~~

~~If the Participant's entire Vested Interest is to be distributed in other than a lump sum, then the amount to be distributed each year (C) The minimum amount which must be distributed during each calendar year, commencing with the Distribution Calendar Year, must be at least an amount equal to the lesser of (1) the Participant's total distributable interest, or (2) the quotient obtained by dividing the Participant's entire Vested Interest by the life expectancy of the Participant or the joint and last survivor expectancy of the Participant and designated Beneficiary. Life expectancy and joint and last survivor expectancy are computed total distributable interest at the beginning of each such calendar year (valued for this purpose as of the Valuation Date immediately preceding the first day of such calendar year, adjusted for contributions allocated and distributions made subsequent to such Valuation Date but prior to the first day of such calendar year) by the lesser of (A) the applicable life expectancy (as described below), or (B) if the Participant's Beneficiary is not his spouse, by the applicable divisor, as described in Treasury Regulation Section 1.401(a)(9)-2.~~

(D) For purposes of calculating the applicable life expectancy, the following rules shall apply:

- (1) Life expectancies shall be calculated pursuant to Treasury Regulation Section 1.401(a)(9)-1, by the use of the return multiples contained in section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Treasury Regulation Section 1.72-9, or in such other manner as may otherwise be prescribed or permitted by law.
- (2) For the Distribution Calendar Year, the Participant's life expectancy may be recalculated no more frequently than annually; however, shall be determined based upon his attained age on his birthday during such Distribution Calendar Year. For the Distribution Calendar Year, the designated Beneficiary's life expectancy shall be determined based upon his attained age on his birthday during such Distribution Calendar Year.
- (3) Except as provided in subsection (4) below, for each calendar year subsequent to the Distribution Calendar Year, the Participant's life expectancy and his designated Beneficiary's life expectancy, as determined with respect to the Distribution Calendar Year, shall be reduced by one for each calendar year which has begun since the Required Beginning Year.
- (4) Notwithstanding the rules contained in subsection (3) above, the Participant may elect, prior to his Benefit Starting Date, to have his life expectancy, or the joint life expectancies of the Participant and his spouse (if his spouse is his Beneficiary), recalculated on an annual basis, based upon his (and, if applicable, his spouse's) attained age on his birthday (and, if applicable, his spouse's birthday) during the calendar year for which such recalculation is applicable. In no event, however, may the life expectancy of a Beneficiary other than the Participant's Spouse may not be recalculated. non-spouse Beneficiary be recalculated.

~~(1) If the Participant's Spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within (E) Notwithstanding that distributions under the Plan may have commenced to the Participant before the Distribution Calendar Year, the Participant shall receive no credit under this Section 6.3 for such earlier distributions; rather, the total remaining distributable interest of the Participant, calculated as provided above at the beginning of the Distribution Calendar Year, shall be subject to the minimum distribution requirements contained in this Section 6.3.~~

(E) Notwithstanding the rules contained in this Section 6.3, if distribution hereunder is made under an annuity contract purchased from an insurance company, which contract provides for annual (or more frequent) nonincreasing (except as otherwise permitted under applicable Treasury Regulations) payments commencing no later than the April 1<sup>st</sup> following the Distribution Calendar Year and payable over a period permitted by Section 6.3(B), then the life expectancy of the Participant (and his Beneficiary, if applicable) shall be determined based upon the age of the Participant (and his Beneficiary, if applicable) as of the birthday occurring during

~~(2) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first distribution calendar year, shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the applicable life expectancy or (2) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A 4 of section 1.401(a)(9)-2 of the Income Tax Regulations. Distributions after the death of the Participant shall be distributed using the applicable life expectancy in subsection (d)(1) above as the relevant divisor without regard to regulations section 1.401(a)(9)-2.~~

~~(3) The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's required beginning date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the~~

Employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar year, benefits commence, even if such calendar year is prior to the Participant's Distribution Calendar Year, and such calendar year shall be treated as the Distribution Calendar Year. In all events, distribution under any such annuity contract shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations).

(G) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.5(G) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

6.4 NON-TRANSFERABLE. The Participant's right to any Annuity payments, benefits, and refunds is not transferable and shall be free from the claims of all creditors to the fullest extent permitted by law.

6.5 DEATH DISTRIBUTION COMMENCEMENT DATE. Upon the death of the Participant, the following distribution provisions shall take effect: PROVISIONS. Notwithstanding anything contained herein to the contrary, the payment of death benefits shall comply with the requirements of Section 401(a)(9) of the Code (and accompanying Treasury Regulations), and thus, the following rules shall apply to the extent required thereunder:

(A) If the Participant dies after distribution of his entire Vested Interest has commenced, the remaining portion of such Vested Interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

In no event shall distribution of the Participant's remaining Vested Interest be made in a lump sum after the Participant's death unless such distribution is consented to, in writing, by the Participant's Surviving Spouse, if any.

(B) If the Participant dies before distribution of his Vested Interest commences, the Participant's entire Vested Interest will be distributed no later than five years after (A) In the event of a Participant's death prior to the April 1<sup>st</sup> following his Distribution Calendar Year (unless his benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.3(F), in which case the provisions of this Section 6.5(A) shall not apply, but rather, the provisions of Section 6.5(B) shall apply), then death benefits, if any, attributable to such Participant shall be completely distributed to his Beneficiary no later than the last day of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below, subject to the exceptions contained in Sections 6.5(A)(1) and (2) below:

(1) (1) If any portion of the Participant's Vested Interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated Beneficiary (or over a period not extending beyond If the Participant or Beneficiary has elected that death benefits be paid in installments over a term certain or over the life of the Beneficiary, then such distributions shall be made, as elected, over a term certain not to exceed the life expectancy of such Beneficiary), commencing no later than one year after the Beneficiary or over the life of the Beneficiary, commencing in either case no later than the last day of the calendar year containing the first anniversary of the Participant's death. Such method of distribution must comply with Section 6.5, except that the applicable life expectancy shall be that of the Beneficiary. (2)

(2) If the designated Beneficiary is the Participant's ~~Surviving Spouse~~, the date distributions are required to begin in accordance with spouse, then the rules contained in Section 6.5(A)(1) above shall be modified as follows:

(a) The date distributions would otherwise be required to commence in accordance with Section 6.5(A)(1) above shall not be earlier than the date on later of (i) the last day of the calendar year containing the first anniversary of the Participant's death, or (ii) the last day of the calendar year in which the Participant would have attained age 70-1/2. However, the Surviving Spouse may elect, at any time following the Participant's death, to defer the date on which distributions will begin until no later than the date on which the Participant would have attained age 70-1/2 and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant-1/2.

(C) ~~For purposes of (B) above, payments will be calculated by use of the return multiples specified in section 1.72-9 of the Income Tax Regulations. Life expectancy of a Surviving Spouse may be recalculated annually; however, in the case of any other designated beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.~~ (b) In the event of the spouse's death after the Participant but prior to the spouse's required benefit commencement date, as described in Section 6.7(a)(2)(A), (unless such spouse's benefits have irrevocably commenced under an annuity contract meeting the requirements of Section 6.3(F), but payable over a period permitted by Section 6.5(A), in which case the provisions of this Section 6.5(A)(2)(b) shall not apply, but rather, the provisions of Section 6.5(B) shall apply as if the spouse were the Participant), then subsequent distributions, if any, shall be subject to the 5-year or 1-year rule described above, whichever is applicable, but such rule shall be applied as if the spouse were the Participant; provided, however, that the rules contained in Section 6.5(A)(2)(a) shall not be available to the surviving spouse of the Participant's surviving spouse.

(D) ~~For purposes of this Section (Death Distribution Commencement Date) any amount paid to a child of the Participant will be treated as if it had been paid to the Surviving Spouse if the amount becomes payable to the Surviving Spouse when the child reaches the age of majority.~~ (B) In the event of a Participant's death (1) subsequent to the April 1<sup>st</sup> following his Distribution Calendar Year and subsequent to his actual commencement of benefits under a payment option other than an annuity contract described in Section 6.3(F), or (2) subsequent to the irrevocable commencement of benefits under an annuity contract meeting the requirements of Section 6.3(F), then any death benefits payable to the Participant's Beneficiary shall be distributed at least as rapidly as under the method of distribution being utilized as of the date of the Participant's death.

(C) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Treasury Regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This Section 6.5(C) shall continue in effect until the end of the last calendar year beginning before the effective date of final Treasury Regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

6.6 ALTERNATE PAYEE SPECIAL DISTRIBUTION. Distributions pursuant to Section 15.7 may be made without regard to the age or employment status of the Participant.

ARTICLE VI-A  
DIRECT ROLLOVERS

6A.1 Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, effective as of January 1, 1992, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except as otherwise provided by the Employer's administrative procedures as permitted by regulations. In addition, a Distributee's election of a Direct Rollover shall be subject to the following requirements:

- (A) If the Distributee elects to have only a portion of an Eligible Rollover Distribution paid to an Eligible Retirement Plan in a Direct Rollover, that portion must be equal to at least \$500.
- (B) If the entire amount of a Distributee's Eligible Rollover Distribution is \$500 or less, the distribution may not be divided. Instead, the amount must either be paid to the Distributee or to an Eligible Retirement Plan in a Direct Rollover.
- (C) A Distributee may not elect a Direct Rollover if the Distributee's Eligible Rollover Distributions during a year are reasonably expected by the Plan Administrator to total less than \$200 (or any lower minimum amount specified by the Plan Administrator).
- (D) A Distributee's election to make or not make a Direct Rollover with respect to one payment in a series of periodic payments shall apply to all subsequent payments in the series, except that a Distributee shall be permitted at any time to change, with respect to subsequent payments in the series of periodic payments, a previous election to make or not make a Direct Rollover. A change of election shall be accomplished by the Distributee notifying the Plan Administrator of the change. Such notice must be in the form and manner prescribed by the Plan Administrator.

6A.2 Definitions.

- (A) **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (B) **Distributee:** A Distributee includes 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 who is the alternate payee under a ~~qualified~~ domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse.
- (C) **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or an individual retirement annuity.
- (D) **Eligible Rollover Distribution:** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

**ARTICLE VII  
RETIREMENT BENEFITS**

- 7.1 **NORMAL RETIREMENT.** A Participant who attains his Normal Retirement Age shall have a Vesting Percentage of 100%. If a Participant retires from the active Service of the Employer on his Normal Retirement Date, he shall be entitled to receive a distribution of the entire value of his Participant's Account as of his Normal Retirement Date.
- 7.2 **DISABILITY RETIREMENT.** A Participant who retires from the Service of the Employer on account of Disability shall have a Vesting Percentage of 100% and shall be entitled to receive a distribution of the entire value of his Participant's Account as of his Disability Retirement Date.

ARTICLE VIII  
TERMINATION OF EMPLOYMENT

- 8.1 **DISTRIBUTION.** As of a Participant's Termination of Employment, he shall be entitled to receive a distribution of his entire Vested Interest. Such distribution shall be further subject to the terms and conditions of Article VI.

If at the time of his Termination of Employment the Participant's Vesting Percentage is not 100% and the Participant does not take a distribution from the portion of his Vested Interest subject to the Vesting Percentage, the non-vested portion of his Participant's Account will become a Forfeiture upon the date such terminated Participant incurs a One-Year Break-in-Service.

If at the time of his Termination of Employment the Participant's Vesting Percentage is not 100% and such Participant does take a distribution from the portion of his Vested Interest subject to the Vesting Percentage, or if the Participant's Vesting Percentage is 0%, the non-vested portion of his Participant's Account will become a Forfeiture upon the date such terminated Participant incurs a One-Year Break-In-Service.

If the Participant, whose non-vested portion of his Participant's Account became a Forfeiture in accordance with the terms of the preceding paragraph, is later rehired by the Employer and re-enrolls in the Plan before incurring a One-Year Break-in-Service, then the amount of the Forfeiture shall remain forfeited, but the Participant's prior Service shall be restored.

