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2-21-04

City of Alexandria, Virginia

MEMORANDUM

DATE: FEBRUARY 13, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: RESOLUTION TO ADOPT THE "CITY OF ALEXANDRIA FIREFIGHTERS AND POLICE OFFICERS PENSION PLAN," DATED JANUARY 1, 2004, AS THE DEFINED BENEFIT RETIREMENT PLAN, INCLUDING DISABILITY BENEFITS, FOR SWORN FIREFIGHTERS AND POLICE OFFICERS EMPLOYED BY THE CITY OF ALEXANDRIA

ISSUE: Consideration of a Resolution to adopt the "City of Alexandria Firefighters and Police Officers Pension Plan," dated January 1, 2004 ("Plan"), as the defined benefit retirement plan and disability benefits, for sworn firefighters and police officers employed by the City of Alexandria.

RECOMMENDATION: That City Council adopt the attached resolution (Attachment I), which approves and adopts the City of Alexandria Firefighters and Police Officers Pension Plan (Attachment II) as the defined benefit retirement plan, including disability benefits, for firefighters and police officers employed by the City of Alexandria.

DISCUSSION: The City Manager's presentation and the February 10 Council docket item #24 described the key provisions of the Plan. The docket item mentioned that two features of the Plan - - Average Monthly Compensation and Employee Contribution - - were subject to change depending on staff's analysis of the Plan's final financial information prepared by the City's outside actuaries.

The actuaries' cost projection for the Plan, an annual contribution equal to 26.5 percent of the covered payroll, is a reduction from the original estimate of 28.07 percent. As a result of this reduction in the cost projections, after discussing this with the police and fire representatives, staff has revised the Plan by (1) lowering the Average Monthly Compensation used to calculate a retiree's benefit from 60 months to 48 months (which increases the projected annual Plan cost to

27.25 percent of payroll), and (2) by lowering by .50 percent the Employee Contribution, from 8 percent to 7.50 percent.

The attached resolution adopts the new defined benefit retirement Plan as the City's retirement program for sworn firefighters and police officers. The new defined benefit retirement plan:

1. Converts the existing Retirement Income Plan for sworn firefighters and police officers from a defined contribution plan to a defined benefit plan;
2. Changes the name of the Retirement Income Plan to the City of Alexandria Firefighters and Police Officers Pension Plan;
3. Merges the existing Disability Income Plan for sworn firefighters and police officers into the Plan; and
4. Adopts a trust as the funding vehicle under the Plan.

FISCAL IMPACT: The City is currently paying 20 percent of covered payroll into the existing defined contribution plan. Under the defined benefit retirement plan, initially the cost to the City will be 20 percent of payroll. However, the City's 20 percent cost could increase when the market value of the pension plan assets and investment earnings decrease. Conversely, the City's 20 percent cost could decrease when the market value of the pension plan assets and investment earnings increase.

ATTACHMENTS:

Attachment I. Resolution

Attachment II. The City of Alexandria Firefighters and Police Officers Pension Plan

STAFF:

Mark Jinks, Assistant City Manager

Michele Evans, Assistant City Manager

D. A. Neckel, Director of Finance

Caterina Tarver, Pension Administrator

RESOLUTION NO. _____

WHEREAS, the City of Alexandria, Virginia, has heretofore maintained the defined contribution retirement plan known as the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" and the defined benefit disability income plan known as the "City of Alexandria Firefighters and Police Officers Disability Income Plan;" and

WHEREAS, the City of Alexandria, Virginia, now desires to convert from the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" to a combined defined contribution plan and defined benefit plan, effective January 1, 2004, known as the "City of Alexandria Firefighters and Police Officers Pension Plan;" and

WHEREAS, the City of Alexandria, Virginia, further desires to merge the "City of Alexandria Firefighters and Police Officers Disability Income Plan," into and make same a part of the "City of Alexandria Firefighters and Police Officers Pension Plan," effective February 21, 2004; and

WHEREAS, the "City of Alexandria Firefighters and Police Officers Pension Plan" is intended to maintain and meet requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF ALEXANDRIA, VIRGINIA:**

1. That the "City of Alexandria Firefighters and Police Officers Pension Plan," a copy of which is attached to this Resolution and incorporated fully herein by reference, be, and hereby is, recognized, adopted and approved.
2. That the City Manager be, and hereby is, authorized and directed to make on behalf of the City of Alexandria any changes to the "City of Alexandria Firefighters and Police Officers Pension Plan," as may be requested by the Internal Revenue Service, or, based on advice of counsel, as are necessary or desirable for the said Plan to maintain and meet the requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and
3. That the City Manager be, and hereby is, authorized and directed to take such additional actions as may be necessary to fully implement the "City of Alexandria Firefighters and Police Officers Pension Plan;" and

4. That this Resolution shall be effective immediately; provided, however, that the provisions of the "City of Alexandria Firefighters and Police Officers Pension Plan" shall be effective as stated in the said Plan.

Attachment

ADOPTED: _____

WILLIAM D. EUILLE, MAYOR

ATTEST:

Jacqueline M. Henderson, CMC, City Clerk

Draft as of February 13, 2004 - Subject to Modification Prior to Adoption by City

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

As In Effect on January 1, 2004

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

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

ARTICLE 1

NATURE OF PLAN; NAME; DEFINITIONS; CONSTRUCTION

1.1 Background; Nature of Plan

Prior to January 1, 2004, the City of Alexandria (the "City") maintained the City of Alexandria Retirement Income Plan for Firefighters and Police Officers (the "Retirement Income Plan") and the City of Alexandria Firefighters and Police Officers Disability Income Plan (the "Disability Income Plan"). The Retirement Income Plan was a "money purchase pension plan", under which individual accounts were maintained for each Participant in the Plan. Participants were allowed to direct the investment of their account and benefits under the Retirement Income Plan were based solely on amounts contributed to the Retirement Income Plan and any investment income, gains, losses or expenses credited, charged or allocated to the Participant's Retirement Income Account.

The Disability Income Plan was a separate plan which provided service and non-service connected disability benefits to firefighters and police officers who became disabled prior to their normal retirement date.

Pursuant to an ordinance duly adopted by the Alexandria City Council on February 21, 2004, the Retirement Income Plan and Disability Income Plan have been amended, effective as of January 1, 2004 (the "Effective Date"):

- (1) to change the name of the Retirement Income Plan to the City of Alexandria Firefighters and Police Officers Pension Plan (the "Pension Plan");
- (2) to authorize the use of a trust and/or one or more annuity contracts as the funding vehicle(s) under the Pension Plan;
- (3) to provide for the merger of the Disability Income Plan into the Pension Plan; and
- (4) to convert the Retirement Income Plan from a money purchase pension plan to a combined money purchase pension plan and a defined benefit plan, under which:
 - (i) All future benefits will accrue under the defined benefit portion of the Plan (i.e., under the Pension Plan).

- (ii) Participants with Retirement Income Accounts who became Participants in the Plan prior to July 1, 2003 and who are actively employed by the City as a firefighter or police officer on the Date of Adoption will be given the option of exchanging their "City Funded Retirement Income Account" for "Pre-2004 Credited Service" under the Pension Plan (the "Past Service Election").
- (iii) An individual account will continue to be maintained for Participants who do not make the Past Service Election (or who are not eligible for such Election). Participants who continue to have a Retirement Income Account will continue to direct the investment of their Retirement Income Accounts.
- (iv) No further City or Employee contributions will be permitted with respect to the Retirement Income Accounts.
- (v) All amounts credited to Retirement Income Accounts as of the Date of Adoption will be fully vested. (However, benefits that accrue on and after the Effective Date under the defined benefit portion of the Plan will be subject to the vesting schedule contained in Section 6.5 of the Plan.)

1.2 Name; Type of Plan

The Pension Plan may be referred to as the "City of Alexandria Firefighters and Police Officers Pension Plan." The Pension Plan is a continuation of the Retirement Income Plan and is a money purchase pension plan (with respect amounts contributed prior to the Date of Adoption and subsequent Investment Adjustments with respect thereto) and a defined benefit plan (with respect to benefits accruing on or after the Effective Date).

The Plan is a governmental plan, as described in Section 414(d) of the Internal Revenue Code.

1.3 Qualification Under Internal Revenue Code

The City of Alexandria Firefighters and Police Officers Pension Plan is intended to be a pension plan that continues to qualify under Section 401(a) of the Internal Revenue Code, so that the trust established under the Plan will be exempt from tax under Section 501 of the Internal Revenue Code. Notwithstanding anything herein to the contrary, the conversion of this Plan from a money purchase pension plan to a combined money purchase pension plan and a defined benefit plan and the merger of the Disability Income Plan into the Pension Plan shall be contingent upon the City's receipt of a favorable determination letter from

the Internal Revenue Service to the effect that the conversion and merger will not adversely affect the qualification of the Plan under Section 401 et. seq. of the Internal Revenue Code and the City reserves the right to amend the Plan retroactively to the extent necessary to obtain such a favorable determination letter.

1.4 Applicability

The provisions of the Plan shall apply only to an individual who meets the definition of Covered Employee and who is credited with an Hour of Service on or after the Date of Adoption. The rights, benefits and interests of any Covered Employee who died, retired, became Disabled or otherwise reached a Termination Date prior to the Date of Adoption shall be determined under the provisions of the Retirement Income Plan as in effect on the date such former Covered Employee died, retired or became Disabled, otherwise reached a Termination Date.

The provisions of Article 5, which provide for the payment of benefits to a Participant who becomes Disabled, shall apply to any Participant who reaches his or her Disability Retirement Date on or after the Date of Adoption (even if the injury or illness giving rise to the Disability occurred before the Date of Adoption). The right of any Covered Employee whose Disability Retirement Date occurred prior to the Date of Adoption, and the amount and conditions of such benefits, shall be determined under the provisions of the Disability Income Plan as in effect on the date such former Covered Employee reached his or her Disability Retirement Date.

1.5 Incorporation of Trust Agreement and Annuity Contract(s)

The Trust Agreement and any Annuity, as the same may be amended from time to time, are intended to be and hereby are incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

1.6 Definitions.

Unless a different meaning is plainly implied by the context, the following terms as used in this Plan shall have the following meanings:

Accrued Pension Benefit

"Accrued Pension Benefit" means the monthly benefit to which a Participant is entitled under the defined benefit portion of the Plan on or after the Effective Date pursuant to the provisions of Section 6.1, expressed as a single life annuity commencing at the Participant's Normal Retirement Date or the Actuarial Equivalent thereof. The Accrued Pension Benefit as of any date preceding the Participant's Normal Retirement Date shall be a monthly benefit

commencing on the Participant's Normal Retirement Date and continuing for his or her life, calculated in the same manner as a normal retirement benefit and based upon the benefit earned by such Participant as of the date of determination.

In no event, however, shall the Accrued Pension Benefit:

- (1) exceed the maximum limitation determined, as of the date of computation, pursuant to Section 6.8; or
- (2) be less than the Actuarial Equivalent of (i) the Minimum Retirement Benefit (in the case of a Participant who elects to exchange his/her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4) and (ii) the Employee Contribution Retirement Benefit.

Actuarial Assumptions

"Actuarial Assumptions" means those assumptions employed in the determination of Actuarial Equivalents or for other pertinent benefit calculations, as set forth in Appendix A hereto, as the same may be modified from time to time.

Actuarial Equivalent

"Actuarial Equivalent" means a benefit of equivalent dollar value on a specified date, computed on the basis of the Actuarial Assumptions (including projected cost of living adjustments).

Actuary

"Actuary" means the independent enrolled actuary, selected by the Administrator.

Administrator

"Administrator" means the City Manager or the person or committee designated by the City Manager to administer the Plan in accordance with Section 10.6.

Annuity Contract

"Annuity Contract" means a group annuity contract issued by a licensed insurance company to the Trust or the City to fund all or part of the benefits provided under the Plan, as such contract may be amended from time to time in accordance with the terms thereof.

Authorized Leave of Absence

"Authorized Leave of Absence" shall mean an unpaid temporary absence from active service with the City for a specified period which is not treated as a termination of employment and which is granted or extended by the City pursuant to its regular personnel policies.

Average Monthly Compensation

"Average Monthly Compensation" means 1/48th of the total amount of a Participant's Compensation for the forty-eight (48) consecutive full calendar months of the Participant's employment as a Covered Employee in which his or her Compensation was the highest. In the event a Participant's entire period of employment consists of less than forty-eight (48) consecutive full calendar months of employment as a Covered Employee, the Participant's Average Monthly Compensation shall be determined by averaging (on a monthly basis) the Participant's Compensation during the number of full calendar months that the Participant was employed as a Covered Employee. Notwithstanding anything herein, in determining a Participant's Average Monthly Compensation under this Plan, (1) only Compensation earned during a calendar month that is included in calculating the Participant's Years of Credited Service be taken into account, and (2) the determination of Average Monthly Compensation shall include Compensation earned prior to the Effective Date.

Base Disability Benefit

"Base Disability Benefit" means the annual amount of the Disability Benefit payable under Section 5.7, 5.8, 5.9 or 5.10 (as determined on the that Disability Benefits commence to the Participant). In the case of a Disability Benefit payable pursuant to the contingent annuitant option, the Base Disability Benefit shall be determined as if the Participant had died on the day following his or her Disability Retirement Date and benefits had immediately commenced to such contingent annuitant on such date.

Base Pension Benefit

"Base Pension Benefit" means, the annual amount of the annuity benefit payable as of the Participant's Benefit Commencement Date with respect to the Participant's Accrued Pension Benefit under Section 6.1, 6.2, 6.3, 6.4 or 6.5. In the case of a joint and survivor annuity payable to a surviving spouse or other beneficiary, the Base Pension Benefit shall be determined based on the amount

that would have been payable to the surviving spouse or beneficiary if the Participant had died on the day following his or her Benefit Commencement Date and benefits had immediately commenced to such surviving spouse or other beneficiary on such date.

Beneficiary

"Beneficiary" means the person or persons entitled to receive any benefit payable under the terms of the Plan following the death of a Participant.

Benefit Commencement Date

"Benefit Commencement Date" means the first day of the first period for which a Participant's Accrued Pension Benefit is due to be paid or is due to commence. In the case of a Participant who has made a DROP Election in accordance with Section 6.4, the Benefit Commencement Date means the first day of the first period for which a Participant's Accrued Pension Benefit is due to be paid or is due to commence following the Participant's DROP Retirement Date.

Board

"Board" means the Retirement Plan Board that is established under Article 10 to manage the assets of the Plan.

Cash-Out

"Cash-Out" means a distribution made pursuant to Section 6.5 in settlement of any and all benefits otherwise payable under the defined benefit portion of the Plan.

City

"City" means the City of Alexandria, Virginia.

City Funded Retirement Income Account

"City Funded Retirement Income Account" means any portion of a Participant's Retirement Income Account that is attributable to City contributions and Investment Adjustments thereon or to any amount transferred pursuant to Section 3.5 of the Prior Plan and Investment Adjustments thereon.

City Representatives

"City Representatives" means the members of the Board who are nominated by the City Manager pursuant to Section 10.2.

Compensation

"Compensation" means the retirement base compensation (i.e., regular or base salary or wages received from the City during a Plan Year for personal services rendered as a Covered Employee, based on the Covered Employee's grade and step). Such term excludes any and all overtime, differentials, allowances, premiums, bonuses, FLSA adjustments or form of extra compensation.

Notwithstanding the foregoing, Compensation shall include any amount which would otherwise be deemed Compensation under this definition but for the fact that it is deferred pursuant to a salary reduction agreement under a plan described in Section 457, 414(h), 132(f) or 125 of the Internal Revenue Code.

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

Covered Employee

"Covered Employee" means an Employee who is actively employed by the City as a sworn police officer or firefighter (but only during the period of time that such Employee is actively employed by the City as a sworn police officer or firefighter). The term "Covered Employee" does not include a parking enforcement officer, a tag enforcement officer, or an Employee who is covered under the City of Alexandria Pension Plan for Firefighters and Police Officers.

CPI

"CPI" means the Consumer Price Index - All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84=100), published and revised by the Bureau of Labor Statistics, U.S. Department of Labor, or the successor to such index.

Date of Adoption

"Date of Adoption" means February 21, 2004, the date on which the City Council adopted the Pension Plan (i.e., approved the amendment converting the Prior Plan into the Pension Plan and merging the Disability Income Plan into the Pension Plan).

Disability or Disabled

"Disability" or "Disabled" means a Total or Partial Disability.

Disability Benefit

"Disability Benefit" means the monthly benefit, if any, that is payable under Article 5 with respect to a Covered Employee who becomes Disabled.

Disability Income Plan

"Disability Income Plan" means the City of Alexandria Disability Income Plan for Firefighters and Police Officers that was in effect prior to the Date of Adoption.

Disability Retirement Date

"Disability Retirement Date" means the first day of the month after the Administrator has determined that a Participant is Disabled.

DROP

"DROP" means the Deferred Retirement Option Program described in Section 6.4.

DROP Election

"DROP Election" means an election under Section 6.4(c) to participate in the DROP.

DROP Effective Date

"DROP Effective Date" means the date on which the Participant's DROP Election becomes effective. The DROP Effective Date must be the first day of a [calendar month][payroll period].

DROP Retirement Date

"DROP Retirement Date" means the first day of the month coincident with or next following the retirement date voluntarily elected by a eligible DROP Participant in his or her DROP Election.

Early Retirement Date

"Early Retirement Date" means the first day of the month coincident with or next following the earlier of the date on which a Participant:

- (1) completes 25 Years of Credited Service as a Covered Employee, or
- (2) completes 20 Years of Credited Service as a Covered Employee, provided that the Participant is at least 50 years old. A Participant who completes 20 Years of Credited Service prior to attaining age 50, will reach his or her Early Retirement Date on the first day of the month coincident with or next following the Participant's 50th birthday, provided the Participant is employed as a Covered Employee on that date.

Effective Date

"Effective Date" means January 1, 2004. The Plan was adopted on February 21, 2004, but was effective as of January 1, 2004.

Employee

"Employee" means any person who is classified by the City as an employee and who is employed in any capacity by the City (or any City Department); provided, however, that the term Employee shall not include (1) any individual who is classified by the City as working or providing services in a non-employee capacity (including, without limitation, a person classified by the City as an independent contractor), notwithstanding the later reclassification by a court or any regulatory agency of the person as a common law employee of the City, or (2) any individual deemed to be a leased employee of the City, pursuant to Section 414(n) of the Internal Revenue Code.

Employee Contribution Retirement Benefit

"Employee Contributions Retirement Benefit" means the sum of:

- (1) the Employee Retirement Contributions made by the Participant; plus
- (2) 4% interest on the Employee Retirement Contributions computed on December 31 of each year and compounded annually.

Employee Disability Contribution

"Employee Disability Contribution" means the after-tax contributions made by the Participant pursuant to Section 4.3(b) to fund Disability

Benefits payable with respect to a Non-Service Connected Partial Disability.

Employee Retirement Contribution

"Employee Retirement Contribution" means the contributions made by the Participant through salary reduction and "picked up" by the City pursuant to Section 4.2(b).

Fund

"Fund" shall mean the assets accumulated under the Trust Agreement and any Annuity Contracts in order to provide for the payment of the benefits specified in the Plan (but not the City of Alexandria Firefighters and Police Officers Pension Benefit Restoration Plan attached hereto as Appendix B).

Hour of Service

"Hour of Service" means each hour for which an Employee is directly or indirectly paid or entitled to payment by the City for the performance of duties as a Covered Employee.

Internal Revenue Code

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

Investment Adjustment(s)

"Investment Adjustment(s)" means any increase and/or decrease in the value of a Participant's Retirement Income Account attributable to investment income, gains, losses or expenses that are or have been credited, charged or allocated to the Retirement Income Account.

Investment Funds

"Investment Funds" means the investment media from among which each Participant may direct the investment of his or her Retirement Income Account. Such term is limited to one or more:

- (1) variable Annuity Contracts;
- (2) pooled separate accounts maintained by an insurance company under an Annuity Contract;

- (3) shares of redeemable capital stock of one or more regulated investment companies, as defined in Section 851(a) of the Internal Revenue Code; and
- (4) combined, common or commingled trust funds established by any person or entity acting as trustee or investment manager for the collective investment of trust funds of pension, profit sharing or other employee benefit plans, whether or not such collective funds are limited to qualified retirement plans.

Minimum Retirement Benefit

"Minimum Retirement Benefit" means, in the case of a Participant who elected to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4, the value of the Participant's City Funded Retirement Income Account as of December 31, 2003 (without any adjustment for any contributions or Investment Adjustments subsequent to December 31, 2003) or a straight life annuity that is the Actuarial Equivalent thereof (as the context requires).

Non-Service Connected Partial Disability

"Non-Service Connected Partial Disability" means a Partial Disability which meets the requirements of Section 5.4

Non-Service Connected Total and Permanent Disability

"Non-Service Connected Total and Permanent Disability" means a Total Disability which meets the requirements of Section 5.2.

Normal Retirement Date

"Normal Retirement Date" means:

- (1) In the case of a Participant who commenced employment as a Covered Employee on or after the Effective Date, the first day of the month coincident with or next following the attainment of age 55 with at least 5 Years of Credited Service.
- (2) In the case of a Participant who commenced employment as a Covered Employee prior to the Effective Date, the first day of the month coincident with or next following the attainment of age 55.

Partial Disability or Partially Disabled

"Partial Disability" or "Partially Disabled" means an illness or injury which prevents a Covered Employee from performing the duties of the job that the Covered Employee was assigned by the City at the time of suffering such illness or injury, as determined by the Administrator on the basis of a medical examination performed by an independent diagnostic clinic or physician(s) selected by the Administrator.

Participant

"Participant" means a Covered Employee who is currently included in the Plan as provided in Article 2 hereof. In addition, where appropriate according to the context of the Plan, the term Participant shall also include a Beneficiary or a former Covered Employee who is entitled to benefits under the Plan.

Participant Representative

"Participant Representative" means the members of the Board nominated by the Voting Participants pursuant to Section 10.3.

Plan or Pension Plan

"Plan" or "Pension Plan" means the City of Alexandria Firefighters and Police Officers Pension Plan, as described herein or as hereafter amended from time to time.

Plan Year

"Plan Year" means the calendar year.

Pre-2004 Credited Service

"Pre-2004 Credited Service" means Years of Credited Service completed prior to January 1, 2004, provided that the contributions the City made to the Retirement Income Plan with respect to such prior service (and the related Investment Adjustments) have not been distributed to the Participant prior to the Date of Adoption.

If, for any reason, the contributions the City made to the Retirement Income Plan with respect to such prior service were previously distributed to the Participant, then the Participant's Pre-2004 Credited Service shall be determined without regard to any period of prior service for which the Participant previously received a distribution.

Prior Plan or Retirement Income Plan

"Prior Plan" or "Retirement Income Plan" means the City of Alexandria Retirement Income Plan for Firefighters and Police Officers that was in effect prior to the Date of Adoption.

Reemployment Commencement Date

"Reemployment Commencement Date" means the date on which a individual first performs an Hour of Service as a Covered Employee after a period during which no Hours of Service were performed by reason of the occurrence of a Termination Date or the cessation of an individual's status as a Covered Employee.

Remuneration

- (1) "Remuneration" means a participant's wages as defined in Section 3401(a) of the Internal Revenue Code and all other payments of compensation to the Participant from the City for which the City is required to furnish the Participant a written statement under Sections 6041(d) and 6051(a)(3) of the Internal Revenue Code.
- (2) Remuneration shall be determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
- (3) Remuneration does not include Employee Retirement Contributions picked up by the City pursuant to Section 4.2(b)(2).
- (4) Remuneration shall include any amount which would otherwise be deemed Remuneration under this definition but for the fact that it is deferred pursuant to a salary reduction agreement under any plan described in Section 457, 414(h), 132(f) or 125 of the Internal Revenue Code.

Retirement Income Account

"Retirement Income Account" means the individual account maintained for each Participant reflecting all amounts credited to such Participant under the Retirement Income Plan, as adjusted for Investment Adjustments thereon and any distributions.

On and after the Date of Adoption, each Retirement Income Account shall reflect:

- (1) In the case of a Participant who validly elected to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4, then the Participant's Retirement Income Account shall only reflect amounts, if any, attributable to (i) assets transferred or rolled over to the Plan pursuant to Section 4.3 of the Prior Plan; (ii) voluntary contributions made pursuant to Section 4.4 of the Prior Plan; and (iii) Investment Adjustments on the forgoing. Such account shall not reflect (i) any City contributions under the Prior Plan; (ii) any amount transferred pursuant to Section 3.5 of the Prior Plan; or (iii) any Investment Adjustments attributable to the forgoing. If the Participant's Retirement Income Account as of the Date of Adoption does not include any prior rollover or voluntary contributions, then the Participant shall cease to have a Retirement Income Account on and after the Date of Adoption.
- (2) In the case of a Participant who does not elect to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4, the Participant's Retirement Income Account shall continue to reflect the amount attributable to (i) City contributions under the Prior Plan; (ii) any amount transferred pursuant to Section 3.5 of the Prior Plan; (iii) any assets transferred or rolled over to the Plan pursuant to Section 4.3 of the Prior Plan; (iv) any voluntary contributions made pursuant to Section 4.4 of the Prior Plan; and (v) Investment Adjustments attributable to the forgoing.

The Retirement Income Account shall include any other functional subaccounts as may be established by the Administrator from time to time. Each Participant's Retirement Income Account shall be equal to the sum of the Investment Funds in which such account is invested.

Service Connected Partial Disability

"Service Connected Partial Disability" means a Partial Disability which meets the requirements of Section 5.3.

Service Connected Total and Permanent Disability

"Service Connected Total and Permanent Disability" means a Total Disability which meets the requirements of Section 5.1.

Spouse

"Spouse" refers to the legally married spouse of the Participant. For purposes of the Pension Plan, the term is limited to a spouse to whom the Participant is married in a legally recognized ceremony and does not include a common law spouse (even if a common law marriage is legally recognized).

Total Disability or Totally Disabled

"Total Disability" or "Totally Disabled" means an illness or injury which prevents a Covered Employee from performing the duties of all jobs for which the Covered Employee is otherwise qualified or any job for which the Covered Employee could become qualified by rehabilitation or retraining, as determined by the Administrator on the basis of a medical examination performed by an independent diagnostic clinic or physician(s) selected by the Administrator.

Termination Date

"Termination Date" means the first to occur of:

- (1) a termination of employment from the City by reason of resignation, discharge, mutual agreement, retirement or death;
- (2) the date on which an Authorize Leave of Absence expires without a return to active employment; or
- (3) a Participant's Disability Retirement Date.

Trust Agreement

"Trust Agreement" means the agreement by and between the City and the Trustee, together with any and all amendments or supplements thereto.

Trustee

"Trustee" means the bank or trust company selected by the Board to serve as Trustee under the Trust.

Voting Participant.

"Voting Participant" means a Participant with an Accrued Pension Benefit or Retirement Income Account attributable to such Participant's employment as a Covered Employee. The term includes a former Covered Employee who continues to have an

Accrued Pension Benefit or Retirement Income Account attributable to his or her employment as a Covered Employee or who is currently receiving retirement benefits based upon his or her employment as a Covered Employee. The term does not include a Participant who may be a current or former Covered Employee, but whose rights to benefits under the Plan are not attributable to such Participant's employment as a Covered Employee (e.g. a Participant whose rights to benefits under the Plan are attributable solely to his or her status as a Beneficiary, contingent annuitant or an alternate payee under a domestic relations order).

Year of Credited Service

A Participant shall be credited with 1/12th of a Year of Credited Service for each full calendar month of service as a Covered Employee commencing on or after the Effective Date and ending with the Participant's Termination Date. A Covered Employee shall not be credited with Years of Credited Service (or 1/12th increments thereof) for any calendar month during which he or she is not a Covered Employee for the entire month or for any calendar month commencing after the Covered Employee's Termination Date. In addition, except as otherwise provided in Section 3.4, a Participant shall not be credited with Years of Credited Service (or 1/12th increments thereof) for any calendar month prior to the Effective Date.

Year of Service

A Covered Employee shall be credited with 1/12th of a Year of Service for each calendar month (including calendar months prior to the Effective Date) during which he or she is a Covered Employee for the entire month. A Participant shall not be credited with Years of Service (or 1/12th increments thereof) for any calendar month during any portion of which he or she is not a Covered Employee.

ARTICLE 2

PARTICIPATION

2.1 Commencement of Participation.

A Covered Employee's participation in this Plan, and the agreement to make contributions hereunder, as described in Sections 4.2(b) and 4.3(b), is mandatory and a condition of employment. Subject to the forgoing, the commencement of a Covered Employee's participation in the Plan shall be governed by the following:

- (a) Each Covered Employee participating in the Retirement Income Plan on the Date of Adoption, shall continue participation hereunder, according to the terms of this amended and restated Plan (including, without limitation, the contributions required by the Covered Employee under Sections 4.2(b) and 4.3(b)).
- (b) Every other Employee who is or becomes a Covered Employee on or after the Date of Adoption shall become a Participant on the date he or she first performs an Hour of Service as a Covered Employee.
- (c) No Employee shall become a Participant, however, if he or she is not a Covered Employee on the date the individual's participation is to begin.

2.2 Termination of Participation.

A Participant shall cease to accrue benefits under the Plan on the earlier of (i) his or her Termination Date or (ii) the date on which the Participant ceases to be a Covered Employee. In addition, a Participant who reaches his or Termination Date or who ceases to be a Covered Employee shall cease to be eligible for Disability Benefits attributable to a Disability that occurs or arises on or after such date. Notwithstanding the cessation of benefit accruals or eligibility for Disability Benefits, a Participant who has ceased participation hereunder shall remain a Participant, as the context of the Plan requires, to the extent such Participant is still entitled to any benefits under the Plan.

Termination of participation does not necessarily entitle a Participant to commence benefits under the Plan. The payment or commencement of benefits under the Plan shall be governed by, and subject to, the provisions of Article 6.

2.3 Reemployment

If a Participant reaches a Termination Date or ceases to be a Covered Employee and is subsequently reemployed as a Covered Employee, then such individual's status with respect to the Plan shall be governed by the following:

(a) Participation

The Covered Employee shall become Participant on his or her Reemployment Commencement Date.

(b) Vesting and Benefit Accrual

Subject to subsection (d) below, the Covered Employee's prior Years of Service and Years of Credited Service shall be aggregated with Years of Service and Years of Credited Service after his or her Reemployment Commencement Date for all purposes of the Plan (i.e., Years of Service and Years of Credited Service completed subsequent to the Employee's Reemployment Commencement Date and the prior Years of Service and Years of Credited Service will be added together in determining the Covered Employee's eligibility to receive, the vested percentage of, and amount of, his or her Accrued Pension Benefit). If the Covered Employee was subject to the 5 year graded vesting schedule contained in Section 6.5(c)(1)(iii) prior to his or her Reemployment Commencement Date, then the Covered Employee's vested percentage of his or her Accrued Pension Benefit as of his or her Reemployment Commencement Date shall not be less than the vesting percentage determined in accordance with the 5 year graded vesting schedule set forth in Section 6.5(c)(1)(iii). However, all future accruals shall be subject to the 5 year cliff vesting schedule contained in Section 6.5(c)(1)(ii) (based upon the Covered Employee's combined pre-break and post break Years of Service).

(c) Benefit Payments

If, at the time of his Reemployment Commencement Date, the Participant is receiving retirement benefits pursuant to Article 6 of the Plan, such retirement benefits shall cease until such time as they may be paid in conjunction with the retirement benefits accrued with respect to the Participant's subsequent employment. In any event, any retirement benefits payable with respect to subsequent employment shall be reduced or offset if and as necessary to avoid duplication of any retirement benefits payable or paid with respect to the Participant's prior employment.

If a Participant reaches a Termination Date, begins receiving retirement benefits pursuant to Article 6 of the Plan and is subsequently re-employed by the City in a capacity other than as a Covered Employee, the Participant's retirement benefits shall continue unabated.

(d) Cash-out

(1) If, after the Participant's Termination Date:

- (i) the Participant receives a Cash-Out of his or her Employee Contribution Retirement Benefit, and
- (ii) the Participant resumes his or her employment as a Covered Employee,

then, notwithstanding any provision providing for the crediting of additional Years of Service and Years of Credited Service, the Years of Service and Years of Credited Service with respect to which the distribution was received shall be disregarded in subsequent determinations of the amount of the Participant's eligibility to receive, the vested percentage of, and the amount of his or her Accrued Pension Benefit.

(2) However, if the Participant:

- (i) resumes his or her employment as a Covered Employee, and
- (ii) within 90 days of his or her Reemployment-Commencement Date, repays to the Trust the full amount of the Cash-Out, plus interest from date of distribution to date of repayment at the rate of 7.5% per annum, compounded annually,

then his or her Accrued Pension Benefit will be determined taking into account the Participant's Years of Service and Years of Credited Service before as well as after the Termination Date (subject to the provisions of this Section 2.3).

2.4 Enrollment

Participation hereunder shall be automatic upon commencement or re-commencement of employment as a Covered Employee; provided, however, that the City may, in its discretion, require each Covered Employee to execute a written application containing such items as may be desired by the City including, but not limited to, the Covered

Employee's consent to be bound by all the terms and conditions of the Plan and all amendments thereto, and authorization to have the Employee Retirement Contribution and Employee Disability Contribution deducted from his or her pay.

2.5 Change Of Employment Category

If a Participant ceases to be a Covered Employee, but continues in the employ of the City as an Employee, he or she shall cease participation in this Plan (and shall cease to accrue benefits hereunder) at the time he or she ceases to be a Covered Employee.

2.6 Determination of Eligibility.

The Administrator shall, in its discretion, determine the eligibility of Covered Employees in accordance with the provisions of this Article 2. The City shall make available to the Administrator a list of all Covered Employees, indicating the original dates of their employment with the City, their benefit eligibility dates and any breaks they may have incurred.

ARTICLE 3

CREDIT FOR SERVICE

3.1 Authorized Leave of Absence

- (a) A Participant shall not be deemed to have reached his or her Termination Date on account of a Authorized Leave of Absence. However, except as otherwise provided in Section 3.1(b) or as required by law, 1/12th increments of Years of Service and Years of Credited Service shall not be credited during an Authorized Leave of Absence.
- (b) Notwithstanding Section 3.1(a), if a Participant incurs an Authorized Leave of Absence on account of military service, the Participant shall receive credit for Years of Service and Years of Credited Service for the period of such Authorized Leave of Absence to the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994 or any other law (but without any requirement for such a Participant to make contributions upon his or her reemployment for the period of his or her military service).

3.2 Fractional Credit For Service

To the extent not precluded by the operation of Section 3.1, a Covered Employee shall receive partial or full credit for service, as follows:

- (a) **Year of Service**

For purposes of determining the extent to which a Participant is vested in his or her Accrued Pension Benefit, the Participant shall receive credit on the basis of his or her whole Years of Service.

- (b) **Year of Credited Service**

For purposes of determining the extent to which a Participant shall accrue benefits and for purposes of determining whether he or she is eligible for retirement, the Participant's Years of Credited Service shall be expressed in whole years and months.

3.3 Transfers Between Covered And Non-Covered Employment

- (a) **Transfer to a Position as a Covered Employee**

- (1) If an Employee becomes a Covered Employee on or after the Date of Adoption, such Employee's benefits under this

Plan with respect to his or her service as a Covered Employee shall be based only on Years of Service and Years of Credited Service earned while such individual is a Covered Employee.

- (2) In determining such a Participant's Average Monthly Compensation under this Plan, only Compensation with respect to employment as a Covered Employee shall be taken into account.
- (3) If the Employee was previously a Participant in the Plan, the provisions of Section 2.3 shall apply.