- 8.2 **NO FURTHER RIGHTS OR INTEREST.** A Participant shall have no further interest in or any rights to any portion of his Participant's Account that becomes a Forfeiture due to his Termination of Employment once the Participant incurs a One-Year Break in-Service in accordance with Article II.
- 8.3 **~~APPLICATION~~ APPLICATION OF FORFEITURES.** Any Forfeiture arising in accordance with the provisions of Section 8.1 shall be used by the Employer to reduce and in lieu of the contributions made by the Employer next due under Article IV, or to pay Plan expenses, at the earliest opportunity after such Forfeiture becomes available.

ARTICLE IX  
FIDUCIARY DUTIES AND RESPONSIBILITIES

- 9.1 **GENERAL FIDUCIARY STANDARD OF CONDUCT.** Each Fiduciary of the Plan shall discharge his duties hereunder solely in the interest of the Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Each Fiduciary shall act with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character and with like aims, in accordance with the documents and instruments governing this Plan, insofar as such documents and instruments are consistent with this standard.
- 9.2 **SERVICE IN MULTIPLE CAPACITIES.** Any Person or group of persons may serve in more than one Fiduciary capacity with respect to this Plan.
- 9.3 **LIMITATIONS ON FIDUCIARY LIABILITY.** Nothing in this Plan shall be construed to prevent any Fiduciary from receiving any benefit to which he may be entitled as a Participant or Beneficiary in this Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of this Plan as applied to all other Participants and Beneficiaries. Nor shall this Plan be interpreted to prevent any Fiduciary from receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of his duties with the Plan; except that no Person so serving who already receives full-time pay from an Employer shall receive compensation from this Plan, except for reimbursement of expenses properly and actually incurred.
- 9.4 **INVESTMENT MANAGER.** When an Investment Manager has been appointed he is required to acknowledge in writing that he has undertaken a Fiduciary responsibility with respect to the Plan.

ARTICLE X  
THE ADMINISTRATOR

10.1 DESIGNATION AND ACCEPTANCE. The Employer shall designate a person or persons to serve as Administrator under the Plan and such person, by joining in the execution of this Plan accepts such appointment and agrees to act in accordance with the terms of the Plan.

10.2 DUTIES AND AUTHORITY. The Administrator shall administer the Plan in a nondiscriminatory manner for the exclusive benefit of Participants and their Beneficiaries.

The Administrator shall perform all such duties as are necessary to operate, administer, and manage the Plan in accordance with the terms thereof, including but not limited to the following:

- (A) To determine all questions relating to a Participant's coverage under the Plan;
- (B) To maintain all necessary records for the administration of the Plan;
- (C) To compute and authorize the payment of retirement income and other benefit payments to eligible Participants and Beneficiaries;
- (D) To interpret and construe the provisions of the Plan and to make regulations which are not inconsistent with the terms thereof; and
- (E) To advise or assist Participants regarding any rights, benefits, or elections available under the Plan.

The Administrator shall take all such actions as are necessary to operate, administer, and manage the Plan as a retirement program which is at all times in full compliance with any law or regulation affecting this Plan.

The Administrator may allocate certain specified duties of plan administration to an individual or group of individuals who, with respect to such duties, shall have all reasonable powers necessary or appropriate to accomplish them.

10.3 EXPENSES AND COMPENSATION. All expenses of administration may be paid out of Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Plan. However, the Employer may reimburse the Plan for any administration expense incurred. Any administration expense paid to the Plan as a reimbursement shall not be considered an Employer Contribution. Nothing shall prevent the Administrator from receiving reasonable compensation for services rendered in administering this Plan, unless the Administrator already receives full-time pay from any Employer adopting the Plan.

10.4 INFORMATION FROM EMPLOYER. To enable the Administrator to perform his functions, the Employer shall supply full and timely information to the Administrator on all matters relating to this Plan as the Administrator may require.

10.5 ADMINISTRATIVE COMMITTEE; MULTIPLE SIGNATURES. In the event that more than one person has been duly nominated to serve on the Administrative Committee and has signified in writing the acceptance of such designation, the signature(s) of one or more persons may be accepted by an interested party as conclusive evidence that the Administrative Committee has duly authorized the action therein set forth and as representing the will of and binding upon the whole Administrative Committee. No person receiving such documents or written instructions and acting in good faith and in reliance thereon shall be

obliged to ascertain the validity of such action under the terms of this Plan. The Administrative Committee shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting or in writing without a meeting.

- 10.6 **RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.** The Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than 30 days after the delivery thereof, unless such notice shall be waived.

The Administrator may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than 30 days after delivery thereof, unless such notice shall be waived.

The Employer, upon receipt of or giving notice of the resignation or removal of the Administrator, shall promptly designate a successor Administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the Board of Directors of the Employer will function as the Administrative Committee until a new Administrator has been appointed and has accepted such appointment.

- 10.7 **INVESTMENT MANAGER.** The Administrator may appoint, in writing, an Investment Manager or Managers to whom is delegated the authority to manage, acquire, invest, or dispose of all or any part of the Plan assets. With regard to the assets entrusted to his care, the Investment Manager shall provide written instructions and directions to the Employer, who shall in turn be entitled to rely upon such written direction. This appointment and delegation shall be evidenced by a signed written agreement.

- 10.8 **DELEGATION OF DUTIES.** The Administrator shall have the power, to the extent permitted by law, to delegate the performance of such Fiduciary and non-Fiduciary duties, responsibilities, and functions as the Administrator shall deem advisable for the proper management and administration of the Plan in the best interests of the Participants and their Beneficiaries.

ARTICLE XI  
PARTICIPANTS' RIGHTS

- 11.1 GENERAL RIGHTS OF PARTICIPANTS AND BENEFICIARIES. The Plan is established and the Plan assets are held for the exclusive purpose of providing benefits for such Employees and their Beneficiaries as have qualified to participate under the terms of the Plan.
- 11.2 FILING A CLAIM FOR BENEFITS. A Participant or Beneficiary or the Employer acting in his behalf, shall notify the Administrator of a claim of benefits under the Plan. Such request shall be in writing to the Administrator and shall set forth the basis of such claim and shall authorize the Administrator to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.
- 11.3 REMEDIES AVAILABLE TO PARTICIPANTS. A Participant or Beneficiary shall be entitled, either in his own name or in conjunction with any other interested parties, to bring such actions in law or equity or to undertake such administrative actions or to seek such relief as may be necessary or appropriate to compel the disclosure of any required information, to enforce or protect his rights, to recover present benefits due to him or to clarify his rights to future benefits under the Plan.
- 11.4 LIMITATION OF RIGHTS. Participation hereunder shall not grant any Participant the right to be retained in the Service of the Employer or any other rights or interest in the Plan other than those specifically herein set forth.
- 11.5 PARTICIPANT'S ACCOUNT AND VALUATION. A Participant's Account shall be maintained on behalf of each Participant until such account is distributed in accordance with the terms of this Plan. At least once per year, as of the last day of the Plan Year, each Participant's Account shall be adjusted for any earnings, gains, losses, contributions, and expenses, attributable to such Plan Year, in order to obtain a new valuation of the Participant's Account.
- 11.6 ~~INVESTMENT OF CONTRIBUTIONS. Each Participant shall have the exclusive authority to direct the investment of Nonselective once they have completed 5 Years of Service and have become 100% vested.~~
- ~~The Participant shall elect, by written notice to the Plan Administrator or through use of the automated AnswerLine phone service, to have a specified percentage invested in one or more investment fund(s), as long as the designated percentage for each fund is a whole number, and the sum of the percentages allocated is equal to 100%.~~
- ~~Twice during the Plan Year, on April 1 and October 1, the Participant may change the amount of the contributions pursuant to the above paragraph to be invested in a particular investment fund, subject to the rules of the investment funds in which the Participant's Account is invested or is to be invested. However, effective August 1, 1994, on any day of the Plan Year, the Participant may change the amount of the contributions pursuant to the above paragraph to be invested in a particular investment fund, subject to the rules of the investment fund in which the Participant's Account is invested or is to be invested.~~
- 11.7 ~~TRANSFERS BETWEEN INVESTMENT FUNDS. A Participant may designate the amount of the contributions pursuant to Section 11.6 above to be transferred between the investment funds designated by the Employer twice during the Plan Year, on April 1 and October 1. However, effective August 1, 1994, a Participant may designate the amount of the contributions pursuant to Section 11.6 above to be transferred between the investment funds designated by the Employer on any day during the Plan Year.~~
- ~~Notwithstanding the above, the transfer of amounts between investment funds shall be subject to the rules of the investment funds in which the Participant's Account is invested or is to be invested. PARTICIPANT DIRECTED INVESTMENT OF ACCOUNTS. This Section 11.6 shall apply except to the extent provided in Section 11.7.~~

- (A) Subject to the provisions of Section 5.4, and subject to such limitations as may from time to time be required by law, imposed by the Administrator or contained elsewhere in the Plan, and subject to such operating rules and procedures as may be imposed from time to time by the Administrator (or the Insurance Company), each Participant (including for this purpose former Participants with a deferred vested benefit, Beneficiaries and/or an alternate payee under a domestic relations order in which a Participant's Account has been validly divided into separate accounts for the Participant and alternate payee) shall direct the investment of his Participant's Account in accordance with the following:
- (B) The Administrator shall designate the investment options offered by the Insurance Company from among which each Participant may direct the investment of his Participant's Account. The Administrator may, in its absolute discretion change, modify or limit such Investment Funds and may establish uniform rules and procedures to be followed with respect to the investment of Participants' Accounts in such Investment Funds.
- (C) The Administrator shall determine the manner, period, and frequency of investment elections (e.g., daily, weekly, or monthly). Different terms and conditions may be specified for different Investment Funds (e.g., monthly elections for one Investment Fund and daily elections for another Investment Fund). Any term or condition imposed by the Administrator may apply to an entire Participant's Account or may be applied separately to different subaccounts, different Investment Funds or to different types of contributions (e.g., future contributions versus the current balance of a Participant's Account). Except as the Administrator shall otherwise determine, any initial or subsequent investment designation shall be in writing, on a form supplied by and filed with the Administrator (or the Insurance Company), and shall be effective on such date as may be specified by the Administrator (or the Insurance Company). The Administrator may provide for telephone or other electronic investment designations to the extent that such facilities are made available by the funding agency, and may establish (and thereafter change) a limit on the number of designations that may be made by any Participant during a specified period.
- (D) All contributions and other amounts added to a Participant's Account (except for investment earnings) shall be allocated among the separate Investment Funds in accordance with the then effective investment designation. Except as the Administrator shall otherwise determine, any distributions shall be taken proportionately from each separate Investment Fund in which the Participant's Account is invested at the time of the distribution. As of the effective date of any new investment designation, the entire balance of the Participant's Account at that date shall be reallocated among the designated investment media according to the percentages specified in the investment designations (unless the Administrator permits, and the Participant has designated, different allocations as between existing balances and future contributions), but no reallocations of the Participant's Account are to be made merely to adjust for disproportionate investment growth among such funds (other than in response to a subsequent investment designation filed with respect to the Participant's Account).
- (E) In the event the Administrator (or the Insurance Company) receives an initial or revised investment designation which it deems to be incomplete, unclear, not in accordance with procedures established pursuant to this Section or otherwise improper, the Participant's investment designation then in effect shall remain in effect (or, in the case of a deficiency in an initial designation, the Participant shall be deemed to have filed no designation) until a complete investment designation is filed in accordance with the rules and procedures established by the Administrator (or the Insurance Company).
- (F) Subject to the limitation contained in Section 11.7, it is intended that each Participant be required to direct the investment of his Participant's Account to the extent set forth in this Section. In the event that the Administrator (or the Insurance Company) possesses at any time instructions

as to the investment of less than all of a Participant's Account, the Participant shall be deemed to have designated that the non-directed portion of his Participant's Account be invested in an Insurance Company separate account that invests primarily in money market instruments (or if no such separate account is available, then in the Investment Fund which most closely resembles a money market or stable asset fund). To the extent that the Administrator finds it to be administratively appropriate to hold a portion of the assets of the Plan out of the operation of this Section, or to the extent that the operation of this Section is suspended or terminated with respect to any portion of the assets of the Plan as aforesaid, then the Administrator shall direct the Insurance Company with respect to the investment.

- (G) The Administrator may determine at any time to vary the rules provided above to accord with the requirements of any Investment Fund, for ease in administration, or for any other reason.

11.7 AUTOMATIC INVESTMENT IN MONEY MARKET FUND. Until April 30, 2002, in the case of a Participant with less than five Years of Service, the portion of the Participant's Account that is attributable to Employer Contributions and earnings thereon shall be invested in an Insurance Company separate account that invests primarily in money market instruments (or if no such separate account is available, then in the Investment Fund which most closely resembles a money market or stable asset fund). Effective as of May 1, 2002, a Participant with less than five Years of Service shall direct the investment of his entire Participant Account in accordance with, and subject to, the provisions of Section 11.6.

ARTICLE XII  
THE INSURANCE COMPANY

- 12.1 DUTIES AND RESPONSIBILITIES. The Insurance Company shall issue the Annuity Contract and thereby assume all the duties and responsibilities set forth therein. The terms of the Annuity Contract may be changed as provided therein without amending this Plan, provided such changes shall conform (1) to the requirements for qualification under section 401(a) of the Internal Revenue Code, as amended from time to time and (2) to ERISA, as amended from time to time.
- 12.2 RELATION TO EMPLOYER, ADMINISTRATOR AND PARTICIPANTS. The Insurance Company may receive the statement of the Administrator or, if the Administrator so designates, the Employer, as conclusive evidence of any of the matters decided in the Plan and the Insurance Company shall be fully protected in taking or permitting any action on the basis thereof and shall incur no liability or responsibility for so doing. The Insurance Company shall not be required to question any action by the Employer or the Administrator or any Participant nor to determine that such action is properly taken under the Plan. The Insurance Company shall be fully discharged from any and all liability with respect to any payment to any Participant hereunder in accordance with the terms of the Annuity Contract. The Insurance Company shall not be required to take any action contrary to its normal rules and practices.

ARTICLE XIII  
AMENDMENT OR TERMINATION OF THE PLAN

13.1 **AMENDMENT OF PLAN.** The Employer shall have the right from time to time to modify or amend, in whole or in part, any or all provisions of the Plan, provided that a resolution pursuant to such modification or amendment shall first be adopted and provided further that the modification or amendment is signed by the Employer and the Administrator. Upon any such modification or amendment the Administrator shall be furnished a copy thereof. No amendment shall deprive any Participant or Beneficiary of any Vested Interest hereunder.

No amendment to the Plan shall decrease a Participant's Account balance. Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's Vested Interest determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective.

13.2 **CONDITIONS OF AMENDMENT.** The Employer shall not make any amendment which would cause the Plan to lose its status as a qualified plan within the meaning of section 401(a) of the Code.

13.3 **TERMINATION OF THE PLAN.** The Employer intends to continue the Plan indefinitely for the benefit of its Employees, but reserves the right to terminate the Plan at any time by resolution of its Board of Directors or other governing body. Upon such termination, the liability of the Employer to make contributions hereunder shall terminate.

13.4 **FULL VESTING.** Upon the termination or partial termination of the Plan, or upon complete discontinuance of Employer contributions, the rights of all affected Participants in and to the amounts credited to each such Participant's Account shall be 100% vested and nonforfeitable.

13.5 **DISTRIBUTIONS UPON PLAN TERMINATION.** If this Plan is terminated and the Employer does not maintain or establish another defined contribution plan, each Participant shall receive a total distribution, in the form of a lump-sum distribution of his Participant's Account in accordance with the terms and conditions of Article VI.

However, if this Plan is terminated and the Employer does maintain or establish another defined contribution plan as discussed in the above paragraph, or if the Plan is only partially terminated, each Participant shall receive a total distribution of his Participant's Account, excluding any amounts attributable to contributions made by the Employer, in accordance with the terms and conditions of Article VI. In such a situation, any amounts in a Participant's Account attributable to contributions made by the Employer may be distributed only upon the occurrence of an event described in Article VI.

13.6 **APPLICATION OF FORFEITURES.** Upon the termination of the Plan, any Forfeitures which have not been applied as of such termination to reduce the contribution made by the Employer shall be credited on a pro rata basis to the Participant's Account of the then Active Participants in the same manner as the last contribution made by the Employer under the Plan.

13.7 **APPROVAL BY THE INTERNAL REVENUE SERVICE.** Notwithstanding any other provisions of this Plan, the Employer's adoption of this Plan is subject to the condition precedent that the Employer's Plan shall be approved and qualified by the Internal Revenue Service as meeting the requirements of section 401(a) of the Internal Revenue Code. In the event the Plan initially fails to qualify and the Internal Revenue Service issues a final ruling that the Employer's Plan fails to so qualify as of the Effective Date, all liability of the Employer to make further contributions hereunder shall cease. The Plan Administrator and any other Named Fiduciary shall be notified immediately by the Employer, in writing, of such failure to qualify. Upon such notification, the value of the Participants' Accounts shall be distributed in cash to the Employer, subject to the terms and conditions of Article VI.

That portion of such distribution which is attributable to Participant Contributions as specified in Section 11.5, if any, shall be paid to the Participant, and the balance of such distribution shall be paid to the Employer.

- 13.8 **SUBSEQUENT UNFAVORABLE DETERMINATION.** If the Employer is notified subsequent to initial favorable qualification that the Plan is no longer qualified within the meaning of section 401(a) of the Internal Revenue Code, and if the Employer shall fail within a reasonable time to make any necessary changes in order that the Plan shall so qualify, the Participants' Accounts shall be fully vested and nonforfeitable and shall be disposed of as if the Plan had terminated, in the manner set forth in this Article ~~XIV~~ XIII.

ARTICLE XIV  
SUBSTITUTION OF PLANS

- 14.1 **SUBSTITUTION OF PLANS.** The Employer may substitute an individually designed plan or a master or prototype plan for this Plan without terminating this Plan as embodied herein and this shall be deemed to constitute an amendment and restatement in its entirety of this Plan as heretofore adopted by the Employer; provided, however, that the Employer shall have certified to the Insurance Company that this Plan is being continued on a restated basis which meets the requirements of section 401(a) of the Internal Revenue Code.
- 14.2 **TRANSFER OF ASSETS.** Upon 90 days' written notification from the Employer (unless the Insurance Company shall accept a shorter period of notification) that a different plan meeting the requirements set forth in Section 14.1 above has been executed and entered into by the Administrator and the Employer, and after the Insurance Company has been furnished the Employer's certification in writing that the Employer intends to continue the Plan as a qualified Plan under section 401(a) of the Internal Revenue Code, the Insurance Company shall transfer the value of all Participant's Accounts to the Employer or such person or persons as may be entitled to receive the same. The Insurance Company may rely fully on the representations or directions of the Employer with respect to any such transfer and shall be fully protected and discharged with respect to any such transfer made in accordance with such representations, instructions, or directions.

ARTICLE XV  
MISCELLANEOUS

- 15.1 **NON-REVERSION.** This Plan has been established by the Employer for the exclusive benefit of the Participants and their Beneficiaries. Except as otherwise provided in Section 13.7 and 15.7, under no circumstances shall any funds contributed hereunder, at any time, revert to or be used by the Employer, nor shall any such funds or assets of any kind be used other than for the benefit of the Participants or their Beneficiaries.
- 15.2 **GENDER AND NUMBER.** When necessary to the meaning hereof, and except when otherwise indicated by the context, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall be deemed to include the plural.
- 15.3 **REFERENCE TO THE CODE.** Any reference to any section of the Internal Revenue Code or to any other statute or law shall be deemed to include any successor law of similar import.
- 15.4 **GOVERNING LAW.** The Plan shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.
- 15.5 **COMPLIANCE WITH THE CODE.** This Plan is intended to comply with all requirements for qualification under the Internal Revenue Code, and if any provision hereof is subject to more than one interpretation or any term used herein is subject to more than one construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.
- 15.6 **CONTRIBUTION RECAPTURE.** Notwithstanding any other provisions of this Plan, in the case of a contribution which is made by an Employer by a mistake of fact, Section 15.1 shall not prohibit the return of such contribution to the Employer within one year after the payment of the contribution. The amount which may be returned to the Employer is the excess of (1) the amount contributed over (2) the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had the mistaken amount not been contributed, then the amount to be returned to the Employer would have to be limited so as to avoid such reduction.
- 15.7 **DOMESTIC RELATIONS ORDERS.** Notwithstanding any other provisions of this Plan, the Participant's Account may be segregated and distributed pursuant to a domestic relations order which creates or recognizes the existence of an alternate payee's right to receive all or a portion of the benefits payable to a Participant under the Plan. The Plan Administrator shall establish procedures for processing a domestic relations order.

**CITY OF ALEXANDRIA  
SUPPLEMENTAL RETIREMENT PLAN  
January 1, 1999 Restatement**

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## PREAMBLE

The City of Alexandria Supplemental Retirement Plan, originally effective as of August 1, 1970, is hereby amended and restated in its entirety. The Plan, as amended and restated hereby, is intended to qualify as a defined benefit pension plan under Code Section 401(a) and is a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended. The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

Except as otherwise specifically provided in the Plan, this amended and restated Plan shall be effective as of January 1, 1999, and the rights of any person who did not have an Hour of Service under the Plan on or after January 1, 1999, shall generally be determined in accordance with the terms of the Plan as in effect on the date for which he was last credited with an Hour of Service.

Notwithstanding the foregoing, the following special effective dates shall apply:

- (a) The provision protecting veterans re-employment rights in Article XVI is effective December 12, 1994.
- (b) The limitations on retirement benefits in Article XI are effective for limitation years beginning on or after January 1, 1995.
- (c) The change in the definition of "leased employee" in the definition of "Employee" in Article I is effective for Plan Years beginning on or after January 1, 1997.
- (d) Part-time employees were eligible to participate effective July 1, 1999.
- (e) Provisions relating to direct rollovers as set forth in Section 10.5 were added effective January 1, 1992.

Any provision which is contained in this amended and restated Plan (as the same may be further amended from time to time) and which is required to be effective before January 1, 1999, in order to retain the qualification of the Plan under Section 401(a) of the Code shall, nevertheless, be effective as of its required effective date under the Code.

## ARTICLE I DEFINITIONS

### 1.1 Plan Definitions

As used herein, the following words and phrases, when they appear with initial letters capitalized as indicated below, have the meanings hereinafter set forth:

- (a) An "**Active Participant**" means a Participant who is accruing Credited Service under the Plan in accordance with the provisions of Article II.
- (b) A Participant's "**Accrued Benefit**" shall mean, as of any date prior to the Participant's Normal Retirement Date, a monthly benefit, commencing on the Participant's Normal Retirement Date and continuing for his life, calculated in the same manner as a normal retirement benefit and based upon the Credited Service earned by such Participant and the Participant's Average Earnings as of the date of determination. As of the Participant's Normal Retirement Date, the Participant's Accrued Benefit shall be the monthly retirement benefit described in Section 4.2.
- (c) A Participant's "**Accumulated Contributions**" as of any date means the sum of the following:
  - (1) the total of the Participant's Mandatory Employee Contributions, plus interest;
  - (2) the total of the Participant's Pick Up Contributions, plus interest; and
  - (3) the total of the Participant's Supplemental Employee Contributions, plus interest.

A Participant's Accumulated Contributions shall include any amount contributed by the City as a Pick-Up Contribution, notwithstanding that the amount of such Pick-Up Contribution was funded by the City and was not withheld from the Employee's compensation.

Interest on a Participant's Mandatory Employee Contributions and Pick Up Contributions shall be compounded annually from the end of the Plan Year for which the contribution was made to the first day of the month coinciding with or immediately preceding the date of determination as follows:

- (1) For contributions made prior to July 1, 1982, at two percent.
- (2) For contributions made on or after July 1, 1982, with respect to periods prior to July 1, 1990, at five percent.

- (3) For contributions made on or after July 1, 1982, with respect to periods after June 30, 1990, at 120 percent of the Federal mid-term rate as in effect under Code Section 1274 for the first month of the Plan Year.