(b) Transfer to a Non-Covered Position

- (1) If an individual ceases to be a Covered Employee, but remains an Employee, the individual's participation in this Plan shall cease as of the date he or she ceases to be a Covered Employee. Further, such individual's benefits under this Plan shall be determined based only on Years of Service and Years of Credited Service earned while such individual is a Covered Employee and shall be determined under the provisions of this Plan in effect as of the date such individual ceased to be a Covered Employee.
- (2) In determining Average Monthly Compensation under this Plan, only Compensation with respect to employment as a Covered Employee shall be taken into account.
- (3) The payment or commencement of benefits under the Plan shall be governed by, and subject to, the provisions of Article 6. Notwithstanding anything to the contrary, no benefits shall be paid or commence to such individual prior the earlier of the individual's (1) Termination Date, or (2) Normal Retirement Date.

3.4 Exchange of Retirement Income Account for Pre-2004 Credited Service

- (a) Each Covered Employee who on the Date of Adoption:
 - (1) is a Participant in the Plan;
 - (2) has a Retirement Income Account attributable to his or her employment as a Covered Employee;

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- (3) is actively employed by the City as a Covered Employee (and has not reached his or her Disability Retirement Date); and
- (4) commenced participation in the Prior Plan prior to July 1, 2003,

was offered the opportunity to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service.

- (b) In order to be effective, an election under this Section 3.4 must:
 - (1) have been made on a form supplied by the City for this purpose;
 - (2) have been returned to (and the receipt acknowledged by) the Department of Finance on or before 5:00 P.M. (Eastern Time) on January 16, 2004; and
 - (3) have included a valid and enforceable release of the City, and its elected officials, employees, agents and representatives (as well as any other person or entity who may have a fiduciary relationship with respect to the administration or management of the Retirement Income Plan) from any and all claims relating to or arising out of the Retirement Income Account or the administration or management of the Retirement Income Plan prior to the date of the election.
- (c) To the extent a Covered Employee described in Section 3.4(a) made an election satisfying the requirements of Section 3.4(b), then:
 - (1) The Participant's Pre-2004 Credited Service shall be taken into account in determining the Participant's Years of Credited Service.
 - (2) No amount or benefit shall be payable to anyone with respect to the Participant's City Funded Retirement Income Account (the balance of which shall be reduced to zero). However, the Participant's Retirement Income Account shall continue to reflect the amount, if any, attributable to (i) assets transferred or rolled over to the Plan pursuant to Section 4.3 of the Prior Plan; (ii) the amount, if any, attributable to voluntary contributions made pursuant to Section 4.4 of the Prior Plan; and (iii) Investment Adjustments attributable to the forgoing.

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- (3) The Participant's City Funded Retirement Income Account shall become part of the Fund and shall be available to provide benefits to all Participants under the defined benefit portion of the Plan.

ARTICLE 4

FUNDING

4.1 Fund

Contributions made under the terms of the Plan shall be deposited in the Trust or one or more Annuity Contracts. Such contributions, together with any income, gains or profits, less distributions, expenses and losses, shall comprise the Fund. The Trustee shall maintain that portion of the Fund held pursuant to the terms of the Trust.

Separate trust accounts, Annuity Contracts, or accounts under Annuity Contracts shall be established for (i) the defined benefit portion of the Plan, (ii) any Retirement Income Accounts, and (iii) any assets transferred to the Pension Plan from the Disability Income Plan. The establishment of such separate accounts shall be for accounting and bookkeeping only and shall not require a segregation of any part of the assets of the Fund.

The Retirement Income Accounts shall be held, invested, reinvested, managed, administered and distributed for the exclusive benefit of Participants with Retirement Income Accounts. The portion of the Fund comprising the defined benefit portion of the Plan shall be held, invested, reinvested, managed, administered and distributed for the exclusive benefit of Participants with an Accrued Pension Benefit. The assets transferred to the Pension Plan from the Disability Income Plan shall be held, invested, reinvested, managed, administered and distributed for the exclusive purpose of providing Disability Benefits pursuant to Article 5.

No person shall have any interest in or right to the Fund or any part thereof, except as expressly provided in the Plan. Each Participant, former Participant, Beneficiary or other person who shall claim the right to any payment under the Plan shall be entitled to look only to the Fund for such payment. No liability for the payment of benefits under the Plan (or the Disability Income Plan) shall be imposed upon the Trustee, the issuer of any Annuity Contract, the Board, the Administrator, the City, or their respective agents or employees.

4.2 Pension Contributions

(a) City Contributions

- (1) After taking into account the contributions made by Covered Employees in accordance with Section 4.2(b), the City shall, from time to time, make contributions to the Fund in amounts necessary, according to sound actuarial principles, (and based upon reasonable actuarial assumptions, funding

methods and related matters recommended by the Actuary) to fund the benefits under this Plan and to maintain the actuarial integrity of the Fund. For this purpose:

- (i) Any unfunded liability attributable to the grant of additional Years of Credited Service pursuant to Section 3.4 shall be amortized over a 25 year period beginning January 1, 2004, in level dollar payments; and
 - (ii) The contribution required by the City under this provision shall be (1) based upon the actuarial valuation produced annually by the Actuary; (2) expressed as a percentage of Compensation; and (3) remitted monthly (in arrears), such that the contribution with respect to Compensation paid during a month shall be remitted to the Trustee or deposited in an Annuity Contract within 15 business days after the close of such month.
- (2) Notwithstanding any provisions of this Plan to the contrary, upon the City's request, a contribution which was made by the City under Section 4.2(a) or 4.3(a) due to a mistake of fact shall be returned to the City within one year after the payment of the contribution. Any portion of a contribution returned shall be adjusted to reflect its proportionate share of the losses of the Fund, but shall not be adjusted to reflect any earnings or gains.

(b) Employee Retirement Contributions

- (1) On and after the Date of Adoption, each Participant who is classified as a Covered Employee shall make Employee Retirement Contributions to the Plan in an amount equal to 7.5% of the Participant's Compensation, as reflected in the paycheck the Participant receives from the City. Such Employee Retirement Contribution shall continue until the earlier of the Participant's (1) Termination Date, or (2) DROP Effective Date, and shall be made in accordance with rules established by the Administrator.
- (2) The Employee Retirement Contributions referred to in Section 4.2(b)(1) shall be:
 - (i) picked up by the City, as described in Section 414(h)(2) of the Internal Revenue Code;

- (ii) deducted from the pay of the contributing Participants as salary reduction contributions;
 - (iii) paid by the City to the Trustee or deposited in an Annuity Contract within 15 business days following the end of the month during which such amounts were withheld from the pay of the contributing Participants;
 - (iv) made a part of the Participant's Employee Contribution Retirement Benefit, that is, a part of his or her Accrued Pension Benefit; and
 - (v) automatically suspended for any payroll period during which the participant is not a Covered Employee or during which he or she is on an Authorized Leave of Absence.
- (3) Notwithstanding any provisions of this Plan to the contrary, Participant contributions picked up by the City, shall be fully (100%) vested.

4.3 Disability Contributions

The cost of providing the Disability Benefits on or after the Date of Adoption shall be borne by contributions by the City and the Participants. The amount of the respective contributions shall be determined as follows:

(a) City Disability Contribution

On and after the Date of Adoption, subject to the limitations contained herein, the City shall, from time to time, make contributions to the Fund in amounts necessary, according to sound actuarial principles, (and based upon reasonable actuarial assumptions, funding methods and related matters recommended by the Actuary) to fund the Disability Benefits under this Plan (other than Disability Benefits attributable to a Non-Service Connected Partial Disability, which shall be funded by contributions made by Covered Employees in accordance with Section 4.3(b)). The contribution attributable to Disability Benefits payable to Participants before their Normal Retirement Date shall not exceed three percent (3%) of the Compensation of all Participants for any Plan Year. The contribution attributable to Disability Benefits payable to Participants after their Normal Retirement Date shall not be limited by a percentage of Compensation of Participants.

(b) Employee Disability Contributions

On and after the Date of Adoption, each Participant shall make an Employee Disability Contribution in an amount required to offset the cost (as determined by the Actuary based upon reasonable actuarial assumptions, funding methods and related matters) to provide for Disability Benefits attributable to a Non-Service Connected Partial Disability under Sections 5.4 and 5.10. Such Employee Disability Contribution shall continue until the earlier of the Participant's (1) Termination Date, or (2) DROP Effective Date. The initial amount of Employee Disability Contribution shall be ½% of each Participant's Compensation, as reflected in the paycheck the Participant receives from the City; however, this amount may be changed on any January 1 that the Actuary determines that such change is necessary to maintain proper funding. The amount of the Employee Disability Contribution shall not be picked up by the City under Section 414(h)(2) of the Internal Revenue Code. The Employee Disability Contribution shall only be used to pay for Disability Benefits on account of a Non-Service Connected Partial Disability.

4.4 Disposition Of Forfeitures

Any forfeitures arising under the Plan for any reason shall not be applied to increase the benefit of any person hereunder, but rather, shall be applied to pay administrative expenses of the Plan and Fund, if and as directed by the Administrator, and/or be used to reduce the City's contributions under the Plan.

4.5 Actuarial Examination

The Administrator shall, at least once every Plan year, cause the liabilities of the Plan to be evaluated by the Actuary who shall report to the Board and the City as to the soundness and solvency of the Fund in relation to the said liabilities, the amount of the City contribution sufficient to meet the requirements of Section 4.2(a) and 4.3(a) and the amount of the Employee Disability Contribution sufficient to meet the requirements of Section 4.3(b).

4.6 Transfer of Assets from Disability Income Plan

On or following the Date of Adoption, the liability for all benefits of any kind or nature under the Disability Income Plan, as well as all assets held under the Trust established with respect to the Disability Income Plan, shall be transferred to this Plan, which shall thereafter be responsible for

all benefits payable under the Disability Income Plan following the date of transfer.

4.7 Contributions to Retirement Income Accounts

City contributions pursuant to Section 4.1 of the Prior Plan shall continue until the Date of Adoption. On and after the Date of Adoption, no further City contributions will be made pursuant to Section 4.1 of the Prior Plan. On and after the Effective Date, no other contributions of any kind will be made or permitted to any Retirement Income Account (including, without limitation, rollover contributions pursuant to Section 4.3 of the Prior Plan, or voluntary employee contributions pursuant to Section 4.4 or 4.5 of the Prior Plan). Subject to the provisions of Section 3.4, amounts previously contributed to a Participant's Retirement Income Account shall (1) remain a part of the Account after the Date of Adoption, (2) be subject to investment direction by the Participant in accordance with, and subject to the terms of, Section 9.4, and (3) be distributable upon termination of employment with the City in accordance with the provisions of Section 6.6.

ARTICLE 5

Disability Benefits

5.1 Eligibility for a Service Connected Total and Permanent Disability Benefit

A Participant will be eligible for a Disability Benefit on account of a Service Connected Total and Permanent Disability commencing on the first day of the month when the Participant meets each and all of the following conditions:

- (a) The Participant is Totally Disabled prior to his or her Normal Retirement Date (while actively employed as a Covered Employee);
- (b) The Participant has been Totally Disabled for a period of six (6) consecutive months;
- (c) The Participant's Total Disability has been ruled by the Virginia State Industrial Commission as total and permanent and is compensable as Workmen's Compensation; and
- (d) The Participant has received an award of Social Security disability benefits.

5.2 Eligibility for a Non-Service Connected Total and Permanent Disability Benefit

A Participant will be eligible for a Disability Benefit on account of a Non-Service Connected Total and Permanent Disability commencing on the first day of the month when the Participant meets all of the following conditions:

- (a) The Participant is Totally Disabled prior to the earlier of his or her Normal Retirement Date or DROP Effective Date (while actively employed as a Covered Employee);
- (b) The Participant has been Totally Disabled for a period of six (6) consecutive months; and
- (c) The Participant has received an award of Social Security disability benefits.

5.3 Eligibility for Service Connected Partial Disability Benefit

A Participant will be eligible for a Disability Benefit on account of a Service Connected Partial Disability commencing on the first day of the month when he meets all of the following conditions:

- (a) The Participant is Partially Disabled prior to his or her Normal Retirement Date (while actively employed as a Covered Employee);
- (b) The Participant's Disability has been ruled by the Virginia State Industrial Commission to be compensable as Workmen's Compensation;
- (c) The Participant's Disability is certified by the Administrator as a Service Connected Partial Disability; and
- (d) The Administrator determines that such Disability is not reasonably correctable or subject to rehabilitation, the cost of which shall be borne by the City.

5.4 Eligibility for a Disability Benefit on Account of Non-Service-Connected Partial Disability

A Participant will be eligible for a Disability Benefit on account of a Non-Service Connected Partial Disability commencing on the first day of the month when the Participant meets all of the following conditions:

- (a) The Participant is Partially Disabled prior to the earlier of his or her Normal Retirement Date or DROP Effective Date (while actively employed as a Covered Employee);
- (b) The Participant has been a Participant under this Plan (including any participation under the Disability Income Plan) for at least five (5) years at the commencement of his or her Partial Disability;
- (c) His disability is certified by the Administrator as a Non-Service Connected Partial Disability; and
- (d) The Administrator determines that such Partial Disability is not reasonably correctable or subject to rehabilitation, the cost of which shall be borne by the City.

5.5 Certain Excluded Disabilities

Notwithstanding anything in this Plan to the contrary, a Participant shall not become eligible for a Disability Benefit under this Plan if his or her Disability results from, or consists of addiction to narcotics or conviction of participation in a felonious act.

5.6 Gainful Employment

- (a) Notwithstanding any other provision of this Plan, any Participant receiving benefits or eligible to receive benefits under this Plan as the 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 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.
- (b) (1) Prior to any action to provide such alternate 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 or she has just cause to refuse to accept such alternate employment, the Participant 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, the Personnel Director 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 Section 5.6(b)(2)(i) or (ii).
- (2) (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 Benefits, as set forth in Section 5.11(a)(6) or (b)(3). If the Industrial Commission should fail or refuse to act on this question, then the determination shall be made pursuant to Section 5.6(b)(2)(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 the reasoning and precedential support 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.

5.7 Amount of Disability Benefit on Account of Service-Connected Total and Permanent Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.1 on account of a Service Connected Total and Permanent Disability shall receive a monthly Disability Benefit equal to seventy percent (70%) of the Participant's Average Monthly Compensation.

5.8 Amount of Disability Benefit on Account of Non-Service-Connected Total and Permanent Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.2 on account of a Non-Service Connected Total and Permanent Disability shall receive a monthly Disability Benefit equal to sixty-six and two-thirds percent (66 2/3%) of the Participant's Average Monthly Compensation.

5.9 Amount of Disability Benefit on Account of Service-Connected Partial Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.3 on account of a Service Connected Partial Disability Benefit shall receive a monthly Disability Benefit equal to sixty-six and two-thirds percent (66 2/3%) of the Participant's Average Monthly Compensation, reduced by the annual amount of periodic payments payable, if any, under the Workmen's Compensation Act of the Commonwealth of Virginia. Such reduction shall be applied on a monthly basis in an amount equal to one-twelfth (1/12) of the annual amount so determined.

5.10 Amount of Disability Benefit on Account of Non-Service-Connected Partial Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.4 on account of a Non-Service Connected Partial Disability Benefit shall receive a monthly Disability Benefit equal to fifty percent (50%) of the Participant's Average Monthly Compensation.

5.11 Commencement and Cessation of Disability Benefits

- (a) Disability Benefits shall be paid monthly commencing on the Participant's Disability Retirement Date.
- (b) Subject to the provisions of Section 5.13 and 5.15, Disability Benefits for a Participant who is Totally Disabled and entitled to benefits under Sections 5.1 or 5.2, will cease on the first day of the month coincident, with or next following the earliest of the dates specified below:
 - (1) The date the administrator determines that the Participant is no longer Totally Disabled, on the basis of a medical examination by an independent diagnostic clinic or physician(s) selected by the Administrator.
 - (2) The date the Participant refuses to undergo a medical examination requested by the Administrator, provided the

Participant may not be required to undergo such medical examination more often than twice a year.

- (3) The Participant's Normal Retirement Date.
 - (4) The date that the Participant's disability payments under Social Security cease.
 - (5) The date the Participant returns to a regular occupation or employment.
 - (6) The date the Participant refuses any employment which the Participant is required to accept pursuant to Section 5.6.
 - (7) The date on which the Participant dies.
- (b) Subject to the provisions of Section 5.13 and 5.15, Disability Benefits for a Participant who is Partially Disabled and entitled to benefits under Sections 5.3 or 5.4, will cease on the first day of the month coincident with or next following the earliest of the dates specified below:
- (1) The date the Administrator determines that the Participant is no longer Partially Disabled, on the basis of a medical examination by an independent diagnostic clinic or physician(s) selected by the Administrator.
 - (2) The date the Participant refuses to undergo a medical examination requested by the Administrator, provided the Participant may not be required to undergo such medical examination more often than twice a year.
 - (3) The date the Participant refuses any employment which the Participant is required to accept pursuant to Section 5.6.
 - (4) The Participant's Normal Retirement Date.
 - (5) The date on which the Participant dies.

5.12 Limitation on Benefits

Disability Benefits under this Article 5 or the Disability Income Plan before Normal Retirement Date shall be limited by the assets of the Fund designated for the payment of Disability Benefits. If the Administrator after consultation with the Actuary foresees the portion of the Fund dedicated to Disability Benefits becoming insolvent, the Administrator may reduce all

Participants' Disability Benefits on a pro rata basis as of the first day of any month after giving each Participant receiving Disability Benefits under the Plan and the Disability Income Plan adequate written notice.

5.13 Disability Benefits After Normal Retirement Date

A Participant who reaches his or her Normal Retirement Age shall begin receiving his or her Accrued Pension Benefit in accordance with the provisions of Article 6 and may elect to have his or her Accrued Pension Benefit paid in any of the optional annuity forms permitted under Section 7.2(a) or (b) (but not under Section 7.2(c)).

When the Participant reaches his or her Normal Retirement Date, Disability benefits under this Plan shall be recomputed so that the Participant's Disability benefits under Article 5 and the sum of the Participant's Accrued Pension Benefit under Article 6 and, if applicable the amount of his or her City Funded Retirement Income Account (all expressed in the form in which Disability Benefits were payable prior to the Participant's Normal Retirement Date) is actuarially equal in value to the amount of payments that the Participant would have received under Article 5 if the Participant (i) had not been Disabled, (ii) had continued to be employed by the City at the same rank and grade he or she had attained immediately prior to his or her Disability, (ii) for the prior forty-eight (48) months, had received the amount of pay applicable to such rank and grade (including any cost of living wage adjustment granted by the City but ignoring any step increases for such rank and grade), and (iv) had become Disabled and begun receiving Disability Benefits under this Article 5 immediately prior to his or her Normal Retirement Date. If the amount of pay applicable to the Participant's rank and grade is modified by a change in the City's compensation or classification system, then the Participant shall be assigned to an equivalent rank and grade within such revised compensation or classification system for purposes of applying the provisions of this Section.

Following such recalculation, the Disability Benefits under Article 5 shall continue to be paid to the Participant following his or her Normal Retirement Date in the same form as such Benefits were being paid prior to the Participant's Normal Retirement Date (i.e., either in the normal form or under the contingent annuitant option), but only to the extent necessary to provide that the Disability Benefits under Article 5 and the retirement benefits under Article 6 (including for this purpose any retirement benefits payable with respect to the Participant's City Funded Retirement Income Account, after taking into account any Investment Adjustments after the Date of Adoption) are Actuarially Equivalent to the recalculated Disability Benefits the Participant would have received under Article 5, as computed in accordance with the preceding paragraph. In the event that the Participant's retirement benefits under Article 6 (including for this purpose

any retirement benefits payable with respect to the Participant's City Funded Retirement Income Account, as adjusted for any investment gains or losses after the Date of Adoption) are equal to or greater than such recalculated Disability Benefit, then all Disability Benefits payable under this Article 5 shall cease on the Participant's Normal Retirement Date.

For purposes of this Section 5.13, any benefits to the Participant under the Retirement Income Plan shall be actuarially calculated by the Actuary using the Actuarial Assumptions in effect at such Normal Retirement Date.

5.14 Cash Settlement Option

The Participant may, at the option of the Administrator, receive a cash settlement in an amount agreed upon by the Participant and the Administrator prior to his Disability Retirement Date in lieu of the Disability Benefit that he would otherwise be entitled to, provided such Disability is due to a Service Connected Total and Permanent Disability or Service Connected Partial Disability as described in Section 5.1 and 5.3. Any such cash settlement shall not be in excess of the value of the Participant's Disability Benefit on his Disability Retirement Date, as determined based on the Actuarial Assumptions assuming payment to a Participant ceases as of the earlier of the first day of the month in which the Participant dies or reaches his or her Normal Retirement Date.

5.15 Contingent Annuitant Option

A Participant may elect, prior to his or her Disability Retirement Date, to receive Disability Benefits in the form of the contingent annuitant option and designate a contingent annuitant (who is the spouse of the Participant or the Participant's natural or legally adopted children, determined as of the Participant's Disability Retirement Date). A Participant's election, revocation or change under this Section shall be made by written notice filed with the Administrator. Such contingent annuitant shall not be more than 30 years younger than the Participant. Under this option, the Participant will receive a reduced annual Disability Benefit equal to 50%, 66 2/3%, or 100% of the Disability Benefit payable during the Participant's lifetime (as specified in the election). Such reduced Disability Benefit shall be payable to the contingent annuitant until the first day of the month in which the contingent annuitant dies.

If a Participant elects the contingent annuitant option, the amount of the Disability Benefit to which the Participant is entitled will be adjusted, so that it is the Actuarial Equivalent of the Disability Benefit that the Participant would have received had the election not been made.

This option will become inoperative if (i) a Disabled Participant ceases to be eligible for Disability Benefits for reasons other than death, or (2) either

the Participant or the contingent annuitant dies before Disability Benefits commence.

If the Contingent Annuitant dies before the Participant, this option will become inoperative and the Participant's Disability Benefits will be adjusted up to the full amount.

The Administrator reserves the right to make this option inoperative with respect to any Participant if the annual Disability Benefit to the Contingent Annuitant would be less than Sixty Dollars (\$60.00).

5.16 Cost of Living Adjustment

Disability Benefits payable pursuant to Section 5.7, 5.8, 5.9, 5.10 or 5.13 shall be adjusted beginning May 1, 2005 for changes in the cost of living in accordance with the provisions of Section 6.11.

5.17 Death of Disabled Participant

If a Participant receiving Disability Benefits dies, the extent to which any benefits are payable following the death of the Participant shall be determined in accordance with Section 6.9(f).

ARTICLE 6

RETIREMENT AND OTHER TERMINATION OF EMPLOYMENT

6.1 Normal Retirement

- (a) A Participant who terminates employment with the City on his or her Normal Retirement Date shall be entitled to receive a monthly retirement income, beginning with the first day of the month coincident with or next following his or her Normal Retirement Date and continuing for the remainder of the Participant's life.
- (b) The amount of such monthly benefit shall equal to:
 - (1) 2.5% of the Participant's Average Monthly Compensation, multiplied by the number of the Participant's Years of Credited Service up to a maximum of 20 years, plus
 - (2) 3.2% of the Participant's Average Monthly Compensation, multiplied by the number of the Participant's Years of Credited Service in excess of 20 years, but not in excess of 30 years (i.e., up to a maximum of 10 years).

Notwithstanding anything to the contrary, in no event shall a Participant's monthly allowance under Section 6.1(b) exceed 82% of the Participant's Average Monthly Compensation.

6.2 Early Retirement

- (a) A Participant who reaches his or her Early Retirement Date and who shall terminate employment with the City at that time shall thereupon be entitled to receive, commencing on the first day of the month coincident with or next following the Participant's 55th birthday, a monthly benefit equal to the Participant's Accrued Pension Benefit, determined as of his or her Early Retirement Date.
- (b) At the election of the Participant, payment of his or her vested Accrued Pension Benefit may commence at any time on or after the Participant's Early Retirement Date and prior to his or her 55th birthday, in which case such Accrued Pension Benefit shall be reduced (in order to reflect early commencement of payments) to an amount that is the Actuarial Equivalent of the Participant's Accrued Pension Benefit.
- (c) Notwithstanding the foregoing, a Participant who has completed at least 25 Years of Credited Service prior to attaining age 55 shall be entitled to a monthly benefit equal to the Participant's Accrued

Pension Benefit (determined as of his or her Early Retirement Date) commencing on the first day of the month coincident with or next following the date of his or her termination of employment with the City (i.e., the Participant's benefit shall not be actuarially reduced for commencement prior to age 55).

6.3 Employment After Normal Retirement Age

In the event a Participant remains an Employee after his or her Normal Retirement Date, then, subject to the limitations set forth in Section 6.8 and subject to Section 7.3, the Participant shall be entitled to receive, commencing on the first day of the month coincident with or otherwise next following his or her termination of employment with the City, the benefit to which the Participant would have been entitled with respect to his or her Accrued Pension Benefit pursuant to Section 6.1(b) if he or she had retired on the Participant's Normal Retirement Date, but adjusted:

- (a) by including any additional Years of Credited Service which have accrued since the Participant's Normal Retirement Date (subject to the overall 30 year limitation on Years of Credited Service taken into account); and
- (b) by taking into account any increases in Average Monthly Compensation which may be generated by increases in Compensation earned as a Covered Employee since the Participant's Normal Retirement Date.

6.4 Deferred Retirement Option Program

(a) Eligibility For DROP

A Participant who has completed at least 30 Years of Credited Service may voluntarily elect, pursuant to this Section 6.4, to retire for purposes of calculating his or her Accrued Pension Benefit, continue working as a Covered Employee for a period of up to 3 years, and defer commencement of his or her Accrued Pension Benefit until his or her DROP Retirement Date. The deferred benefit will be credited to the Participant's DROP Account and credited with interest in accordance with Section 6.4(e). In order for the DROP Election to be effective, the eligible Participant must complete and execute an election and release on a form supplied by the Administrator, and such election and release must be valid and binding on the Participant in accordance with its terms.

A Participant who does not elect to participate in the DROP in accordance with the provisions of this Section 6.4 when first eligible, may elect to participate at anytime thereafter prior to his or her Termination Date or Disability Retirement Date.

(b) Election of Retirement Date

An eligible Participant who voluntarily elects to have the provisions of this Section 6.4 apply shall irrevocably elect to retire no later than three years following the DROP Effective Date on which the Participant makes a DROP Election in accordance with Section 6.4(c). The DROP Election is not a commitment to remain employed for a period of up to three years or a guarantee of continued employment. A Participant who makes a DROP Election may retire at any time prior to the date specified in his or her DROP Election and may be terminated by the City at any time in accordance with the relevant rules and procedures applicable to terminations of firefighters or police officers.

(c) DROP Election

The election to participate in the DROP in accordance with all of the terms and conditions of this Section 6.4 must be made, if at all, by executing and delivering to the Administrator, a DROP Election on a form provided by the Administrator for this purpose. Such form shall include a waiver and release of any age discrimination or other claims relating to the DROP. A DROP Election using the form provided by the Administrator must be filed with the Administrator at least sixty (60) days prior to the proposed DROP Effective Date. The proposed DROP Effective Date selected by the Participant shall be subject to the approval of the Administrator. A Participant who makes a DROP Election shall have a period of seven (7) calendar days to revoke the DROP Election. If the DROP Election is in effect at the close of regular business hours on the seventh calendar day after the date on which the Participant signs the DROP Election, the DROP Election (including, without limitation, the DROP Effective Date and the commitment to terminate employment and retire on the date specified) shall thereupon become irrevocable.

If a Participant makes a valid DROP Election, the amount accrued by a Participant after his or her DROP Effective Date and the amount payable with respect to the Participant's Accrued Pension Benefit shall be determined solely and exclusively by the provisions of this Section 6.4 and, except as otherwise specifically provided herein, the Participant shall not be entitled to any payment, benefit or amount with respect to his or her Accrued Pension Benefit.

(d) Effect of Failure to Elect

The rights under the Plan of any Participant who is eligible for the DROP but who does not elect to participate in the DROP in

accordance with, and subject to, all of the terms and conditions of this Section 6.4, shall be determined by the remaining terms of the Plan, and the value of any rights created by this Section 6.4 shall not be considered in determining such Participant's Accrued Pension Benefit or the Actuarial Equivalent thereof.

(e) Credit to DROP Account

- (1) As of the first day of each calendar month commencing on or after the DROP Effective Date and continuing until the Participant's DROP Retirement Date, the Participant's DROP Account shall be credited with the amount the Participant would have received under Section 6.1 or 6.2(c) if the Participant had actually retired on the DROP Effective Date and elected to receive his or her Accrued Pension Benefit in the form of a straight life annuity. Notwithstanding the forgoing, in lieu of having the amount credited to his or her DROP Account determined under the monthly life annuity form of retirement income, the Participant may elect, as part of his or her DROP Election, to have the amount determined under any of the Actuarial Equivalent forms of benefit specified in Section 7.2(a) or (b).
- (2) The initial annuity amount will be adjusted each May 1 (beginning May 1, 2005) for changes in the cost of living in accordance with the provisions of Section 6.11.
- (3) As of the last day of each full calendar month that has elapsed since the DROP Effective Date, a Participant's DROP Account shall be credited with interest for such full calendar month at the rate of 3%, compounded annually. No interest shall be credited for any period less than a full calendar month.

(f) Amount of Retirement Benefit

Subject to the limitations contained in Section 6.8, an eligible Participant who is subject to a valid and binding DROP Election shall be entitled to receive a monthly retirement income, beginning with the first day of the month coincident with or next following his or her DROP Retirement Date equal to:

- (1) His or her Accrued Pension Benefit, calculated as if the Participant had terminated employment with the City on the Participant's DROP Effective Date.

- (2) Additional monthly retirement income that is the Actuarial Equivalent of the value of the Participant's DROP Account on the DROP Retirement Date.

(g) Form of Retirement Benefit

Following the DROP Retirement Date, the Participant's retirement benefit, as determined pursuant to Section 6.4(f), shall be payable in the form of monthly payments for the remainder of the Participant's life, unless an optional form of payment has been elected pursuant to Section 7.2.

A Participant may elect to have his or her benefits following the DROP Retirement Date paid in the form of a joint and survivor annuity or guaranteed period certain under Section 7.2(a) or (b) in accordance with the procedures contained in Article 7. The election made by the Participant does not have to be the same as the election made with respect to the amount credited to his or her DROP Account under Section 6.4(e). A Participant may also elect to receive the value of his or her DROP Account (but not his or her Accrued Pension Benefit) in the form of a single lump sum payment.

Upon the Participant's Benefit Commencement Date, any election made by the Participant (including the designation of a Beneficiary under any option other than the guaranteed period option) shall be irrevocable.

The benefit payable to the Participant following his or her DROP Retirement Date shall be adjusted beginning May 1 of the year following the Participant's DROP Retirement Date for changes in the cost of living in accordance with the provisions of Section 6.11.

(h) Amount of Benefit Accruals and Cessation of Employee Contributions

Except as specifically provided in Section 6.4(i), a Participant who makes a DROP Election shall be treated as if he or she ceased to be a Covered Employee as of the DROP Election Date.

- (1) The Participant shall not be required to make any Employee Retirement or Disability Contributions with respect to Compensation earned on or after the DROP Effective Date.
- (2) Such Participant's Accrued Pension Benefit shall be determined based only on Years of Service and Years of Credited Service earned as of the DROP Effective Date and

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shall be determined under the provisions of this Plan in effect as of the DROP Effective Date.

- (3) In determining Average Monthly Compensation under this Plan, only Compensation with respect to employment as a Covered Employee prior to the DROP Effective Date shall be taken into account.
- (4) The benefit accrued by the Participant subsequent to the DROP Effective Date shall consist solely of the amounts credited to the Participant's DROP Account under Section 6.4(e).

(i) Disability Benefits

On and after the DROP Effective Date, the Participant shall cease to be eligible for Disability Benefits on account of a Non-Service Connected Total and Permanent Disability or Non-Service Connected Partial Disability, but shall remain eligible for Disability Benefits on account of a Service Connected Total and Permanent Disability or Service Connected Partial Disability in accordance with the provisions of Article 5.

(j) Death Benefits

If a Participant who makes a DROP Election dies before the DROP Effective Date, the DROP Election shall be inoperative, and the death benefits, if any, payable on account of the Participant's death shall be determined in accordance with the provisions of Section 6.9.

If a Participant who makes a DROP Election dies after the DROP Effective Date but before his or her Benefit Commencement Date (following the DROP Retirement Date) the benefits payable upon the death of the Participant shall be determined in accordance with the provisions of Section 6.9(e).

If a Participant dies after his or her Benefit Commencement Date (following the DROP Retirement Date), the benefits, if any, to which the Participant's Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 7.2.

6.5 Other Termination of Employment

- (a) A Participant who reaches a Termination Date prior to his or her Normal or Early Retirement Date for any reason other than

Disability or death and after having become vested in his or her Accrued Pension shall be entitled to receive, commencing on the first day of the month coincident with or next following the Participant's Normal Retirement Date, a monthly benefit equal to his vested Accrued Pension Benefit, determined as of the date of such Termination Date (i.e., based upon the Participant's actual Years of Credited Service and Average Monthly Compensation at his or her Termination Date).

(b) Commencement of Termination Benefit

Subject to the provisions of Section 6.5(d), benefits payable pursuant to this Section 6.5 shall commence on the first day of the month coincident with or next following the Participant's Normal Retirement Date.

(c) Vested Percentage of the Accrued Pension Benefit

(1) The vested percentage of a Participant's Accrued Pension Benefit shall be equal to the greater of:

(i) 100% of the Participant's Employee Contribution Retirement Benefit and his or her Minimum Retirement Benefit, if any; or

(ii) In the case of a Participant who commenced employment as a Covered Employee on or after the Effective Date, a percentage of the Participant's Accrued Pension Benefit, determined on the basis of the number of his or her Years of Service and in accordance with the following schedule:

Years of Service	Percentage Vested
Less than 5	0%
5 or more	100%

(iii) In the case of a Participant who commenced employment as a Covered Employee prior to the Effective Date (and who has been continuously employed as a Covered Employee from the Effective Date through his or her Termination Date), a percentage of the Participant's Accrued Pension Benefit, determined on the basis of the number of his or her Years of Service and in accordance with the following schedule:

Years of Service	Percentage Vested
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%

- (2) Notwithstanding the preceding paragraph, a Participant's vested percentage in his or her Accrued Pension Benefit shall be 100% upon attainment of his or her Normal Retirement Date while a Covered Employee.

(d) Cash Out of Employee Contributions and Minimum Retirement Benefit

Notwithstanding the preceding provisions of this Section 6.5,

- (1) A Participant who reaches a Termination Date before reaching his or her Early or Normal Retirement Date, but after having become vested in all or a portion of his or her Accrued Pension Benefit attributable to City contributions, may elect to receive a Cash-Out of an amount equal to the sum of his or her Employee Contribution Retirement Benefit and his or her Minimum Retirement Benefit, as provided in Section 7.2(c), in which case such Cash-Out may be made at any time following the Termination Date, at the election of the Participant.
- (2) A Participant who reaches a Termination Date before becoming vested in any portion of his or her Accrued Pension Benefit attributable to City contributions shall receive a Cash-Out of his or her Employee Contribution Retirement Benefit as provided in Section 7.2(c), which Cash-Out shall be made as soon as administratively feasible following the Termination Date.
- (3) If the present value of a the total amount due a Participant with respect to Participant's vested Accrued Pension Benefit is \$5,000 or less as of his or her Termination Date, distribution of the Participant's vested Accrued Pension Benefit shall be made in a single lump sum payment within a reasonable time following his or her Termination Date.

- (4) A Cash-Out made pursuant to this Section 6.5(d) shall constitute full payment of all benefits due to such Participant under the Plan with respect to his or her Accrued Pension Benefit.
- (5) In the event of a Cash-Out to a Participant pursuant to this Section 6.5(d), then, subject to restoration provided in Section 2.3(d), the portion of the Participant's Accrued Pension Benefit attributable to City contributions shall be forfeited by the Participant.