Interest on a Participant's Supplemental Employee Contributions shall be compounded annually from the end of the Plan Year for which the contribution was made to the first day of the month coinciding with or immediately preceding the date of determination at two percent.

- (d) The "**Actuarial Equivalent**" of a value means the actuarial equivalent determined using the UP 1984 Group Mortality Table, with no set backs, and PBGC interest rates used at the beginning of each Plan Year, except that in determining the present value of a Participant's Accrued Benefit under the Plan for purposes of a single sum payment, the following factors shall be used: (i) the table prescribed by the Secretary of the Treasury, which shall be based on the prevailing commissioners' standard table, described in Code Section 807(d)(5)(A), used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code Section 807(d)(5)) and (ii) the annual rate of interest on 30-year Treasury securities for the second calendar month preceding the Plan Year in which the distribution is made.

Notwithstanding the foregoing, for a Participant whose Annuity Starting Date occurs during the period beginning on January 1, 2000, and ending one year after the later of (i) January 1, 2000 or (ii) the date this amendment and restatement is adopted, the present value of a Participant's Accrued Benefit the following factors shall be used: (i) the UP-1984 Group Mortality Table and (ii) the "PBGC interest rate" in effect for such Annuity Starting Date under the terms of the Plan immediately prior to January 1, 2000, if those factors provide a larger present value.

For purposes of this paragraph, the "PBGC interest rate" means the immediate or deferred rates utilized by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination as in effect at the beginning of the Plan Year in which the present value of the Participant's benefit is being determined. For Participants who have reached Normal Retirement Date at the time present value is being determined, the PBGC interest rate shall be the immediate rate. For Participants who have not yet reached Normal Retirement Date at the time present value is being determined, the PBGC rate shall be the deferred rate.

- (e) The "**Actuary**" means an independent actuary selected by the City, who is an enrolled actuary as defined in Code Section 7701(a)(35), or a firm or corporation of actuaries having such a person on its staff, which person, firm, or corporation is to serve as the actuarial consultant for the Plan.

- (f) The "**Administrator**" means the Director of Personnel of the City, as provided in Section 2-5-54(d) of the City of Alexandria Code of Ordinances.
- (g) An "**Affiliate**" means any agency, instrumentality or other entity which must be aggregated with the City for a relevant purpose under Code Section 414.
- (h) A Participant's, or Beneficiary's, if the Participant has died, "**Annuity Starting Date**" means the first day of the first period for which an amount is paid as an annuity or, in the case of a single sum payment, the first day on which all events have occurred which entitle the Participant, or his Beneficiary, if applicable, to such benefit.

If a Participant whose Annuity Starting Date has occurred is reemployed by the City resulting in a suspension of benefits in accordance with the provisions of Section 10.1, for purposes of determining the form of payment of such Participant's benefit upon his subsequent retirement, such prior Annuity Starting Date shall apply to benefits accrued both before and after the Participant's reemployment.

- (i) A Participant's "**Average Earnings**" means his highest average Earnings received for any three consecutive December 1sts (or such Consecutive December 1sts in which he was an Active Participant, if fewer than three) during his period of employment with the City divided by twelve.
- (j) A Participant's "**Beneficiary**" means the person designated by the Participant (or otherwise entitled under the terms of the Plan) to receive benefits after the death of a Participant in accordance with and subject to the terms of the Plan.
- (k) "**City**" means the City of Alexandria. Where required by the context of the Plan, the term City shall also include the Commonwealth of Virginia Department of Health, Division of Community Health Services with respect to employees who work for the Alexandria Health Department.
- (l) "**City Council**" means the Alexandria City Council.
- (m) The "**Code**" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a Code section shall include (i) such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section and (ii) all rulings, regulations, notices, announcements, and other pronouncements issued by the U.S. Treasury Department, the Internal Revenue Service, and any court of competent jurisdiction that relate to such section and that are applicable to governmental plans.
- (n) A Participant's "**Credited Service**" means his period of service for purposes of determining the amount of any benefit for which he is eligible under the Plan, as computed in accordance with the provisions of Article III.

- (o) The "**Earnings**" for a Full-Time Participant means his rate of annual basic compensation from the City for services as an Employee as of the latest December 1, excluding overtime, commissions, bonuses, and other additional compensation. If a Participant is not employed on such date, his Earnings is his fixed rate of compensation on his Entry Date, translated to an annual basis. Earnings for a Part-Time Employee means the annual rate of basic compensation (excluding overtime, commissions, bonuses, and other additional compensation) applicable to a Full-Time employee in the same position for services as an Employee as of the latest December 1.

Effective as of January 1, 1996, Compensation with respect to any Plan Year shall in no event exceed the dollar limit specified in Code Section 401(a)(17) (as adjusted from time to time by the Secretary of the Treasury).

- (p) An "**Employee**" means

- (1) Any individual who is treated by the City as a regular Full-Time or Part-Time employee of the City for payroll purposes other than (i) a police officer or firefighter covered by another pension plan to which the City makes contributions or (ii) any employee of the city school system (a "**City Employee**").
- (2) Any individual employed by the Commonwealth of Virginia Department of Health, Division of Community Health Services who works for the Alexandria Health Department on a full-time basis (a "**Health Department Employee**").

For this purpose, a "Full-Time Employee" is any City Employee who is classified and treated by the City as a full-time employee and a "Part-Time Employee" is any City Employee who is classified and treated by the City as a part-time employee and who is scheduled to work at least twenty (20) hours per week.

Seasonal employees and employees who are not classified and treated by the City or the Commonwealth of Virginia, Department of Health as regular employees are not considered "Employees" for purposes of the Plan and are not eligible to participate in the Plan.

For purposes of the Plan, any "leased employee," other than an excludable leased employee, shall be treated as an employee of the City; provided, however, that no "leased employee" shall become an Employee or shall accrue a benefit hereunder based on service as a "leased employee".

A "leased employee" means any person who performs services for the City (the "recipient") (other than an employee of the recipient) pursuant to an agreement between the recipient and

any other person (the "leasing organization") on a substantially full-time basis for a period of at least one (1) year, provided that such services are performed under the primary direction or control of the recipient. An "excludable leased employee" means any leased employee of the recipient who is covered by a money purchase pension plan maintained by the leasing organization which provides for (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of compensation, (ii) full and immediate vesting, and (iii) immediate participation by employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization or whose compensation from the leasing organization in each plan year during the four-year period ending with the plan year is less than \$1,000); provided, however, that leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force. For purposes of this Section, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient shall be treated as provided by the recipient.

Notwithstanding anything to the contrary, the term Employee shall not include any individual classified by the City as working or providing services in a capacity other than as an Employee (including, without limitation, a person classified as an independent contractor or any person performing services for the City under a contract between the City and a leasing or other third party organization), notwithstanding the later reclassification, by a court or any governmental agency, of the person as a common law employee of the City.

- (q) A Participant's "**Employee Derived Benefit**" as of any date means an amount equal to the Participant's Accumulated Contributions expressed in the normal form of benefit as a monthly benefit commencing at Normal Retirement Date. A Participant's Employee Derived Benefit shall be deemed to include Pick-Up Contributions funded by the City notwithstanding that such amount was not withheld from the Employee's compensation.
- (r) A Participant's "**Employer Derived Benefit**" as of any date means the excess, if any, of his Accrued Benefit as of such date over his Employee Derived Benefit as of such date.
- (s) An Employee's "**Employment Commencement Date**" means the date he first completes an Hour of Service or, in the case of an Employee who has incurred an Employment Severance Date, the first date following his Employment Severance Date on which he again completes an Hour of Service.
- (t) An Employee's "**Employment Severance Date**" means the date on which he retires, dies, or his active employment as an Employee is otherwise terminated. An Employee's Employment Severance Date is deemed to have occur on the last day on which he is actively at work for the City; provided, however, that his Employment Severance Date shall not occur due to absence from active work because of sickness, injury, leave of absence, or layoff, unless or until he retires, dies, or his employment is otherwise terminated. Notwithstanding the foregoing, an Employee's Employment Severance Date shall not occur if he is absent from

work with the City on account of service with the armed forces of the United States, he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, and he returns to work with the City within the period during which he retains such reemployment rights, but, if he does not return to work within such period, his Employment Severance Date shall be the date his absence commenced.

- (u) An "**Entry Date**" means the first day of each calendar month.
- (v) The "**Funding Agent**" means the person or persons which at the time shall be designated, qualified, and acting under the Funding Agreement and shall include (i) any trustee for a trust established pursuant to the Funding Agreement, (ii) any insurance company that issues an annuity or insurance contract pursuant to the Funding Agreement, or (iii) any person holding assets in a custodial account pursuant to the Funding Agreement. The City may designate a person or persons other than the Funding Agent to perform any responsibilities of the Funding Agent under the Plan, and the Funding Agent shall not be liable for the performance of such person in carrying out such responsibilities. The term Funding Agent shall include any delegate of the Funding Agent as may be provided in the Funding Agreement.
- (w) The "**Funding Agreement**" means the agreement entered into between the City and the Funding Agent relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto and shall include any agreement establishing a trust, a custodial account, an annuity contract, or an insurance contract (other than a life, health or accident, property, casualty, or liability insurance contract) for the investment of assets; provided, however, that any custodial account or contract established hereunder meets the requirements of Code Section 401(f).
- (x) An "**Hour of Service**" with respect to any Employee means each hour for which he is paid, or entitled to payment, for the performance of duties for the City as an Employee.
- (y) A Participant's "**Mandatory Employee Contributions**" mean
  - (1) with respect to Participants who are Health Department Employees, the after-tax contributions required to be made by a Participant to accrue a benefit hereunder.
  - (2) with respect to Participants who are City Employees, the after-tax contributions made by the Participant prior to July 1, 1982 to accrue a benefit under the Plan as in effect prior to such date.
- (z) A Participant's "**Normal Retirement Date**" means,
  - (1) with respect to Full-Time Employees, for purposes of benefit eligibility, the earlier of (i) date he attains age 65, or (ii) the date he attains age 55 with 30 years of Service,

and for all other purposes, the first day of the month coinciding with or immediately following such date.

- (2) with respect to Part-Time Employees, for purposes of benefit eligibility, the later of (i) the date he attains age 65, or (ii) the fifth anniversary of his "participation commencement date" and for all other purposes, the first day of the month coinciding with or immediately following such date.
- (aa) A Participant's "**Past Service Compensation**" means 1/12th of his fixed annual pay as of July 22, 1970, excluding bonuses, commissions, overtime and other special compensation.
- (bb) A "**Participant**" means any person who becomes eligible to participate in the Plan in accordance with the provisions of Article III and who retains an Accrued Benefit under the Plan.
- (cc) The "**Pension Fund**" means the fund or funds maintained under the Funding Agreement for purposes of accumulating contributions made by the City and Employees and paying benefits under the Plan.
- (dd) A Participant's "**Pick Up Contributions**" mean the contributions contributed by the City to the Plan on behalf of the Participant and which are treated as employer contributions pursuant to Code Section 414(h)(2).
- (ee) The "**Plan**" means this City of Alexandria Supplemental Retirement Plan, established effective August 1, 1970, as amended and restated by this instrument, with all amendments, modifications, and supplements hereafter made.
- (ff) A "**Plan Year**" means the 12-consecutive-month period ending each December 31.
- (gg) A Participant's "**Required Beginning Date**" means the April 1 following the calendar year in which occurs the later of the Participant's (i) attainment of age 70 1/2 or (ii) the date the Participant retires.
- (hh) A Participant's "**Service**" means his period of service for purposes of determining his eligibility for a benefit under the Plan, as computed in accordance with the provisions of Article II.
- (ii) A Participant's "**Supplemental Employee Contributions**" mean the after-tax contributions he made to the Plan in addition to his Mandatory Employee Contributions prior to February 1, 1972, pursuant to his election filed with the City prior to February 1, 1971.
- (jj) A Participant's "**Spouse**" means the person who is the Participant's lawful spouse.

## **1.2 Construction**

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular. The Plan is intended to comply with all applicable requirements for qualification of a governmental plan under Code Section 401(a) and if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the plan being so qualified.