6.6 Retirement Income Accounts

In addition to any benefit payable with respect to his or her Accrued Pension Benefit, a Participant with an Retirement Income Account under the Plan shall also be entitled to receive additional monthly retirement income, beginning with the first day of the month coincident with or next following the earlier of his or her Termination Date or Normal Retirement Date and continuing for the remainder of the Participant's life that is the Actuarial Equivalent of the value of his or her Retirement Income Account on the Participant's Benefit Commencement Date. If a Participant reaches a Termination Date prior to age 55, then, at the election of the Participant, payment of his or her Retirement Income Account may be deferred until the Participant's 55th birthday. If a Participant reaches his or her Normal Retirement Date prior to his or her Termination Date, the Participant may elect to commence or receive payment of his or her Retirement Income Account as of his or her Normal Retirement Date. Absent such an election, payment of the Participant's Retirement Income Account will be made or commence within a reasonable time following his or her Termination Date.

Notwithstanding the forgoing, if the value of a Participant's Retirement Income Account is \$5,000 or less on his or her Termination Date, distribution of the Participant's Retirement Income Account shall be made in a single lump sum within a reasonable time following his or her Termination Date.

A Participant shall be 100% vested in his or her Retirement Income Account.

6.7 Form of Benefits

Except as otherwise expressly provided herein, the benefits payable pursuant to Section 6.1 through 6.6 shall be payable in the form of a single life annuity beginning on the applicable date specified in Section 6.1 through 6.6, unless an optional form of payment has been elected pursuant to Section 7.2.

6.8 Maximum Limitation On Benefits

Notwithstanding any Plan provisions to the contrary:

(a) Maximum Benefit

To the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 6.8, the maximum monthly benefit to which any Participant may be entitled at any time with respect to his or her Accrued Pension Benefit pursuant to Sections 6.1 through 6.5, as adjusted from time to time pursuant to Section 6.11 (hereafter referred to as the "maximum benefit") shall not exceed the defined benefit dollar limit (adjusted as provided in Section 6.8(b)), which limit shall be determined in accordance with the following:

- (1) The defined benefit dollar limit shall be \$13,333, as adjusted under Section 415(d) of the Internal Revenue Code.
- (2) The defined benefit dollar limit as set forth above is the monthly amount payable in the form of a straight life annuity, beginning no earlier than age 62 (except as provided in Section 6.8(b)(1)(ii)) and no later than age 65.

In addition to the foregoing, to the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 6.8, the maximum annual additions for any limitation year shall be equal to the lesser of:

- (1) \$40,000, as adjusted pursuant to Section 415(d) of the Internal Revenue Code; or
- (2) 100% of the Participant's Remuneration.

The defined benefit and defined contribution dollar limits shall be adjusted, effective January 1 of each year, under Section 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe. A limit as adjusted under Section 415(d) shall apply to limitation years ending with or within the calendar year for which the adjustment applies.

(b) Actuarial Adjustment of Defined Benefit Dollar Limit

The defined benefit dollar limit shall be subject to actuarial adjustment as follows:

- (1) If the benefit is payable in any form other than a single life annuity or a qualified joint and survivor annuity (as defined for purposes of Section 415 of the Internal Revenue Code), the maximum benefit shall be reduced so that it is the Actuarial Equivalent of the single life annuity.
 - (i) If the benefit of a Participant begins prior to age 62, the defined benefit dollar limit applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the Actuarial Equivalent of the defined benefit dollar limit applicable to the Participant at age 62 (adjusted under Section 5.8(c), if required). The defined benefit dollar limit applicable at an age prior to age 62 is determined as the lesser of (i) the Actuarial Equivalent (at such age) of the defined benefit dollar limit computed using the interest rate and mortality table specified in Section 1.6(b) of the Plan, and (ii) the Actuarial Equivalent (at such age) of the defined benefit dollar limit computed using a 5% interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to Section 417(e)(3) of the Internal Revenue Code. Any decrease in the defined benefit dollar limit determined in accordance with this Section 5.8(b)(1)(i) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
 - (ii) The adjustment described in Section 6.8(b)(1)(i) above shall not apply to Participants who have been credited with at least 15 years of creditable service as a full-time Covered Employee.
- (2) If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limit applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is Actuarially Equivalent to the defined benefit dollar limit applicable to the Participant at age 65 (adjusted under Section 6.8(c), if required). The Actuarial Equivalent of the defined benefit dollar limit applicable at an age after age 65 is determined as (i) the lesser of the Actuarial Equivalent (at such age) of the defined benefit dollar limit computed using the interest rate and mortality table specified in Section 1.6(b) of the Plan and (ii) the Actuarial Equivalent (at such

age) of the defined benefit dollar limit computed using a 5% interest rate assumption and the applicable mortality table as designated by the Secretary of the Treasury from time to time pursuant to Section 417(e)(3) of the Internal Revenue Code. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(c) Reducing Dollar Limit

If a Participant has fewer than 10 years of participation in the defined benefit portion of the Plan, the defined benefit dollar limit shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (2) the denominator of which is 10. For this purpose, a Participant who makes a valid DROP Election shall continue to accrue years of participation until his or her DROP Retirement Date.

In the case of Years of Credited Service credited to a Participant pursuant to Section 3.4:

- (1) The limitation contained in Section 6.8(a)(1) and this Section 6.8(c) shall not apply to the portion of the Participant's Accrued Pension Benefit (determined as of his or her Normal Retirement Date) that is attributable to any additional Years of Credited Service under Section 3.4 that are actuarially funded by the Participant's Retirement Income Account.
- (2) The limitation contained in Section 6.8(a)(1) and this Section 6.8(c) shall apply to the portion of the Participant's Accrued Pension Benefit (determined as of his or her Normal Retirement Date) that is attributable to any additional Years of Credited Service under Section 3.4 that are not actuarially funded by the Participant's Retirement Income Account.
- (3) The determination of the extent to which additional Years of Credited Service under Section 3.4 are actuarially funded by the Participant's Retirement Income Account as of his or her Normal Retirement Date shall be made by the Actuary based on the Actuarial Assumptions.

(d) Limitation Year

Limitation year shall be defined as the Plan year.

(e) Other Reductions in Maximum Benefit

In addition to the foregoing, the maximum benefit shall be reduced, and the rate of benefit accrual shall be frozen or reduced

accordingly, to the extent necessary to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, with respect to any Participant who is also a participant in:

- (1) any other tax-qualified pension plan maintained by the City, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(l) of the Internal Revenue Code) has been established for the Participant;
- (2) any welfare plan maintained by the City in which a separate account (as described in Section 419A(d) of the Internal Revenue Code) has been established to provide post-retirement medical benefits for the Participant; and/or
- (3) any retirement or welfare plan, as aforesaid, maintained by a related employer, as described in Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

(f) Annual Additions

Annual Additions shall be defined as the sum of the following items credited to the Participant under this Plan and under any other tax-qualified defined contribution plans sponsored by the City for any limitation year: City contributions that are separately allocated to the Participant's credit in any defined contribution plan; forfeitures; participant contributions; and amounts credited after March 31, 1984 to the participant's individual medical account (within the meaning of Section 415(l) of the Internal Revenue Code). Notwithstanding anything to the contrary, the amount of a Participant's Retirement Income Account that is used to purchase credit for pre-January 1, 2004 Years of Credited Service shall not be treated as a post-January 1, 2004 annual addition.

(g) Incorporation of Section 415 Limits

To the extent a Participant's benefit is subject to provisions of Section 415 of the Internal Revenue 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.

6.9 Death Benefits

The only benefits payable under the Plan in the event of the death of a Participant shall be as follows:

(a) General Benefit

In the event of the death of a Participant prior to the earlier of his or her Disability Retirement Date, Benefit Commencement Date or DROP Effective Date, the Participant's Beneficiary shall be entitled to receive, as a single lump sum:

- (1) an amount equal to the Participant's Employee Contribution Retirement Benefit;
- (2) an amount equal to the Participant's Minimum Retirement Benefit, if any; and
- (3) an amount equal to the Participant's Retirement Income Account, if any.

(b) Surviving Spouse Annuity Benefit

- (1) If all of the following conditions are met, then the surviving spouse of a deceased Participant shall be entitled to receive a survivor annuity with respect to the Participant's Accrued Pension Benefit, in lieu of the benefit described in Section 6.9 (a)(1) and (2) above:
 - (i) the Participant is married on the date of death;
 - (ii) the Participant was continuously married to the surviving spouse for a period of at least one year prior to the date of death, or the Participant's death was attributable to an accidental injury and the Participant was married to the surviving spouse on the date of such accidental injury;
 - (iii) the Participant's death occurs (A) before his or her Termination Date or DROP Effective Date, or (B) after his or her Early or Normal Retirement Date and before his or her Benefit Commencement Date; and
 - (iv) the spouse does not elect to receive the lump sum benefit provided in subsection (a)(1), and, if applicable, (a)(2) above.
- (2) For purposes of this subsection (b), a survivor annuity is a monthly income commencing in the month next following the Participant's death, and continuing for the remainder of the spouse's life, in an amount equal to the benefit the spouse would have received under an immediate joint and survivor annuity pursuant to Section 7.2(a) (with a 50% spousal

survivor benefit) had the Participant retired on the day before death, but computed without actuarial reduction for early retirement or early commencement.

(c) Benefits Payable After Benefit Commencement Date

If a Participant dies after his or her Benefit Commencement Date, the benefits, if any, to which the Participant's Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 7.2.

(d) Death While on Authorized Leave of Absence

The Beneficiary of a Participant who dies while a Covered Employee and on an Authorized Leave of Absence for reasons other than military service shall be entitled to receive death benefits pursuant to this Section 6.9.

(e) Death of DROP Participant

If a Participant dies on or after his or her DROP Effective Date, but prior to his or her Benefit Commencement Date (following the DROP Retirement Date), the death benefits payable on account of the death of the Participant shall be determined in accordance with the provisions of this Section 6.9(e).

(1) If the amount being credited to the Participant's DROP Account was based on a straight life annuity, then the Participant's Beneficiary shall be entitled to receive as a single lump sum:

- (i) the amount of the Participant's DROP Account; and
- (ii) an amount equal to the Participant's Retirement Income Account, if any.

(2) If the Participant elected to have the amount credited to his or her DROP Account determined in one of the optional forms permitted under Section 7.2(a) or (b), then:

- (i) The Participant shall be deemed to have reached his Termination Date on the day prior to the date of death and to have commenced payment of his or her Accrued Pension Benefit according to the form that deferred benefit payments were being credited to the Participant's DROP Account under Section 6.4(e)(1). The benefits, if any, to which the Participant's

Beneficiary shall be entitled with respect to the Participant's Accrued Pension Benefit shall depend upon the form in which the Participant's Accrued Pension Benefits were being credited to the Participant's DROP Account under Section 6.4(e)(1).

(ii) In addition to the amount payable under Section 6.9(e)(2)(I) above, the Participant's Beneficiary shall be entitled to receive as a single lump sum:

- a. the amount of the Participant's DROP Account; and
- b. an amount equal to the Participant's Retirement Income Account, if any.

(f) Death of a Participant Receiving Disability Benefits

The extent to which death benefits are payable to with respect to a Participant who dies while receiving Disability Benefits shall be determined by the provisions of this Section 6.9(f).

(1) If the Participant dies prior to his or her Normal Retirement Date, the following provisions shall apply:

(i) If the Participant has not elected the contingent annuitant option in accordance with Section 5.15, then:

- a. All Disability Benefits shall cease on the date of the Participant's death; and
- b. The Participant's shall be deemed to have died prior to his or her Termination Date for purposes of Section 6.9(a) and (b).

(ii) If the Participant has elected the contingent annuitant option in accordance with Section 5.15, then the benefit payable to the contingent annuitant shall be in lieu of any other benefit payable on account of the death of the Participant with respect to the Participant's Accrued Pension Benefit (including any Minimum Retirement Benefit) and the Participant's City Funded Retirement Income Account. The amount of the benefit payable to the contingent annuitant shall not be subject to any reduction under Section 5.13.

- (2) If the Participant dies on or after his or her Normal Retirement Date, the following provisions shall apply:
 - (i) If the Participant has not elected the contingent annuitant option in accordance with Section 5.15, then all Disability Benefits shall cease on the date of the Participant's death.
 - (ii) If the Participant has elected the contingent annuitant option in accordance with Section 5.15, then the Disability Benefit (as reduced on the Participant's Normal Retirement Date in accordance with Section 5.13) shall be payable to the contingent annuitant.
 - (iii) The extent to which any benefits are payable following the Participant's death with respect to his or her Accrued Pension Benefit shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 7.2.

(g) Death of Terminated Vested Participant

If a Participant reaches a Termination Date prior to his Early or Normal Retirement Date for any reason other than Disability and dies before his or her Benefit Commencement Date, then the Participant's designated Beneficiary shall be entitled to receive a single lump sum in an amount equal to:

- (1) the Employee Contribution Retirement Benefit (to the extent such amounts were not previously withdrawn);
- (2) the Minimum Retirement Benefit, if any; and
- (3) the balance of any Retirement Income Account.

6.10 Limitations On Death Benefits

All death benefits payable pursuant to Section 6.9 shall be distributed only in accordance with regulations prescribed by the Internal Revenue Service under Section 401(a)(9) of the Internal Revenue Code, as follows:

(a) Lump Sum Benefit

All benefits payable as a lump sum under Section 6.9(a), (e)(1), (e)(2)(ii) or (g) shall be distributed in full not later than the last day of the calendar year containing the 5th anniversary of the death of the Participant.

(b) Surviving Spouse Annuity Benefit

If the Participant's Beneficiary is the Participant's surviving spouse, then, unless the Participant's spouse elects to receive the lump sum benefit under Section 6.9(a), benefits payable under Section 6.9(b) to or for the benefit of the spouse shall begin not later than the later of the last day of the calendar year containing the first anniversary of the Participant's death, or the last day of the calendar year in which the Participant would have reached age 70-1/2.

(c) When Annuity Benefits Commence Before Participant's Death

If annuity benefits meeting the requirements of Section 7.3(a) had commenced prior to the Participant's death, then the death benefits payable pursuant to Sections 7.2 may be distributed without regard to the aforesaid 5 year limit, but must be distributed at least as rapidly as they would have been under the pre-death method of distribution.

6.11 Cost Of Living Adjustments

- (a) Subject to the provisions of Section 6.11(b) and Section 6.8, (i) any amount payable as an annuity under Sections 6.1, 6.2, 6.3, 6.4, 6.5 or 6.9(b) or (f) (including a benefit payable under any of the optional forms permitted under Section 7.2(a) or (b)) with respect to a Participant's Accrued Pension Benefit, or (ii) any Disability Benefit payable under Section 5.7, 5.8, 5.9, 5.10 or 5.13 shall be increased or decreased as of May 1 of each year by multiplying the benefit, as determined immediately prior to the adjustment (including any prior cost-of-living adjustments made pursuant to this Section 6.11), by a fraction,

- (1) whose numerator is the CPI for the month of January of the current fiscal year; and
- (2) whose denominator is the CPI for the month of January of the preceding fiscal year.

The resulting adjustment may increase or decrease the benefit payable to a Participant or Beneficiary.

- (b) Notwithstanding anything herein to the contrary,

- (1) This Section 6.11 shall be effective as of May 1, 2005. No cost-of-living adjustment shall be made with respect to any benefits paid prior to May 1, 2005.

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- (2) The first adjustment made under Section 6.11(a) shall be the May 1 occurring on or after the first anniversary of the date on which the benefit commenced.
- (3) The amount of the cost-of-living adjustment for any year shall in no event exceed three percent (3%).
- (4) The benefit payable to a Participant (or a surviving spouse or other Beneficiary) after the application of this Section 6.11 shall never exceed two hundred percent (200%) of the Base Pension Benefit or Base Disability Benefit, as the case may be.
- (5) In no event shall a reduction in the amount of the benefit payable to a Participant (or a surviving spouse or other Beneficiary) as a result of this Section 6.11 cause the benefit to be less than the Participant's Base Pension Benefit or Base Disability Benefit, as the case may be.
- (6) The following special rules shall apply in determining the cost of living adjustments with respect to a Participant who continues to receive a Disability Benefit following his or her Normal Retirement Date:
 - (i) Separate cost of living adjustment shall be made with respect to the payment of the Participant's Disability Benefit and Accrued Pension Benefit following the Participant's Normal Retirement Date (subject to all of the limitations and provisions of this Section 6.11).
 - (ii) Following the Participant's Normal Retirement Date, the next adjustment made under Section 6.11(a) to the Participant's Disability Benefit and Accrued Pension Benefit shall be May 1 occurring on or after the first anniversary of the Participant's Normal Retirement Date. Such adjustment shall be based on changes in the cost of living that occurred during the calendar year preceding the May 1 date of such adjustment.
 - (iii) In the case of an adjustment to a Disability Benefit payable after the Participant's Normal Retirement Date, the cost of living adjustment and the application of the three percent (3%) limitation shall be applied as if the Disability Benefit payable immediately after the Participant's Normal Retirement Date (i.e., the

Disability Benefit after the offset under Section 5.13) had been in effect on January 1 of the preceding fiscal year (so that the cost of living adjustment is calculated with respect to the recalculated Disability Benefit and not the Disability Benefit payable prior to the Participant's Normal Retirement Date).

- (iv) The aggregate cost of living adjustments made pursuant to this Section 6.11 with respect to the combined Disability Benefits payable under Article 5 and the retirement benefits payable under Article 6 relating to the Participant's Accrued Pension Benefit shall not exceed:
 - a. Two hundred percent (200%) of the Base Disability Benefit, less
 - b. the amount of the benefit provided by the Participant's City Funded Retirement Income Account (determined as of the Participant's Normal Retirement Date and expressed in the same form of payment as the Disability Benefit using the Actuarial Assumptions in effect on such date).
- (7) The following special rules shall apply in determining the cost of living adjustments with respect to any benefit payable to a contingent annuitant pursuant to Section 5.15 following the death of the Participant:
 - (i) For all purposes of this Section 6.11, benefits payable to a contingent annuitant following the death of the Participant shall be deemed to have commenced on the date on which the benefit commenced to the Participant.
 - (ii) The first adjustment to the benefit payable to the contingent annuitant shall be determined as if the amount payable to the contingent annuitant had commenced immediately prior to January 1 of the preceding fiscal year (so that the cost of living adjustment is calculated with respect to the amount payable to the contingent annuitant and not to the Disability Benefit payable to the Participant immediately prior to death).

- (iii) For purposes of determining whether the two hundred percent (200%) limit applies, the Base Disability Benefit shall be determined as if the Participant had died on the day following his or her Disability Retirement Date and benefits had immediately commenced to such contingent annuitant on such date. To the extent that the Participant dies on or after his or her Normal Retirement Date, the aggregate limitation contained in Section 6.11(b)(6)(iv) shall be applied in a manner consistent with the provisions of this subsection.
- (8) The following special rules shall apply in determining the cost of living adjustments with respect to any benefit payable to a surviving spouse or other Beneficiary following the death of the Participant:
 - (i) For all purposes of this Section 6.11, benefits payable to a surviving spouse or other beneficiary following the death of the Participant shall be deemed to have commenced on the date on which the benefit commenced to the Participant.
 - (ii) The first adjustment to a joint and survivor annuity payable to a surviving spouse or other beneficiary shall be determined as if the survivor annuity had commenced immediately prior to January 1 of the preceding fiscal year (so that the cost of living adjustment is calculated with respect to the survivor annuity and not the benefit payable to the Participant immediately prior to death).
 - (iii) For purposes of determining whether the two hundred percent (200%) limit applies, the Base Pension Benefit shall be determined as if the Participant had died on the day following his or her Benefit Commencement Date and benefits had immediately commenced to such surviving spouse or other beneficiary on such date.
- (9) Notwithstanding anything herein to the contrary, this Section 6.11 shall not apply to any benefit paid with respect to a Participant's Retirement Income Account. For this purpose, no portion of the Participant's Accrued Pension Benefit that is attributable to the purchase of Credited Service under

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Section 3.4 shall be deemed attributable to the Participant's Retirement Income Account.

ARTICLE 7

PAYMENT OF BENEFITS

7.1 Method Of Payment

- (a) All benefit distributions shall be in cash (or in individual annuity contracts as provided herein).
- (b) The Administrator shall determine, in its discretion, whether the distribution shall be funded through periodic payments made directly from the Trust, or through the purchase of individual annuity contracts, or whether a combination of such methods of distribution shall be used, and the Administrator shall give such directions and information as may be necessary to carry out the decision of the Administrator.
- (c) If the Administrator shall determine that the whole or any part of the distribution is to be funded through purchase of an individual annuity contract for a Participant, the Administrator shall select such form of contract (including a variable annuity) to be so purchased and shall direct the payment of the premium of such contract to the issuing company.
- (d) The Administrator shall direct that all right, title and interest in such contract shall remain part of the Fund under the terms of the Plan and the Participant shall have no right, title or interest therein except to receive the payments therefrom as provided therein, and, to the extent that such contract is used to fund a guaranteed period option under Section 7.2(c), to change the Beneficiary from time to time.

7.2 Optional Forms Of Retirement Benefits

A Participant, subject to the conditions hereinafter set forth, may elect to receive, in lieu of the monthly life annuity form of retirement income described in Section 6.1, 6.2, 6.3, 6.4, 6.5 or 6.6, a benefit, which is its Actuarial Equivalent, payable in any of the forms specified in this Section 7.2. A Participant who has both an Accrued Pension Benefit and a Retirement Income Account may make separate elections with respect to the benefits payable with respect to his or her Accrued Pension Benefit and Retirement Income Account.

(a) Joint and Survivor Option

- (1) The joint and survivor option is a monthly income payable during the Participant's lifetime and continuing after his or

her death at either a 50%, 66 2/3%, or 100% (as elected by the Participant) rate to the Participant's Beneficiary (as determined as of the Participant's Benefit Commencement Date) and continuing for the remainder of such Beneficiary's life.

- (2) The only permitted Beneficiary under the joint and survivor option is the spouse of the Participant or the Participant's natural or legally adopted children or stepchildren (by marriage) all as determined as of the Benefit Commencement Date.
- (3) If the Beneficiary dies before the Participant's Benefit Commencement Date, the Participant's election shall thereupon become void.
- (4) If the Beneficiary dies after the Participant's Benefit Commencement Date (but before the Participant dies), the election shall remain effective and the Participant shall continue to receive the reduced retirement income payable to the Participant in accordance with the option.

(b) Guaranteed Period Option.

- (1) The guaranteed period option is a monthly income payable during the Participant's lifetime and guaranteed to continue to the Participant or his designated Beneficiary for a period certain of 5, 10, 15 or 20 years after the commencement of benefit payments to the Participant, regardless of whether the Participant survives such period certain. The period certain shall be elected by the Participant prior to his or her Benefit Commencement Date.
- (2) If the Participant's Beneficiary dies before the Participant, the Participant shall have the right to designate another Beneficiary. If the Participant's Beneficiary dies after the Participant and after benefits have commenced, benefits for the remainder of the period certain will be continued to the estate of the Beneficiary, unless the Participant shall have designated another Beneficiary to receive such benefits.

(c) Lump Sum Option

- (1) A Participant may elect to receive the value of his or her DROP Account or Retirement Income Account (but not his or her Accrued Pension Benefit) in the form of a single lump sum payment.

- (2) A Participant (other than a Participant receiving Disability Benefits under Article 5) may elect at any time after his or her Termination Date and before the earlier of his or her Normal Retirement Date, DROP Effective Date or Benefit Commencement Date to receive a lump sum cash payment in an amount equal to the sum of the Participant's Employee Contributions Benefit and Minimum Retirement Benefit (if any) in lieu of all other benefits with respect to the Participant's Accrued Pension Benefit under the Plan and, upon payment of that lump sum cash payment, the entire remaining portion of his or her Accrued Pension Benefit shall be forfeited by the Participant. In the event the Participant is subsequently re-employed as a Covered Employee, any amount forfeited shall be subject to restoration to the extent provided in Section 2.3(d).

7.3 General Provisions Applicable To Options

(a) Election Procedures

An election of a contingent annuitant option under Section 5.15 or any optional form of benefit described in Section 7.2 shall be made by a Participant in writing, on a form supplied by the Administrator.

Any election under Section 5.15 must be made prior to the Participant's Disability Retirement Date. Except as expressly provided in Section 5.15, upon the Participant's Disability Retirement Date, the election of the contingent annuitant option under Section 5.15 (including the designation of a contingent annuitant) shall be irrevocable.

Upon the Participant's Benefit Commencement Date, any election under Section 7.2 (including the designation of a Beneficiary under any option other than the guaranteed period option) shall be irrevocable.

(b) Effect of Death

In the event of the death of a Participant prior to his or her Benefit Commencement Date, no benefits shall be payable to the Participant's spouse or other Beneficiary except as provided in Section 6.9, regardless of whether or not the Participant has elected an optional form of benefit pursuant to Section 7.2.

(c) Minimum Distribution Requirements

Notwithstanding any other provision in the Plan to the contrary, distribution shall be made only in accordance with Section

401(a)(9) of the Internal Revenue Code and regulations promulgated thereunder. To the extent required thereby, distribution of benefits shall comply with the following limitations:

- (1) (i) Except as otherwise provided below, distribution shall begin not later than the later of April first of the calendar year (hereinafter referred to as the "commencement year") in which the Participant retires or attains age 70½.
- (ii) Distribution shall be made:
 - a. over the life of the Participant or the lives of the participant and his or her Beneficiary; and/or
 - b. over a period certain not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her Beneficiary,

All as described in proposed treasury regulation §1.401(a)(9)-1, or, if shorter, the alternate period described in proposed treasury regulation §1.401(a)(9)-2.

- (2) A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year.
- (3) Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.
- (4) Nothing contained in this subsection (c) shall prevent distribution of annuity benefits providing for non-increasing (except as otherwise permitted in proposed treasury regulation 1.401(a)(9)-1) payments beginning not later than the commencement year (except as provided in paragraph (3) above) and payable at least annually over a period permitted by this subsection (c) (for which purpose, if benefit commencement under the annuity precedes the commencement year, each relevant life expectancy shall be based on the individual's attained age as of his or her

birthday occurring in the calendar year in which benefit commencement occurs).

7.4 Eligible Rollover Distributions

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the 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.

(a) Definitions

(1) 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:

- (i) 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 10 years or more; and
- (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible retirement plan:

- (i) An "eligible retirement plan" is:
 - a. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
 - b. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
 - c. A qualified trust described in Section 401(a) of the Internal Revenue Code or an annuity plan described in Section 403(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution;
 - d. An annuity contract described in Section 403(b) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution; and
 - e. An eligible plan described in Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, that accepts the distributee's eligible rollover distribution and agrees to account separately for amounts transferred into such plan from this plan.
- (ii) The foregoing definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(3) Distributee:

A "distributee" includes a participant or former participant. In addition, the participant's or former participant's surviving spouse is a distributee with regard to the interest of the spouse or former spouse.

(4) Direct rollover:

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE 8

BENEFICIARIES

8.1 Designation Of Beneficiaries

(a) Participant Designation

Each Participant may designate a beneficiary or beneficiaries (who may be named contingently or successively) to receive such benefits as may be payable under the Plan upon or after the Participant's death. Prior to the Participant's Benefit Commencement Date and, subject to the provisions of the Plan, such designation may be changed from time to time by the Participant by filing a new designation with the Administrator. Upon the Participant's Benefit Commencement Date, the designation of a Beneficiary under any option other than the guaranteed period option shall be irrevocable.

(b) Revocations; Form of Designation; Filed with Plan Administrator

Each designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Administrator, and, shall be effective only when filed in writing with the Administrator. Except as provided in Section 7.2(b) and 8.1(a), a designation shall not be effective unless it is filed in writing with the Administrator prior to the Participant's Benefit Commencement Date.

(c) Absence of Valid Beneficiary Designation

In the absence of a valid Beneficiary designation, or if, at the time any benefit payment that is due under the terms of the Plan following the Participant's death, there is no living Beneficiary validly named by the Participant eligible to receive the payment, the Administrator shall direct any such benefit payment to:

- (1) the Participant's spouse, if then living; otherwise to
- (2) the Participant's then living descendants, if any, per stirpes; otherwise to
- (3) the Participant's then living parent or parents, equally; otherwise to

(4) the Participant's estate.

(d) Question Regarding Right of a Person to Receive a Benefit Payment

In determining the existence or identity of anyone entitled to a benefit payment, the Administrator may rely conclusively upon information supplied by the Participant's personal representative. In the event of a lack of adequate information being supplied to the Administrator, or in the event that any question arises as to the right of any person to receive a benefit payment as aforesaid, or in the event that a dispute arises with respect to any such payment, then, notwithstanding the foregoing, the Administrator, in its sole discretion, may, in complete discharge of the Administrator, and without liability for any tax or other consequences which might flow therefrom, direct the Trustee to:

- (1) distribute the payment to the Participant's estate,
- (2) retain such payment, without liability for interest, until the rights thereto are determined, or
- (3) deposit the payment into any court of competent jurisdiction.

8.2 Location Of Participants And Beneficiaries

(a) Notice to Last Post Office Address

Any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Administrator, or if no such address was filed with the Administrator, then at the individual's last post office address as shown on the City's records, shall be binding on the Participant or Beneficiary for all purposes of the Plan. Except for the Administrator's sending of a registered letter to the last known address, the Administrator shall not be obliged to search for any Participant or Beneficiary.

(b) Forfeiture if Participant or Beneficiary Fails to Claim Amount

If the Administrator notifies any Participant or Beneficiary that he or she is entitled to an amount under the Plan and the Participant or Beneficiary fails to claim such amount or make his or her location known to the Administrator within 3 years thereafter, then, except as otherwise required by law, the Administrator shall have the right to direct that the amount payable shall be deemed to be a forfeiture and treated in accordance with Section 4.3, except that the dollar amount of the forfeiture, unadjusted for gains or losses in the

interim, shall be reinstated if a claim for the benefit is made by the Participant or Beneficiary to whom it was payable. If any benefit payable to an unlocated participant or beneficiary is subject to escheat pursuant to applicable state law, the Administrator shall not be liable to any person for any payment made in accordance with such law.

ARTICLE 9

ADMINISTRATION OF THE PLAN AND MANAGEMENT OF PLAN ASSETS

9.1 Administration Of The Plan

The Plan shall be operated and administered on behalf of the City by the Administrator, which shall have the powers and duties set forth in Section 10.7.

9.2 Management Of Plan Assets

The Board shall have the powers and duties set forth in Section 10.5 with respect to the management of the assets of the Plan. The Board may also make recommendations to the City Manager or the City Council concerning modifications to or clarifications of the Plan.

9.3 Pension Fund

All assets of the Plan shall be deposited and held in one or more Annuity Contracts selected by the Board and/or in the Trust. The assets held under the Trust and any Annuity Contracts shall comprise the Fund and shall be held for the purpose of providing benefits to Participants and defraying reasonable expenses of administering the Plan. Subject to Section 9.4, and the terms of the Trust, the Trustee shall have the full power and authority to invest and reinvest the portion of the Fund held under the Trust and to change such investments and reinvestments in accordance with the terms of the Trust.

9.4 Participant Directed Investment Of Retirement Income Accounts

A Participant shall not have any right with respect to the investment of the assets of the Fund used to provide his or her Accrued Pension Benefit. However, subject to such limitations as may from time to time be required by law, imposed by the Board or contained elsewhere in the Plan, and subject to such operating rules and procedures as may be imposed from time to time by the Board (or its designee), each Participant (including for this purpose former Participants with a Retirement Income Account, Beneficiaries and/or an alternate payee under a domestic relations order in which a Participant's Retirement Income Account has been validly divided into separate accounts for the Participant and alternate payee) shall have the right to direct the investment of his or her Retirement Income Account in accordance with the following:

- (a) The Board shall designate the Investment Funds from among which each Participant may direct the investment of his or her Retirement

Income Account. The Board 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 Retirement Income Accounts in such Investment Funds.

- (b) The Board 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 Board may apply to an entire Retirement Income Account or may be applied separately to different subaccounts, or different Investment Funds. Except as the Board shall otherwise determine, any initial or subsequent investment designation shall be in writing, on a form supplied by and filed with the Board (or its designee), and shall be effective on such date as may be specified by the Board (or its designee). The Board may provide for telephone or other electronic investment designations to the extent that such facilities are made available by the Trustee or the Investment Fund, and may establish (and thereafter change) a limit on the number of designations that may be made by any Participant during a specified period.
- (c) A Participant's Retirement Income Account (except for investment earnings) shall be allocated among the separate Investment Funds in accordance with the then effective investment designation. Except as the Board shall otherwise determine, any distributions shall be taken proportionately from each separate Investment Fund in which the Participant's Retirement Income 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 Retirement Income Account at that date shall be reallocated among the designated Investment Funds according to the percentages specified in the investment designation.
- (d) In the event the Board (or its designee) 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, clear investment designation has been filed that is in accord with the rules and procedures established by the Board (or its designee) and has become effective.

- (e) It is intended that each Participant be required to direct the investment of his or her Retirement Income Account to the extent set forth in this Section. In the event that the Board (or its designee) possesses at any time instructions as to the investment of less than all of a Participant's Retirement Income Account, the Participant shall be deemed to have designated that the non-directed portion of his or her Retirement Income Account be invested in the separate Investment Fund which most closely resembles a money market or stable asset fund. To the extent that the Board 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 Board shall direct the Trustee with respect to the investment of such assets in accordance with the Trust Agreement.
- (f) The Board 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. In such event, the Board shall promptly notify Participants of any changes which affect the manner in which Retirement Income Accounts are invested.

Neither the Trustee, the Board, the Administrator, the City, the issuer of any Annuity Contract nor any other person who may be deemed a fiduciary hereunder shall have any responsibility to determine the appropriateness of any individual Participant's investment direction.

ARTICLE 10

RETIREMENT PLAN BOARD AND ADMINISTRATOR

10.1 Retirement Plan Board

- (a) The Board shall consist of eight members who are nominated by the City Manager and Voting Participants in accordance with this Article and appointed by the City Council.
- (b) Four of the members of the Board shall be nominated by the City Manager pursuant to Section 10.2 (the "City Representatives"), and four of the members of the Board shall be nominated by the Voting Participants pursuant to Section 10.3 (the "Participant Representatives"). In the event the City Council does not appoint a City Representative or Participant Representative that has been nominated in accordance with this Article, the City Manager or Voting Participants, as the case may be, shall select and present another nominee in accordance with the provisions of this Article.
- (c) In addition to the four City Representatives and four Participant Representatives, there shall be two alternate Participant Representatives and one alternate City Representative appointed by the City Council. The two alternates Participant Representatives shall be nominated in the same manner as the Participant Representatives (with one of the Participant alternates nominated by Voting Participants who are or were Firefighters, and the other Participant alternate nominated by Voting Participants who are or were Police Officers). The alternate City Representative shall be nominated by the City Manager. The designated alternates may attend meetings of the Board and participate therein, but unless acting in place of an absent member of the Board in accordance with Section 10.4, shall not be entitled to vote on any matter presented to the Board for consideration.
- (d) Each member of the Board and each alternate shall signify in writing his acceptance of his appointment as a member or alternate of the Board. No person shall act as a member of the Board or as an alternate until he has accepted and acknowledged his appointment.
- (e) Until such time as the initial members of the Board have been appointed (and signified acceptance of their appointment), the City Manager or his or her designee shall serve as the sole member of the Board.

10.2 City Representatives

- (a) The City Manager shall nominate the four City Representatives for appointment to the Board. The City Representatives appointed by the City Council shall serve as members of the Board until removed or until their death or resignation.
- (b) Each City Representative shall have the right to resign as a member of the Board at any time by giving notice in writing, mailed or delivered to the City Manager and the remaining members of the Board. A City Representative who was an employee of the City at the time of his appointment shall be deemed to have resigned from the Board upon his termination of employment with the City. The City Manager at any time may, in his discretion, request that the City Council remove any City Representative with or without cause. Upon the death, resignation or removal of a City Representative, the City Manager shall nominate a successor. The appointment of a successor shall be made by the City Council, and the successor shall have all of the rights and privileges and all of the duties and obligations of his predecessor.