**ARTICLE II**  
**SERVICE & CREDITED SERVICE**

**2.1 Service and Credited Service**

Each person who is an Employee shall be credited with Service and Credited Service for purposes of the Plan as follows:

- (a) Service shall be computed in completed full years treating each 365 days of Service as a completed full year of Service.
- (b) If he is a Full-Time Employee, he shall be credited with Service and Credited Service for the period beginning on his Employment Commencement Date and ending on his Employment Severance Date. Credited Service shall be computed in completed full years and fractions of years treating each full month for which he is credited with Credited Service as 1/12th year of Credited Service. If a Full-Time Employee is credited with Credited Service for a portion of a month that is equal to at least 15 days, his Credited Service shall be rounded up to the next highest 1/12th.
- (c) If he is a Part-Time Employee, he shall be credited with Service and Credited Service for the period beginning on the later to occur of (i) July 1, 1999 or (ii) his Employment Commencement Date and ending on his Employment Severance Date. Credited Service for a Part-Time Employee will be based on the Employee's regularly scheduled hours as of December 1 divided by 2,080. Monthly Credited Service for a Part-Time Employee shall be determined by further dividing the Employee's pro-rated Credited Service by 12; provided however, if a Part-Time Employee is credited with Credited Service for a portion of a month that is equal to at least 15 days, he shall be deemed to have worked for the entire month his Credited Service (so that the divisor for such month will be 1/12<sup>th</sup> notwithstanding that the Employee was not credited with Credited Service for the entire month). If an employee who is regularly scheduled to work less than 20 hours a week becomes regularly scheduled to work 20 or more hours a week after December 1 of a year and enters the Plan at that time, such Employee's Credited Service for his initial year of participation will be based on the number of hours the Employee is regularly scheduled to work on his Entry Date.
- (d) A Part-Time Employee who suspends his regular position to accept a temporary summer, seasonal position with the City at an increased rate of compensation or additional hours of work and who returns to his regular part-time position will receive credit for Service completed in such temporary summer, seasonal position. However, the Part-Time Employee shall not accrue Credited Service with respect to such temporary summer, seasonal position.
- (e) A Part-Time Employee who becomes a Full-Time Employee shall receive credit for Service as a Part-Time Employee from the later to occur of (i) July 1, 1999 or (ii) his Employment

Commencement Date through his Employment Severance Date without regard to the pro-ration requirement contained in Section 2.1 (c). However, Credited Service completed as a Part-Time Employee shall continue to be computed in accordance with the pro-ration rules contained in Section 2.1(c).

- (f) Notwithstanding the foregoing, no Service shall be credited to an Employee for periods in which he was required to, but did not, make Mandatory Employee Contributions to the Plan.

## **2.2 Transfers**

Notwithstanding the foregoing, the determination of a Participant's Service and Credited Service shall be subject to the following:

- (a) Any person who transfers or retransfers to employment with the City as an Employee directly from other employment with the City in a capacity other than as an Employee, shall be credited with Service and Credited Service beginning on his transfer date.
- (b) Any person who transfers from employment with the City as an Employee directly to other employment with the City in a capacity other than as an Employee, shall be deemed to have terminated employment with the City for purposes of determining his Service or Credited Service. However, such person shall not be deemed to have terminated his employment as an Employee for other purposes of the Plan until such time as he is no longer in the employment of the City, at which time he shall become entitled to benefits if he is otherwise eligible therefore under the provisions of the Plan.

## **2.3 Retirement or Termination and Reemployment**

If an Employee retires or otherwise terminates employment with the City, his eligibility for and the amount of any benefit to which he may be entitled under the Plan shall be determined based upon the Service and Credited Service with which he is credited at the time of such retirement or other termination of employment. If such retired or former Employee is reemployed by the City, the Service and Credited Service with which he was credited at the time of such prior retirement or other termination of employment shall be aggregated with the Service and Credited Service with which he is credited following his reemployment for purposes of determining his eligibility for and the amount of any benefit to which he may be entitled under the Plan upon his subsequent retirement or other termination of employment if he had a vested interest in his Employer Derived Benefit at the time of his previous retirement or other termination of employment.

Notwithstanding the foregoing, if the Participant received a single sum payment of the present value of his vested Accrued Benefit as provided in Section 8.2 or 10.4 or a distribution of his Accumulated Contributions as provided in Section 9.1, in connection with his prior retirement or termination of employment, his Service and Credited Service credited at the time of such prior retirement or

termination of employment shall be lost and shall not be aggregated with the Service and Credited Service credited to the Participant following his reemployment.

Notwithstanding any other provision of this Section, if a retired or former Employee returns to employment in a capacity other than as an Employee, his period of employment shall be treated for the purposes of the Plan solely in accordance with the transfer provisions of this Article II.

#### **2.4 Finality of Determinations**

All determinations with respect to the crediting of Service and Credited Service under the Plan shall be made on the basis of the records of the City, and all determinations so made shall be final and conclusive upon Employees, former Employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Article, there shall be no duplication of Service and Credited Service.

## **ARTICLE III ELIGIBILITY FOR PARTICIPATION**

### **3.1 Participation**

Each Employee who was an Active Participant immediately prior to January 1, 1999, shall continue as an Active Participant hereunder. Each other person shall become an Active Participant as of the Entry Date coinciding with or immediately following the date on which he becomes an Employee.

Notwithstanding the foregoing, no person who is a Health Department Employee shall become an Active Participant hereunder unless he makes Mandatory Employee Contributions to the Plan as provided in Section 3.3. A Health Department Employee who would otherwise have become an Active Participant hereunder as of an Entry Date but for his failure to make the required Mandatory Employee Contributions to the Plan shall become an Active Participant as of any subsequent Entry Date as of which he actually begins to make the required Mandatory Employee Contributions to the Plan.

### **3.2 Pick Up Contributions**

Each City Employee who was hired on or after July 1, 1982, or who was hired prior to July 1, 1982 and made a one-time election to continue as an Active Participant hereunder, shall automatically participate in the Plan. The City shall make a Pick Up Contribution on behalf of each City Employee equal to two percent of their Earnings for the Plan Year.

No further Pick Up Contributions shall be made to the Plan on a Participant's behalf on or after the earliest of (1) the Participant's Employment Severance Date, (2) the date the Participant ceases to be an Employee, or (3) the Participant's Annuity Starting Date.

### **3.3 Mandatory Employee Contributions**

A Health Department Employee shall make Mandatory Employee Contributions to the Plan equal to two percent of his Earnings for the Plan Year. A Health Department Employee must authorize the Commonwealth of Virginia to withhold the required Mandatory Employee Contributions to the Plan from his Earnings and to contribute such amounts to the Plan.

Notwithstanding the foregoing, a Health Department Employee shall no longer be required or eligible to make Mandatory Employee Contributions to the Plan beginning on the earliest of (1) the Participant's Employment Severance Date, (2) the date the Participant ceases to be an Employee, or (3) the Participant's Annuity Starting Date.

### **3.4 Suspension of Mandatory Employee Contributions**

A Participant's Mandatory Employee Contributions shall automatically be suspended for any period during which he is not eligible to accrue Credited Service under the Plan. Such Participant's Mandatory Employee Contributions shall automatically resume as of the date he is once more eligible to accrue Credited Service under the Plan.

A Participant whose Mandatory Employee Contributions are suspended pursuant to this Section shall not accrue a benefit hereunder for the period such suspension is in effect.

### **3.5 Termination of Participation**

A Participant shall remain an Active Participant as long as he continues in employment as an Employee and, if he is a Health Department Employee, he continues to make Mandatory Employee Contributions to the Plan. A person shall remain a Participant as long as he retains an Accrued Benefit under the Plan.

### **3.6 Participation Upon Reemployment**

If a former Employee who was a Participant hereunder is reemployed as an Employee, he shall again become an Active Participant hereunder as of (i) his reemployment date if he is a City Employee or, (ii) the date as of which he begins making the required Mandatory Employee Contributions to the Plan in accordance with the provisions of Section 3.3, if he is a Health Department Employee. If a former Employee who was not a Participant hereunder is reemployed as an Employee, he shall become an Active Participant hereunder on the next Entry Date if he is a City Employee or if he is a Health Department Employee, the date as of which he begins to make Mandatory Employee Contributions to the Plan in accordance with the provisions of Section 3.3.

### **3.7 Finality of Determinations**

All determinations with respect to the eligibility of an Employee to become a Participant under the Plan shall be made by the Administrator on the basis of the records of the City, and all determinations so made by the Administrator shall be final and conclusive for all Plan purposes. Each Employee who becomes a Participant shall be entitled to the benefits, and be bound by all the terms, provisions, and conditions of the Plan and the Funding Agreement.

**ARTICLE IV  
NORMAL RETIREMENT**

**4.1 Eligibility**

Each Participant who retires from employment with the City on or after his Normal Retirement Date shall be eligible for a normal retirement benefit. A Participant who continues in employment with the City after his Normal Retirement Date shall not be entitled to receive any benefits hereunder until his actual retirement date.

**4.2 Amount**

An eligible Participant's monthly normal retirement benefit shall be equal to the sum of his basic pension benefit determined under paragraph (a) below and, if applicable, his supplemental pension benefit determined under paragraph (b) below.

- (a) An eligible Participant's basic pension benefit is equal to the sum of (1) and (2) below:
- (1) For Credited Service earned prior to January 1, 1988, the sum of (i) and (ii), increased by the percentage in (iii) below:
- (i) 1.625 percent of the Participant's Past Service Compensation up to \$100.00, plus 0.250 percent of the Participant's Past Service Compensation in excess of \$100.00, multiplied by his number of years of Credited Service earned after July 31, 1960, but prior to August 1, 1970; plus
- (ii) 1.625 percent of the Participant's Average Earnings up to 100.00, plus 0.250 percent of the Participant's Average Earnings in excess of \$100.00, multiplied by his number of years of Credited Service earned after July 31, 1970, but prior to January 1, 1988;
- increased by
- (iii) 50 percent.
- plus
- (2) 0.80 percent of his Average Earnings multiplied by his years of Credited Service earned after December 31, 1987.
- (b) A supplemental pension benefit shall only be payable with respect to a Participant who made Supplemental Employee Contributions to the Plan. An eligible Participant's supplemental

pension benefit is equal to: (1) 1.625 percent of the Participant's Past Service Compensation up to \$100.00, plus 0.250 percent of the Participant's Past Service Compensation in excess of \$100.00, multiplied by (2) his number of years of Credited Service earned immediately prior to August 1, 1960.

In no event will a reduction in a Participant's Average Earnings reduce the normal retirement benefit payable to him below the amount that would have been payable to him under the same form of payment had he retired prior to his Normal Retirement Date when eligible for an early retirement benefit.

#### **4.3 Minimum Benefits**

Notwithstanding any other provision of the Plan to the contrary, in the case of a Participant who does not receive a return of his Accumulated Contributions, in no event will the monthly normal retirement benefit payable to a Participant be less than his Employee Derived Benefit.

#### **4.4 Adjustment to Normal Retirement Benefit for Employment After Normal Retirement Date**

The monthly retirement benefit payable with respect to each Participant who continues in employment with the City after Normal Retirement Date shall be determined as provided in paragraph (a), and if applicable paragraph (b) below:

- (a) the Participant's Accrued Benefit as of the date such benefit is being determined in accordance with paragraph (a) of Section 4.1; plus
- (b) if he is eligible for a supplemental pension benefit, the sum of item (1) plus item (2):
  - (1) 50 percent of his supplemental pension benefit determined under paragraph (b) of Section 4.2 as of his Normal Retirement Date multiplied by the late retirement factor shown in the Table attached to the Plan based on the number of years by which his Annuity Starting Date follows his Normal Retirement Date.
  - (2) The balance of his supplemental pension determined under paragraph (b) of Section 4.2 as of his Normal Retirement Date.

No further adjustments shall be made to a Participant's monthly normal retirement benefit after his Annuity Starting Date, and, if he continues to accrue benefits under the Plan, such continued accruals shall be reduced as provided in Section 10.7.

#### **4.5 Payment**

A monthly normal retirement benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of the month in which he retires or the first day of the month for which he applies for the benefit to commence, but not later than the date specified in Section 10.6.

**ARTICLE V  
EARLY RETIREMENT**

**5.1 Eligibility**

Each Participant who retires from employment with the City at or after age 55 with 5 or more years of Service, but prior to his Normal Retirement Date, shall be eligible for an early retirement benefit.

**5.2 Amount**

An eligible Participant's monthly early retirement benefit shall be equal to his Accrued Benefit on the date of his early retirement; provided, however, that if the Participant has fewer than 30 years of Service at retirement, the amount of such benefit shall be reduced by multiplying such amount by the appropriate early commencement factor determined as provided in the Table attached to the Plan.

**5.3 Payment**

A monthly early retirement benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of the month in which he retires or the month in which he makes written application for the benefit, but not later than his Normal Retirement Date.

**ARTICLE VI  
VESTED RIGHTS**

**6.1 Vesting**

A Participant's vested interest in his Employee Derived Benefit shall be at all times 100 percent.

A Participant's vested interest in his Employer Derived Benefit shall be determined in accordance with the following schedule, based upon the number of full years of Service credited to him; provided, however, that a Participant's vested interest in his Employer Derived Benefit shall be 100 percent if he is employed by the City on his Normal Retirement Date; or, if he is a Full-Time Employee, if he is employed by the City on the date he attains age 60.

Years of Service	Vested Interest
less than five	0%
five or more	100%

**6.2 Eligibility for Deferred Vested Retirement Benefit**

Each Participant who terminates employment with the City, who has a vested interest in his Employer Derived Benefit, and who is not eligible for any other retirement benefit under the Plan shall be eligible for a deferred vested retirement benefit.

**6.3 Amount of Deferred Vested Retirement Benefit**

An eligible Participant's deferred vested retirement benefit shall be equal to his Accrued Benefit determined as of the date of his termination of employment and payable commencing on his Normal Retirement Date.

**6.4 Payment**

A monthly deferred vested retirement benefit shall be paid to an eligible Participant commencing as of his Normal Retirement Date; provided, however, that a Participant may elect to begin benefit payments as of the first day of any month following the month in which he attains age 55; and further provided that if the Participant has fewer than 30 years of Service at retirement, the amount of such benefit shall be reduced by multiplying such amount by the appropriate early commencement factor determined as provided in the Table attached to the Plan.

## **ARTICLE VII DISABILITY BENEFIT**

### **7.1 Eligibility**

Each Participant who suffers permanent and total disability while actively employed by the City but prior to his Normal Retirement Date and who has at least five years of Service shall be eligible for a disability benefit. For purposes of this Article, "permanent and total disability" means any physical or mental condition that prevents the Participant from engaging in any substantial gainful activity, as determined by the Administrator, in its discretion, on the basis of medical evidence satisfactory to the Administrator, and who is entitled to disability benefits under Title II of the Social Security Act.

### **7.2 Amount**

An eligible Participant's monthly disability benefit shall be equal to his Accrued Benefit on the date his disability commenced.

### **7.3 Payment**

A monthly disability benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of:

- (a) the expiration of five months from the date on which his permanent and total disability commenced; or
- (b) the month in which he makes written application for the benefit.

A Participant's Annuity Starting Date will not be deemed to have occurred simply because payment of disability benefits have commenced to him hereunder.

Payment of a monthly disability benefit shall continue to a Participant until his Normal Retirement Date, or until otherwise terminated as hereinafter provided. Any Participant who continuously up to his Normal Retirement Date receives a disability benefit under the Plan shall be deemed for all Plan purposes to have retired upon the occurrence of his Normal Retirement Date and shall be eligible for a normal retirement benefit in an amount determined as provided in Section 4.2, but based on his years of Credited Service and the provisions of the Plan in effect on the date his disability commenced. Upon the occurrence of his Normal Retirement Date, a Participant receiving disability benefits may elect (subject to the rules prescribed by the Administrator) to receive payment of his normal retirement benefit in one of the optional forms of payment provided in Section 8.2

#### **7.4 Termination of Disability Benefit Prior to Normal Retirement Date**

Disability benefit payments shall terminate if, prior to the Participant's Normal Retirement Date, the Participant

- (a) ceases to be disabled;
- (b) dies; or
- (c) refuses to undergo a medical examination requested by the Administrator.

If a Participant's disability benefit ceases prior to his Normal Retirement Date, and if he does not return promptly to work with the City, his employment thereupon shall be deemed terminated for all Plan purposes, and he shall be eligible for an early retirement benefit in an amount determined in the same manner as specified in Section 5.2, or a deferred vested retirement benefit in an amount determined in the same manner as specified in Section 6.3, but based on his years of Credited Service and the provisions of the Plan in effect on the date his disability commenced and only if he meets the eligibility requirements for such benefit as in effect on the date his disability commenced. If such Participant's disability benefit ceases prior to his Normal Retirement Date, and if he returns promptly to work with the City, he shall continue as an Employee in accordance with and subject to the remaining provisions of the Plan.

#### **7.5 Medical Examination**

In determining whether or not a Participant is or continues to be permanently and totally disabled, the Administrator may require the Participant to submit to a medical examination by a physician acceptable to it. The Administrator may not require a Participant to submit to such an examination more than two times during a 12-month period. If the Participant refuses to submit to such a medical examination, he shall be deemed to have ceased to be disabled hereunder and shall no longer be entitled to disability benefits hereunder.

#### **7.6 Service Crediting While Receiving Disability Benefit**

A Participant who is receiving disability benefits hereunder shall not be credited with Service or Credited Service for periods for which he is paid disability benefits hereunder.

## ARTICLE VIII FORMS OF PAYMENT

### 8.1 Normal Form of Payment

A Participant who is eligible to receive any retirement benefit under Section 4.1, 5.1, or 6.2 of the Plan shall receive payment of such benefit in the form of a single life annuity with cash refund. Such Participant shall receive a monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. Upon the Participant's death, the excess of his Accumulated Contributions determined as of his Annuity Starting Date over the total payments made to the Participant shall be paid to the Participant's surviving Beneficiary in a single sum payment.

Subject to the rules prescribed by the Administrator, a Participant may elect to receive payment of his benefit in one of the optional forms of payment provided in Section 8.2.

### 8.2 Optional Forms of Payment

Within the election period prescribed by the Administrator, a Participant who is eligible to receive a normal, early, or deferred vested retirement benefit may elect to receive payment of such benefit in accordance with any one of the following options.

If the Participant's Beneficiary under an optional form of payment dies prior to the Participant's Annuity Starting Date, the election shall become inoperative and ineffective, and benefit payments, if any, shall be made under the normal form of payment provided in Section 8.1, unless the Participant elects another optional form of payment prior to his Annuity Starting Date. Once a Participant's Annuity Starting Date occurs, however, the form of payment elected by the Participant will not change even if the Participant's Beneficiary predeceases him.

The monthly payments made under any optional form of payment hereunder shall be the Actuarial Equivalent of the monthly benefit otherwise payable to the Participant in the normal single life annuity with cash refund form described in Section 8.1.

- (a) **Single Life Annuity (no cash refund).** The Participant shall receive an increased monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. No further benefits shall be payable following the Participant's death.
- (b) **100% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall

receive a monthly benefit for his or her remaining lifetime equal to the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.

- (c) **66 2/3% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall receive a monthly benefit for his or her remaining lifetime equal to 66 2/3rds percent of the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.
- (d) **50% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Spouse shall receive a monthly benefit for his or her remaining lifetime equal to one-half of the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.
- (e) **15-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the 15-year period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such 15-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the 15-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 8.3.
- (f) **Ten-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the ten-year period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such ten-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the ten-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 8.3.
- (g) **Five-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the five-year

period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such five-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the five-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 8.3.

- (h) **Single Sum Payment.** The Participant may elect to receive a single sum payment of the full present value of his vested Accrued Benefit in lieu of the form of benefit described in Section 8.1, which is the Actuarial Equivalent thereof. In the case of a Participant who does not receive a return of his Accumulated Contributions, in no event will the single sum payment payable to a Participant be less than his Employee Derived Benefit.

Notwithstanding any other provision of the Plan to the contrary, distribution under an optional form of payment shall be made in accordance with Code Section 401(a)(9) and regulations issued thereunder, including the minimum distribution incidental benefit requirement. If a Participant designates a person other than his Spouse as his Beneficiary under an optional form of payment, and if payments under the optional form elected would not meet the minimum distribution incidental benefit requirement, the payment period (and the monthly amount payable) shall be reduced to the extent necessary to satisfy such requirement.

### **8.3 Designation of Beneficiary and Beneficiary in Absence of Designated Beneficiary**

A Participant's Beneficiary may be any individual or, in the case of a Beneficiary to receive payments for the remainder of a period-certain under the form of payment elected by the Participant, any individuals, trust, or estate, selected by the Participant.

If payment is to be made to a Participant's surviving Beneficiary for the remainder of a period-certain under the form of payment elected by the Participant and no Beneficiary survives or the Participant has not designated a Beneficiary, the Participant's Beneficiary shall be the Participant's surviving Spouse or, if none, the Participant's surviving children in equal shares or, if none, the Participant's estate.

### **8.4 Notice Regarding Forms of Payment**

Subject to the rules prescribed by the Administrator, the Administrator shall provide a Participant with a written description of (i) the terms and conditions of the normal form of payment provided in Section 8.1, (ii) the optional forms of payment provided in Section 8.2, (iii) the Participant's right to elect an optional form of payment and the effect thereof. Subject to the provisions of Code Section 402(f), the Administrator shall provide such explanation within a reasonable period before a Participant's Annuity Starting Date.

### **8.5 Death Prior to Annuity Starting Date**

If a Participant dies prior to his Annuity Starting Date, the only death benefit payable under this Plan is the benefit payable under Section 9.2 and no Beneficiary or any person claiming under or through the Participant shall be entitled to any other benefit under the Plan.

### **8.6 Effect of Reemployment on Form of Payment**

If a Participant who has commenced benefit payments under the Plan is subsequently reemployed, then, following his resumption of participation in this Plan, the determination of his future benefit shall be actuarially reduced or offset, if and as necessary, to avoid duplication of any benefits paid with respect to his prior employment.

**ARTICLE IX  
RETURN OF ACCUMULATED CONTRIBUTIONS**

**9.1 Distribution of Accumulated Contributions**

Subject to the provisions of Section 10.4, a Participant who terminates employment for reasons other than death may elect to receive, in lieu of any other benefit provided under the Plan, a cash distribution of his Accumulated Contributions at any time prior to the date payment of his retirement benefit begins.

The payment of a Participant's Accumulated Contributions shall be in full satisfaction of any benefit to which the Participant may be entitled to receive under the terms of the Plan.

**9.2 Death Benefit**

Upon a Participant's death, his Beneficiary may be eligible for a death benefit as provided herein.

- (a) **Death Prior to Commencement of Benefit Payments.** If a Participant dies prior to his Annuity Starting Date and has not previously received distribution of his Accumulated Contributions as provided in Section 9.1, his Beneficiary shall receive a death benefit, payable in a single sum, that is equal to the Participant's Accumulated Contributions determined as of the Participant's date of death.
- (b) **Death After Commencement of Benefit Payments.** If a Participant dies after his Annuity Starting Date and the form of payment elected by the Participant under the provisions of Article VIII does not provide for continued benefits in the event of the Participant's death, the Participant's Beneficiary shall receive a death benefit, payable in a single sum, that is equal to the excess, if any, of (i) the Participant's Accumulated Contributions, determined as of the date benefit payments commenced under the Plan, over (ii) the amount of all benefit payments made under the terms of the Plan either to the Participant and/or his Beneficiary or Spouse under the provisions of Article VIII. No death benefit shall be payable hereunder if the Participant elected the optional single sum life annuity described in paragraph (a) of Section 8.2.
- (c) **Designation of Beneficiary under Section 9.2:** Each Participant may designate in writing any one or more persons as his death beneficiary to receive payment of the death benefit provided under this Section 9.2. Such designation shall be filed with the Administrator and shall be in such form as the Administrator shall require. A Participant at any time and from time to time, whether before or after his retirement or other termination of employment, may change the Beneficiary previously designated by him by filing with the Administrator a new designation in such form as it shall require.