10.3 Participant Representatives

- (a) The Voting Participants shall nominate each Participant Representative (by secret ballot). A Participant Representative must be a current Voting Participant.
- (b) Two out of the four Participant Representatives shall be Voting Participants who are currently or previously employed by the City as Firefighters, and shall be nominated for appointment to the Board based on the vote of all Voting Participants who are or were Firefighters. The remaining two Participant Representatives shall be Voting Participants who are currently or previously employed by the City as Police Officers, and shall be nominated for appointment to the Board based on the vote of all Voting Participants who are or were Police Officers.
- (c) Each Participant Representative, and alternate, shall serve a three-year term (or until their successor is duly appointed and has accepted his position on the Board). Each Participant Representative may be re-nominated and re-appointed for any number of additional three-year terms.
- (d) The City Manager (or his designee), in consultation with employee organizations in the Police and Fire Departments, shall conduct the initial nomination of Participant Representatives, and thereafter such nominations shall be conducted by the Board. In any

nomination proceeding conducted by the Board, no Participant Representative who is seeking to be nominated for re-appointment to the Board shall participate in conduct of the nomination proceedings by the Board.

- (e) The City Manager or his designee (for the initial nomination) or the Board (for all subsequent nominations) shall establish reasonable rules and procedures to be followed with respect to the conduct of the nomination of Participant Representatives (consistent with the provisions of Section 10.3(f)). Such procedures may include the use of paperless notices, ballots or other communications.
- (f) For the purpose of the nomination of Participant Representatives pursuant to this Section 10.3, the following procedures shall apply:
 - (1) Each Voting Participant shall have one vote in such nomination proceedings (regardless of the amount of the Participant's Accrued Pension Benefit or the amount in the Participant's Retirement Income Account).
 - (2) Each Voting Participant desiring to serve as a Participant Representative shall submit a nominating petition (in such form as the City Manager (for the initial nomination) or the Board (for all subsequent nominations) may prescribe that contains the signature of at least twenty-five of the Voting Participants entitled to vote for the nomination of such Participant Representative (i.e., Voting Participants who are or were Firefighters or Police Officers, as the case may be).
 - (3) Each Voting Participant entitled to vote on the nomination of a Participant Representative shall be provided with a ballot identifying each Voting Participant who is a valid nominee for appointment as a Participant Representative, and a brief (no more than three letter size pages) statement prepared and submitted by each candidate discussing their qualifications and reasons for serving as a Participant Representative.
 - (4) The ballot shall also include:
 - (i) Instructions for completing the ballot and information concerning the time and manner the ballot is to be returned to the City Manager (for the initial nomination) or the Board (for all subsequent nominations). If the ballot is to be returned by mail, the ballot shall include a postage paid return envelope addressed to the City Manager (for the initial

nomination) or the Board (for all subsequent nominations).

- (ii) The date by which the Voting Participant's ballot must be postmarked (if mailed) or actually received (if delivered) in order for the Voting Participant's vote to count.
 - (iii) Such other information that the City Manager (for the initial nomination) or the Board (for all subsequent nominations) reasonably believes is necessary to enable the Voting Participant to make an informed vote for the nomination of the Participant Representative.
- (g) A Participant Representative who ceases to be a Voting Participant shall be deemed to have resigned from the Board on the date he ceases to be a Voting Participant. A Participant Representative may resign from the Board at any time, upon 30 days notice to the Board. Upon the death, resignation or deemed resignation of a Participant Representative, the alternate shall become the Participant Representative until such time as a successor is nominated in accordance with the provisions of this Section 10.3 and appointed to the Board by the City Council.
- (h) The Voting Participants at any time may request that the City Council remove a Participant Representative or alternate and may nominate a new Participant Representative or alternate to fill any vacancy among Participant Representatives or alternates. In order to request removal of a Participant Representative or alternate, the Voting Participants shall submit a removal petition to the Board containing the signatures of at least twenty percent (20%) of the Voting Participants who are entitled to vote for the nomination of the Participant Representative or alternate (i.e., Voting Participants who are or were Firefighters or Police Officers, as the case may be). Such petition shall be in such form and contain such other information as may be reasonably prescribed by the Board. Upon receipt of a valid removal petition, the Board shall conduct a proceeding to determine whether or not to recommend removal (using the procedures for nomination of Participant Representatives and alternates, other than Section 10.3(f)(2)). For purposes of 10.3(f)(3), the Participant Representative or alternate who is the subject of the removal petition and the Voting Participants submitting the removal petition shall each have the opportunity to submit a brief (no more than three letter size pages) statement discussing the reasons why the recommendation to remove the

Participant Representative or alternate should (or should not) be presented to the City Council. In the event that a Participant Representative or alternate is removed, a new Participant Representative or alternate shall be nominated using the procedures contained in Section 10.3(f).

- (i) If the City Manager (for the initial nomination) or the Board (for all subsequent nominations) makes an error in conducting a nomination or removal proceeding with respect to any Participant Representative or alternate, such error shall not affect the nomination or removal (and shall be ignored), unless the City Manager (for the initial nomination) or the Board (for all subsequent nominations) reasonably concludes that the results of the nomination or removal vote would have been different, absent such error.
- (j) Any ballot, information or other communication to a Voting Participant shall be sent to the Participant at his last post office address, electronic mail address or other address shown on the Plan's records. Information or communications addressed generally to all Voting Participants shall also be posted in those places generally used for posting Employee communications (e.g., the City's intranet site). Except for sending such ballot, information or communication to the last know address shown on the Plan's records and posting general information or communications, neither the City Manager (for the initial nomination) or the Board (for all subsequent nominations) shall be obliged to take any other action to locate a Voting Participant.

10.4 Conduct Of Board Business

- (a) The Board may adopt rules for the conduct of its business.
- (b) Proceedings and actions of the Board shall be subject to the Virginia Freedom of Information Act and all other applicable law, and the Board shall takes all steps necessary to ensure that it complies with such Act and all applicable law.
- (c) The members of the Board shall elect a Chairman and a Secretary from among its members. Neither the City Representatives nor the Participant Representatives shall hold the position of both Chairman and Secretary (e.g., if a City Representative is elected to serve as Chairman, the Secretary shall be a Participant Representative). In the event the members of the Board fail to elect a Chairman or Secretary within sixty (60) days, the City Manager may appoint the Chairman or Secretary, as the case may be.

- (d) A regular meeting of the Board shall be held each calendar quarter, on a date, and at a reasonable time and place, jointly designated by the Chairman and Secretary or by resolution of the Board from time to time (provided that such date does not fall on a holiday for employees of the City). Special meetings of the Board may be called jointly by the Chairman and Secretary, or by a majority of the members of the Board. Meetings of the Board shall take place within the City of Alexandria at a site furnished by the City.
- (e) Notice of the time and place of every regular, special and reconvened meeting of the Board shall be given to each member and each alternate by personal delivery, by telephone communication, by telephone facsimile transmission, by first class mail, by electronic mail, or by a delivery service providing confirmation of delivery. At least 5 business days notice shall be given of all regular meetings and at least 72 hours notice shall be given of all special or reconvened meetings. The purpose of any meeting of the Board need not be stated in the notice. No notice of the time, place or purpose of any meeting need be given to any member, who, in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice or who attends the meeting.
- (f) Meetings of the Board shall be presided over by the Chairman or in his absence by the Secretary, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.
- (g) The Board shall keep minutes of its proceedings showing the vote of each member on each question or if absent or failing to vote indicating such fact, and shall keep records of its official actions.
- (h) Subsequent to each Board meeting, and as soon as practicable thereafter, each member of the Board (and each alternate) shall be furnished with a copy of the minutes of said meeting (which minutes shall be revised, if necessary, and then adopted and approved by the Board at its next meeting).
- (i) Two City Representatives and two Participant Representatives (with at least one Firefighter and one Police Participant Representative) shall constitute a quorum for the transaction of any business of the Board. At all meetings of the Board, each City and Participant Representative shall have a total of one vote. In the event that the Participant Representative elected by the Firefighters is absent, the alternate Participant Representative elected by the

Firefighters shall, if present, cast one vote. In the event that a police Participant Representative elected by the Police Officers is absent, the alternate representative elected by the Police Officers shall, if present, cast one vote. In the event that a City Representative is absent, the alternate City Representative shall, if present, cast one vote. Decisions of the Board shall be by a majority of the votes cast.

- (j) If quorum is lacking for any meeting, the meeting may be adjourned and reconvened by the chairman of the meeting to a future date, and any business may be transacted at any adjourned meeting which could have been transacted at the meeting as originally called. A quorum must be present at the reconvened meeting in order for the Board to transact any business or take any action.
- (k) In the event of a tie vote by the Board, the question or questions in issue may be submitted to the City Manager for resolution upon majority vote of the entire Board. If the Board does not agree to submit the question to the City Manager for resolution, then either the City Representatives (by majority vote of the City Representatives) or Participant Representatives (by majority vote of the Participant Representatives) may request that an individual be selected to arbitrate and decide the action or question in issue. The location of the arbitration shall be in the City of Alexandria, Virginia and shall be conducted in accordance with its applicable arbitration rules and procedures of the American Arbitration Association or its successor. If the City Representatives and the Participant Representatives cannot agree on an individual to serve as the arbitrator with 20 days after arbitration has been invoked, the parties will jointly request that the Chief Judge of the Alexandria Circuit Court designate an individual to serve as arbitrator and decide the action or question. The City shall pay the cost of the arbitrator; but City Representatives and the Participant Representatives shall each bear their own costs and expenses in connection with the arbitration. The decision of the City Manager or the arbitrator on such issue shall be final and binding on the Board. In the event the Board does not submit the action or issue to the City Manager, or the City or Participant Representatives do not invoke arbitration following a tie vote, the action or question shall fail and the status quo shall remain in effect, until such time as the question or action is subsequently addressed by the Board.
- (l) The Board may create such subcommittees as it shall deem necessary and appropriate, provided, however, that all proceedings and actions of any subcommittees shall be subject to the Virginia Freedom of Information Act and applicable law, and the Board shall

takes all steps necessary to ensure that each subcommittee complies with such Act and applicable law.

- (m) The Board may authorize one or more of its number or any agent to execute or deliver any instrument on its behalf and do any and all other things necessary and proper in the exercise of its duties with respect to the Plan.
- (n) The Board shall adopt standards of conduct (which conform to the State and Local Government Conflict of Interests Act) and shall require newly elected City and Participant Representatives (and alternates) to attend a course of instruction in the responsibilities and duties of a fiduciary and of an employee benefit plan that is sponsored by International Foundation of Employee Benefit Plans (or a similar organization) within a reasonable period of time following their appointment or nomination (unless such member has previously served as a fiduciary of a similar plan and, in connection therewith, has attended a similar course of instruction within a period of 5 years preceding the member's date of appointment).
- (o) All documents, instruments, orders, requests, directions, instructions and other papers shall be executed on behalf of the Board by either its Chairman or Secretary, or by any member or agent of the Board duly authorized to act on the Board's behalf.
- (p) The City shall provide the Board with assistance in recording and maintaining the minutes of the Board; notifying appropriate persons of the actions of the Board; and providing any other required administrative and clerical assistance.
- (q) In carrying out its duties the Board may, from time to time, employ agents and may delegate to them ministerial and limited discretionary duties as it sees fit.
- (r) The members of the Board who are Participant Representatives (or alternates of Participant Representatives) will receive compensation for their services as member of the Board (or alternate) in an amount determined by the City Council. City Representatives (and the alternate of the City Representatives) shall perform their duties with respect to the Plan without receiving any additional compensation in their capacity as Board members.

10.5 Duties And Responsibility Of The Board

The Board shall serve as the fiduciary of the Plan in connection with the management of the Plan's assets.

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Except as the City, acting through the City Council, shall otherwise expressly determine, the Board shall have full authority to act for the City before all persons in any matter directly pertaining to the management of the assets of the Plan, including, without limitation, the power:

- (a) To establish and modify written investment policies, objectives and guidelines with respect to the Fund.
- (b) To act for the City in any matter directly pertaining to the investment of the Fund.
- (c) To select, retain and/or remove the Trustee, to enter into a Trust Agreement with the Trustee on such terms and conditions as the Board deems advisable, and to establish and determine the amount of compensation to be paid to the Trustee.
- (d) To select one or more Annuity Contracts as a funding vehicle for the Plan.
- (e) To direct the Trustee with respect to the investment and/or investment allocation of that portion of the Fund relating to the defined benefit portion of the Plan and/or that portion of the Fund relating the disability benefits provided under the Plan.
- (f) To retain or remove one or more investment managers to manage or direct investment allocations with respect to such portions of the Fund as the Board shall designate.
- (g) To allocate investment duties and responsibilities between the Trustee and one or more investment managers.
- (h) To determine, select, monitor, review and alter as appropriate the Investment Funds from among which each Participant may direct the investment of his or her Retirement Income Account in accordance with the provisions of Section 8.4, and to take all action necessary to perform such function.
- (i) To establish reasonable rules and procedures to be followed with respect to the investment of Retirement Income Accounts, including the use of paperless notices, elections, consents, authorizations, instructions, directions, designations, requests or communications.
- (j) To determine the manner, period, and frequency of investment elections by Participants under Section 9.4.
- (k) If deemed appropriate by the Board, to suspend or terminate the right of Participants to direct the investment of all or any portion of their Retirement Income Account (and in such event to direct the

Trustee with respect to the investment of such Retirement Income Accounts).

- (l) To add or terminate any annuity contract as an Investment Fund or funding vehicle under the Plan.
- (m) To provide investment education (but not investment advice) to Plan Participants who have Retirement Income Accounts through independent service providers acting solely in the interests of Plan Participants.
- (n) To appoint and retain any trustees, custodians, investment managers, investment advisors, investment planners, record-keepers, and other vendors for the Plan as it deems necessary and appropriate for the management and operation of the assets of the Plan.
- (o) To approve all standard form benefit statements, and all other standard or special written communications from the Plan to Participants with respect to their Accrued Pension Benefit or Retirement Income Account (or the investment thereof), including but not limited to information and communications furnished to Participants by the City that directly relates to or describes their Accrued Pension Benefit or the investment of assets of the Plan, or provides information to Participants respecting the value of their Retirement Income Accounts.
- (p) To establish reasonable rules and procedures to be followed with respect to the nomination (and removal) of Participant Representatives.
- (q) To consult with the City, Administrator or City Manager respecting the terms of the Plan and to make recommendations concerning modifications to or clarifications of the Plan (including making recommendations to the City Council following consultation with the City Manager); provided, however, that the Board shall have no discretionary authority acting itself to modify or amend, in any respect, any term or provision of the Plan, which authority resides exclusively with the City Council.
- (r) To do all acts, whether or not expressly authorized herein, which the Board deems necessary or appropriate in connection with the management of the assets of the Plan.

Notwithstanding anything herein to the contrary, the Board shall not have the power to amend or terminate the Plan, to affect the employer-

employee relationship between the City and any Employee, all of which powers are reserved to the City.

10.6 Administrator

In the absence of any designation to the contrary by the City Manager, the City Manager shall serve as the Administrator.

The City Manager may designate and appoint one or more persons who are employed by the City to act as Administrator. The person or persons designated as the Administrator by the City Manager shall have full power and authority to administer and operate the Plan in accordance with its terms and in particular the authority contained in Section 9.7, and, in acting pursuant thereto, shall have full power and authority to deal with all persons in any matter directly connected with the operation and administration of the Plan.

If more than one person is designated as the Administrator by the City Manager, 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 (or each member of the Administrative Committee) shall signify in writing his acceptance of his responsibility as Administrator.

Any person or persons designated by the City Manager as Administrator (or a member of the Administrative Committee) shall:

- (a) have the right to resign at any time by giving notice in writing, mailed or delivered to the City Manager;
- (b) be deemed to have resigned as an Administrator (or a member of the Administrative Committee) upon his termination of employment with the City; and
- (c) shall be subject to removal by the City Manager at any time, with or without cause.

Upon the death, resignation or removal of an Administrator, the City Manager may appoint a successor. The appointment of a successor shall be made by the City Manager in writing, and the successor shall have all of the rights and privileges and all of the duties and obligations of his predecessor.

If the City Manager has created an Administrative Committee to serve as the Administrator, then the City Manager shall designate a Chairman and Secretary from among the members of the Administrative Committee.

The Administrative Committee may adopt reasonable rules for the conduct of its business. A majority of the members then serving as members of the Administrative Committee shall constitute a quorum for the transaction of business. All action taken by the Administrative Committee shall be by vote of a majority of those present at such meeting and entitled to vote. Actions may be taken without a meeting upon written consent signed by at least a majority of the members of the Administrative Committee. All documents, instruments, orders, requests, directions, instructions and other papers shall be executed on behalf of the Administrative Committee by either its Chairman or Secretary, or by any member or agent of the Administrative Committee duly authorized to act on the Committee's behalf.

10.7 Duties and Powers of Administrator.

The Administrator shall have the following duties and powers in connection with the administration of this Plan:

- (a) To administer the Plan in accordance with the provisions of the Plan and applicable law.
- (b) To make and to change from time to time and to enforce such rules and regulations, consistent with the provisions of this Plan, as may be necessary or desirable for the carrying out of its duties, and for the efficient administration of the Plan.
- (c) Finally and conclusively to determine, according to the provisions set forth in this Plan, the eligibility of a Participant under this Plan and, if eligible, the Participant's rights hereunder.
- (d) To exercise its sole discretionary right and authority to interpret and construe terms of this Plan and any rules and regulations that the Administrator might make.
- (e) To advise the City and the Board regarding the known future need for funds to be available for distribution in order that the Board may establish investments accordingly.
- (f) To correct defects, supply omissions and reconcile inconsistencies to the extent necessary to effectuate the Plan.
- (g) To compute the amount of benefits which shall be payable to any Participant or Beneficiary in accordance with the provisions of the Plan and to determine the person or persons to whom such benefits shall be paid.

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- (h) To direct the Trustee, custodian or issuer of an Annuity Contract concerning all payments which shall be made out of the Fund pursuant to the provisions of this Plan, an Annuity Contract or the Trust Agreement.
- (i) To file all reports with government agencies, Employees and other parties as may be required by law, whether such reports are initially the obligation of the City, the Plan or the Trustee.
- (j) To engage the Actuary of the Plan and to cause the liabilities of the Plan to be evaluated by the Actuary as provided in the Plan.
- (k) To compromise, settle, or release claims or demands in favor of or against the Plan or the Administrator on such terms as the Administrator may deem reasonable and prudent.
- (l) To recommend changes to the Plan that are necessary or desirable to maintain the qualification of the Plan under Section 401(a) of the Internal Revenue Code.
- (m) To request determination letters from the Secretary of the Treasury that the Plan continues to meet the requirements for qualification under Section 401 of the Internal Revenue Code and to 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.
- (n) To do all acts necessary to implement any action or decision with respect to the administration of the Plan.
- (o) To do all acts, whether or not expressly authorized herein, which the Administrator deems necessary to accomplish the general purposes of this Plan, provided, however, that the Administrator shall have no authority to take any action with respect to the management of the assets of the Plan, other than those actions which are necessary to implement any action or decision of the Board.

Notwithstanding anything herein to the contrary, the Administrator shall not have the power to amend or terminate the Plan or to affect the employer-employee relationship between the City and any Employee, which powers are reserved to the City.

10.8 Participation by Members of Board or Administrator

No member of the Board or Administrative Committee shall be precluded from becoming a Participant in the Plan if he or she would be otherwise

eligible, but such member shall not be entitled to vote or act upon matters or to sign any documents relating specifically to his or her own participation under the Plan, except when such matters or documents relate to benefits generally.

10.9 Agents

The Board and the Administrator may employ agents, consultants, accountants, attorneys, and service providers and provide for such clerical, legal, actuarial, accounting, medical, advisory or other services as it deems necessary to perform their respective duties under this Plan.

10.10 Allocation of Duties

The duties and powers reserved to the Board and the Administrator may be allocated among their respective members so long as such allocation is pursuant to written procedures adopted by the Board or Administrator, as the case may be, in which case, no member of the Board or Administrative Committee shall have any liability, with respect to any duties or powers not allocated to him or her, for the acts or omissions of any other member of the Board or Administrative Committee.

10.11 Delegation of Duties

The Board and the Administrator may delegate any of their respective duties or powers to employees of the City, or to any other person or firm, provided that the Board or Administrator, as the case may be, shall prudently choose such person or firm and rely in good faith on their actions.

10.12 Action Conclusive

Any action on matters within the discretion of the Board or the Administrator shall be final and conclusive except as provided in Article 10.

10.13 Records and Reports

- (a) The Administrator and the Board shall maintain such records, and compile such data, as is necessary for the proper administration and operation of the Plan and the proper management of the assets of the Plan. The Administrator and the Board shall maintain adequate records of their actions and proceedings in administering this Plan and shall file all reports and take all other actions necessary or appropriate in order to comply with applicable law.
- (b) The Plan shall be included in the annual audit of City sponsored retirement plans.

- (c) The Board shall furnish the City Manager or his designee a copy of all monthly financial or investment reports, the annual audit of the Plan, and any financial reports or documents provided by any service provider to the Plan.
- (d) The City shall promptly furnish all necessary information to the Administrator and the Board to permit them to perform their respective duties under the Plan. The Administrator and the Board shall be entitled to rely upon the accuracy and completeness of all information furnished by the City, unless it knows or should have known that such information is erroneous.

10.14 Expenses Of Administrator And Board.

Unless paid by the City, any expenses incurred by the Administrator or the Board in connection with the administration or management of the Plan shall be paid out of the Fund, including but not limited to those associated with the retention of attorneys, accountants, an actuaries, or other service providers; provided, however, that any and all fees and expenses of the Administrator or the Board shall be subject to review and approval of the City Council.

10.15 Reservation of Rights by City.

Where rights are reserved in this Plan to the City, such rights shall be exercised only by action of the City. The City may conduct independent audits of the Fund, or examine the records of the Plan or the Fund, at any time.

10.16 Standard of Care.

The Board and the Administrator shall perform all duties required of them under this Plan in a prudent manner. Neither the Board or the Administrator shall not be responsible in any way for any action or omission of the City, the Trustee or any other fiduciaries in the performance of their respective duties and obligations under the Plan and Trust Agreement. Neither the Board or the Administrator shall be responsible for any act or omission of any of their respective agents, or with respect to reliance upon advice of their respective counsel (whether or not such counsel is also counsel to the City) provided that such agents or counsel were prudently chosen by the Board or Administrator, as the case may be, and that the Board or the Administrator relied in good faith upon the action of such agent or the advice of such counsel.

10.17 Paperless Communications

Notwithstanding anything contained herein to the contrary, the Board or the Administrator from time to time may establish uniform procedures whereby with respect to any or all instances herein where a writing is required, including but not limited to any required written notice, election, consent, authorization, instruction, direction, designation, request or claim, communication may be made by any other means designated by the Board or the Administrator including by paperless communication, and such alternative communication shall be deemed to constitute a writing to the extent permitted by applicable law, provided that such alternative communication is carried out in accordance with such procedures in effect at such time.

ARTICLE 11

CLAIMS PROCEDURE

11.1 Claim for Benefits.

Any person claiming a benefit under the Plan (a "Claimant") shall apply for such benefit by filing a claim with the Administrator in writing on the form or forms prescribed by the Administrator. If no form or forms have been prescribed, a claim for benefits shall be made in writing to the Administrator setting forth the basis for the claim. The Claimant shall furnish the Administrator with such documents, evidence, data, authorizations, consents or information in support of such claim as the Administrator considers necessary or desirable to determine the validity of the claim. The Administrator shall respond in writing to any claim for benefits.

11.2 Notice of Denial.

- (a) If the claim is denied, either in whole or in part, the written notice of denial shall state, in a manner calculated to be understood by the Claimant:
 - (1) The specific reason or reasons for denial, with specific references to the Plan provisions on which the denial is based;
 - (2) A description of any additional material or information necessary for the Claimant to perfect his or her claim, if possible, and an explanation of why such material or information is necessary; and
 - (3) An explanation of the Plan's claims review procedure and the time limits applicable to such procedures.
- (b) The written notice denying or granting the Claimant's claim shall be provided to the Claimant within 90 days after the Administrator's receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension is required, written notice of the extension shall be furnished by the Administrator to the Claimant within the initial 90-day period and in no event shall such an extension exceed a period of ninety (90) days from the end of the initial 90-day period. Any extension notice shall indicate the special circumstances requiring the extension and the date on which the Administrator expects to render a decision on the claim.

11.3 Right to Reconsideration.

Any Claimant whose claim is denied (or such Claimant's authorized representative) may, within sixty (60) days after the Claimant's receipt of notice of the denial, request a review of the denial by notice given, in writing, to the Administrator. Upon such a request for review, the claim shall be reviewed by the Administrator (or its designated representative) which may, but shall not be required to, grant the Claimant a hearing.

11.4 Review of Documents and Submission of Comments.

The Claimant shall be provided reasonable access to, and copies of, all relevant documents, records and information directly related to the claim. In connection with the review, the Claimant may have an authorized representative act on the claimant's behalf. The Claimant may submit comments, documents, records and other relevant information in writing to the Administrator.

11.5 Decision by Administrator.

- (a) The decision on review normally shall be made within sixty (60) days of the Administrator's receipt of the request for review. If an extension of time is required due to special circumstances, the Claimant shall be notified, in writing, by the Administrator, and the time limit for the decision on review shall be extended up to a total of one hundred and twenty (120) days. Any extension notice shall indicate the special circumstance requiring the extension and the date on which the Administrator expect to render a decision on the appeal.
- (b) The Administrator shall notify the Claimant in writing of all benefit determinations as soon as possible, but no later than fifteen (15) days after the benefit determination is made.
- (c) The decision on review shall be in writing and shall state, in a manner calculated to be understood by the Claimant the specific reason or reasons for the decision, with specific references to the relevant Plan provisions on which the decision is based.
- (d) The Administrator has the exclusive discretionary authority to construe and to interpret Plan terms, to decide all questions of eligibility for benefits and to determine the amount of such benefits, and its decisions on such matters shall be final and conclusive. This grant of discretionary authority extends to all decisions made by the Administrator on review, which shall be final and binding with respect to all concerned parties.

- (e) A Claimant shall be entitled, either in his or her 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 or her rights, to recover present benefits due to the Claimant or to clarify rights to future benefits under the Plan. However, in any civil action, in law or equity, any interpretation or determination made pursuant to the discretionary authority conveyed upon the Administrator shall be upheld, unless it is shown that the interpretation or determination made by the Administrator was an abuse of discretion (or was arbitrary and capricious).

ARTICLE 12

AMENDMENT OR TERMINATION OF THE PLAN

12.1 Amendment Of Plan

The City shall have the right from time to time to modify or amend, in whole or in part any or all provisions of the Plan. Upon any such modification or amendment, the Board and the Administrator shall be furnished a copy thereof.

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 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 5 days prior to the scheduled meeting. At least 7 days notice shall be given of the time and place of such meeting.

Any change in benefits provided for by amendment to the Plan shall not apply to any Participant whose Termination Date, Disability Retirement Date or cessation of participation occurred prior to the effective date of such amendment, except as otherwise specifically provided for in the Plan or in such amendment.

12.2 Conditions Of Amendment

No amendment shall:

- (a) make it possible for any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, except that, if after the Plan is terminated there are assets remaining after all Plan liabilities have been provided for, such remaining assets shall be returned to the City.
- (b) directly or indirectly, reduce the vested portion of any Participant's Accrued Pension Benefit as of the effective date of the amendment.

12.3 Termination

It is the present intention of the City to maintain the Plan indefinitely for the benefit of its Covered Employees. Nevertheless, subject to the second paragraph of Section 11.1, the City reserves the right, at any time, by resolution of the City Council to permanently discontinue further contributions to the Trust or to terminate the entire Plan and Trust. Upon such event, the Accrued Pension Benefits, to the extent funded, of all Participants shall become fully vested and nonforfeitable. Upon termination of the Plan, the value of the Accrued Pension Benefits of all Participants shall be determined in accordance with the provisions of Section 12.4.

12.4 Allocation of Assets of Fund on Termination of Plan.

In the event that the Plan is terminated by the City, the Administrator shall determine (on the basis of actuarial valuation) the share of the Fund allocable to each person entitled thereto, in the following order:

- (a) First, all unpaid expenses, fees and other charges under the Plan shall be paid.
- (b) Second, the balance of each Retirement Income Account shall be distributed.
- (c) Third, each Participant shall receive an amount equal to the Participant's Employee Contribution Retirement Benefit (determined as of the date of termination), less any benefits received under the Plan.
- (d) Fourth, an amount sufficient to provide for all Disability Benefits to each Participant who is Disabled and who is entitled to or who is receiving Disability Benefits under the Plan immediately prior to termination, reduced to reflect any allocations made pursuant to the foregoing subsections.
- (e) Fifth, an amount sufficient to provide for the amount of the Accrued Pension Benefit not already provided for under subsection (c) shall be allocated to each former Participant or Beneficiary who has been receiving monthly payments for 3 years, or who could have begun to receive retirement benefits under the Plan at least 3 years prior to the date of termination of the Plan (but who elected to defer the retirement or the commencement of benefits under the Plan), in both cases based upon the terms of the Plan in effect on the date of termination of the Plan.

- (f) Sixth, an amount sufficient to provide for all Accrued Pension Benefit not already provided for under subsection (c) or (d) that were nonforfeitable immediately prior to the termination of the Plan.
- (g) Seventh, any remaining balance shall be allocated to all Participants and Beneficiaries in proportion to the excess of the actuarial values of their Accrued Pension Benefits under the Plan over the amounts allocated under subsections (c), (d) and (f).
- (h) Eighth, if after following the order of allocations set forth above there is an amount remaining, then such amount shall be returned to the City. The Actuary for the Plan shall certify that what is being returned to the City is not needed to satisfy all of the liabilities under the Plan as to the Participants or Beneficiaries.

Should there prove to be insufficient funds to provide the amounts required to fully satisfy any subsection, then the allocation to all persons covered by that subsection will be reduced by the same proportion.

The provisions set forth in this Section 12.4 shall be subject to such modification, retroactively if required, without necessity of formal amendment to the Plan, as may be necessary in order to cause the termination of the Plan and/or trust and any distributions made pursuant thereto and to conform to any requirements which may be imposed by the Internal Revenue Service to prevent disqualification of the Plan and/or Trust, and no such modification shall be deemed prejudicial to the interest of any Participant or Beneficiary. Further these provisions may be modified retroactively by an amendment to the Plan to change the priority and method of allocation of the Fund on termination of the Plan, provided such amendment does not adversely affect the qualification of the Plan under Section 401(a) of the Internal Revenue Code or increase the amount returned to the City.

12.5 Distribution Of The Fund.

- (a) Upon termination of the Plan, the City may determine to distribute the assets of the Fund as soon as is practicable after such termination. In such event, the Board, in its discretion, shall distribute the Retirement Income Accounts and the amount determined under Section 12.4 to distributable with respect to the Accrued Pension Benefits to Participants or their Beneficiaries by the purchase of annuity contracts, or by liquidating the Fund and distributing the assets to Participants, or partially by one method and partially by another, or in any manner as may be established or required by law.

- (b) As an alternative to immediate distribution of the Trust, the City, in its discretion, and subject to its option at any time to require the complete distribution of the Trust to the then Participants, may defer commencement of benefits to any Participant who has not reached an event that would otherwise entitle such Participant to commence benefits under Sections 6.1, 6.2, 6.3, 6.5 or 6.6 until such Participant reaches an event which would otherwise entitle him or her to benefit commencement, at which time the provisions of Sections 7.1 - 7.4 shall become applicable.
- (c) If the City invokes the application of Section 12.6(b), then during the interim period, there shall be established and maintained a separate account in the name of each Participant, based upon the values established pursuant to Sections 12.4. The separate account shall thereafter define and measure the amount available for benefits distributable to the Participant, and there shall be credited or charged thereto any income, expenses, gains or losses (whether or not realized, based upon fair market value of invested assets) attributable or allocable thereto as of each trust valuation date (or the date of complete distribution of the trust) with respect to the period since the last valuation date.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Limitations On Liability Of City

(a) No Rights Except as Provided by Law, Plan Provision, or Terms of Insurance or Annuity Policy

Neither the establishment of the Plan or Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the City (or any person connected therewith), the Trustee, the Board, the Administrator, any custodian, trustee or any insurance company, except as provided by law, by any Plan provision or by the terms of any insurance or annuity policy.

(b) City Does Not Guarantee the Trust

The City does not in any way guarantee the Trust from loss or depreciation, nor does the City guarantee the payment of any money which may be or become due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Fund, and in no event shall the City (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom.

(c) City Not Liable for Failure to Make Contributions

The City shall not be liable to any person for failure on its part to make contributions as provided in Section 4.2 or 4.3, nor shall any action lie to compel the City to make such contributions.

(d) City Not Liable for Failure of Plan to Qualify Under Internal Revenue Code

The City (or any person connected therewith) shall not have any liability to any person by reason of the failure of the Plan to maintain qualified status under Section 401(a) of the Internal Revenue Code, or the failure of the Trust to attain and/or maintain tax exempt status under Section 501(a) of the Internal Revenue Code, regardless of the reason for such failure.

13.2 Construction

(a) General Rules of Constriction

For all purposes of the Plan, where the context admits, the singular shall include the plural, and the plural shall include the singular, and references to persons shall include individuals, receivers, trustees, guardians, fiduciaries, corporations, partnerships, associations, estates and trusts. Headings of sections, subsections, and paragraphs are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

(b) Intended to Comply with Requirements for Qualification Under Internal Revenue Code

The Plan is intended to comply with all requirements for qualification under Section 401(a) of the Internal Revenue Code 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.

(c) References to Governmental Regulations

References in this Plan to regulations issued by the Internal Revenue Service, the Department of the Treasury or other governmental agencies shall include all regulations, rulings, procedures, releases and other position statements issued by any such agency.

(d) Severability

In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(e) Laws of Commonwealth of Virginia Shall Govern

All questions pertaining to the validity, construction and administration of the Plan, and the validity of its respective provisions, shall be determined in accordance with the laws of the Commonwealth of Virginia, except to the extent superseded by the Internal Revenue Code.

13.3 Miscellaneous

(a) Non Guarantee of Employment

Participation under the Plan shall not give any participant the right to be retained in the service of the City nor any right or claim to any benefit under the Plan unless such right or claim to such benefit has specifically accrued hereunder.

(b) Counsel

The City, the Board and the Administrator may consult with legal counsel, who may also serve as counsel for the City, the Administrator or the Board (as the case may be), with respect to the meaning or construction of this Plan and the Trust Agreement, their respective obligations or duties hereunder or with respect to any action or proceeding or any question of law, and they shall be fully protected with respect to any action taken, or omitted by them in good faith pursuant to the advice of legal counsel.

(c) Prohibition Against Assignment Of Benefits

- (1) Except as provided below or as specifically provided by law, no benefit payable at any time under this Plan shall be subject in any manner to anticipation, alienation, attachment, garnishment, sale, transfer, assignment (either at law or in equity), execution, levy, pledge, encumbrance, charge or other legal and equitable process.
- (2) The prohibitions of subsection (c)(1) shall not preclude, and the trustee at the direction of the Administrator or to the extent necessary to comply with a directive of a court or other governmental agency of competent jurisdiction) shall honor (i) the enforcement of a federal tax levy made pursuant to Section 6331 of the Internal Revenue Code; (ii) the collection by the United States on a judgment resulting from an unpaid tax assessment, or (iii) the creation, assignment recognition of a right to any benefit payable with respect to a participant pursuant to a "qualified domestic relations order."
- (3) Further, the prohibitions of subsection (c)(1) shall not preclude any arrangement for: (a) the withholding of taxes from Plan benefit payments, (b) the recovery by the Plan of overpayments of benefits previously made to a Participant, (c) the transfer of benefit rights from the Plan to another plan, or (d) the direct deposit of benefit payments to an

account in a banking institution (if not part of an arrangement constituting an assignment or alienation).