If no Beneficiary shall have been designated by a Participant under this Section, or if all persons designated by him as Beneficiary shall die before becoming entitled to a death benefit hereunder, then such Participant's Beneficiary shall be his surviving Spouse or, if none, his surviving children in equal shares or, if none, his estate. A Beneficiary designation under this Section shall be separate from any Beneficiary designation under the provisions of Article VIII.

**ARTICLE X  
GENERAL PROVISIONS & LIMITATIONS  
REGARDING BENEFITS**

**10.1 Suspension of Benefits**

Subject to the provisions of Section 10.6, if a Participant who is receiving benefits under this Plan resumes employment with the City as an Employee, his benefits shall be suspended until his subsequent retirement, termination of employment or death.

**10.2 Non-Alienation of Retirement Rights or Benefits**

Except as otherwise required by law, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have the power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void. Notwithstanding the foregoing, retirement benefits hereunder may be reduced pursuant to a domestic relations order approved by the Administrator in accordance with the procedures set forth in Section 13.3.

**10.3 Payment of Benefits to Others**

If any person to whom a retirement benefit is payable is unable to care for his affairs because of illness or accident, any payment due (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative) may be paid to the Spouse, parent, brother or sister, or any other individual deemed by the Administrator to be maintaining or responsible for the maintenance of such person. The monthly payment of a retirement benefit to a person for the month in which he dies shall, if not paid to such person prior to his death, be paid to his Spouse, parent, brother, sister, or estate as the Administrator shall determine. Any payment made in accordance with the provisions of this Section shall be a complete discharge of any liability of the Plan with respect to the benefit so paid.

**10.4 Payment of Small Benefits; Deemed Cashout**

If the Actuarially Equivalent present value of any retirement benefit payable under Section 4.1, 5.1, or 6.2 or any survivor benefit is \$5,000 or less, such Actuarially Equivalent present value shall be paid to the Participant, or his Beneficiary, if applicable, in a single sum payment, in lieu of all other benefits under the Plan, as soon as practicable following the date of the Participant's retirement, death, or other termination of employment and he shall cease to be a Participant under the Plan as of the date of such payment.

A former Participant who received a distribution hereunder, because of his retirement or other termination of employment shall lose the Service and Credited Service with which he was credited at the time of his prior termination of employment or retirement. If such former Participant is reemployed, such prior Service and Credited Service shall not be reinstated.

## **10.5 Direct Rollovers**

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving a single sum payment as provided in Section 8.2 or Section 10.4, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Administrator, to have any portion or all of such payment that is an "eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee"; provided, however, that this provision shall not apply if the total distribution is less than \$200 and that a "qualified distributee" may not elect this provision with respect to any partial distribution that is less than \$500. Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover. For purposes of this Section, the following terms have the following meanings:

- (a) An "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts rollovers; provided, however, that, in the case of a direct rollover by a surviving Spouse, an eligible retirement plan does not include a qualified trust described in Code Section 401(a).
- (b) An "eligible rollover distribution" means any distribution of all or any portion of a Participant's Accrued Benefit or a distribution of all or any portion of a survivor benefit under Article VIII or IX to a qualified distributee; provided, however, that an eligible rollover distribution does not include: any distribution of a Participant's Mandatory Employee Contributions; any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the qualified distributee or the joint lives or joint life expectancies of the qualified distributee and the qualified distributee's designated beneficiary, or for a specified period of ten years or more; and any distribution to the extent such distribution is required under Code Section 401(a)(9).
- (c) A "qualified distributee" means a Participant, his surviving Spouse, or his Spouse or former Spouse who is an alternate payee under a domestic relations order, as defined in Code Section 414(p).

## **10.6 Limitations on Commencement**

Notwithstanding any other provision of the Plan to the contrary, payment of a Participant's retirement benefit shall commence not later than the Participant's Required Beginning Date.

Distributions required to commence under this Section shall be made in accordance with Code Section 401(a)(9) and regulations issued thereunder. If payment of a Participant's retirement benefit does not commence until his Required Beginning Date, his Required Beginning Date shall be considered his Annuity Starting Date for all purposes of the Plan.

If the Participant dies after his Annuity Starting Date, but prior to distribution of his entire interest, the remaining portion of such interest shall be distributed to his Beneficiary in a method which is at least as rapid as the method being used at the date of the Participant's death. If the Participant dies prior to his Annuity Starting Date, the entire interest attributable to the Participant shall be distributed within five years after the date of his death, unless such interest is payable to a designated beneficiary (as defined in Code Section 401(a)(9)) for a period which does not exceed the life or life expectancy of such designated beneficiary, in which event distribution of such interest shall commence no later than the date the Participant would have attained age 70 1/2 if the designated beneficiary is the surviving Spouse of such Participant, or the date which is one year after the date of such Participant's death if the designated beneficiary is not the surviving Spouse of such Participant.

Subject to the requirements of Code Sections 401(a)(9), no benefit payments shall commence under the Plan until the Participant, or his Beneficiary, if applicable, makes written application therefor on a form satisfactory to the Administrator.

**ARTICLE XI  
MAXIMUM RETIREMENT BENEFITS**

**11.1 Definitions**

For purposes of this Article, the following terms have the following meanings.

- (a) A Participant's "annual retirement benefit" means the amount of retirement benefit attributable to City contributions which is payable to him annually under the Plan multiplied by the appropriate factor prescribed by the Secretary of the Treasury if such benefit is to be paid in a manner other than to the Participant for his life only. A Participant's "aggregate annual retirement benefit" includes his "annual retirement benefit" and his annual retirement benefit, if any, under any and all other defined benefit plans (whether or not terminated) maintained by the City or any Affiliate.
- (b) The "limitation year" means the Plan Year.
- (c) "Defined benefit plan" and "defined contribution plan" have the meanings given such terms in Code Section 415(k).

**11.2 Maximum Limitation on Annual Benefits**

The "annual retirement benefit" and the "aggregate annual retirement benefit" that may be paid to a Participant may not at any time within any "limitation year" exceed the limitations contained in Code Section 415(b). The maximum limitations will be determined in accordance with Code Section 415 and the applicable regulations for governmental plans thereunder.

**11.3 Maximum Limitation on Mandatory Employee Contributions and Pick-Up Contributions**

Notwithstanding any other provision of the Plan to the contrary, "annual additions" credited to a Participant's Accumulated Contributions with respect to a "limitation year" shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Code Section 415(d)) or (ii) 25 percent of the Participant's compensation, as defined in Code Section 415(c)(3) and regulations issued thereunder; provided, however, that the limit in clause (i) shall be pro-rated for any short "limitation year". The "annual addition" with respect to a Participant for a "limitation year" means the sum of his Mandatory Employee Contributions and Pick-Up Contributions contributed to the Plan, employer contributions, employee contributions, and forfeitures allocated to his accounts for the "limitation year" under any other qualified defined contribution plan (whether or not terminated) maintained by

the City or an Affiliate concurrently with the Plan, and amounts described in Code Sections 415(l)(2) and 419A(d)(2) allocated to his account for the "limitation year".

#### **11.4 Manner of Reduction**

If the Participant's "aggregate annual retirement benefit" exceeds the limitations specified in this Article, the reduction in the amount of his "annual retirement benefit" shall be equal to the amount by which his "aggregate annual retirement benefit" exceeds the limitations of this Article multiplied by a fraction, the numerator of which is his "annual retirement benefit" (determined without regard to this Article) and the denominator of which is his "aggregate annual retirement benefit" (determined without regard to the limitations of this Article or any corresponding limitation in any other defined benefit plan maintained by the City or any Affiliate).

If the "annual addition" to the Plan of a Participant in any "limitation year" would otherwise exceed the amount that may be applied for his benefit under the limitation contained in Section 11.3, the limitation shall be satisfied by reducing the Mandatory Employee Contributions or Pick-Up Contributions to the Participant's account to the extent necessary. If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by the City or a Affiliate concurrently with the Plan, and if the "annual addition" for the "limitation year" would otherwise exceed the amount that may be applied for the Participant's benefit under the limitation contained in the preceding Section, such excess shall be reduced first by returning the employee contributions made by the Participant for the "limitation year" under all defined contribution plans other than the Plan, and the income attributable thereto, to the extent necessary in the order prescribed by the Administrator. If the limitation contained in the preceding Section still is not satisfied after returning all of the employee contributions made by the Participant under all such other plans, the excess shall be reduced by returning or forfeiting, as provided in each such defined contribution plan, the elective contributions made on the Participant's behalf for the "limitation year" under all such other plans, and, if elective contributions are returned, the income attributable thereto, to the extent necessary in the order prescribed by the Administrator. If the limitation contained in the preceding Section still is not satisfied after returning or forfeiting all of the elective contributions made on the Participant's behalf under all such other plans, the portion of the employer contributions and of forfeitures for the "limitation year" under all such other plans that has been allocated to the Participant thereunder, but which exceeds the limitation set forth in the preceding Section, shall be deemed a forfeiture for the "limitation year" and shall be disposed of as provided in such other plans; provided, however, that the amount of the employer contributions and forfeitures that is a deemed forfeiture under this Section shall be effected in the order prescribed by the Administrator, but first under any other defined contribution plan that is not a money purchase pension plan and, if the limitation still is not satisfied, then under such money purchase pension plan. If the limitation contained in the preceding Section still is not satisfied after all employer contributions and forfeitures under all such other defined contributions plans are deemed forfeited for the "limitation year", the limitation shall be satisfied by reducing "annual additions" under the Plan as provided in this Section.

#### **11.5 Maximum Defined Benefit and Defined Contribution Limitation**

For limitation years commencing prior to the year 2000, if a Participant also is or was covered by one or more defined contribution plans maintained by the City or any Affiliate, the sum of the defined benefit plan fraction described in Code Section 415(e)(2) and the defined contribution plan fraction described in Code Section 415(e)(3) in no event shall exceed 1.0 in any limitation year. At the election of the City, the denominator of the defined contribution plan fraction may be computed in accordance with the special transition rule provided in Code Section 415(e)(6) and applicable regulations thereunder.

In the event that the sum of the defined benefit plan fraction and the defined contribution plan fraction would exceed the limitation of 1.0, annual additions under the defined contribution plan shall be reduced to the extent necessary to meet such limitation.

## **ARTICLE XII PENSION FUND**

### **12.1 Pension Fund**

The Pension Fund is maintained by the Funding Agent for the Plan under a Funding Agreement with the City. Benefits under the Plan shall be only as can be provided by the assets of the Pension Fund, and no liability for payment of benefits shall be imposed upon the City, or any of its elected or appointed officials or employees.

### **12.2 Contributions by the City**

So long as the Plan continues, contributions will be made by the City at such times and in such amounts as the City in its sole discretion shall from time to time determine, based on the advice of the Actuary and consistent with the funding policy for the Plan. Subject to the provisions of Section 12.5, all such contributions shall be delivered to the Funding Agent for deposit in the Pension Fund.

### **12.3 Expenses of the Plan**

The expenses of administration of the Plan, including the expenses of the Administrator and fees of the Funding Agent and any investment advisor, shall be paid from the Pension Fund, unless the City or the City elects to make payment.

### **12.4 No Reversion**

The Pension Fund shall be for the exclusive benefit of Participants and persons claiming under or through them.

All such contributions shall be irrevocable and such contributions as well as the Pension Fund, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the City or any Affiliate except that:

- (a) the residual amounts specified in Article XIV may be returned to the City;
- (b) any contributions which are made under a mistake of fact may be returned to the City within one year after the contributions were made;

The Administrator shall determine, in its sole discretion, whether the contributions described above shall be returned to the City. If any such contributions are to be returned, the Administrator shall so direct the Funding Agent, in writing, no later than ten days prior to the last day upon which they may be returned.