- (4) Notwithstanding the foregoing, a Participant's benefit under the Plan may be offset by the amount that the Participant is ordered or required to pay to the Plan if:
 - (i) the order or requirement to pay arises (i) under a judgment of conviction for a crime involving the Plan or the Fund, or (ii) under settlement agreement or a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of a fiduciary or other obligation of the Participant with respect to the Plan or the Fund, and
 - (ii) the judgment, order, decree or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan.
- (5) For the purposes hereof, a qualified domestic relations order shall mean a judgment, decree or order made pursuant to a state domestic relations law which relates to the provision of child support, alimony payments or marital property rights and
 - (i) which clearly specifies:
 - a. the names and last known mailing addresses of the participant and each payee;
 - b. the amount or percentage of the participant's benefits to be paid by this Plan to each payee (or the manner in which such amount or percentage is to be determined);
 - c. the number of payments or period to which such order relates: and
 - (ii) which does not:
 - a. require this Plan to provide any type or form of benefit, or any option, not otherwise provided under this Plan;

- b. require this Plan to provide increased benefits (determined on the basis of actuarial value); or
- c. require the payment of the same benefits to any payee which are payable to another payee pursuant to a prior qualified domestic relations order.

(d) Cooperation of Parties

All parties to this Plan and any person claiming any interest hereunder agree to perform any and all acts and execute any and all documents and papers which are necessary or desirable for carrying out this Plan or any of its provisions.

(e) Incapacity

If the Administrator shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor, or is physically or mentally incompetent to receive such benefit and to give a valid release therefor, and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian, committee or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Administrator may determine to make payments of such benefit otherwise payable to such Participant or Beneficiary to such other person or institution, including a custodian under a Uniform Gifts to Minors Act, or corresponding legislation (who shall be an adult, a guardian of the minor or a trust company), and such payments shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

APPENDIX A

ACTUARIAL ASSUMPTIONS

This Appendix A lists all of the Actuarial Assumptions necessary to be included in a Plan document. This Appendix, which may be amended from time to time by the Administrator (without the necessity of formal amendment to the Plan) to make necessary adjustments in the Actuarial Assumptions, is intended to be incorporated by reference into and made a part of the Plan. Except as otherwise permitted by law, no amendment to this Appendix A shall reduce any Participant's Accrued Pension Benefit calculated as of the later of the effective date or the adoption of such an amendment.

Actuarial Equivalence:

1. Interest Rate: 7.5%
2. Mortality: 1983 Group Annuity Mortality Table for males, with ages set back one year.
3. Cost of Living: 3% (subject to overall Plan limits)

APPENDIX B

CITY OF ALEXANDRIA FIREFIGHTERS AND POLICE OFFICERS PENSION RESTORATION PLAN

- (a) This Appendix B shall constitute a qualified governmental excess benefit arrangement, as described in Section 415(m) of the Internal Revenue Code. The City Of Alexandria Firefighters And Police Officers Pension Restoration Plan (the "Restoration Plan") shall be deemed a separate portion of the Pension Plan which is maintained solely for the purpose of providing to Participants in the Pension Plan whose Accrued Pension Benefit exceeds the limitations imposed by Section 415 of the Internal Revenue Code as a result of an election to exchange the Participant's City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4 of the Pension Plan. Under the Restoration Plan, no election shall be provided at any time to a Participant (directly or indirectly) to defer compensation. Furthermore, no benefits under the Restoration Plan shall be paid from the Trust maintained to fund the Plan.
- (b) In accordance with Section (a) above, any Participant in the Plan whose Accrued Pension Benefit exceeds the limitations imposed by Section 415 of the Internal Revenue Code as a result of an election to exchange the Participant's City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4 of the Pension Plan shall receive such excess amount under the Restoration Plan, subject to applicable taxes. Payments from the Restoration Plan shall be made to Participants at the same time and in the same form as payments are made to Participants under the Pension Plan.
- (c) All of the terms and conditions of the Pension Plan, to the extent not inconsistent with the Restoration Plan, shall control the rights and benefits of Participants and Beneficiaries under the Restoration Plan. In this regard, a Participant's Beneficiary designation under the Pension Plan (and all rules of the Pension Plan incident to such designation) shall control for purposes of the Restoration Plan.
- (d) Participants and their Beneficiaries under the Restoration Plan shall have solely those rights of an unsecured creditor of the City. No assets of the City shall be deemed to be held in trust for any Participants and Beneficiaries, nor shall any assets be considered security for the performance of obligations of the City. The City's obligation under the Restoration Plan shall be unsecured.

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- (e) The Restoration Plan is an unfunded plan maintained to provide retirement benefits for Restoration Plan Participants. Any Participant's benefit under the Restoration Plan is maintained for recordkeeping purposes only and is not to be construed as funded. Notwithstanding the unfunded status of the Restoration Plan, the City may establish a grantor trust to hold assets under the Restoration Plan. Any assets set aside, including any assets transferred to a trust or purchased by the City with respect to amounts payable under the Restoration Plan, shall be subject to the claims of the City's general creditors and no person other than the City shall, by virtue of the provisions of the Restoration Plan, have any interest in such assets.
- (f) Notwithstanding anything in the Pension Plan to the contrary, no Participant or Beneficiary shall not have any right to commute, sell, pledge, assign, transfer or otherwise convey the right to receive any payment under the Restoration Plan and any attempt to accomplish the same shall be void. The right to any payment of benefits shall be non-assignable and non-transferable. Such right to payment shall not be subject to legal process or levy of any kind.

RESOLUTION NO. 2097

WHEREAS, the City of Alexandria, Virginia, has heretofore maintained the defined contribution retirement plan known as the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" and the defined benefit disability income plan known as the "City of Alexandria Firefighters and Police Officers Disability Income Plan;" and

WHEREAS, the City of Alexandria, Virginia, now desires to convert from the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" to a combined defined contribution plan and defined benefit plan, effective January 1, 2004, known as the "City of Alexandria Firefighters and Police Officers Pension Plan;" and

WHEREAS, the City of Alexandria, Virginia, further desires to merge the "City of Alexandria Firefighters and Police Officers Disability Income Plan," into and make same a part of the "City of Alexandria Firefighters and Police Officers Pension Plan," effective February 21, 2004; and

WHEREAS, the "City of Alexandria Firefighters and Police Officers Pension Plan" is intended to maintain and meet requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA:

1. That the "City of Alexandria Firefighters and Police Officers Pension Plan," a copy of which is attached to this Resolution and incorporated fully herein by reference, be, and hereby is, recognized, adopted and approved.
2. That the City Manager be, and hereby is, authorized and directed to make on behalf of the City of Alexandria any changes to the "City of Alexandria Firefighters and Police Officers Pension Plan," as may be requested by the Internal Revenue Service, or, based on advice of counsel, as are necessary or desirable for the said Plan to maintain and meet the requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and
3. That the City Manager be, and hereby is, authorized and directed to take such additional actions as may be necessary to fully implement the "City of Alexandria Firefighters and Police Officers Pension Plan;" and

4. That this Resolution shall be effective immediately; provided, however, that the provisions of the "City of Alexandria Firefighters and Police Officers Pension Plan" shall be effective as stated in the said Plan.

Attachment

ADOPTED: February 21, 2004

WILLIAM D. EUILLE, MAYOR

ATTEST:

Jacqueline M. Henderson, CMC, City Clerk

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

As In Effect on January 1, 2004

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

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

ARTICLE 1

NATURE OF PLAN; NAME; DEFINITIONS; CONSTRUCTION

1.1 Background; Nature of Plan

Prior to January 1, 2004, the City of Alexandria (the "City") maintained the City of Alexandria Retirement Income Plan for Firefighters and Police Officers (the "Retirement Income Plan") and the City of Alexandria Firefighters and Police Officers Disability income Plan (the "Disability Income Plan"). The Retirement Income Plan was a "money purchase pension plan", under which individual accounts were maintained for each Participant in the Plan. Participants were allowed to direct the investment of their account and benefits under the Retirement Income Plan were based solely on amounts contributed to the Retirement Income Plan and any investment income, gains, losses or expenses credited, charged or allocated to the Participant's Retirement Income Account.

The Disability Income Plan was a separate plan which provided service and non-service connected disability benefits to firefighters and police officers who became disabled prior to their normal retirement date.

Pursuant to an ordinance duly adopted by the Alexandria City Council on February 21, 2004, the Retirement Income Plan and Disability Income Plan have been amended, effective as of January 1, 2004 (the "Effective Date"):

- (1) to change the name of the Retirement Income Plan to the City of Alexandria Firefighters and Police Officers Pension Plan (the "Pension Plan");
- (2) to authorize the use of a trust and/or one or more annuity contracts as the funding vehicle(s) under the Pension Plan;
- (3) to provide for the merger of the Disability Income Plan into the Pension Plan; and
- (4) to convert the Retirement Income Plan from a money purchase pension plan to a combined money purchase pension plan and a defined benefit plan, under which:
 - (i) All future benefits will accrue under the defined benefit portion of the Plan (i.e., under the Pension Plan).

- (ii) Participants with Retirement Income Accounts who became Participants in the Plan prior to July 1, 2003 and who are actively employed by the City as a firefighter or police officer on the Date of Adoption will be given the option of exchanging their "City Funded Retirement Income Account" for "Pre-2004 Credited Service" under the Pension Plan (the "Past Service Election").
- (iii) An individual account will continue to be maintained for Participants who do not make the Past Service Election (or who are not eligible for such Election). Participants who continue to have a Retirement Income Account will continue to direct the investment of their Retirement Income Accounts.
- (iv) No further City or Employee contributions will be permitted with respect to the Retirement Income Accounts.
- (v) All amounts credited to Retirement Income Accounts as of the Date of Adoption will be fully vested. (However, benefits that accrue on and after the Effective Date under the defined benefit portion of the Plan will be subject to the vesting schedule contained in Section 6.5 of the Plan.)

1.2 Name; Type of Plan

The Pension Plan may be referred to as the "City of Alexandria Firefighters and Police Officers Pension Plan." The Pension Plan is a continuation of the Retirement Income Plan and is a money purchase pension plan (with respect amounts contributed prior to the Date of Adoption and subsequent Investment Adjustments with respect thereto) and a defined benefit plan (with respect to benefits accruing on or after the Effective Date).

The Plan is a governmental plan, as described in Section 414(d) of the Internal Revenue Code.

1.3 Qualification Under Internal Revenue Code

The City of Alexandria Firefighters and Police Officers Pension Plan is intended to be a pension plan that continues to qualify under Section 401(a) of the Internal Revenue Code, so that the trust established under the Plan will be exempt from tax under Section 501 of the Internal Revenue Code. Notwithstanding anything herein to the contrary, the conversion of this Plan from a money purchase pension plan to a combined money purchase pension plan and a defined benefit plan and the merger of the Disability Income Plan into the Pension Plan shall be contingent upon the City's receipt of a favorable determination letter from

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the Internal Revenue Service to the effect that the conversion and merger will not adversely affect the qualification of the Plan under Section 401 et. seq. of the Internal Revenue Code and the City reserves the right to amend the Plan retroactively to the extent necessary to obtain such a favorable determination letter.

1.4 Applicability

The provisions of the Plan shall apply only to an individual who meets the definition of Covered Employee and who is credited with an Hour of Service on or after the Date of Adoption. The rights, benefits and interests of any Covered Employee who died, retired, became Disabled or otherwise reached a Termination Date prior to the Date of Adoption shall be determined under the provisions of the Retirement Income Plan as in effect on the date such former Covered Employee died, retired or became Disabled, otherwise reached a Termination Date.

The provisions of Article 5, which provide for the payment of benefits to a Participant who becomes Disabled, shall apply to any Participant who reaches his or her Disability Retirement Date on or after the Date of Adoption (even if the injury or illness giving rise to the Disability occurred before the Date of Adoption). The right of any Covered Employee whose Disability Retirement Date occurred prior to the Date of Adoption, and the amount and conditions of such benefits, shall be determined under the provisions of the Disability Income Plan as in effect on the date such former Covered Employee reached his or her Disability Retirement Date.

1.5 Incorporation of Trust Agreement and Annuity Contract(s)

The Trust Agreement and any Annuity, as the same may be amended from time to time, are intended to be and hereby are incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

1.6 Definitions.

Unless a different meaning is plainly implied by the context, the following terms as used in this Plan shall have the following meanings:

Accrued Pension Benefit

"Accrued Pension Benefit" means the monthly benefit to which a Participant is entitled under the defined benefit portion of the Plan on or after the Effective Date pursuant to the provisions of Section 6.1, expressed as a single life annuity commencing at the Participant's Normal Retirement Date or the Actuarial Equivalent thereof. The Accrued Pension Benefit as of any date preceding the Participant's Normal Retirement Date shall be a monthly benefit

commencing on the Participant's Normal Retirement Date and continuing for his or her life, calculated in the same manner as a normal retirement benefit and based upon the benefit earned by such Participant as of the date of determination.

In no event, however, shall the Accrued Pension Benefit:

- (1) exceed the maximum limitation determined, as of the date of computation, pursuant to Section 6.8; or
- (2) be less than the Actuarial Equivalent of (i) the Minimum Retirement Benefit (in the case of a Participant who elects to exchange his/her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4) and (ii) the Employee Contribution Retirement Benefit.

Actuarial Assumptions

"Actuarial Assumptions" means those assumptions employed in the determination of Actuarial Equivalents or for other pertinent benefit calculations, as set forth in Appendix A hereto, as the same may be modified from time to time.

Actuarial Equivalent

"Actuarial Equivalent" means a benefit of equivalent dollar value on a specified date, computed on the basis of the Actuarial Assumptions (including projected cost of living adjustments).

Actuary

"Actuary" means the independent enrolled actuary, selected by the Administrator.

Administrator

"Administrator" means the City Manager or the person or committee designated by the City Manager to administer the Plan in accordance with Section 10.6.

Annuity Contract

"Annuity Contract" means a group annuity contract issued by a licensed insurance company to the Trust or the City to fund all or part of the benefits provided under the Plan, as such contract may be amended from time to time in accordance with the terms thereof.

Authorized Leave of Absence

"Authorized Leave of Absence" shall mean an unpaid temporary absence from active service with the City for a specified period which is not treated as a termination of employment and which is granted or extended by the City pursuant to its regular personnel policies.

Average Monthly Compensation

"Average Monthly Compensation" means 1/48th of the total amount of a Participant's Compensation for the forty-eight (48) consecutive full calendar months of the Participant's employment as a Covered Employee in which his or her Compensation was the highest. In the event a Participant's entire period of employment consists of less than forty-eight (48) consecutive full calendar months of employment as a Covered Employee, the Participant's Average Monthly Compensation shall be determined by averaging (on a monthly basis) the Participant's Compensation during the number of full calendar months that the Participant was employed as a Covered Employee. Notwithstanding anything herein, in determining a Participant's Average Monthly Compensation under this Plan, (1) only Compensation earned during a calendar month that is included in calculating the Participant's Years of Credited Service be taken into account, and (2) the determination of Average Monthly Compensation shall include Compensation earned prior to the Effective Date.

Base Disability Benefit

"Base Disability Benefit" means the annual amount of the Disability Benefit payable under Section 5.7, 5.8, 5.9 or 5.10 (as determined on the that Disability Benefits commence to the Participant). In the case of a Disability Benefit payable pursuant to the contingent annuitant option, the Base Disability Benefit shall be determined as if the Participant had died on the day following his or her Disability Retirement Date and benefits had immediately commenced to such contingent annuitant on such date.

Base Pension Benefit

"Base Pension Benefit" means, the annual amount of the annuity benefit payable as of the Participant's Benefit Commencement Date with respect to the Participant's Accrued Pension Benefit under Section 6.1, 6.2, 6.3, 6.4 or 6.5. In the case of a joint and survivor annuity payable to a surviving spouse or other beneficiary, the Base Pension Benefit shall be determined based on the amount

that would have been payable to the surviving spouse or beneficiary if the Participant had died on the day following his or her Benefit Commencement Date and benefits had immediately commenced to such surviving spouse or other beneficiary on such date.

Beneficiary

"Beneficiary" means the person or persons entitled to receive any benefit payable under the terms of the Plan following the death of a Participant.

Benefit Commencement Date

"Benefit Commencement Date" means the first day of the first period for which a Participant's Accrued Pension Benefit is due to be paid or is due to commence. In the case of a Participant who has made a DROP Election in accordance with Section 6.4, the Benefit Commencement Date means the first day of the first period for which a Participant's Accrued Pension Benefit is due to be paid or is due to commence following the Participant's DROP Retirement Date.

Board

"Board" means the Retirement Plan Board that is established under Article 10 to manage the assets of the Plan.

Cash-Out

"Cash-Out" means a distribution made pursuant to Section 6.5 in settlement of any and all benefits otherwise payable under the defined benefit portion of the Plan.

City

"City" means the City of Alexandria, Virginia.

City Funded Retirement Income Account

"City Funded Retirement Income Account" means any portion of a Participant's Retirement Income Account that is attributable to City contributions and Investment Adjustments thereon or to any amount transferred pursuant to Section 3.5 of the Prior Plan and Investment Adjustments thereon.

City Representatives

"City Representatives" means the members of the Board who are nominated by the City Manager pursuant to Section 10.2.

Compensation

"Compensation" means the retirement base compensation (i.e., regular or base salary or wages received from the City during a Plan Year for personal services rendered as a Covered Employee, based on the Covered Employee's grade and step). Such term excludes any and all overtime, differentials, allowances, premiums, bonuses, FLSA adjustments or form of extra compensation.

Notwithstanding the foregoing, Compensation shall include any amount which would otherwise be deemed Compensation under this definition but for the fact that it is deferred pursuant to a salary reduction agreement under a plan described in Section 457, 414(h), 132(f) or 125 of the Internal Revenue Code.

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

Covered Employee

"Covered Employee" means an Employee who is actively employed by the City as a sworn police officer or firefighter (but only during the period of time that such Employee is actively employed by the City as a sworn police officer or firefighter). The term "Covered Employee" does not include a parking enforcement officer, a tag enforcement officer, or an Employee who is covered under the City of Alexandria Pension Plan for Firefighters and Police Officers.

CPI

"CPI" means the Consumer Price Index - All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84=100), published and revised by the Bureau of Labor Statistics, U.S. Department of Labor, or the successor to such index.

Date of Adoption

"Date of Adoption" means February 21, 2004, the date on which the City Council adopted the Pension Plan (i.e., approved the amendment converting the Prior Plan into the Pension Plan and merging the Disability Income Plan into the Pension Plan).

Disability or Disabled

"Disability" or "Disabled" means a Total or Partial Disability.

Disability Benefit

"Disability Benefit" means the monthly benefit, if any, that is payable under Article 5 with respect to a Covered Employee who becomes Disabled.

Disability Income Plan

"Disability Income Plan" means the City of Alexandria Disability Income Plan for Firefighters and Police Officers that was in effect prior to the Date of Adoption.

Disability Retirement Date

"Disability Retirement Date" means the first day of the month after the Administrator has determined that a Participant is Disabled.

DROP

"DROP" means the Deferred Retirement Option Program described in Section 6.4.

DROP Election

"DROP Election" means an election under Section 6.4(c) to participate in the DROP.

DROP Effective Date

"DROP Effective Date" means the date on which the Participant's DROP Election becomes effective. The DROP Effective Date must be the first day of a [calendar month][payroll period].

DROP Retirement Date

"DROP Retirement Date" means the first day of the month coincident with or next following the retirement date voluntarily elected by a eligible DROP Participant in his or her DROP Election.

Early Retirement Date

"Early Retirement Date" means the first day of the month coincident with or next following the earlier of the date on which a Participant:

- (1) completes 25 Years of Credited Service as a Covered Employee, or
- (2) completes 20 Years of Credited Service as a Covered Employee, provided that the Participant is at least 50 years old. A Participant who completes 20 Years of Credited Service prior to attaining age 50, will reach his or her Early Retirement Date on the first day of the month coincident with or next following the Participant's 50th birthday, provided the Participant is employed as a Covered Employee on that date.

Effective Date

"Effective Date" means January 1, 2004. The Plan was adopted on February 21, 2004, but was effective as of January 1, 2004.

Employee

"Employee" means any person who is classified by the City as an employee and who is employed in any capacity by the City (or any City Department); provided, however, that the term Employee shall not include (1) any individual who is classified by the City as working or providing services in a non-employee capacity (including, without limitation, a person classified by the City as an independent contractor), notwithstanding the later reclassification by a court or any regulatory agency of the person as a common law employee of the City, or (2) any individual deemed to be a leased employee of the City, pursuant to Section 414(n) of the Internal Revenue Code.

Employee Contribution Retirement Benefit

"Employee Contributions Retirement Benefit" means the sum of:

- (1) the Employee Retirement Contributions made by the Participant; plus
- (2) 4% interest on the Employee Retirement Contributions computed on December 31 of each year and compounded annually.

Employee Disability Contribution

"Employee Disability Contribution" means the after-tax contributions made by the Participant pursuant to Section 4.3(b) to fund Disability

Benefits payable with respect to a Non-Service Connected Partial Disability.

Employee Retirement Contribution

"Employee Retirement Contribution" means the contributions made by the Participant through salary reduction and "picked up" by the City pursuant to Section 4.2(b).

Fund

"Fund" shall mean the assets accumulated under the Trust Agreement and any Annuity Contracts in order to provide for the payment of the benefits specified in the Plan (but not the City of Alexandria Firefighters and Police Officers Pension Benefit Restoration Plan attached hereto as Appendix B).

Hour of Service

"Hour of Service" means each hour for which an Employee is directly or indirectly paid or entitled to payment by the City for the performance of duties as a Covered Employee.

Internal Revenue Code

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

Investment Adjustment(s)

"Investment Adjustment(s)" means any increase and/or decrease in the value of a Participant's Retirement Income Account attributable to investment income, gains, losses or expenses that are or have been credited, charged or allocated to the Retirement Income Account.

Investment Funds

"Investment Funds" means the investment media from among which each Participant may direct the investment of his or her Retirement Income Account. Such term is limited to one or more:

- (1) variable Annuity Contracts;
- (2) pooled separate accounts maintained by an insurance company under an Annuity Contract;

- (3) shares of redeemable capital stock of one or more regulated investment companies, as defined in Section 851(a) of the Internal Revenue Code; and
- (4) combined, common or commingled trust funds established by any person or entity acting as trustee or investment manager for the collective investment of trust funds of pension, profit sharing or other employee benefit plans, whether or not such collective funds are limited to qualified retirement plans.

Minimum Retirement Benefit

"Minimum Retirement Benefit" means, in the case of a Participant who elected to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4, the value of the Participant's City Funded Retirement Income Account as of December 31, 2003 (without any adjustment for any contributions or Investment Adjustments subsequent to December 31, 2003) or a straight life annuity that is the Actuarial Equivalent thereof (as the context requires).

Non-Service Connected Partial Disability

"Non-Service Connected Partial Disability" means a Partial Disability which meets the requirements of Section 5.4

Non-Service Connected Total and Permanent Disability

"Non-Service Connected Total and Permanent Disability" means a Total Disability which meets the requirements of Section 5.2.

Normal Retirement Date

"Normal Retirement Date" means:

- (1) In the case of a Participant who commenced employment as a Covered Employee on or after the Effective Date, the first day of the month coincident with or next following the attainment of age 55 with at least 5 Years of Credited Service.
- (2) In the case of a Participant who commenced employment as a Covered Employee prior to the Effective Date, the first day of the month coincident with or next following the attainment of age 55.

Partial Disability or Partially Disabled

"Partial Disability" or "Partially Disabled" means an illness or injury which prevents a Covered Employee from performing the duties of the job that the Covered Employee was assigned by the City at the time of suffering such illness or injury, as determined by the Administrator on the basis of a medical examination performed by an independent diagnostic clinic or physician(s) selected by the Administrator.

Participant

"Participant" means a Covered Employee who is currently included in the Plan as provided in Article 2 hereof. In addition, where appropriate according to the context of the Plan, the term Participant shall also include a Beneficiary or a former Covered Employee who is entitled to benefits under the Plan.

Participant Representative

"Participant Representative" means the members of the Board nominated by the Voting Participants pursuant to Section 10.3.

Plan or Pension Plan

"Plan" or "Pension Plan" means the City of Alexandria Firefighters and Police Officers Pension Plan, as described herein or as hereafter amended from time to time.

Plan Year

"Plan Year" means the calendar year.

Pre-2004 Credited Service

"Pre-2004 Credited Service" means Years of Credited Service completed prior to January 1, 2004, provided that the contributions the City made to the Retirement Income Plan with respect to such prior service (and the related Investment Adjustments) have not been distributed to the Participant prior to the Date of Adoption.

If, for any reason, the contributions the City made to the Retirement Income Plan with respect to such prior service were previously distributed to the Participant, then the Participant's Pre-2004 Credited Service shall be determined without regard to any period of prior service for which the Participant previously received a distribution.

Prior Plan or Retirement Income Plan

"Prior Plan" or "Retirement Income Plan" means the City of Alexandria Retirement Income Plan for Firefighters and Police Officers that was in effect prior to the Date of Adoption.

Reemployment Commencement Date

"Reemployment Commencement Date" means the date on which a individual first performs an Hour of Service as a Covered Employee after a period during which no Hours of Service were performed by reason of the occurrence of a Termination Date or the cessation of an individual's status as a Covered Employee.

Remuneration

- (1) "Remuneration" means a participant's wages as defined in Section 3401(a) of the Internal Revenue Code and all other payments of compensation to the Participant from the City for which the City is required to furnish the Participant a written statement under Sections 6041(d) and 6051(a)(3) of the Internal Revenue Code.
- (2) Remuneration shall be determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
- (3) Remuneration does not include Employee Retirement Contributions picked up by the City pursuant to Section 4.2(b)(2).
- (4) Remuneration shall include any amount which would otherwise be deemed Remuneration under this definition but for the fact that it is deferred pursuant to a salary reduction agreement under any plan described in Section 457, 414(h), 132(f) or 125 of the Internal Revenue Code.

Retirement Income Account

"Retirement Income Account" means the individual account maintained for each Participant reflecting all amounts credited to such Participant under the Retirement Income Plan, as adjusted for Investment Adjustments thereon and any distributions.

On and after the Date of Adoption, each Retirement Income Account shall reflect:

- (1) In the case of a Participant who validly elected to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4, then the Participant's Retirement Income Account shall only reflect amounts, if any, attributable to (i) assets transferred or rolled over to the Plan pursuant to Section 4.3 of the Prior Plan; (ii) voluntary contributions made pursuant to Section 4.4 of the Prior Plan; and (iii) Investment Adjustments on the forgoing. Such account shall not reflect (i) any City contributions under the Prior Plan; (ii) any amount transferred pursuant to Section 3.5 of the Prior Plan; or (iii) any Investment Adjustments attributable to the forgoing. If the Participant's Retirement Income Account as of the Date of Adoption does not include any prior rollover or voluntary contributions, then the Participant shall cease to have a Retirement Income Account on and after the Date of Adoption.
- (2) In the case of a Participant who does not elect to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4, the Participant's Retirement Income Account shall continue to reflect the amount attributable to (i) City contributions under the Prior Plan; (ii) any amount transferred pursuant to Section 3.5 of the Prior Plan; (iii) any assets transferred or rolled over to the Plan pursuant to Section 4.3 of the Prior Plan; (iv) any voluntary contributions made pursuant to Section 4.4 of the Prior Plan; and (v) Investment Adjustments attributable to the forgoing.

The Retirement Income Account shall include any other functional subaccounts as may be established by the Administrator from time to time. Each Participant's Retirement Income Account shall be equal to the sum of the Investment Funds in which such account is invested.

Service Connected Partial Disability

"Service Connected Partial Disability" means a Partial Disability which meets the requirements of Section 5.3.

Service Connected Total and Permanent Disability

"Service Connected Total and Permanent Disability" means a Total Disability which meets the requirements of Section 5.1.

Spouse

"Spouse" refers to the legally married spouse of the Participant. For purposes of the Pension Plan, the term is limited to a spouse to whom the Participant is married in a legally recognized ceremony and does not include a common law spouse (even if a common law marriage is legally recognized).

Total Disability or Totally Disabled

"Total Disability" or "Totally Disabled" means an illness or injury which prevents a Covered Employee from performing the duties of all jobs for which the Covered Employee is otherwise qualified or any job for which the Covered Employee could become qualified by rehabilitation or retraining, as determined by the Administrator on the basis of a medical examination performed by an independent diagnostic clinic or physician(s) selected by the Administrator.

Termination Date

"Termination Date" means the first to occur of:

- (1) a termination of employment from the City by reason of resignation, discharge, mutual agreement, retirement or death;
- (2) the date on which an Authorize Leave of Absence expires without a return to active employment; or
- (3) a Participant's Disability Retirement Date.

Trust Agreement

"Trust Agreement" means the agreement by and between the City and the Trustee, together with any and all amendments or supplements thereto.

Trustee

"Trustee" means the bank or trust company selected by the Board to serve as Trustee under the Trust.

Voting Participant.

"Voting Participant" means a Participant with an Accrued Pension Benefit or Retirement Income Account attributable to such Participant's employment as a Covered Employee. The term includes a former Covered Employee who continues to have an

Accrued Pension Benefit or Retirement Income Account attributable to his or her employment as a Covered Employee or who is currently receiving retirement benefits based upon his or her employment as a Covered Employee. The term does not include a Participant who may be a current or former Covered Employee, but whose rights to benefits under the Plan are not attributable to such Participant's employment as a Covered Employee (e.g. a Participant whose rights to benefits under the Plan are attributable solely to his or her status as a Beneficiary, contingent annuitant or an alternate payee under a domestic relations order).

Year of Credited Service

A Participant shall be credited with 1/12th of a Year of Credited Service for each full calendar month of service as a Covered Employee commencing on or after the Effective Date and ending with the Participant's Termination Date. A Covered Employee shall not be credited with Years of Credited Service (or 1/12th increments thereof) for any calendar month during which he or she is not a Covered Employee for the entire month or for any calendar month commencing after the Covered Employee's Termination Date. In addition, except as otherwise provided in Section 3.4, a Participant shall not be credited with Years of Credited Service (or 1/12th increments thereof) for any calendar month prior to the Effective Date.

Year of Service

A Covered Employee shall be credited with 1/12th of a Year of Service for each calendar month (including calendar months prior to the Effective Date) during which he or she is a Covered Employee for the entire month. A Participant shall not be credited with Years of Service (or 1/12th increments thereof) for any calendar month during any portion of which he or she is not a Covered Employee.

ARTICLE 2

PARTICIPATION

2.1 Commencement of Participation.

A Covered Employee's participation in this Plan, and the agreement to make contributions hereunder, as described in Sections 4.2(b) and 4.3(b), is mandatory and a condition of employment. Subject to the forgoing, the commencement of a Covered Employee's participation in the Plan shall be governed by the following:

- (a) Each Covered Employee participating in the Retirement Income Plan on the Date of Adoption, shall continue participation hereunder, according to the terms of this amended and restated Plan (including, without limitation, the contributions required by the Covered Employee under Sections 4.2(b) and 4.3(b)).
- (b) Every other Employee who is or becomes a Covered Employee on or after the Date of Adoption shall become a Participant on the date he or she first performs an Hour of Service as a Covered Employee.
- (c) No Employee shall become a Participant, however, if he or she is not a Covered Employee on the date the individual's participation is to begin.

2.2 Termination of Participation.

A Participant shall cease to accrue benefits under the Plan on the earlier of (i) his or her Termination Date or (ii) the date on which the Participant ceases to be a Covered Employee. In addition, a Participant who reaches his or Termination Date or who ceases to be a Covered Employee shall cease to be eligible for Disability Benefits attributable to a Disability that occurs or arises on or after such date. Notwithstanding the cessation of benefit accruals or eligibility for Disability Benefits, a Participant who has ceased participation hereunder shall remain a Participant, as the context of the Plan requires, to the extent such Participant is still entitled to any benefits under the Plan.

Termination of participation does not necessarily entitle a Participant to commence benefits under the Plan. The payment or commencement of benefits under the Plan shall be governed by, and subject to, the provisions of Article 6.

2.3 Reemployment

If a Participant reaches a Termination Date or ceases to be a Covered Employee and is subsequently reemployed as a Covered Employee, then such individual's status with respect to the Plan shall be governed by the following:

(a) Participation

The Covered Employee shall become Participant on his or her Reemployment Commencement Date.

(b) Vesting and Benefit Accrual

Subject to subsection (d) below, the Covered Employee's prior Years of Service and Years of Credited Service shall be aggregated with Years of Service and Years of Credited Service after his or her Reemployment Commencement Date for all purposes of the Plan (i.e., Years of Service and Years of Credited Service completed subsequent to the Employee's Reemployment Commencement Date and the prior Years of Service and Years of Credited Service will be added together in determining the Covered Employee's eligibility to receive, the vested percentage of, and amount of, his or her Accrued Pension Benefit). If the Covered Employee was subject to the 5 year graded vesting schedule contained in Section 6.5(c)(1)(iii) prior to his or her Reemployment Commencement Date, then the Covered Employee's vested percentage of his or her Accrued Pension Benefit as of his or her Reemployment Commencement Date shall not be less than the vesting percentage determined in accordance with the 5 year graded vesting schedule set forth in Section 6.5(c)(1)(iii). However, all future accruals shall be subject to the 5 year cliff vesting schedule contained in Section 6.5(c)(1)(ii) (based upon the Covered Employee's combined pre-break and post break Years of Service).

(c) Benefit Payments

If, at the time of his Reemployment Commencement Date, the Participant is receiving retirement benefits pursuant to Article 6 of the Plan, such retirement benefits shall cease until such time as they may be paid in conjunction with the retirement benefits accrued with respect to the Participant's subsequent employment. In any event, any retirement benefits payable with respect to subsequent employment shall be reduced or offset if and as necessary to avoid duplication of any retirement benefits payable or paid with respect to the Participant's prior employment.

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If a Participant reaches a Termination Date, begins receiving retirement benefits pursuant to Article 6 of the Plan and is subsequently re-employed by the City in a capacity other than as a Covered Employee, the Participant's retirement benefits shall continue unabated.

(d) Cash-out

(1) If, after the Participant's Termination Date:

- (i) the Participant receives a Cash-Out of his or her Employee Contribution Retirement Benefit, and
- (ii) the Participant resumes his or her employment as a Covered Employee,

then, notwithstanding any provision providing for the crediting of additional Years of Service and Years of Credited Service, the Years of Service and Years of Credited Service with respect to which the distribution was received shall be disregarded in subsequent determinations of the amount of the Participant's eligibility to receive, the vested percentage of, and the amount of his or her Accrued Pension Benefit.

(2) However, if the Participant:

- (i) resumes his or her employment as a Covered Employee, and
- (ii) within 90 days of his or her Reemployment-Commencement Date, repays to the Trust the full amount of the Cash-Out, plus interest from date of distribution to date of repayment at the rate of 7.5% per annum, compounded annually,

then his or her Accrued Pension Benefit will be determined taking into account the Participant's Years of Service and Years of Credited Service before as well as after the Termination Date (subject to the provisions of this Section 2.3).

2.4 Enrollment

Participation hereunder shall be automatic upon commencement or re-commencement of employment as a Covered Employee; provided, however, that the City may, in its discretion, require each Covered Employee to execute a written application containing such items as may be desired by the City including, but not limited to, the Covered

Employee's consent to be bound by all the terms and conditions of the Plan and all amendments thereto, and authorization to have the Employee Retirement Contribution and Employee Disability Contribution deducted from his or her pay.