### **12.5 Forfeitures Not to Increase Benefits**

Any forfeitures arising from the termination of employment or death of an Employee, or for any other reason, shall be used to reduce City contributions to the Pension Fund, and shall not be applied to increase the benefits any Participant otherwise would receive under the Plan at any time prior to the termination of the Plan.

### **12.6 Change of Funding Medium**

The City shall have the right to change at any time the means through which benefits under the Plan shall be provided. No such change shall constitute a termination of the Plan or result in the diversion to the City of any funds previously contributed in accordance with the Plan.

## **ARTICLE XIII ADMINISTRATION**

### **13.1 Authority of the Administrator**

The Administrator shall have all the powers and authority expressly conferred upon it herein and further shall have the sole discretionary right, authority, and power to interpret and construe the Plan, and to determine any disputes arising thereunder, subject to the provisions of Section 13.3. In exercising such powers and authority, the Administrator at all times shall exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Administrator may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist it in carrying out its duties hereunder.

### **13.2 Action of the Administrator**

All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Administrator under the Plan shall be in writing and signed by or on behalf of the Administrator.

### **13.3 Domestic Relations Order Approval Procedures**

The Administrator shall approve a domestic relations order and direct that payment of a Participant's benefit be made in accordance with the terms of such order provided that all of the following requirements are met:

- (a) The order creates or recognizes the existence of an "alternate payee's" right to, or assigns to an "alternate payee" the right to, receive all or a portion of the Participant's Accrued Benefit under the Plan.
- (b) The order clearly specifies the following:
  - (1) the name and last known mailing address, if any, of the Participant and of each "alternate payee" covered by the order;
  - (2) the amount or percentage of the Participant's Accrued Benefit to be paid to each "alternate payee", or the manner in which such amount or percentage is to be determined;
  - (3) the number of payments or the period to which such order applies; and
  - (4) the name of the Plan.

- (c) The order does not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan.
- (d) The order does not require the Plan to provide increased benefits (determined on the basis of actuarial value).
- (e) The order does not require the payment of benefits to an "alternate payee" which are required to be paid to another "alternate payee" under another order previously approved by the Administrator.
- (f) The order does not provide for payment to the "alternate payee" in the form of a joint and survivor annuity with the "alternate payee's" subsequent spouse as beneficiary.

A domestic relations order may provide for payment prior to the date the Participant has separated from service if it provides that such payment shall be made on or after the date the Participant would have attained "earliest retirement age" under the Plan as if the Participant had retired on the date payments commence under the order (based only on the Participant's Accrued Benefit as of that date and subject to reduction for early commencement in accordance with the terms of the Plan).

The Administrator shall promptly notify the Participant and "alternate payee" of its receipt of the domestic relations order and of the Plan's procedures for approval of domestic relations orders. Within a reasonable period of receipt of such order, the Administrator shall determine whether the order meets the requirements established under this Section and shall notify the Participant and each "alternate payee" of its determination.

During the period of time following the Administrator's receipt of a domestic relations order and prior to the Administrator's determination as to whether the order meets the requirements of this Section, the Administrator shall separately account for those amounts that would have been payable to the "alternate payee" if the order had been approved (the "segregated amounts"). If within 18 months of the date the first payment would have been made under the domestic relations order, such order is approved by the Administrator, the Administrator shall pay the segregated amounts to the appropriate "alternate payee", with interest thereon. If within such 18-month period the order is disapproved by the Administrator, or the Administrator has not yet resolved whether the order meets the requirements of this Section, the Administrator shall pay the segregated amounts to the person or persons to whom payment would have been made if there had been no order. If the Administrator later approves the order, such order shall be applied prospectively only.

For purposes of this Section, the following terms shall have the following meanings:

- (g) An "alternate payee" means any Spouse, former Spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, a Participant's benefit under the Plan.

- (h) A "domestic relations order" means any judgment, decree, or order (including approval of a property settlement) that:
  - (1) relates to the provision of child support, alimony payments, or marital property rights to a Spouse, former Spouse, child, or other dependent of a Participant; and
  - (2) is made pursuant to a state domestic relations law (including a community property law).
- (i) A Participant's "earliest retirement age" means the earlier of (1) the date on which the Participant is entitled to a distribution under the Plan, or (2) the date the Participant would have attained age 55.

#### **13.4 Actions Binding**

Subject to the provisions of Section 13.3, any action taken by the Administrator which is authorized, permitted, or required under the Plan shall be final and binding upon the City, the Funding Agent, all persons who have or who claim an interest under the Plan, and all third parties dealing with the City or the Funding Agent.

**ARTICLE XIV  
AMENDMENT & TERMINATION OF PLAN**

**14.1 Right of Amendment**

The City reserves the right at any time and from time to time, by means of a written instrument executed in the name of the City by its duly authorized representatives, to amend or modify the Plan and, to the extent provided therein, to amend or modify the Funding Agreement. No pension or other benefit granted prior to the time of any amendment or modification of the Plan shall be reduced, suspended, or discontinued as a result thereof, except to the extent necessary to enable the Plan to meet the requirements for qualification under the Code or the requirements of any governmental authority. Moreover, no such action shall operate to recapture for the City any contributions made to the Pension Fund.

**14.2 Termination of the Plan**

The City reserves the right, by means of a written resolution adopted by the City Council, at any time to terminate the Plan. In the event of termination, no further benefits shall accrue, no further contributions shall be made, and all assets remaining in the Pension Fund, after provision has been made for payment of the expenses of administration and liquidation in connection with the termination, shall be allocated by the Funding Agent upon the advice of the Actuary, among the Participants and Beneficiaries of the Plan, in the following manner and order of precedence:

- (a) First to that portion of a Participant's or Beneficiary's Accrued Benefit that is derived from the Participant's Mandatory Employee Contributions, Supplemental Employee Contributions, and Pick Up Contributions.
- (b) In the case of benefits payable as an annuity,
  - (1) in the case of the benefit of a Participant or Beneficiary which was in pay status as of the beginning of the three-year period ending on the termination date of the Plan, to 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; and
  - (2) in the case of a Participant's or Beneficiary's benefit (other than a benefit described in subparagraph (1) of this paragraph) which would have been in pay status as of the beginning of such three-year period if the Participant had retired prior to the beginning of such three-year period and if his benefits had commenced (in the normal form of annuity under the Plan) as of the beginning of such period, to 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) of this paragraph, the lowest benefit in pay status during a three-year period shall be considered the three-year benefit in pay status for such period.

- (c) Next,
  - (1) to Participants age 60 or over; and
  - (2) to Participants age 50 to 59; and
  - (3) to Participants age 45 to 54, inclusive; and
  - (4) to Participants under age 45.

Notwithstanding any other provision of the Plan to the contrary, other than Sections 14.3 through 14.8, the amount allocated to any Participant under this Section 14.2 shall be fully vested and nonforfeitable. The City shall furnish all information reasonably required for the purposes of making such allocations. The Funding Agent shall implement the allocations determined under this Section among the persons for whose benefit such allocations are made through distribution of the assets of the Pension Fund, through application of the amounts allocated to the purchase from an insurance company of immediate or deferred annuities, or through creation of one or more new funds for the purpose of distributing the assets of the Pension Fund (to the extent so allocated), or by a combination of the foregoing.

#### **14.3 Adjustment of Allocation**

The amount allocated under any paragraph of Section 14.2 with respect to any benefit shall be properly adjusted for any allocations of assets with respect to that benefit under a prior paragraph of Section 14.2.

#### **14.4 Assets Insufficient for Allocation**

If the assets available for allocation under any paragraph of Section 14.2 (other than paragraphs (c)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the date of termination of the Plan) of their respective benefits described in that paragraph.

#### **14.5 Assets Insufficient for Allocation Under Paragraph (c) of Section 14.2**

This Section applies if the assets available for allocation under paragraph (c) of Section 14.2 are not sufficient to satisfy in full the benefits of individuals described in such paragraph.

- (a) If this Section applies, except as provided in paragraph (b), the assets shall be allocated to the benefits of individuals described in paragraph (c) of Section 14.2 on the basis of the benefits

of individuals which would have been described in such paragraph under the Plan as in effect at the beginning of the five-year period ending on the date of termination of the Plan.

- (b) If the assets available for allocation under paragraph (a) of this Section are sufficient to satisfy in full the benefits described in such paragraph (without regard to this paragraph (b)), then for purposes of paragraph (a), benefits of individuals described in such paragraph shall be determined on the basis of the Plan as amended by the most recent Plan amendment effective during such five-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in paragraph (a), and any assets remaining to be allocated under such paragraph (a) on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

#### **14.6 Residual Assets**

Subject to the provisions of Section 14.10, any residual assets of the Plan shall be distributable to the City if:

- (a) all liabilities of the Plan to Participants and their beneficiaries have been satisfied; and
- (b) the distribution does not contravene any provision of law.

#### **14.7 Meanings of Terms**

The terms used in Sections 14.2 through 14.4 shall have, where required, the same meaning as the same terms have as used in Section 4044 of the Employee Retirement Income Security Act of 1974, as amended; provided, however, that any term specifically defined in the Plan shall retain its meaning as defined thereunder.

#### **14.8 Payments by the Funding Agent**

The Funding Agent shall make the payments specified in a written direction of the Administrator in accordance with the provisions of Section 14.2 until the same shall be superseded by a further written direction. The obligation of the Funding Agent to make any payment hereunder in all events shall be limited to the amount of the Pension Fund at the time any such payment shall become due.

#### **14.9 Residual Assets Distributable to the City**

Upon written notice from the Administrator that any residual assets of the Plan are distributable to the City in accordance with the provisions of Section 14.6, then the Funding Agent shall pay over such residual assets, or an amount equal to the fair market value of that portion of such residual assets which are not so paid, to the City; provided, however, that, under no circumstances or conditions other than as set forth in this Section 14.9 and in Section 12.4, shall any contribution of the City, or any portion of the proceeds or avails thereof, ever revert, be paid, or inure to the benefit,

directly or indirectly, of the City or any Affiliate; nor shall any portion of the principal or the income from the Pension Fund ever be used for or diverted to any purpose other than for the exclusive benefit of Participants and persons claiming under or through them pursuant to the Plan.

**ARTICLE XV  
MISCELLANEOUS**

**15.1 No Commitment as to Employment**

Nothing contained herein shall be construed as a commitment or agreement on the part of any person to continue his employment with the City, or as a commitment on the part of the City to continue the employment, compensation, or benefits of any person for any period, and all employees of the City shall remain subject to discharge, layoff, or disciplinary action to the same extent as if the Plan had never been put into effect.

**15.2 Governing Law**

Except as provided under Federal law, the provisions of the Plan shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia..

**15.3 Funding Agreement**

The Funding Agreement and the Pension Fund maintained thereunder shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Funding Agreement are hereby incorporated by reference into the Plan.

**15.4 Benefit Offsets for Overpayments**

If a Participant or Beneficiary receives benefits hereunder for any period in excess of the amount of benefits to which he was entitled under the terms of the Plan as in effect for such period, such overpayment shall be offset against current or future benefit payments, as applicable, until such time as the overpayment is entirely recouped by the Plan.

**15.5 Veterans Reemployment Rights**

Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

## ADDENDUM

Re: Adjustment Factors

### Early Commencement Reduction Factors

<b>Number of Years and Months from Annuity Starting Date to Normal Retirement Date:</b>	<b>Factors:</b>
1	.9333%
2	.8667%
3	.8000%
4	.7333%
5	.6667%
6	.6333%
7	.6000%
8	.5667%
9	.5333%
10	.5000%

Note: When a partial year is involved, the factor will be appropriately adjusted.

**Late Commencement Adjustment Factors**

<b>Number of Years and Months from Normal Retirement Date to Annuity Starting Date:</b>	<b>Factors:</b>
<b>1</b>	.106%
<b>2</b>	1.12%
<b>3</b>	1.19 %
<b>4</b>	1.26%
<b>5</b>	1.34%
<b>6</b>	1.42%
<b>7</b>	1.50%
<b>8</b>	1.58%
<b>9</b>	1.67%
<b>10</b>	1.76%

Factors for other years and months will be determined in a manner consistent with the manner used in determining these factors