2.5 Change Of Employment Category

If a Participant ceases to be a Covered Employee, but continues in the employ of the City as an Employee, he or she shall cease participation in this Plan (and shall cease to accrue benefits hereunder) at the time he or she ceases to be a Covered Employee.

2.6 Determination of Eligibility.

The Administrator shall, in its discretion, determine the eligibility of Covered Employees in accordance with the provisions of this Article 2. The City shall make available to the Administrator a list of all Covered Employees, indicating the original dates of their employment with the City, their benefit eligibility dates and any breaks they may have incurred.

ARTICLE 3

CREDIT FOR SERVICE

3.1 Authorized Leave of Absence

- (a) A Participant shall not be deemed to have reached his or her Termination Date on account of a Authorized Leave of Absence. However, except as otherwise provided in Section 3.1(b) or as required by law, 1/12th increments of Years of Service and Years of Credited Service shall not be credited during an Authorized Leave of Absence.
- (b) Notwithstanding Section 3.1(a), if a Participant incurs an Authorized Leave of Absence on account of military service, the Participant shall receive credit for Years of Service and Years of Credited Service for the period of such Authorized Leave of Absence to the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994 or any other law (but without any requirement for such a Participant to make contributions upon his or her reemployment for the period of his or her military service).

3.2 Fractional Credit For Service

To the extent not precluded by the operation of Section 3.1, a Covered Employee shall receive partial or full credit for service, as follows:

(a) Year of Service

For purposes of determining the extent to which a Participant is vested in his or her Accrued Pension Benefit, the Participant shall receive credit on the basis of his or her whole Years of Service.

(b) Year of Credited Service

For purposes of determining the extent to which a Participant shall accrue benefits and for purposes of determining whether he or she is eligible for retirement, the Participant's Years of Credited Service shall be expressed in whole years and months.

3.3 Transfers Between Covered And Non-Covered Employment

(a) Transfer to a Position as a Covered Employee

- (1) If an Employee becomes a Covered Employee on or after the Date of Adoption, such Employee's benefits under this

Plan with respect to his or her service as a Covered Employee shall be based only on Years of Service and Years of Credited Service earned while such individual is a Covered Employee.

- (2) In determining such a Participant's Average Monthly Compensation under this Plan, only Compensation with respect to employment as a Covered Employee shall be taken into account.
- (3) If the Employee was previously a Participant in the Plan, the provisions of Section 2.3 shall apply.

(b) Transfer to a Non-Covered Position

- (1) If an individual ceases to be a Covered Employee, but remains an Employee, the individual's participation in this Plan shall cease as of the date he or she ceases to be a Covered Employee. Further, such individual's benefits under this Plan shall be determined based only on Years of Service and Years of Credited Service earned while such individual is a Covered Employee and shall be determined under the provisions of this Plan in effect as of the date such individual ceased to be a Covered Employee.
- (2) In determining Average Monthly Compensation under this Plan, only Compensation with respect to employment as a Covered Employee shall be taken into account.
- (3) The payment or commencement of benefits under the Plan shall be governed by, and subject to, the provisions of Article 6. Notwithstanding anything to the contrary, no benefits shall be paid or commence to such individual prior the earlier of the individual's (1) Termination Date, or (2) Normal Retirement Date.

3.4 Exchange of Retirement Income Account for Pre-2004 Credited Service

- (a) Each Covered Employee who on the Date of Adoption:
 - (1) is a Participant in the Plan;
 - (2) has a Retirement Income Account attributable to his or her employment as a Covered Employee;

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- (3) is actively employed by the City as a Covered Employee (and has not reached his or her Disability Retirement Date); and
- (4) commenced participation in the Prior Plan prior to July 1, 2003,

was offered the opportunity to exchange his or her City Funded Retirement Income Account for Pre-2004 Credited Service.

- (b) In order to be effective, an election under this Section 3.4 must:
 - (1) have been made on a form supplied by the City for this purpose;
 - (2) have been returned to (and the receipt acknowledged by) the Department of Finance on or before 5:00 P.M. (Eastern Time) on January 16, 2004; and
 - (3) have included a valid and enforceable release of the City, and its elected officials, employees, agents and representatives (as well as any other person or entity who may have a fiduciary relationship with respect to the administration or management of the Retirement Income Plan) from any and all claims relating to or arising out of the Retirement Income Account or the administration or management of the Retirement Income Plan prior to the date of the election.
- (c) To the extent a Covered Employee described in Section 3.4(a) made an election satisfying the requirements of Section 3.4(b), then:
 - (1) The Participant's Pre-2004 Credited Service shall be taken into account in determining the Participant's Years of Credited Service.
 - (2) No amount or benefit shall be payable to anyone with respect to the Participant's City Funded Retirement Income Account (the balance of which shall be reduced to zero). However, the Participant's Retirement Income Account shall continue to reflect the amount, if any, attributable to (i) assets transferred or rolled over to the Plan pursuant to Section 4.3 of the Prior Plan; (ii) the amount, if any, attributable to voluntary contributions made pursuant to Section 4.4 of the Prior Plan; and (iii) Investment Adjustments attributable to the forgoing.

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- (3) The Participant's City Funded Retirement Income Account shall become part of the Fund and shall be available to provide benefits to all Participants under the defined benefit portion of the Plan.

ARTICLE 4

FUNDING

4.1 Fund

Contributions made under the terms of the Plan shall be deposited in the Trust or one or more Annuity Contracts. Such contributions, together with any income, gains or profits, less distributions, expenses and losses, shall comprise the Fund. The Trustee shall maintain that portion of the Fund held pursuant to the terms of the Trust.

Separate trust accounts, Annuity Contracts, or accounts under Annuity Contracts shall be established for (i) the defined benefit portion of the Plan, (ii) any Retirement Income Accounts, and (iii) any assets transferred to the Pension Plan from the Disability Income Plan. The establishment of such separate accounts shall be for accounting and bookkeeping only and shall not require a segregation of any part of the assets of the Fund.

The Retirement Income Accounts shall be held, invested, reinvested, managed, administered and distributed for the exclusive benefit of Participants with Retirement Income Accounts. The portion of the Fund comprising the defined benefit portion of the Plan shall be held, invested, reinvested, managed, administered and distributed for the exclusive benefit of Participants with an Accrued Pension Benefit. The assets transferred to the Pension Plan from the Disability Income Plan shall be held, invested, reinvested, managed, administered and distributed for the exclusive purpose of providing Disability Benefits pursuant to Article 5.

No person shall have any interest in or right to the Fund or any part thereof, except as expressly provided in the Plan. Each Participant, former Participant, Beneficiary or other person who shall claim the right to any payment under the Plan shall be entitled to look only to the Fund for such payment. No liability for the payment of benefits under the Plan (or the Disability Income Plan) shall be imposed upon the Trustee, the issuer of any Annuity Contract, the Board, the Administrator, the City, or their respective agents or employees.

4.2 Pension Contributions

(a) City Contributions

- (1) After taking into account the contributions made by Covered Employees in accordance with Section 4.2(b), the City shall, from time to time, make contributions to the Fund in amounts necessary, according to sound actuarial principles, (and based upon reasonable actuarial assumptions, funding

methods and related matters recommended by the Actuary) to fund the benefits under this Plan and to maintain the actuarial integrity of the Fund. For this purpose:

- (i) Any unfunded liability attributable to the grant of additional Years of Credited Service pursuant to Section 3.4 shall be amortized over a 25 year period beginning January 1, 2004, in level dollar payments; and
 - (ii) The contribution required by the City under this provision shall be (1) based upon the actuarial valuation produced annually by the Actuary; (2) expressed as a percentage of Compensation; and (3) remitted monthly (in arrears), such that the contribution with respect to Compensation paid during a month shall be remitted to the Trustee or deposited in an Annuity Contract within 15 business days after the close of such month.
- (2) Notwithstanding any provisions of this Plan to the contrary, upon the City's request, a contribution which was made by the City under Section 4.2(a) or 4.3(a) due to a mistake of fact shall be returned to the City within one year after the payment of the contribution. Any portion of a contribution returned shall be adjusted to reflect its proportionate share of the losses of the Fund, but shall not be adjusted to reflect any earnings or gains.

(b) Employee Retirement Contributions

- (1) On and after the Date of Adoption, each Participant who is classified as a Covered Employee shall make Employee Retirement Contributions to the Plan in an amount equal to 7.5% of the Participant's Compensation, as reflected in the paycheck the Participant receives from the City. Such Employee Retirement Contribution shall continue until the earlier of the Participant's (1) Termination Date, or (2) DROP Effective Date, and shall be made in accordance with rules established by the Administrator.
- (2) The Employee Retirement Contributions referred to in Section 4.2(b)(1) shall be:
 - (i) picked up by the City, as described in Section 414(h)(2) of the Internal Revenue Code;

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- (ii) deducted from the pay of the contributing Participants as salary reduction contributions;
 - (iii) paid by the City to the Trustee or deposited in an Annuity Contract within 15 business days following the end of the month during which such amounts were withheld from the pay of the contributing Participants;
 - (iv) made a part of the Participant's Employee Contribution Retirement Benefit, that is, a part of his or her Accrued Pension Benefit; and
 - (v) automatically suspended for any payroll period during which the participant is not a Covered Employee or during which he or she is on an Authorized Leave of Absence.
- (3) Notwithstanding any provisions of this Plan to the contrary, Participant contributions picked up by the City, shall be fully (100%) vested.

4.3 Disability Contributions

The cost of providing the Disability Benefits on or after the Date of Adoption shall be borne by contributions by the City and the Participants. The amount of the respective contributions shall be determined as follows:

(a) City Disability Contribution

On and after the Date of Adoption, subject to the limitations contained herein, the City shall, from time to time, make contributions to the Fund in amounts necessary, according to sound actuarial principles, (and based upon reasonable actuarial assumptions, funding methods and related matters recommended by the Actuary) to fund the Disability Benefits under this Plan (other than Disability Benefits attributable to a Non-Service Connected Partial Disability, which shall be funded by contributions made by Covered Employees in accordance with Section 4.3(b)). The contribution attributable to Disability Benefits payable to Participants before their Normal Retirement Date shall not exceed three percent (3%) of the Compensation of all Participants for any Plan Year. The contribution attributable to Disability Benefits payable to Participants after their Normal Retirement Date shall not be limited by a percentage of Compensation of Participants.

(b) Employee Disability Contributions

On and after the Date of Adoption, each Participant shall make an Employee Disability Contribution in an amount required to offset the cost (as determined by the Actuary based upon reasonable actuarial assumptions, funding methods and related matters) to provide for Disability Benefits attributable to a Non-Service Connected Partial Disability under Sections 5.4 and 5.10. Such Employee Disability Contribution shall continue until the earlier of the Participant's (1) Termination Date, or (2) DROP Effective Date. The initial amount of Employee Disability Contribution shall be ½% of each Participant's Compensation, as reflected in the paycheck the Participant receives from the City; however, this amount may be changed on any January 1 that the Actuary determines that such change is necessary to maintain proper funding. The amount of the Employee Disability Contribution shall not be picked up by the City under Section 414(h)(2) of the Internal Revenue Code. The Employee Disability Contribution shall only be used to pay for Disability Benefits on account of a Non-Service Connected Partial Disability.

4.4 Disposition Of Forfeitures

Any forfeitures arising under the Plan for any reason shall not be applied to increase the benefit of any person hereunder, but rather, shall be applied to pay administrative expenses of the Plan and Fund, if and as directed by the Administrator, and/or be used to reduce the City's contributions under the Plan.

4.5 Actuarial Examination

The Administrator shall, at least once every Plan year, cause the liabilities of the Plan to be evaluated by the Actuary who shall report to the Board and the City as to the soundness and solvency of the Fund in relation to the said liabilities, the amount of the City contribution sufficient to meet the requirements of Section 4.2(a) and 4.3(a) and the amount of the Employee Disability Contribution sufficient to meet the requirements of Section 4.3(b).

4.6 Transfer of Assets from Disability Income Plan

On or following the Date of Adoption, the liability for all benefits of any kind or nature under the Disability Income Plan, as well as all assets held under the Trust established with respect to the Disability Income Plan, shall be transferred to this Plan, which shall thereafter be responsible for

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all benefits payable under the Disability Income Plan following the date of transfer.

4.7 Contributions to Retirement Income Accounts

City contributions pursuant to Section 4.1 of the Prior Plan shall continue until the Date of Adoption. On and after the Date of Adoption, no further City contributions will be made pursuant to Section 4.1 of the Prior Plan. On and after the Effective Date, no other contributions of any kind will be made or permitted to any Retirement Income Account (including, without limitation, rollover contributions pursuant to Section 4.3 of the Prior Plan, or voluntary employee contributions pursuant to Section 4.4 or 4.5 of the Prior Plan). Subject to the provisions of Section 3.4, amounts previously contributed to a Participant's Retirement Income Account shall (1) remain a part of the Account after the Date of Adoption, (2) be subject to investment direction by the Participant in accordance with, and subject to the terms of, Section 9.4, and (3) be distributable upon termination of employment with the City in accordance with the provisions of Section 6.6.

ARTICLE 5

Disability Benefits

5.1 Eligibility for a Service Connected Total and Permanent Disability Benefit

A Participant will be eligible for a Disability Benefit on account of a Service Connected Total and Permanent Disability commencing on the first day of the month when the Participant meets each and all of the following conditions:

- (a) The Participant is Totally Disabled prior to his or her Normal Retirement Date (while actively employed as a Covered Employee);
- (b) The Participant has been Totally Disabled for a period of six (6) consecutive months;
- (c) The Participant's Total Disability has been ruled by the Virginia State Industrial Commission as total and permanent and is compensable as Workmen's Compensation; and
- (d) The Participant has received an award of Social Security disability benefits.

5.2 Eligibility for a Non-Service Connected Total and Permanent Disability Benefit

A Participant will be eligible for a Disability Benefit on account of a Non-Service Connected Total and Permanent Disability commencing on the first day of the month when the Participant meets all of the following conditions:

- (a) The Participant is Totally Disabled prior to the earlier of his or her Normal Retirement Date or DROP Effective Date (while actively employed as a Covered Employee);
- (b) The Participant has been Totally Disabled for a period of six (6) consecutive months; and
- (c) The Participant has received an award of Social Security disability benefits.

5.3 Eligibility for Service Connected Partial Disability Benefit

A Participant will be eligible for a Disability Benefit on account of a Service Connected Partial Disability commencing on the first day of the month when he meets all of the following conditions:

- (a) The Participant is Partially Disabled prior to his or her Normal Retirement Date (while actively employed as a Covered Employee);
- (b) The Participant's Disability has been ruled by the Virginia State Industrial Commission to be compensable as Workmen's Compensation;
- (c) The Participant's Disability is certified by the Administrator as a Service Connected Partial Disability; and
- (d) The Administrator determines that such Disability is not reasonably correctable or subject to rehabilitation, the cost of which shall be borne by the City.

5.4 Eligibility for a Disability Benefit on Account of Non-Service-Connected Partial Disability

A Participant will be eligible for a Disability Benefit on account of a Non-Service Connected Partial Disability commencing on the first day of the month when the Participant meets all of the following conditions:

- (a) The Participant is Partially Disabled prior to the earlier of his or her Normal Retirement Date or DROP Effective Date (while actively employed as a Covered Employee);
- (b) The Participant has been a Participant under this Plan (including any participation under the Disability Income Plan) for at least five (5) years at the commencement of his or her Partial Disability;
- (c) His disability is certified by the Administrator as a Non-Service Connected Partial Disability; and
- (d) The Administrator determines that such Partial Disability is not reasonably correctable or subject to rehabilitation, the cost of which shall be borne by the City.

5.5 Certain Excluded Disabilities

Notwithstanding anything in this Plan to the contrary, a Participant shall not become eligible for a Disability Benefit under this Plan if his or her Disability results from, or consists of addiction to narcotics or conviction of participation in a felonious act.

5.6 Gainful Employment

- (a) Notwithstanding any other provision of this Plan, any Participant receiving benefits or eligible to receive benefits under this Plan as the 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 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.
- (b)
 - (1) Prior to any action to provide such alternate 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 or she has just cause to refuse to accept such alternate employment, the Participant 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, the Personnel Director 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;

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- (v) should the Participant continue to refuse to accept the alternate employment, the issue shall be determined in accordance with the procedures of Section 5.6(b)(2)(i) or (ii).
- (2) (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 Benefits, as set forth in Section 5.11(a)(6) or (b)(3). If the Industrial Commission should fail or refuse to act on this question, then the determination shall be made pursuant to Section 5.6(b)(2)(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 the reasoning and precedential support 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.

5.7 Amount of Disability Benefit on Account of Service-Connected Total and Permanent Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.1 on account of a Service Connected Total and Permanent Disability shall receive a monthly Disability Benefit equal to seventy percent (70%) of the Participant's Average Monthly Compensation.

5.8 Amount of Disability Benefit on Account of Non-Service-Connected Total and Permanent Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.2 on account of a Non-Service Connected Total and Permanent Disability shall receive a monthly Disability Benefit equal to sixty-six and two-thirds percent (66 2/3%) of the Participant's Average Monthly Compensation.

5.9 Amount of Disability Benefit on Account of Service-Connected Partial Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.3 on account of a Service Connected Partial Disability Benefit shall receive a monthly Disability Benefit equal to sixty-six and two-thirds percent (66 2/3%) of the Participant's Average Monthly Compensation, reduced by the annual amount of periodic payments payable, if any, under the Workmen's Compensation Act of the Commonwealth of Virginia. Such reduction shall be applied on a monthly basis in an amount equal to one-twelfth (1/12) of the annual amount so determined.

5.10 Amount of Disability Benefit on Account of Non-Service-Connected Partial Disability

Subject to Section 5.12, a Participant who is entitled to a Disability Benefit under Section 5.4 on account of a Non-Service Connected Partial Disability Benefit shall receive a monthly Disability Benefit equal to fifty percent (50%) of the Participant's Average Monthly Compensation.

5.11 Commencement and Cessation of Disability Benefits

- (a) Disability Benefits shall be paid monthly commencing on the Participant's Disability Retirement Date.
- (b) Subject to the provisions of Section 5.13 and 5.15, Disability Benefits for a Participant who is Totally Disabled and entitled to benefits under Sections 5.1 or 5.2, will cease on the first day of the month coincident, with or next following the earliest of the dates specified below:
 - (1) The date the administrator determines that the Participant is no longer Totally Disabled, on the basis of a medical examination by an independent diagnostic clinic or physician(s) selected by the Administrator.
 - (2) The date the Participant refuses to undergo a medical examination requested by the Administrator, provided the

Participant may not be required to undergo such medical examination more often than twice a year.

- (3) The Participant's Normal Retirement Date.
 - (4) The date that the Participant's disability payments under Social Security cease.
 - (5) The date the Participant returns to a regular occupation or employment.
 - (6) The date the Participant refuses any employment which the Participant is required to accept pursuant to Section 5.6.
 - (7) The date on which the Participant dies.
- (b) Subject to the provisions of Section 5.13 and 5.15, Disability Benefits for a Participant who is Partially Disabled and entitled to benefits under Sections 5.3 or 5.4, will cease on the first day of the month coincident with or next following the earliest of the dates specified below:
- (1) The date the Administrator determines that the Participant is no longer Partially Disabled, on the basis of a medical examination by an independent diagnostic clinic or physician(s) selected by the Administrator.
 - (2) The date the Participant refuses to undergo a medical examination requested by the Administrator, provided the Participant may not be required to undergo such medical examination more often than twice a year.
 - (3) The date the Participant refuses any employment which the Participant is required to accept pursuant to Section 5.6.
 - (4) The Participant's Normal Retirement Date.
 - (5) The date on which the Participant dies.

5.12 Limitation on Benefits

Disability Benefits under this Article 5 or the Disability Income Plan before Normal Retirement Date shall be limited by the assets of the Fund designated for the payment of Disability Benefits. If the Administrator after consultation with the Actuary foresees the portion of the Fund dedicated to Disability Benefits becoming insolvent, the Administrator may reduce all

Participants' Disability Benefits on a pro rata basis as of the first day of any month after giving each Participant receiving Disability Benefits under the Plan and the Disability Income Plan adequate written notice.

5.13 Disability Benefits After Normal Retirement Date

A Participant who reaches his or her Normal Retirement Age shall begin receiving his or her Accrued Pension Benefit in accordance with the provisions of Article 6 and may elect to have his or her Accrued Pension Benefit paid in any of the optional annuity forms permitted under Section 7.2(a) or (b) (but not under Section 7.2(c)).

When the Participant reaches his or her Normal Retirement Date, Disability benefits under this Plan shall be recomputed so that the Participant's Disability benefits under Article 5 and the sum of the Participant's Accrued Pension Benefit under Article 6 and, if applicable the amount of his or her City Funded Retirement Income Account (all expressed in the form in which Disability Benefits were payable prior to the Participant's Normal Retirement Date) is actuarially equal in value to the amount of payments that the Participant would have received under Article 5 if the Participant (i) had not been Disabled, (ii) had continued to be employed by the City at the same rank and grade he or she had attained immediately prior to his or her Disability, (ii) for the prior forty-eight (48) months, had received the amount of pay applicable to such rank and grade (including any cost of living wage adjustment granted by the City but ignoring any step increases for such rank and grade), and (iv) had become Disabled and begun receiving Disability Benefits under this Article 5 immediately prior to his or her Normal Retirement Date. If the amount of pay applicable to the Participant's rank and grade is modified by a change in the City's compensation or classification system, then the Participant shall be assigned to an equivalent rank and grade within such revised compensation or classification system for purposes of applying the provisions of this Section.

Following such recalculation, the Disability Benefits under Article 5 shall continue to be paid to the Participant following his or her Normal Retirement Date in the same form as such Benefits were being paid prior to the Participant's Normal Retirement Date (i.e., either in the normal form or under the contingent annuitant option), but only to the extent necessary to provide that the Disability Benefits under Article 5 and the retirement benefits under Article 6 (including for this purpose any retirement benefits payable with respect to the Participant's City Funded Retirement Income Account, after taking into account any Investment Adjustments after the Date of Adoption) are Actuarially Equivalent to the recalculated Disability Benefits the Participant would have received under Article 5, as computed in accordance with the preceding paragraph. In the event that the Participant's retirement benefits under Article 6 (including for this purpose

any retirement benefits payable with respect to the Participant's City Funded Retirement Income Account, as adjusted for any investment gains or losses after the Date of Adoption) are equal to or greater than such recalculated Disability Benefit, then all Disability Benefits payable under this Article 5 shall cease on the Participant's Normal Retirement Date.

For purposes of this Section 5.13, any benefits to the Participant under the Retirement Income Plan shall be actuarially calculated by the Actuary using the Actuarial Assumptions in effect at such Normal Retirement Date.

5.14 Cash Settlement Option

The Participant may, at the option of the Administrator, receive a cash settlement in an amount agreed upon by the Participant and the Administrator prior to his Disability Retirement Date in lieu of the Disability Benefit that he would otherwise be entitled to, provided such Disability is due to a Service Connected Total and Permanent Disability or Service Connected Partial Disability as described in Section 5.1 and 5.3. Any such cash settlement shall not be in excess of the value of the Participant's Disability Benefit on his Disability Retirement Date, as determined based on the Actuarial Assumptions assuming payment to a Participant ceases as of the earlier of the first day of the month in which the Participant dies or reaches his or her Normal Retirement Date.

5.15 Contingent Annuitant Option

A Participant may elect, prior to his or her Disability Retirement Date, to receive Disability Benefits in the form of the contingent annuitant option and designate a contingent annuitant (who is the spouse of the Participant or the Participant's natural or legally adopted children, determined as of the Participant's Disability Retirement Date). A Participant's election, revocation or change under this Section shall be made by written notice filed with the Administrator. Such contingent annuitant shall not be more than 30 years younger than the Participant. Under this option, the Participant will receive a reduced annual Disability Benefit equal to 50%, 66 2/3%, or 100% of the Disability Benefit payable during the Participant's lifetime (as specified in the election). Such reduced Disability Benefit shall be payable to the contingent annuitant until the first day of the month in which the contingent annuitant dies.

If a Participant elects the contingent annuitant option, the amount of the Disability Benefit to which the Participant is entitled will be adjusted, so that it is the Actuarial Equivalent of the Disability Benefit that the Participant would have received had the election not been made.

This option will become inoperative if (i) a Disabled Participant ceases to be eligible for Disability Benefits for reasons other than death, or (2) either

the Participant or the contingent annuitant dies before Disability Benefits commence.

If the Contingent Annuitant dies before the Participant, this option will become inoperative and the Participant's Disability Benefits will be adjusted up to the full amount.

The Administrator reserves the right to make this option inoperative with respect to any Participant if the annual Disability Benefit to the Contingent Annuitant would be less than Sixty Dollars (\$60.00).

5.16 Cost of Living Adjustment

Disability Benefits payable pursuant to Section 5.7, 5.8, 5.9, 5.10 or 5.13 shall be adjusted beginning May 1, 2005 for changes in the cost of living in accordance with the provisions of Section 6.11.

5.17 Death of Disabled Participant

If a Participant receiving Disability Benefits dies, the extent to which any benefits are payable following the death of the Participant shall be determined in accordance with Section 6.9(f).

ARTICLE 6

RETIREMENT AND OTHER TERMINATION OF EMPLOYMENT

6.1 Normal Retirement

- (a) A Participant who terminates employment with the City on his or her Normal Retirement Date shall be entitled to receive a monthly retirement income, beginning with the first day of the month coincident with or next following his or her Normal Retirement Date and continuing for the remainder of the Participant's life.
- (b) The amount of such monthly benefit shall equal to:
 - (1) 2.5% of the Participant's Average Monthly Compensation, multiplied by the number of the Participant's Years of Credited Service up to a maximum of 20 years, plus
 - (2) 3.2% of the Participant's Average Monthly Compensation, multiplied by the number of the Participant's Years of Credited Service in excess of 20 years, but not in excess of 30 years (i.e., up to a maximum of 10 years).

Notwithstanding anything to the contrary, in no event shall a Participant's monthly allowance under Section 6.1(b) exceed 82% of the Participant's Average Monthly Compensation.

6.2 Early Retirement

- (a) A Participant who reaches his or her Early Retirement Date and who shall terminate employment with the City at that time shall thereupon be entitled to receive, commencing on the first day of the month coincident with or next following the Participant's 55th birthday, a monthly benefit equal to the Participant's Accrued Pension Benefit, determined as of his or her Early Retirement Date.
- (b) At the election of the Participant, payment of his or her vested Accrued Pension Benefit may commence at any time on or after the Participant's Early Retirement Date and prior to his or her 55th birthday, in which case such Accrued Pension Benefit shall be reduced (in order to reflect early commencement of payments) to an amount that is the Actuarial Equivalent of the Participant's Accrued Pension Benefit.
- (c) Notwithstanding the foregoing, a Participant who has completed at least 25 Years of Credited Service prior to attaining age 55 shall be entitled to a monthly benefit equal to the Participant's Accrued

Pension Benefit (determined as of his or her Early Retirement Date) commencing on the first day of the month coincident with or next following the date of his or her termination of employment with the City (i.e., the Participant's benefit shall not be actuarially reduced for commencement prior to age 55).

6.3 Employment After Normal Retirement Age

In the event a Participant remains an Employee after his or her Normal Retirement Date, then, subject to the limitations set forth in Section 6.8 and subject to Section 7.3, the Participant shall be entitled to receive, commencing on the first day of the month coincident with or otherwise next following his or her termination of employment with the City, the benefit to which the Participant would have been entitled with respect to his or her Accrued Pension Benefit pursuant to Section 6.1(b) if he or she had retired on the Participant's Normal Retirement Date, but adjusted:

- (a) by including any additional Years of Credited Service which have accrued since the Participant's Normal Retirement Date (subject to the overall 30 year limitation on Years of Credited Service taken into account); and
- (b) by taking into account any increases in Average Monthly Compensation which may be generated by increases in Compensation earned as a Covered Employee since the Participant's Normal Retirement Date.

6.4 Deferred Retirement Option Program

(a) Eligibility For DROP

A Participant who has completed at least 30 Years of Credited Service may voluntarily elect, pursuant to this Section 6.4, to retire for purposes of calculating his or her Accrued Pension Benefit, continue working as a Covered Employee for a period of up to 3 years, and defer commencement of his or her Accrued Pension Benefit until his or her DROP Retirement Date. The deferred benefit will be credited to the Participant's DROP Account and credited with interest in accordance with Section 6.4(e). In order for the DROP Election to be effective, the eligible Participant must complete and execute an election and release on a form supplied by the Administrator, and such election and release must be valid and binding on the Participant in accordance with its terms.

A Participant who does not elect to participate in the DROP in accordance with the provisions of this Section 6.4 when first eligible, may elect to participate at anytime thereafter prior to his or her Termination Date or Disability Retirement Date.

(b) Election of Retirement Date

An eligible Participant who voluntarily elects to have the provisions of this Section 6.4 apply shall irrevocably elect to retire no later than three years following the DROP Effective Date on which the Participant makes a DROP Election in accordance with Section 6.4(c). The DROP Election is not a commitment to remain employed for a period of up to three years or a guarantee of continued employment. A Participant who makes a DROP Election may retire at any time prior to the date specified in his or her DROP Election and may be terminated by the City at any time in accordance with the relevant rules and procedures applicable to terminations of firefighters or police officers.

(c) DROP Election

The election to participate in the DROP in accordance with all of the terms and conditions of this Section 6.4 must be made, if at all, by executing and delivering to the Administrator, a DROP Election on a form provided by the Administrator for this purpose. Such form shall include a waiver and release of any age discrimination or other claims relating to the DROP. A DROP Election using the form provided by the Administrator must be filed with the Administrator at least sixty (60) days prior to the proposed DROP Effective Date. The proposed DROP Effective Date selected by the Participant shall be subject to the approval of the Administrator. A Participant who makes a DROP Election shall have a period of seven (7) calendar days to revoke the DROP Election. If the DROP Election is in effect at the close of regular business hours on the seventh calendar day after the date on which the Participant signs the DROP Election, the DROP Election (including, without limitation, the DROP Effective Date and the commitment to terminate employment and retire on the date specified) shall thereupon become irrevocable.

If a Participant makes a valid DROP Election, the amount accrued by a Participant after his or her DROP Effective Date and the amount payable with respect to the Participant's Accrued Pension Benefit shall be determined solely and exclusively by the provisions of this Section 6.4 and, except as otherwise specifically provided herein, the Participant shall not be entitled to any payment, benefit or amount with respect to his or her Accrued Pension Benefit.

(d) Effect of Failure to Elect

The rights under the Plan of any Participant who is eligible for the DROP but who does not elect to participate in the DROP in

accordance with, and subject to, all of the terms and conditions of this Section 6.4, shall be determined by the remaining terms of the Plan, and the value of any rights created by this Section 6.4 shall not be considered in determining such Participant's Accrued Pension Benefit or the Actuarial Equivalent thereof.

(e) Credit to DROP Account

- (1) As of the first day of each calendar month commencing on or after the DROP Effective Date and continuing until the Participant's DROP Retirement Date, the Participant's DROP Account shall be credited with the amount the Participant would have received under Section 6.1 or 6.2(c) if the Participant had actually retired on the DROP Effective Date and elected to receive his or her Accrued Pension Benefit in the form of a straight life annuity. Notwithstanding the forgoing, in lieu of having the amount credited to his or her DROP Account determined under the monthly life annuity form of retirement income, the Participant may elect, as part of his or her DROP Election, to have the amount determined under any of the Actuarial Equivalent forms of benefit specified in Section 7.2(a) or (b).
- (2) The initial annuity amount will be adjusted each May 1 (beginning May 1, 2005) for changes in the cost of living in accordance with the provisions of Section 6.11.
- (3) As of the last day of each full calendar month that has elapsed since the DROP Effective Date, a Participant's DROP Account shall be credited with interest for such full calendar month at the rate of 3%, compounded annually. No interest shall be credited for any period less than a full calendar month.

(f) Amount of Retirement Benefit

Subject to the limitations contained in Section 6.8, an eligible Participant who is subject to a valid and binding DROP Election shall be entitled to receive a monthly retirement income, beginning with the first day of the month coincident with or next following his or her DROP Retirement Date equal to:

- (1) His or her Accrued Pension Benefit, calculated as if the Participant had terminated employment with the City on the Participant's DROP Effective Date.

- (2) Additional monthly retirement income that is the Actuarial Equivalent of the value of the Participant's DROP Account on the DROP Retirement Date.

(g) Form of Retirement Benefit

Following the DROP Retirement Date, the Participant's retirement benefit, as determined pursuant to Section 6.4(f), shall be payable in the form of monthly payments for the remainder of the Participant's life, unless an optional form of payment has been elected pursuant to Section 7.2.

A Participant may elect to have his or her benefits following the DROP Retirement Date paid in the form of a joint and survivor annuity or guaranteed period certain under Section 7.2(a) or (b) in accordance with the procedures contained in Article 7. The election made by the Participant does not have to be the same as the election made with respect to the amount credited to his or her DROP Account under Section 6.4(e). A Participant may also elect to receive the value of his or her DROP Account (but not his or her Accrued Pension Benefit) in the form of a single lump sum payment.

Upon the Participant's Benefit Commencement Date, any election made by the Participant (including the designation of a Beneficiary under any option other than the guaranteed period option) shall be irrevocable.

The benefit payable to the Participant following his or her DROP Retirement Date shall be adjusted beginning May 1 of the year following the Participant's DROP Retirement Date for changes in the cost of living in accordance with the provisions of Section 6.11.

(h) Amount of Benefit Accruals and Cessation of Employee Contributions

Except as specifically provided in Section 6.4(i), a Participant who makes a DROP Election shall be treated as if he or she ceased to be a Covered Employee as of the DROP Election Date.

- (1) The Participant shall not be required to make any Employee Retirement or Disability Contributions with respect to Compensation earned on or after the DROP Effective Date.
- (2) Such Participant's Accrued Pension Benefit shall be determined based only on Years of Service and Years of Credited Service earned as of the DROP Effective Date and

shall be determined under the provisions of this Plan in effect as of the DROP Effective Date.

- (3) In determining Average Monthly Compensation under this Plan, only Compensation with respect to employment as a Covered Employee prior to the DROP Effective Date shall be taken into account.
- (4) The benefit accrued by the Participant subsequent to the DROP Effective Date shall consist solely of the amounts credited to the Participant's DROP Account under Section 6.4(e).

(i) Disability Benefits

On and after the DROP Effective Date, the Participant shall cease to be eligible for Disability Benefits on account of a Non-Service Connected Total and Permanent Disability or Non-Service Connected Partial Disability, but shall remain eligible for Disability Benefits on account of a Service Connected Total and Permanent Disability or Service Connected Partial Disability in accordance with the provisions of Article 5.

(j) Death Benefits

If a Participant who makes a DROP Election dies before the DROP Effective Date, the DROP Election shall be inoperative, and the death benefits, if any, payable on account of the Participant's death shall be determined in accordance with the provisions of Section 6.9.

If a Participant who makes a DROP Election dies after the DROP Effective Date but before his or her Benefit Commencement Date (following the DROP Retirement Date) the benefits payable upon the death of the Participant shall be determined in accordance with the provisions of Section 6.9(e).

If a Participant dies after his or her Benefit Commencement Date (following the DROP Retirement Date), the benefits, if any, to which the Participant's Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 7.2.

6.5 Other Termination of Employment

- (a) A Participant who reaches a Termination Date prior to his or her Normal or Early Retirement Date for any reason other than

Disability or death and after having become vested in his or her Accrued Pension shall be entitled to receive, commencing on the first day of the month coincident with or next following the Participant's Normal Retirement Date, a monthly benefit equal to his vested Accrued Pension Benefit, determined as of the date of such Termination Date (i.e., based upon the Participant's actual Years of Credited Service and Average Monthly Compensation at his or her Termination Date).

(b) Commencement of Termination Benefit

Subject to the provisions of Section 6.5(d), benefits payable pursuant to this Section 6.5 shall commence on the first day of the month coincident with or next following the Participant's Normal Retirement Date.

(c) Vested Percentage of the Accrued Pension Benefit

(1) The vested percentage of a Participant's Accrued Pension Benefit shall be equal to the greater of:

- (i) 100% of the Participant's Employee Contribution Retirement Benefit and his or her Minimum Retirement Benefit, if any; or
- (ii) In the case of a Participant who commenced employment as a Covered Employee on or after the Effective Date, a percentage of the Participant's Accrued Pension Benefit, determined on the basis of the number of his or her Years of Service and in accordance with the following schedule:

Years of Service	Percentage Vested
Less than 5	0%
5 or more	100%

- (iii) In the case of a Participant who commenced employment as a Covered Employee prior to the Effective Date (and who has been continuously employed as a Covered Employee from the Effective Date through his or her Termination Date), a percentage of the Participant's Accrued Pension Benefit, determined on the basis of the number of his or her Years of Service and in accordance with the following schedule:

Years of Service	Percentage Vested
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%

- (2) Notwithstanding the preceding paragraph, a Participant's vested percentage in his or her Accrued Pension Benefit shall be 100% upon attainment of his or her Normal Retirement Date while a Covered Employee.

(d) Cash Out of Employee Contributions and Minimum Retirement Benefit

Notwithstanding the preceding provisions of this Section 6.5,

- (1) A Participant who reaches a Termination Date before reaching his or her Early or Normal Retirement Date, but after having become vested in all or a portion of his or her Accrued Pension Benefit attributable to City contributions, may elect to receive a Cash-Out of an amount equal to the sum of his or her Employee Contribution Retirement Benefit and his or her Minimum Retirement Benefit, as provided in Section 7.2(c), in which case such Cash-Out may be made at any time following the Termination Date, at the election of the Participant.
- (2) A Participant who reaches a Termination Date before becoming vested in any portion of his or her Accrued Pension Benefit attributable to City contributions shall receive a Cash-Out of his or her Employee Contribution Retirement Benefit as provided in Section 7.2(c), which Cash-Out shall be made as soon as administratively feasible following the Termination Date.
- (3) If the present value of a the total amount due a Participant with respect to Participant's vested Accrued Pension Benefit is \$5,000 or less as of his or her Termination Date, distribution of the Participant's vested Accrued Pension Benefit shall be made in a single lump sum payment within a reasonable time following his or her Termination Date.

- (4) A Cash-Out made pursuant to this Section 6.5(d) shall constitute full payment of all benefits due to such Participant under the Plan with respect to his or her Accrued Pension Benefit.
- (5) In the event of a Cash-Out to a Participant pursuant to this Section 6.5(d), then, subject to restoration provided in Section 2.3(d), the portion of the Participant's Accrued Pension Benefit attributable to City contributions shall be forfeited by the Participant.

6.6 Retirement Income Accounts

In addition to any benefit payable with respect to his or her Accrued Pension Benefit, a Participant with an Retirement Income Account under the Plan shall also be entitled to receive additional monthly retirement income, beginning with the first day of the month coincident with or next following the earlier of his or her Termination Date or Normal Retirement Date and continuing for the remainder of the Participant's life that is the Actuarial Equivalent of the value of his or her Retirement Income Account on the Participant's Benefit Commencement Date. If a Participant reaches a Termination Date prior to age 55, then, at the election of the Participant, payment of his or her Retirement Income Account may be deferred until the Participant's 55th birthday. If a Participant reaches his or her Normal Retirement Date prior to his or her Termination Date, the Participant may elect to commence or receive payment of his or her Retirement Income Account as of his or her Normal Retirement Date. Absent such an election, payment of the Participant's Retirement Income Account will be made or commence within a reasonable time following his or her Termination Date.

Notwithstanding the forgoing, if the value of a Participant's Retirement Income Account is \$5,000 or less on his or her Termination Date, distribution of the Participant's Retirement Income Account shall be made in a single lump sum within a reasonable time following his or her Termination Date.

A Participant shall be 100% vested in his or her Retirement Income Account.

6.7 Form of Benefits

Except as otherwise expressly provided herein, the benefits payable pursuant to Section 6.1 through 6.6 shall be payable in the form of a single life annuity beginning on the applicable date specified in Section 6.1 through 6.6, unless an optional form of payment has been elected pursuant to Section 7.2.

6.8 Maximum Limitation On Benefits

Notwithstanding any Plan provisions to the contrary:

(a) Maximum Benefit

To the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 6.8, the maximum monthly benefit to which any Participant may be entitled at any time with respect to his or her Accrued Pension Benefit pursuant to Sections 6.1 through 6.5, as adjusted from time to time pursuant to Section 6.11 (hereafter referred to as the "maximum benefit") shall not exceed the defined benefit dollar limit (adjusted as provided in Section 6.8(b)), which limit shall be determined in accordance with the following:

- (1) The defined benefit dollar limit shall be \$13,333, as adjusted under Section 415(d) of the Internal Revenue Code.
- (2) The defined benefit dollar limit as set forth above is the monthly amount payable in the form of a straight life annuity, beginning no earlier than age 62 (except as provided in Section 6.8(b)(1)(ii)) and no later than age 65.

In addition to the foregoing, to the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 6.8, the maximum annual additions for any limitation year shall be equal to the lesser of:

- (1) \$40,000, as adjusted pursuant to Section 415(d) of the Internal Revenue Code; or
- (2) 100% of the Participant's Remuneration.

The defined benefit and defined contribution dollar limits shall be adjusted, effective January 1 of each year, under Section 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe. A limit as adjusted under Section 415(d) shall apply to limitation years ending with or within the calendar year for which the adjustment applies.

(b) Actuarial Adjustment of Defined Benefit Dollar Limit

The defined benefit dollar limit shall be subject to actuarial adjustment as follows:

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- (1) If the benefit is payable in any form other than a single life annuity or a qualified joint and survivor annuity (as defined for purposes of Section 415 of the Internal Revenue Code), the maximum benefit shall be reduced so that it is the Actuarial Equivalent of the single life annuity.
 - (i) If the benefit of a Participant begins prior to age 62, the defined benefit dollar limit applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the Actuarial Equivalent of the defined benefit dollar limit applicable to the Participant at age 62 (adjusted under Section 5.8(c), if required). The defined benefit dollar limit applicable at an age prior to age 62 is determined as the lesser of (i) the Actuarial Equivalent (at such age) of the defined benefit dollar limit computed using the interest rate and mortality table specified in Section 1.6(b) of the Plan, and (ii) the Actuarial Equivalent (at such age) of the defined benefit dollar limit computed using a 5% interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to Section 417(e)(3) of the Internal Revenue Code. Any decrease in the defined benefit dollar limit determined in accordance with this Section 5.8(b)(1)(i) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
 - (ii) The adjustment described in Section 6.8(b)(1)(i) above shall not apply to Participants who have been credited with at least 15 years of creditable service as a full-time Covered Employee.
- (2) If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limit applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is Actuarially Equivalent to the defined benefit dollar limit applicable to the Participant at age 65 (adjusted under Section 6.8(c), if required). The Actuarial Equivalent of the defined benefit dollar limit applicable at an age after age 65 is determined as (i) the lesser of the Actuarial Equivalent (at such age) of the defined benefit dollar limit computed using the interest rate and mortality table specified in Section 1.6(b) of the Plan and (ii) the Actuarial Equivalent (at such

age) of the defined benefit dollar limit computed using a 5% interest rate assumption and the applicable mortality table as designated by the Secretary of the Treasury from time to time pursuant to Section 417(e)(3) of the Internal Revenue Code. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(c) Reducing Dollar Limit

If a Participant has fewer than 10 years of participation in the defined benefit portion of the Plan, the defined benefit dollar limit shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (2) the denominator of which is 10. For this purpose, a Participant who makes a valid DROP Election shall continue to accrue years of participation until his or her DROP Retirement Date.

In the case of Years of Credited Service credited to a Participant pursuant to Section 3.4:

- (1) The limitation contained in Section 6.8(a)(1) and this Section 6.8(c) shall not apply to the portion of the Participant's Accrued Pension Benefit (determined as of his or her Normal Retirement Date) that is attributable to any additional Years of Credited Service under Section 3.4 that are actuarially funded by the Participant's Retirement Income Account.
- (2) The limitation contained in Section 6.8(a)(1) and this Section 6.8(c) shall apply to the portion of the Participant's Accrued Pension Benefit (determined as of his or her Normal Retirement Date) that is attributable to any additional Years of Credited Service under Section 3.4 that are not actuarially funded by the Participant's Retirement Income Account.
- (3) The determination of the extent to which additional Years of Credited Service under Section 3.4 are actuarially funded by the Participant's Retirement Income Account as of his or her Normal Retirement Date shall be made by the Actuary based on the Actuarial Assumptions.

(d) Limitation Year

Limitation year shall be defined as the Plan year.

(e) Other Reductions in Maximum Benefit

In addition to the foregoing, the maximum benefit shall be reduced, and the rate of benefit accrual shall be frozen or reduced

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accordingly, to the extent necessary to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, with respect to any Participant who is also a participant in:

- (1) any other tax-qualified pension plan maintained by the City, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(l) of the Internal Revenue Code) has been established for the Participant;
- (2) any welfare plan maintained by the City in which a separate account (as described in Section 419A(d) of the Internal Revenue Code) has been established to provide post-retirement medical benefits for the Participant; and/or
- (3) any retirement or welfare plan, as aforesaid, maintained by a related employer, as described in Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

(f) Annual Additions

Annual Additions shall be defined as the sum of the following items credited to the Participant under this Plan and under any other tax-qualified defined contribution plans sponsored by the City for any limitation year: City contributions that are separately allocated to the Participant's credit in any defined contribution plan; forfeitures; participant contributions; and amounts credited after March 31, 1984 to the participant's individual medical account (within the meaning of Section 415(l) of the Internal Revenue Code). Notwithstanding anything to the contrary, the amount of a Participant's Retirement Income Account that is used to purchase credit for pre-January 1, 2004 Years of Credited Service shall not be treated as a post-January 1, 2004 annual addition.

(g) Incorporation of Section 415 Limits

To the extent a Participant's benefit is subject to provisions of Section 415 of the Internal Revenue 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.

6.9 Death Benefits

The only benefits payable under the Plan in the event of the death of a Participant shall be as follows:

(a) General Benefit

In the event of the death of a Participant prior to the earlier of his or her Disability Retirement Date, Benefit Commencement Date or DROP Effective Date, the Participant's Beneficiary shall be entitled to receive, as a single lump sum:

- (1) an amount equal to the Participant's Employee Contribution Retirement Benefit;
- (2) an amount equal to the Participant's Minimum Retirement Benefit, if any; and
- (3) an amount equal to the Participant's Retirement Income Account, if any.

(b) Surviving Spouse Annuity Benefit

- (1) If all of the following conditions are met, then the surviving spouse of a deceased Participant shall be entitled to receive a survivor annuity with respect to the Participant's Accrued Pension Benefit, in lieu of the benefit described in Section 6.9 (a)(1) and (2) above:
 - (i) the Participant is married on the date of death;
 - (ii) the Participant was continuously married to the surviving spouse for a period of at least one year prior to the date of death, or the Participant's death was attributable to an accidental injury and the Participant was married to the surviving spouse on the date of such accidental injury;
 - (iii) the Participant's death occurs (A) before his or her Termination Date or DROP Effective Date, or (B) after his or her Early or Normal Retirement Date and before his or her Benefit Commencement Date; and
 - (iv) the spouse does not elect to receive the lump sum benefit provided in subsection (a)(1), and, if applicable, (a)(2) above.
- (2) For purposes of this subsection (b), a survivor annuity is a monthly income commencing in the month next following the Participant's death, and continuing for the remainder of the spouse's life, in an amount equal to the benefit the spouse would have received under an immediate joint and survivor annuity pursuant to Section 7.2(a) (with a 50% spousal

survivor benefit) had the Participant retired on the day before death, but computed without actuarial reduction for early retirement or early commencement.

(c) Benefits Payable After Benefit Commencement Date

If a Participant dies after his or her Benefit Commencement Date, the benefits, if any, to which the Participant's Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 7.2.

(d) Death While on Authorized Leave of Absence

The Beneficiary of a Participant who dies while a Covered Employee and on an Authorized Leave of Absence for reasons other than military service shall be entitled to receive death benefits pursuant to this Section 6.9.

(e) Death of DROP Participant

If a Participant dies on or after his or her DROP Effective Date, but prior to his or her Benefit Commencement Date (following the DROP Retirement Date), the death benefits payable on account of the death of the Participant shall be determined in accordance with the provisions of this Section 6.9(e).

- (1) If the amount being credited to the Participant's DROP Account was based on a straight life annuity, then the Participant's Beneficiary shall be entitled to receive as a single lump sum:
 - (i) the amount of the Participant's DROP Account; and
 - (ii) an amount equal to the Participant's Retirement Income Account, if any.
- (2) If the Participant elected to have the amount credited to his or her DROP Account determined in one of the optional forms permitted under Section 7.2(a) or (b), then:
 - (i) The Participant shall be deemed to have reached his Termination Date on the day prior to the date of death and to have commenced payment of his or her Accrued Pension Benefit according to the form that deferred benefit payments were being credited to the Participant's DROP Account under Section 6.4(e)(1). The benefits, if any, to which the Participant's

Beneficiary shall be entitled with respect to the Participant's Accrued Pension Benefit shall depend upon the form in which the Participant's Accrued Pension Benefits were being credited to the Participant's DROP Account under Section 6.4(e)(1).

- (ii) In addition to the amount payable under Section 6.9(e)(2)(I) above, the Participant's Beneficiary shall be entitled to receive as a single lump sum:
 - a. the amount of the Participant's DROP Account; and
 - b. an amount equal to the Participant's Retirement Income Account, if any.

(f) Death of a Participant Receiving Disability Benefits

The extent to which death benefits are payable to with respect to a Participant who dies while receiving Disability Benefits shall be determined by the provisions of this Section 6.9(f).

- (1) If the Participant dies prior to his or her Normal Retirement Date, the following provisions shall apply:
 - (i) If the Participant has not elected the contingent annuitant option in accordance with Section 5.15, then:
 - a. All Disability Benefits shall cease on the date of the Participant's death; and
 - b. The Participant's shall be deemed to have died prior to his or her Termination Date for purposes of Section 6.9(a) and (b).
 - (ii) If the Participant has elected the contingent annuitant option in accordance with Section 5.15, then the benefit payable to the contingent annuitant shall be in lieu of any other benefit payable on account of the death of the Participant with respect to the Participant's Accrued Pension Benefit (including any Minimum Retirement Benefit) and the Participant's City Funded Retirement Income Account. The amount of the benefit payable to the contingent annuitant shall not be subject to any reduction under Section 5.13.

- (2) If the Participant dies on or after his or her Normal Retirement Date, the following provisions shall apply:
 - (i) If the Participant has not elected the contingent annuitant option in accordance with Section 5.15, then all Disability Benefits shall cease on the date of the Participant's death.
 - (ii) If the Participant has elected the contingent annuitant option in accordance with Section 5.15, then the Disability Benefit (as reduced on the Participant's Normal Retirement Date in accordance with Section 5.13) shall be payable to the contingent annuitant.
 - (iii) The extent to which any benefits are payable following the Participant's death with respect to his or her Accrued Pension Benefit shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 7.2.

(g) Death of Terminated Vested Participant

If a Participant reaches a Termination Date prior to his Early or Normal Retirement Date for any reason other than Disability and dies before his or her Benefit Commencement Date, then the Participant's designated Beneficiary shall be entitled to receive a single lump sum in an amount equal to:

- (1) the Employee Contribution Retirement Benefit (to the extent such amounts were not previously withdrawn);
- (2) the Minimum Retirement Benefit, if any; and
- (3) the balance of any Retirement Income Account.

6.10 Limitations On Death Benefits

All death benefits payable pursuant to Section 6.9 shall be distributed only in accordance with regulations prescribed by the Internal Revenue Service under Section 401(a)(9) of the Internal Revenue Code, as follows:

(a) Lump Sum Benefit

All benefits payable as a lump sum under Section 6.9(a), (e)(1), (e)(2)(ii) or (g) shall be distributed in full not later than the last day of the calendar year containing the 5th anniversary of the death of the Participant.

(b) Surviving Spouse Annuity Benefit

If the Participant's Beneficiary is the Participant's surviving spouse, then, unless the Participant's spouse elects to receive the lump sum benefit under Section 6.9(a), benefits payable under Section 6.9(b) to or for the benefit of the spouse shall begin not later than the later of the last day of the calendar year containing the first anniversary of the Participant's death, or the last day of the calendar year in which the Participant would have reached age 70-1/2.

(c) When Annuity Benefits Commence Before Participant's Death

If annuity benefits meeting the requirements of Section 7.3(a) had commenced prior to the Participant's death, then the death benefits payable pursuant to Sections 7.2 may be distributed without regard to the aforesaid 5 year limit, but must be distributed at least as rapidly as they would have been under the pre-death method of distribution.

6.11 Cost Of Living Adjustments

(a) Subject to the provisions of Section 6.11(b) and Section 6.8, (i) any amount payable as an annuity under Sections 6.1, 6.2, 6.3, 6.4, 6.5 or 6.9(b) or (f) (including a benefit payable under any of the optional forms permitted under Section 7.2(a) or (b)) with respect to a Participant's Accrued Pension Benefit, or (ii) any Disability Benefit payable under Section 5.7, 5.8, 5.9, 5.10 or 5.13 shall be increased or decreased as of May 1 of each year by multiplying the benefit, as determined immediately prior to the adjustment (including any prior cost-of-living adjustments made pursuant to this Section 6.11), by a fraction,

- (1) whose numerator is the CPI for the month of January of the current fiscal year; and
- (2) whose denominator is the CPI for the month of January of the preceding fiscal year.

The resulting adjustment may increase or decrease the benefit payable to a Participant or Beneficiary.

(b) Notwithstanding anything herein to the contrary,

- (1) This Section 6.11 shall be effective as of May 1, 2005. No cost-of-living adjustment shall be made with respect to any benefits paid prior to May 1, 2005.

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- (2) The first adjustment made under Section 6.11(a) shall be the May 1 occurring on or after the first anniversary of the date on which the benefit commenced.
- (3) The amount of the cost-of-living adjustment for any year shall in no event exceed three percent (3%).
- (4) The benefit payable to a Participant (or a surviving spouse or other Beneficiary) after the application of this Section 6.11 shall never exceed two hundred percent (200%) of the Base Pension Benefit or Base Disability Benefit, as the case may be.
- (5) In no event shall a reduction in the amount of the benefit payable to a Participant (or a surviving spouse or other Beneficiary) as a result of this Section 6.11 cause the benefit to be less than the Participant's Base Pension Benefit or Base Disability Benefit, as the case may be.
- (6) The following special rules shall apply in determining the cost of living adjustments with respect to a Participant who continues to receive a Disability Benefit following his or her Normal Retirement Date:
 - (i) Separate cost of living adjustment shall be made with respect to the payment of the Participant's Disability Benefit and Accrued Pension Benefit following the Participant's Normal Retirement Date (subject to all of the limitations and provisions of this Section 6.11).
 - (ii) Following the Participant's Normal Retirement Date, the next adjustment made under Section 6.11(a) to the Participant's Disability Benefit and Accrued Pension Benefit shall be May 1 occurring on or after the first anniversary of the Participant's Normal Retirement Date. Such adjustment shall be based on changes in the cost of living that occurred during the calendar year preceding the May 1 date of such adjustment.
 - (iii) In the case of an adjustment to a Disability Benefit payable after the Participant's Normal Retirement Date, the cost of living adjustment and the application of the three percent (3%) limitation shall be applied as if the Disability Benefit payable immediately after the Participant's Normal Retirement Date (i.e., the

Disability Benefit after the offset under Section 5.13) had been in effect on January 1 of the preceding fiscal year (so that the cost of living adjustment is calculated with respect to the recalculated Disability Benefit and not the Disability Benefit payable prior to the Participant's Normal Retirement Date).

- (iv) The aggregate cost of living adjustments made pursuant to this Section 6.11 with respect to the combined Disability Benefits payable under Article 5 and the retirement benefits payable under Article 6 relating to the Participant's Accrued Pension Benefit shall not exceed:
 - a. Two hundred percent (200%) of the Base Disability Benefit, less
 - b. the amount of the benefit provided by the Participant's City Funded Retirement Income Account (determined as of the Participant's Normal Retirement Date and expressed in the same form of payment as the Disability Benefit using the Actuarial Assumptions in effect on such date).
- (7) The following special rules shall apply in determining the cost of living adjustments with respect to any benefit payable to a contingent annuitant pursuant to Section 5.15 following the death of the Participant:
 - (i) For all purposes of this Section 6.11, benefits payable to a contingent annuitant following the death of the Participant shall be deemed to have commenced on the date on which the benefit commenced to the Participant.
 - (ii) The first adjustment to the benefit payable to the contingent annuitant shall be determined as if the amount payable to the contingent annuitant had commenced immediately prior to January 1 of the preceding fiscal year (so that the cost of living adjustment is calculated with respect to the amount payable to the contingent annuitant and not to the Disability Benefit payable to the Participant immediately prior to death).

- (iii) For purposes of determining whether the two hundred percent (200%) limit applies, the Base Disability Benefit shall be determined as if the Participant had died on the day following his or her Disability Retirement Date and benefits had immediately commenced to such contingent annuitant on such date. To the extent that the Participant dies on or after his or her Normal Retirement Date, the aggregate limitation contained in Section 6.11(b)(6)(iv) shall be applied in a manner consistent with the provisions of this subsection.
- (8) The following special rules shall apply in determining the cost of living adjustments with respect to any benefit payable to a surviving spouse or other Beneficiary following the death of the Participant:
 - (i) For all purposes of this Section 6.11, benefits payable to a surviving spouse or other beneficiary following the death of the Participant shall be deemed to have commenced on the date on which the benefit commenced to the Participant.
 - (ii) The first adjustment to a joint and survivor annuity payable to a surviving spouse or other beneficiary shall be determined as if the survivor annuity had commenced immediately prior to January 1 of the preceding fiscal year (so that the cost of living adjustment is calculated with respect to the survivor annuity and not the benefit payable to the Participant immediately prior to death).
 - (iii) For purposes of determining whether the two hundred percent (200%) limit applies, the Base Pension Benefit shall be determined as if the Participant had died on the day following his or her Benefit Commencement Date and benefits had immediately commenced to such surviving spouse or other beneficiary on such date.
- (9) Notwithstanding anything herein to the contrary, this Section 6.11 shall not apply to any benefit paid with respect to a Participant's Retirement Income Account. For this purpose, no portion of the Participant's Accrued Pension Benefit that is attributable to the purchase of Credited Service under

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Section 3.4 shall be deemed attributable to the Participant's Retirement Income Account.

ARTICLE 7

PAYMENT OF BENEFITS

7.1 Method Of Payment

- (a) All benefit distributions shall be in cash (or in individual annuity contracts as provided herein).
- (b) The Administrator shall determine, in its discretion, whether the distribution shall be funded through periodic payments made directly from the Trust, or through the purchase of individual annuity contracts, or whether a combination of such methods of distribution shall be used, and the Administrator shall give such directions and information as may be necessary to carry out the decision of the Administrator.
- (c) If the Administrator shall determine that the whole or any part of the distribution is to be funded through purchase of an individual annuity contract for a Participant, the Administrator shall select such form of contract (including a variable annuity) to be so purchased and shall direct the payment of the premium of such contract to the issuing company.
- (d) The Administrator shall direct that all right, title and interest in such contract shall remain part of the Fund under the terms of the Plan and the Participant shall have no right, title or interest therein except to receive the payments therefrom as provided therein, and, to the extent that such contract is used to fund a guaranteed period option under Section 7.2(c), to change the Beneficiary from time to time.

7.2 Optional Forms Of Retirement Benefits

A Participant, subject to the conditions hereinafter set forth, may elect to receive, in lieu of the monthly life annuity form of retirement income described in Section 6.1, 6.2, 6.3, 6.4, 6.5 or 6.6, a benefit, which is its Actuarial Equivalent, payable in any of the forms specified in this Section 7.2. A Participant who has both an Accrued Pension Benefit and a Retirement Income Account may make separate elections with respect to the benefits payable with respect to his or her Accrued Pension Benefit and Retirement Income Account.

(a) Joint and Survivor Option

- (1) The joint and survivor option is a monthly income payable during the Participant's lifetime and continuing after his or

her death at either a 50%, 66 2/3%, or 100% (as elected by the Participant) rate to the Participant's Beneficiary (as determined as of the Participant's Benefit Commencement Date) and continuing for the remainder of such Beneficiary's life.

- (2) The only permitted Beneficiary under the joint and survivor option is the spouse of the Participant or the Participant's natural or legally adopted children or stepchildren (by marriage) all as determined as of the Benefit Commencement Date.
- (3) If the Beneficiary dies before the Participant's Benefit Commencement Date, the Participant's election shall thereupon become void.
- (4) If the Beneficiary dies after the Participant's Benefit Commencement Date (but before the Participant dies), the election shall remain effective and the Participant shall continue to receive the reduced retirement income payable to the Participant in accordance with the option.

(b) Guaranteed Period Option.

- (1) The guaranteed period option is a monthly income payable during the Participant's lifetime and guaranteed to continue to the Participant or his designated Beneficiary for a period certain of 5, 10, 15 or 20 years after the commencement of benefit payments to the Participant, regardless of whether the Participant survives such period certain. The period certain shall be elected by the Participant prior to his or her Benefit Commencement Date.
- (2) If the Participant's Beneficiary dies before the Participant, the Participant shall have the right to designate another Beneficiary. If the Participant's Beneficiary dies after the Participant and after benefits have commenced, benefits for the remainder of the period certain will be continued to the estate of the Beneficiary, unless the Participant shall have designated another Beneficiary to receive such benefits.

(c) Lump Sum Option

- (1) A Participant may elect to receive the value of his or her DROP Account or Retirement Income Account (but not his or her Accrued Pension Benefit) in the form of a single lump sum payment.

- (2) A Participant (other than a Participant receiving Disability Benefits under Article 5) may elect at any time after his or her Termination Date and before the earlier of his or her Normal Retirement Date, DROP Effective Date or Benefit Commencement Date to receive a lump sum cash payment in an amount equal to the sum of the Participant's Employee Contributions Benefit and Minimum Retirement Benefit (if any) in lieu of all other benefits with respect to the Participant's Accrued Pension Benefit under the Plan and, upon payment of that lump sum cash payment, the entire remaining portion of his or her Accrued Pension Benefit shall be forfeited by the Participant. In the event the Participant is subsequently re-employed as a Covered Employee, any amount forfeited shall be subject to restoration to the extent provided in Section 2.3(d).

7.3 General Provisions Applicable To Options

(a) Election Procedures

An election of a contingent annuitant option under Section 5.15 or any optional form of benefit described in Section 7.2 shall be made by a Participant in writing, on a form supplied by the Administrator.

Any election under Section 5.15 must be made prior to the Participant's Disability Retirement Date. Except as expressly provided in Section 5.15, upon the Participant's Disability Retirement Date, the election of the contingent annuitant option under Section 5.15 (including the designation of a contingent annuitant) shall be irrevocable.

Upon the Participant's Benefit Commencement Date, any election under Section 7.2 (including the designation of a Beneficiary under any option other than the guaranteed period option) shall be irrevocable.

(b) Effect of Death

In the event of the death of a Participant prior to his or her Benefit Commencement Date, no benefits shall be payable to the Participant's spouse or other Beneficiary except as provided in Section 6.9, regardless of whether or not the Participant has elected an optional form of benefit pursuant to Section 7.2.

(c) Minimum Distribution Requirements

Notwithstanding any other provision in the Plan to the contrary, distribution shall be made only in accordance with Section

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401(a)(9) of the Internal Revenue Code and regulations promulgated thereunder. To the extent required thereby, distribution of benefits shall comply with the following limitations:

- (1) (i) Except as otherwise provided below, distribution shall begin not later than the later of April first of the calendar year (hereinafter referred to as the "commencement year") in which the Participant retires or attains age 70½.
- (ii) Distribution shall be made:
 - a. over the life of the Participant or the lives of the participant and his or her Beneficiary; and/or
 - b. over a period certain not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her Beneficiary,

All as described in proposed treasury regulation §1.401(a)(9)-1, or, if shorter, the alternate period described in proposed treasury regulation §1.401(a)(9)-2.

- (2) A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year.
- (3) Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.
- (4) Nothing contained in this subsection (c) shall prevent distribution of annuity benefits providing for non-increasing (except as otherwise permitted in proposed treasury regulation 1.401(a)(9)-1) payments beginning not later than the commencement year (except as provided in paragraph (3) above) and payable at least annually over a period permitted by this subsection (c) (for which purpose, if benefit commencement under the annuity precedes the commencement year, each relevant life expectancy shall be based on the individual's attained age as of his or her

birthday occurring in the calendar year in which benefit commencement occurs).

7.4 Eligible Rollover Distributions

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the 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.

(a) Definitions

(1) 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:

- (i) 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 10 years or more; and
- (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible retirement plan:

- (i) An "eligible retirement plan" is:
 - a. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
 - b. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
 - c. A qualified trust described in Section 401(a) of the Internal Revenue Code or an annuity plan described in Section 403(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution;
 - d. An annuity contract described in Section 403(b) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution; and
 - e. An eligible plan described in Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, that accepts the distributee's eligible rollover distribution and agrees to account separately for amounts transferred into such plan from this plan.
- (ii) The foregoing definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(3) Distributee:

A "distributee" includes a participant or former participant. In addition, the participant's or former participant's surviving spouse is a distributee with regard to the interest of the spouse or former spouse.

(4) Direct rollover:

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE 8

BENEFICIARIES

8.1 Designation Of Beneficiaries

(a) Participant Designation

Each Participant may designate a beneficiary or beneficiaries (who may be named contingently or successively) to receive such benefits as may be payable under the Plan upon or after the Participant's death. Prior to the Participant's Benefit Commencement Date and, subject to the provisions of the Plan, such designation may be changed from time to time by the Participant by filing a new designation with the Administrator. Upon the Participant's Benefit Commencement Date, the designation of a Beneficiary under any option other than the guaranteed period option shall be irrevocable.

(b) Revocations; Form of Designation; Filed with Plan Administrator

Each designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Administrator, and, shall be effective only when filed in writing with the Administrator. Except as provided in Section 7.2(b) and 8.1(a), a designation shall not be effective unless it is filed in writing with the Administrator prior to the Participant's Benefit Commencement Date.

(c) Absence of Valid Beneficiary Designation

In the absence of a valid Beneficiary designation, or if, at the time any benefit payment that is due under the terms of the Plan following the Participant's death, there is no living Beneficiary validly named by the Participant eligible to receive the payment, the Administrator shall direct any such benefit payment to:

- (1) the Participant's spouse, if then living; otherwise to**
- (2) the Participant's then living descendants, if any, per stirpes; otherwise to**
- (3) the Participant's then living parent or parents, equally; otherwise to**

(4) the Participant's estate.

(d) Question Regarding Right of a Person to Receive a Benefit Payment

In determining the existence or identity of anyone entitled to a benefit payment, the Administrator may rely conclusively upon information supplied by the Participant's personal representative. In the event of a lack of adequate information being supplied to the Administrator, or in the event that any question arises as to the right of any person to receive a benefit payment as aforesaid, or in the event that a dispute arises with respect to any such payment, then, notwithstanding the foregoing, the Administrator, in its sole discretion, may, in complete discharge of the Administrator, and without liability for any tax or other consequences which might flow therefrom, direct the Trustee to:

- (1) distribute the payment to the Participant's estate,
- (2) retain such payment, without liability for interest, until the rights thereto are determined, or
- (3) deposit the payment into any court of competent jurisdiction.

8.2 Location Of Participants And Beneficiaries

(a) Notice to Last Post Office Address

Any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Administrator, or if no such address was filed with the Administrator, then at the individual's last post office address as shown on the City's records, shall be binding on the Participant or Beneficiary for all purposes of the Plan. Except for the Administrator's sending of a registered letter to the last known address, the Administrator shall not be obliged to search for any Participant or Beneficiary.

(b) Forfeiture if Participant or Beneficiary Fails to Claim Amount

If the Administrator notifies any Participant or Beneficiary that he or she is entitled to an amount under the Plan and the Participant or Beneficiary fails to claim such amount or make his or her location known to the Administrator within 3 years thereafter, then, except as otherwise required by law, the Administrator shall have the right to direct that the amount payable shall be deemed to be a forfeiture and treated in accordance with Section 4.3, except that the dollar amount of the forfeiture, unadjusted for gains or losses in the

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interim, shall be reinstated if a claim for the benefit is made by the Participant or Beneficiary to whom it was payable. If any benefit payable to an unlocated participant or beneficiary is subject to escheat pursuant to applicable state law, the Administrator shall not be liable to any person for any payment made in accordance with such law.

ARTICLE 9

ADMINISTRATION OF THE PLAN AND MANAGEMENT OF PLAN ASSETS

9.1 Administration Of The Plan

The Plan shall be operated and administered on behalf of the City by the Administrator, which shall have the powers and duties set forth in Section 10.7.

9.2 Management Of Plan Assets

The Board shall have the powers and duties set forth in Section 10.5 with respect to the management of the assets of the Plan. The Board may also make recommendations to the City Manager or the City Council concerning modifications to or clarifications of the Plan.

9.3 Pension Fund

All assets of the Plan shall be deposited and held in one or more Annuity Contracts selected by the Board and/or in the Trust. The assets held under the Trust and any Annuity Contracts shall comprise the Fund and shall be held for the purpose of providing benefits to Participants and defraying reasonable expenses of administering the Plan. Subject to Section 9.4, and the terms of the Trust, the Trustee shall have the full power and authority to invest and reinvest the portion of the Fund held under the Trust and to change such investments and reinvestments in accordance with the terms of the Trust.

9.4 Participant Directed Investment Of Retirement Income Accounts

A Participant shall not have any right with respect to the investment of the assets of the Fund used to provide his or her Accrued Pension Benefit. However, subject to such limitations as may from time to time be required by law, imposed by the Board or contained elsewhere in the Plan, and subject to such operating rules and procedures as may be imposed from time to time by the Board (or its designee), each Participant (including for this purpose former Participants with a Retirement Income Account, Beneficiaries and/or an alternate payee under a domestic relations order in which a Participant's Retirement Income Account has been validly divided into separate accounts for the Participant and alternate payee) shall have the right to direct the investment of his or her Retirement Income Account in accordance with the following:

- (a) The Board shall designate the Investment Funds from among which each Participant may direct the investment of his or her Retirement

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Income Account. The Board 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 Retirement Income Accounts in such Investment Funds.

- (b) The Board 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 Board may apply to an entire Retirement Income Account or may be applied separately to different subaccounts, or different Investment Funds. Except as the Board shall otherwise determine, any initial or subsequent investment designation shall be in writing, on a form supplied by and filed with the Board (or its designee), and shall be effective on such date as may be specified by the Board (or its designee). The Board may provide for telephone or other electronic investment designations to the extent that such facilities are made available by the Trustee or the Investment Fund, and may establish (and thereafter change) a limit on the number of designations that may be made by any Participant during a specified period.
- (c) A Participant's Retirement Income Account (except for investment earnings) shall be allocated among the separate Investment Funds in accordance with the then effective investment designation. Except as the Board shall otherwise determine, any distributions shall be taken proportionately from each separate Investment Fund in which the Participant's Retirement Income 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 Retirement Income Account at that date shall be reallocated among the designated Investment Funds according to the percentages specified in the investment designation.
- (d) In the event the Board (or its designee) 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, clear investment designation has been filed that is in accord with the rules and procedures established by the Board (or its designee) and has become effective.

- (e) It is intended that each Participant be required to direct the investment of his or her Retirement Income Account to the extent set forth in this Section. In the event that the Board (or its designee) possesses at any time instructions as to the investment of less than all of a Participant's Retirement Income Account, the Participant shall be deemed to have designated that the non-directed portion of his or her Retirement Income Account be invested in the separate Investment Fund which most closely resembles a money market or stable asset fund. To the extent that the Board 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 Board shall direct the Trustee with respect to the investment of such assets in accordance with the Trust Agreement.
- (f) The Board 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. In such event, the Board shall promptly notify Participants of any changes which affect the manner in which Retirement Income Accounts are invested.

Neither the Trustee, the Board, the Administrator, the City, the issuer of any Annuity Contract nor any other person who may be deemed a fiduciary hereunder shall have any responsibility to determine the appropriateness of any individual Participant's investment direction.

ARTICLE 10

RETIREMENT PLAN BOARD AND ADMINISTRATOR

10.1 Retirement Plan Board

- (a) The Board shall consist of eight members who are nominated by the City Manager and Voting Participants in accordance with this Article and appointed by the City Council.
- (b) Four of the members of the Board shall be nominated by the City Manager pursuant to Section 10.2 (the "City Representatives"), and four of the members of the Board shall be nominated by the Voting Participants pursuant to Section 10.3 (the "Participant Representatives"). In the event the City Council does not appoint a City Representative or Participant Representative that has been nominated in accordance with this Article, the City Manager or Voting Participants, as the case may be, shall select and present another nominee in accordance with the provisions of this Article.
- (c) In addition to the four City Representatives and four Participant Representatives, there shall be two alternate Participant Representatives and one alternate City Representative appointed by the City Council. The two alternates Participant Representatives shall be nominated in the same manner as the Participant Representatives (with one of the Participant alternates nominated by Voting Participants who are or were Firefighters, and the other Participant alternate nominated by Voting Participants who are or were Police Officers). The alternate City Representative shall be nominated by the City Manager. The designated alternates may attend meetings of the Board and participate therein, but unless acting in place of an absent member of the Board in accordance with Section 10.4, shall not be entitled to vote on any matter presented to the Board for consideration.
- (d) Each member of the Board and each alternate shall signify in writing his acceptance of his appointment as a member or alternate of the Board. No person shall act as a member of the Board or as an alternate until he has accepted and acknowledged his appointment.
- (e) Until such time as the initial members of the Board have been appointed (and signified acceptance of their appointment), the City Manager or his or her designee shall serve as the sole member of the Board.

10.2 City Representatives

- (a) The City Manager shall nominate the four City Representatives for appointment to the Board. The City Representatives appointed by the City Council shall serve as members of the Board until removed or until their death or resignation.
- (b) Each City Representative shall have the right to resign as a member of the Board at any time by giving notice in writing, mailed or delivered to the City Manager and the remaining members of the Board. A City Representative who was an employee of the City at the time of his appointment shall be deemed to have resigned from the Board upon his termination of employment with the City. The City Manager at any time may, in his discretion, request that the City Council remove any City Representative with or without cause. Upon the death, resignation or removal of a City Representative, the City Manager shall nominate a successor. The appointment of a successor shall be made by the City Council, and the successor shall have all of the rights and privileges and all of the duties and obligations of his predecessor.

10.3 Participant Representatives

- (a) The Voting Participants shall nominate each Participant Representative (by secret ballot). A Participant Representative must be a current Voting Participant.
- (b) Two out of the four Participant Representatives shall be Voting Participants who are currently or previously employed by the City as Firefighters, and shall be nominated for appointment to the Board based on the vote of all Voting Participants who are or were Firefighters. The remaining two Participant Representatives shall be Voting Participants who are currently or previously employed by the City as Police Officers, and shall be nominated for appointment to the Board based on the vote of all Voting Participants who are or were Police Officers.
- (c) Each Participant Representative, and alternate, shall serve a three-year term (or until their successor is duly appointed and has accepted his position on the Board). Each Participant Representative may be re-nominated and re-appointed for any number of additional three-year terms.
- (d) The City Manager (or his designee), in consultation with employee organizations in the Police and Fire Departments, shall conduct the initial nomination of Participant Representatives, and thereafter such nominations shall be conducted by the Board. In any

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nomination proceeding conducted by the Board, no Participant Representative who is seeking to be nominated for re-appointment to the Board shall participate in conduct of the nomination proceedings by the Board.

- (e) The City Manager or his designee (for the initial nomination) or the Board (for all subsequent nominations) shall establish reasonable rules and procedures to be followed with respect to the conduct of the nomination of Participant Representatives (consistent with the provisions of Section 10.3(f)). Such procedures may include the use of paperless notices, ballots or other communications.
- (f) For the purpose of the nomination of Participant Representatives pursuant to this Section 10.3, the following procedures shall apply:
 - (1) Each Voting Participant shall have one vote in such nomination proceedings (regardless of the amount of the Participant's Accrued Pension Benefit or the amount in the Participant's Retirement Income Account).
 - (2) Each Voting Participant desiring to serve as a Participant Representative shall submit a nominating petition (in such form as the City Manager (for the initial nomination) or the Board (for all subsequent nominations) may prescribe that contains the signature of at least twenty-five of the Voting Participants entitled to vote for the nomination of such Participant Representative (i.e., Voting Participants who are or were Firefighters or Police Officers, as the case may be).
 - (3) Each Voting Participant entitled to vote on the nomination of a Participant Representative shall be provided with a ballot identifying each Voting Participant who is a valid nominee for appointment as a Participant Representative, and a brief (no more than three letter size pages) statement prepared and submitted by each candidate discussing their qualifications and reasons for serving as a Participant Representative.
 - (4) The ballot shall also include:
 - (i) Instructions for completing the ballot and information concerning the time and manner the ballot is to be returned to the City Manager (for the initial nomination) or the Board (for all subsequent nominations). If the ballot is to be returned by mail, the ballot shall include a postage paid return envelope addressed to the City Manager (for the initial

- nomination) or the Board (for all subsequent nominations).
- (ii) The date by which the Voting Participant's ballot must be postmarked (if mailed) or actually received (if delivered) in order for the Voting Participant's vote to count.
 - (iii) Such other information that the City Manager (for the initial nomination) or the Board (for all subsequent nominations) reasonably believes is necessary to enable the Voting Participant to make an informed vote for the nomination of the Participant Representative.
- (g) A Participant Representative who ceases to be a Voting Participant shall be deemed to have resigned from the Board on the date he ceases to be a Voting Participant. A Participant Representative may resign from the Board at any time, upon 30 days notice to the Board. Upon the death, resignation or deemed resignation of a Participant Representative, the alternate shall become the Participant Representative until such time as a successor is nominated in accordance with the provisions of this Section 10.3 and appointed to the Board by the City Council.
- (h) The Voting Participants at any time may request that the City Council remove a Participant Representative or alternate and may nominate a new Participant Representative or alternate to fill any vacancy among Participant Representatives or alternates. In order to request removal of a Participant Representative or alternate, the Voting Participants shall submit a removal petition to the Board containing the signatures of at least twenty percent (20%) of the Voting Participants who are entitled to vote for the nomination of the Participant Representative or alternate (i.e., Voting Participants who are or were Firefighters or Police Officers, as the case may be). Such petition shall be in such form and contain such other information as may be reasonably prescribed by the Board. Upon receipt of a valid removal petition, the Board shall conduct a proceeding to determine whether or not to recommend removal (using the procedures for nomination of Participant Representatives and alternates, other than Section 10.3(f)(2)). For purposes of 10.3(f)(3), the Participant Representative or alternate who is the subject of the removal petition and the Voting Participants submitting the removal petition shall each have the opportunity to submit a brief (no more than three letter size pages) statement discussing the reasons why the recommendation to remove the

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Participant Representative or alternate should (or should not) be presented to the City Council. In the event that a Participant Representative or alternate is removed, a new Participant Representative or alternate shall be nominated using the procedures contained in Section 10.3(f).

- (i) If the City Manager (for the initial nomination) or the Board (for all subsequent nominations) makes an error in conducting a nomination or removal proceeding with respect to any Participant Representative or alternate, such error shall not affect the nomination or removal (and shall be ignored), unless the City Manager (for the initial nomination) or the Board (for all subsequent nominations) reasonably concludes that the results of the nomination or removal vote would have been different, absent such error.
- (j) Any ballot, information or other communication to a Voting Participant shall be sent to the Participant at his last post office address, electronic mail address or other address shown on the Plan's records. Information or communications addressed generally to all Voting Participants shall also be posted in those places generally used for posting Employee communications (e.g., the City's intranet site). Except for sending such ballot, information or communication to the last known address shown on the Plan's records and posting general information or communications, neither the City Manager (for the initial nomination) or the Board (for all subsequent nominations) shall be obliged to take any other action to locate a Voting Participant.

10.4 Conduct Of Board Business

- (a) The Board may adopt rules for the conduct of its business.
- (b) Proceedings and actions of the Board shall be subject to the Virginia Freedom of Information Act and all other applicable law, and the Board shall take all steps necessary to ensure that it complies with such Act and all applicable law.
- (c) The members of the Board shall elect a Chairman and a Secretary from among its members. Neither the City Representatives nor the Participant Representatives shall hold the position of both Chairman and Secretary (e.g., if a City Representative is elected to serve as Chairman, the Secretary shall be a Participant Representative). In the event the members of the Board fail to elect a Chairman or Secretary within sixty (60) days, the City Manager may appoint the Chairman or Secretary, as the case may be.

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- (d) A regular meeting of the Board shall be held each calendar quarter, on a date, and at a reasonable time and place, jointly designated by the Chairman and Secretary or by resolution of the Board from time to time (provided that such date does not fall on a holiday for employees of the City). Special meetings of the Board may be called jointly by the Chairman and Secretary, or by a majority of the members of the Board. Meetings of the Board shall take place within the City of Alexandria at a site furnished by the City.
- (e) Notice of the time and place of every regular, special and reconvened meeting of the Board shall be given to each member and each alternate by personal delivery, by telephone communication, by telephone facsimile transmission, by first class mail, by electronic mail, or by a delivery service providing confirmation of delivery. At least 5 business days notice shall be given of all regular meetings and at least 72 hours notice shall be given of all special or reconvened meetings. The purpose of any meeting of the Board need not be stated in the notice. No notice of the time, place or purpose of any meeting need be given to any member, who, in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice or who attends the meeting.
- (f) Meetings of the Board shall be presided over by the Chairman or in his absence by the Secretary, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.
- (g) The Board shall keep minutes of its proceedings showing the vote of each member on each question or if absent or failing to vote indicating such fact, and shall keep records of its official actions.
- (h) Subsequent to each Board meeting, and as soon as practicable thereafter, each member of the Board (and each alternate) shall be furnished with a copy of the minutes of said meeting (which minutes shall be revised, if necessary, and then adopted and approved by the Board at its next meeting).
- (i) Two City Representatives and two Participant Representatives (with at least one Firefighter and one Police Participant Representative) shall constitute a quorum for the transaction of any business of the Board. At all meetings of the Board, each City and Participant Representative shall have a total of one vote. In the event that the Participant Representative elected by the Firefighters is absent, the alternate Participant Representative elected by the

Firefighters shall, if present, cast one vote. In the event that a police Participant Representative elected by the Police Officers is absent, the alternate representative elected by the Police Officers shall, if present, cast one vote. In the event that a City Representative is absent, the alternate City Representative shall, if present, cast one vote. Decisions of the Board shall be by a majority of the votes cast.

- (j) If quorum is lacking for any meeting, the meeting may be adjourned and reconvened by the chairman of the meeting to a future date, and any business may be transacted at any adjourned meeting which could have been transacted at the meeting as originally called. A quorum must be present at the reconvened meeting in order for the Board to transact any business or take any action.
- (k) In the event of a tie vote by the Board, the question or questions in issue may be submitted to the City Manager for resolution upon majority vote of the entire Board. If the Board does not agree to submit the question to the City Manager for resolution, then either the City Representatives (by majority vote of the City Representatives) or Participant Representatives (by majority vote of the Participant Representatives) may request that an individual be selected to arbitrate and decide the action or question in issue. The location of the arbitration shall be in the City of Alexandria, Virginia and shall be conducted in accordance with its applicable arbitration rules and procedures of the American Arbitration Association or its successor. If the City Representatives and the Participant Representatives cannot agree on an individual to serve as the arbitrator with 20 days after arbitration has been invoked, the parties will jointly request that the Chief Judge of the Alexandria Circuit Court designate an individual to serve as arbitrator and decide the action or question. The City shall pay the cost of the arbitrator; but City Representatives and the Participant Representatives shall each bear their own costs and expenses in connection with the arbitration. The decision of the City Manager or the arbitrator on such issue shall be final and binding on the Board. In the event the Board does not submit the action or issue to the City Manager, or the City or Participant Representatives do not invoke arbitration following a tie vote, the action or question shall fail and the status quo shall remain in effect, until such time as the question or action is subsequently addressed by the Board.
- (l) The Board may create such subcommittees as it shall deem necessary and appropriate, provided, however, that all proceedings and actions of any subcommittees shall be subject to the Virginia Freedom of Information Act and applicable law, and the Board shall

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takes all steps necessary to ensure that each subcommittee complies with such Act and applicable law.

- (m) The Board may authorize one or more of its number or any agent to execute or deliver any instrument on its behalf and do any and all other things necessary and proper in the exercise of its duties with respect to the Plan.
- (n) The Board shall adopt standards of conduct (which conform to the State and Local Government Conflict of Interests Act) and shall require newly elected City and Participant Representatives (and alternates) to attend a course of instruction in the responsibilities and duties of a fiduciary and of an employee benefit plan that is sponsored by International Foundation of Employee Benefit Plans (or a similar organization) within a reasonable period of time following their appointment or nomination (unless such member has previously served as a fiduciary of a similar plan and, in connection therewith, has attended a similar course of instruction within a period of 5 years preceding the member's date of appointment).
- (o) All documents, instruments, orders, requests, directions, instructions and other papers shall be executed on behalf of the Board by either its Chairman or Secretary, or by any member or agent of the Board duly authorized to act on the Board's behalf.
- (p) The City shall provide the Board with assistance in recording and maintaining the minutes of the Board; notifying appropriate persons of the actions of the Board; and providing any other required administrative and clerical assistance.
- (q) In carrying out its duties the Board may, from time to time, employ agents and may delegate to them ministerial and limited discretionary duties as it sees fit.
- (r) The members of the Board who are Participant Representatives (or alternates of Participant Representatives) will receive compensation for their services as member of the Board (or alternate) in an amount determined by the City Council. City Representatives (and the alternate of the City Representatives) shall perform their duties with respect to the Plan without receiving any additional compensation in their capacity as Board members.

10.5 Duties And Responsibility Of The Board

The Board shall serve as the fiduciary of the Plan in connection with the management of the Plan's assets.

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Except as the City, acting through the City Council, shall otherwise expressly determine, the Board shall have full authority to act for the City before all persons in any matter directly pertaining to the management of the assets of the Plan, including, without limitation, the power:

- (a) To establish and modify written investment policies, objectives and guidelines with respect to the Fund.
- (b) To act for the City in any matter directly pertaining to the investment of the Fund.
- (c) To select, retain and/or remove the Trustee, to enter into a Trust Agreement with the Trustee on such terms and conditions as the Board deems advisable, and to establish and determine the amount of compensation to be paid to the Trustee.
- (d) To select one or more Annuity Contracts as a funding vehicle for the Plan.
- (e) To direct the Trustee with respect to the investment and/or investment allocation of that portion of the Fund relating to the defined benefit portion of the Plan and/or that portion of the Fund relating the disability benefits provided under the Plan.
- (f) To retain or remove one or more investment managers to manage or direct investment allocations with respect to such portions of the Fund as the Board shall designate.
- (g) To allocate investment duties and responsibilities between the Trustee and one or more investment managers.
- (h) To determine, select, monitor, review and alter as appropriate the Investment Funds from among which each Participant may direct the investment of his or her Retirement Income Account in accordance with the provisions of Section 8.4, and to take all action necessary to perform such function.
- (i) To establish reasonable rules and procedures to be followed with respect to the investment of Retirement Income Accounts, including the use of paperless notices, elections, consents, authorizations, instructions, directions, designations, requests or communications.
- (j) To determine the manner, period, and frequency of investment elections by Participants under Section 9.4.
- (k) If deemed appropriate by the Board, to suspend or terminate the right of Participants to direct the investment of all or any portion of their Retirement Income Account (and in such event to direct the

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Trustee with respect to the investment of such Retirement Income Accounts).

- (l) To add or terminate any annuity contract as an Investment Fund or funding vehicle under the Plan.
- (m) To provide investment education (but not investment advice) to Plan Participants who have Retirement Income Accounts through independent service providers acting solely in the interests of Plan Participants.
- (n) To appoint and retain any trustees, custodians, investment managers, investment advisors, investment planners, record-keepers, and other vendors for the Plan as it deems necessary and appropriate for the management and operation of the assets of the Plan.
- (o) To approve all standard form benefit statements, and all other standard or special written communications from the Plan to Participants with respect to their Accrued Pension Benefit or Retirement Income Account (or the investment thereof), including but not limited to information and communications furnished to Participants by the City that directly relates to or describes their Accrued Pension Benefit or the investment of assets of the Plan, or provides information to Participants respecting the value of their Retirement Income Accounts.
- (p) To establish reasonable rules and procedures to be followed with respect to the nomination (and removal) of Participant Representatives.
- (q) To consult with the City, Administrator or City Manager respecting the terms of the Plan and to make recommendations concerning modifications to or clarifications of the Plan (including making recommendations to the City Council following consultation with the City Manager); provided, however, that the Board shall have no discretionary authority acting itself to modify or amend, in any respect, any term or provision of the Plan, which authority resides exclusively with the City Council.
- (r) To do all acts, whether or not expressly authorized herein, which the Board deems necessary or appropriate in connection with the management of the assets of the Plan.

Notwithstanding anything herein to the contrary, the Board shall not have the power to amend or terminate the Plan, to affect the employer-

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employee relationship between the City and any Employee, all of which powers are reserved to the City.

10.6 Administrator

In the absence of any designation to the contrary by the City Manager, the City Manager shall serve as the Administrator.

The City Manager may designate and appoint one or more persons who are employed by the City to act as Administrator. The person or persons designated as the Administrator by the City Manager shall have full power and authority to administer and operate the Plan in accordance with its terms and in particular the authority contained in Section 9.7, and, in acting pursuant thereto, shall have full power and authority to deal with all persons in any matter directly connected with the operation and administration of the Plan.

If more than one person is designated as the Administrator by the City Manager, 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 (or each member of the Administrative Committee) shall signify in writing his acceptance of his responsibility as Administrator.

Any person or persons designated by the City Manager as Administrator (or a member of the Administrative Committee) shall:

- (a) have the right to resign at any time by giving notice in writing, mailed or delivered to the City Manager;
- (b) be deemed to have resigned as an Administrator (or a member of the Administrative Committee) upon his termination of employment with the City; and
- (c) shall be subject to removal by the City Manager at any time, with or without cause.

Upon the death, resignation or removal of an Administrator, the City Manager may appoint a successor. The appointment of a successor shall be made by the City Manager in writing, and the successor shall have all of the rights and privileges and all of the duties and obligations of his predecessor.

If the City Manager has created an Administrative Committee to serve as the Administrator, then the City Manager shall designate a Chairman and Secretary from among the members of the Administrative Committee.

The Administrative Committee may adopt reasonable rules for the conduct of its business. A majority of the members then serving as members of the Administrative Committee shall constitute a quorum for the transaction of business. All action taken by the Administrative Committee shall be by vote of a majority of those present at such meeting and entitled to vote. Actions may be taken without a meeting upon written consent signed by at least a majority of the members of the Administrative Committee. All documents, instruments, orders, requests, directions, instructions and other papers shall be executed on behalf of the Administrative Committee by either its Chairman or Secretary, or by any member or agent of the Administrative Committee duly authorized to act on the Committee's behalf.

10.7 Duties and Powers of Administrator.

The Administrator shall have the following duties and powers in connection with the administration of this Plan:

- (a) To administer the Plan in accordance with the provisions of the Plan and applicable law.
- (b) To make and to change from time to time and to enforce such rules and regulations, consistent with the provisions of this Plan, as may be necessary or desirable for the carrying out of its duties, and for the efficient administration of the Plan.
- (c) Finally and conclusively to determine, according to the provisions set forth in this Plan, the eligibility of a Participant under this Plan and, if eligible, the Participant's rights hereunder.
- (d) To exercise its sole discretionary right and authority to interpret and construe terms of this Plan and any rules and regulations that the Administrator might make.
- (e) To advise the City and the Board regarding the known future need for funds to be available for distribution in order that the Board may establish investments accordingly.
- (f) To correct defects, supply omissions and reconcile inconsistencies to the extent necessary to effectuate the Plan.
- (g) To compute the amount of benefits which shall be payable to any Participant or Beneficiary in accordance with the provisions of the Plan and to determine the person or persons to whom such benefits shall be paid.

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- (h) To direct the Trustee, custodian or issuer of an Annuity Contract concerning all payments which shall be made out of the Fund pursuant to the provisions of this Plan, an Annuity Contract or the Trust Agreement.
- (i) To file all reports with government agencies, Employees and other parties as may be required by law, whether such reports are initially the obligation of the City, the Plan or the Trustee.
- (j) To engage the Actuary of the Plan and to cause the liabilities of the Plan to be evaluated by the Actuary as provided in the Plan.
- (k) To compromise, settle, or release claims or demands in favor of or against the Plan or the Administrator on such terms as the Administrator may deem reasonable and prudent.
- (l) To recommend changes to the Plan that are necessary or desirable to maintain the qualification of the Plan under Section 401(a) of the Internal Revenue Code.
- (m) To request determination letters from the Secretary of the Treasury that the Plan continues to meet the requirements for qualification under Section 401 of the Internal Revenue Code and to 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.
- (n) To do all acts necessary to implement any action or decision with respect to the administration of the Plan.
- (o) To do all acts, whether or not expressly authorized herein, which the Administrator deems necessary to accomplish the general purposes of this Plan, provided, however, that the Administrator shall have no authority to take any action with respect to the management of the assets of the Plan, other than those actions which are necessary to implement any action or decision of the Board.

Notwithstanding anything herein to the contrary, the Administrator shall not have the power to amend or terminate the Plan or to affect the employer-employee relationship between the City and any Employee, which powers are reserved to the City.

10.8 Participation by Members of Board or Administrator

No member of the Board or Administrative Committee shall be precluded from becoming a Participant in the Plan if he or she would be otherwise

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eligible, but such member shall not be entitled to vote or act upon matters or to sign any documents relating specifically to his or her own participation under the Plan, except when such matters or documents relate to benefits generally.

10.9 Agents

The Board and the Administrator may employ agents, consultants, accountants, attorneys, and service providers and provide for such clerical, legal, actuarial, accounting, medical, advisory or other services as it deems necessary to perform their respective duties under this Plan.

10.10 Allocation of Duties

The duties and powers reserved to the Board and the Administrator may be allocated among their respective members so long as such allocation is pursuant to written procedures adopted by the Board or Administrator, as the case may be, in which case, no member of the Board or Administrative Committee shall have any liability, with respect to any duties or powers not allocated to him or her, for the acts or omissions of any other member of the Board or Administrative Committee.

10.11 Delegation of Duties

The Board and the Administrator may delegate any of their respective duties or powers to employees of the City, or to any other person or firm, provided that the Board or Administrator, as the case may be, shall prudently choose such person or firm and rely in good faith on their actions.

10.12 Action Conclusive

Any action on matters within the discretion of the Board or the Administrator shall be final and conclusive except as provided in Article 10.

10.13 Records and Reports

- (a) The Administrator and the Board shall maintain such records, and compile such data, as is necessary for the proper administration and operation of the Plan and the proper management of the assets of the Plan. The Administrator and the Board shall maintain adequate records of their actions and proceedings in administering this Plan and shall file all reports and take all other actions necessary or appropriate in order to comply with applicable law.
- (b) The Plan shall be included in the annual audit of City sponsored retirement plans.

- (c) The Board shall furnish the City Manager or his designee a copy of all monthly financial or investment reports, the annual audit of the Plan, and any financial reports or documents provided by any service provider to the Plan.
- (d) The City shall promptly furnish all necessary information to the Administrator and the Board to permit them to perform their respective duties under the Plan. The Administrator and the Board shall be entitled to rely upon the accuracy and completeness of all information furnished by the City, unless it knows or should have known that such information is erroneous.

10.14 Expenses Of Administrator And Board.

Unless paid by the City, any expenses incurred by the Administrator or the Board in connection with the administration or management of the Plan shall be paid out of the Fund, including but not limited to those associated with the retention of attorneys, accountants, an actuaries, or other service providers; provided, however, that any and all fees and expenses of the Administrator or the Board shall be subject to review and approval of the City Council.

10.15 Reservation of Rights by City.

Where rights are reserved in this Plan to the City, such rights shall be exercised only by action of the City. The City may conduct independent audits of the Fund, or examine the records of the Plan or the Fund, at any time.

10.16 Standard of Care.

The Board and the Administrator shall perform all duties required of them under this Plan in a prudent manner. Neither the Board or the Administrator shall not be responsible in any way for any action or omission of the City, the Trustee or any other fiduciaries in the performance of their respective duties and obligations under the Plan and Trust Agreement. Neither the Board or the Administrator shall be responsible for any act or omission of any of their respective agents, or with respect to reliance upon advice of their respective counsel (whether or not such counsel is also counsel to the City) provided that such agents or counsel were prudently chosen by the Board or Administrator, as the case may be, and that the Board or the Administrator relied in good faith upon the action of such agent or the advice of such counsel.

10.17 Paperless Communications

Notwithstanding anything contained herein to the contrary, the Board or the Administrator from time to time may establish uniform procedures whereby with respect to any or all instances herein where a writing is required, including but not limited to any required written notice, election, consent, authorization, instruction, direction, designation, request or claim, communication may be made by any other means designated by the Board or the Administrator including by paperless communication, and such alternative communication shall be deemed to constitute a writing to the extent permitted by applicable law, provided that such alternative communication is carried out in accordance with such procedures in effect at such time.

ARTICLE 11

CLAIMS PROCEDURE

11.1 Claim for Benefits.

Any person claiming a benefit under the Plan (a "Claimant") shall apply for such benefit by filing a claim with the Administrator in writing on the form or forms prescribed by the Administrator. If no form or forms have been prescribed, a claim for benefits shall be made in writing to the Administrator setting forth the basis for the claim. The Claimant shall furnish the Administrator with such documents, evidence, data, authorizations, consents or information in support of such claim as the Administrator considers necessary or desirable to determine the validity of the claim. The Administrator shall respond in writing to any claim for benefits.

11.2 Notice of Denial.

- (a) If the claim is denied, either in whole or in part, the written notice of denial shall state, in a manner calculated to be understood by the Claimant:
 - (1) The specific reason or reasons for denial, with specific references to the Plan provisions on which the denial is based;
 - (2) A description of any additional material or information necessary for the Claimant to perfect his or her claim, if possible, and an explanation of why such material or information is necessary; and
 - (3) An explanation of the Plan's claims review procedure and the time limits applicable to such procedures.
- (b) The written notice denying or granting the Claimant's claim shall be provided to the Claimant within 90 days after the Administrator's receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension is required, written notice of the extension shall be furnished by the Administrator to the Claimant within the initial 90-day period and in no event shall such an extension exceed a period of ninety (90) days from the end of the initial 90-day period. Any extension notice shall indicate the special circumstances requiring the extension and the date on which the Administrator expects to render a decision on the claim.

11.3 Right to Reconsideration.

Any Claimant whose claim is denied (or such Claimant's authorized representative) may, within sixty (60) days after the Claimant's receipt of notice of the denial, request a review of the denial by notice given, in writing, to the Administrator. Upon such a request for review, the claim shall be reviewed by the Administrator (or its designated representative) which may, but shall not be required to, grant the Claimant a hearing.

11.4 Review of Documents and Submission of Comments.

The Claimant shall be provided reasonable access to, and copies of, all relevant documents, records and information directly related to the claim. In connection with the review, the Claimant may have an authorized representative act on the claimant's behalf. The Claimant may submit comments, documents, records and other relevant information in writing to the Administrator.

11.5 Decision by Administrator.

- (a) The decision on review normally shall be made within sixty (60) days of the Administrator's receipt of the request for review. If an extension of time is required due to special circumstances, the Claimant shall be notified, in writing, by the Administrator, and the time limit for the decision on review shall be extended up to a total of one hundred and twenty (120) days. Any extension notice shall indicate the special circumstance requiring the extension and the date on which the Administrator expect to render a decision on the appeal.
- (b) The Administrator shall notify the Claimant in writing of all benefit determinations as soon as possible, but no later than fifteen (15) days after the benefit determination is made.
- (c) The decision on review shall be in writing and shall state, in a manner calculated to be understood by the Claimant the specific reason or reasons for the decision, with specific references to the relevant Plan provisions on which the decision is based.
- (d) The Administrator has the exclusive discretionary authority to construe and to interpret Plan terms, to decide all questions of eligibility for benefits and to determine the amount of such benefits, and its decisions on such matters shall be final and conclusive. This grant of discretionary authority extends to all decisions made by the Administrator on review, which shall be final and binding with respect to all concerned parties.

- (e) A Claimant shall be entitled, either in his or her 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 or her rights, to recover present benefits due to the Claimant or to clarify rights to future benefits under the Plan. However, in any civil action, in law or equity, any interpretation or determination made pursuant to the discretionary authority conveyed upon the Administrator shall be upheld, unless it is shown that the interpretation or determination made by the Administrator was an abuse of discretion (or was arbitrary and capricious).

ARTICLE 12

AMENDMENT OR TERMINATION OF THE PLAN

12.1 Amendment Of Plan

The City shall have the right from time to time to modify or amend, in whole or in part any or all provisions of the Plan. Upon any such modification or amendment, the Board and the Administrator shall be furnished a copy thereof.

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 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 5 days prior to the scheduled meeting. At least 7 days notice shall be given of the time and place of such meeting.

Any change in benefits provided for by amendment to the Plan shall not apply to any Participant whose Termination Date, Disability Retirement Date or cessation of participation occurred prior to the effective date of such amendment, except as otherwise specifically provided for in the Plan or in such amendment.

12.2 Conditions Of Amendment

No amendment shall:

- (a) make it possible for any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, except that, if after the Plan is terminated there are assets remaining after all Plan liabilities have been provided for, such remaining assets shall be returned to the City.
- (b) directly or indirectly, reduce the vested portion of any Participant's Accrued Pension Benefit as of the effective date of the amendment.

12.3 Termination

It is the present intention of the City to maintain the Plan indefinitely for the benefit of its Covered Employees. Nevertheless, subject to the second paragraph of Section 11.1, the City reserves the right, at any time, by resolution of the City Council to permanently discontinue further contributions to the Trust or to terminate the entire Plan and Trust. Upon such event, the Accrued Pension Benefits, to the extent funded, of all Participants shall become fully vested and nonforfeitable. Upon termination of the Plan, the value of the Accrued Pension Benefits of all Participants shall be determined in accordance with the provisions of Section 12.4.

12.4 Allocation of Assets of Fund on Termination of Plan.

In the event that the Plan is terminated by the City, the Administrator shall determine (on the basis of actuarial valuation) the share of the Fund allocable to each person entitled thereto, in the following order:

- (a) First, all unpaid expenses, fees and other charges under the Plan shall be paid.
- (b) Second, the balance of each Retirement Income Account shall be distributed.
- (c) Third, each Participant shall receive an amount equal to the Participant's Employee Contribution Retirement Benefit (determined as of the date of termination), less any benefits received under the Plan.
- (d) Fourth, an amount sufficient to provide for all Disability Benefits to each Participant who is Disabled and who is entitled to or who is receiving Disability Benefits under the Plan immediately prior to termination, reduced to reflect any allocations made pursuant to the foregoing subsections.
- (e) Fifth, an amount sufficient to provide for the amount of the Accrued Pension Benefit not already provided for under subsection (c) shall be allocated to each former Participant or Beneficiary who has been receiving monthly payments for 3 years, or who could have begun to receive retirement benefits under the Plan at least 3 years prior to the date of termination of the Plan (but who elected to defer the retirement or the commencement of benefits under the Plan), in both cases based upon the terms of the Plan in effect on the date of termination of the Plan.

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- (f) Sixth, an amount sufficient to provide for all Accrued Pension Benefit not already provided for under subsection (c) or (d) that were nonforfeitable immediately prior to the termination of the Plan.
- (g) Seventh, any remaining balance shall be allocated to all Participants and Beneficiaries in proportion to the excess of the actuarial values of their Accrued Pension Benefits under the Plan over the amounts allocated under subsections (c), (d) and (f).
- (h) Eighth, if after following the order of allocations set forth above there is an amount remaining, then such amount shall be returned to the City. The Actuary for the Plan shall certify that what is being returned to the City is not needed to satisfy all of the liabilities under the Plan as to the Participants or Beneficiaries.

Should there prove to be insufficient funds to provide the amounts required to fully satisfy any subsection, then the allocation to all persons covered by that subsection will be reduced by the same proportion.

The provisions set forth in this Section 12.4 shall be subject to such modification, retroactively if required, without necessity of formal amendment to the Plan, as may be necessary in order to cause the termination of the Plan and/or trust and any distributions made pursuant thereto and to conform to any requirements which may be imposed by the Internal Revenue Service to prevent disqualification of the Plan and/or Trust, and no such modification shall be deemed prejudicial to the interest of any Participant or Beneficiary. Further these provisions may be modified retroactively by an amendment to the Plan to change the priority and method of allocation of the Fund on termination of the Plan, provided such amendment does not adversely affect the qualification of the Plan under Section 401(a) of the Internal Revenue Code or increase the amount returned to the City.

12.5 Distribution Of The Fund.

- (a) Upon termination of the Plan, the City may determine to distribute the assets of the Fund as soon as is practicable after such termination. In such event, the Board, in its discretion, shall distribute the Retirement Income Accounts and the amount determined under Section 12.4 to distributable with respect to the Accrued Pension Benefits to Participants or their Beneficiaries by the purchase of annuity contracts, or by liquidating the Fund and distributing the assets to Participants, or partially by one method and partially by another, or in any manner as may be established or required by law.

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- (b) As an alternative to immediate distribution of the Trust, the City, in its discretion, and subject to its option at any time to require the complete distribution of the Trust to the then Participants, may defer commencement of benefits to any Participant who has not reached an event that would otherwise entitle such Participant to commence benefits under Sections 6.1, 6.2, 6.3, 6.5 or 6.6 until such Participant reaches an event which would otherwise entitle him or her to benefit commencement, at which time the provisions of Sections 7.1 - 7.4 shall become applicable.
- (c) If the City invokes the application of Section 12.6(b), then during the interim period, there shall be established and maintained a separate account in the name of each Participant, based upon the values established pursuant to Sections 12.4. The separate account shall thereafter define and measure the amount available for benefits distributable to the Participant, and there shall be credited or charged thereto any income, expenses, gains or losses (whether or not realized, based upon fair market value of invested assets) attributable or allocable thereto as of each trust valuation date (or the date of complete distribution of the trust) with respect to the period since the last valuation date.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Limitations On Liability Of City

(a) No Rights Except as Provided by Law, Plan Provision, or Terms of Insurance or Annuity Policy

Neither the establishment of the Plan or Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the City (or any person connected therewith), the Trustee, the Board, the Administrator, any custodian, trustee or any insurance company, except as provided by law, by any Plan provision or by the terms of any insurance or annuity policy.

(b) City Does Not Guarantee the Trust

The City does not in any way guarantee the Trust from loss or depreciation, nor does the City guarantee the payment of any money which may be or become due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Fund, and in no event shall the City (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom.

(c) City Not Liable for Failure to Make Contributions

The City shall not be liable to any person for failure on its part to make contributions as provided in Section 4.2 or 4.3, nor shall any action lie to compel the City to make such contributions.

(d) City Not Liable for Failure of Plan to Qualify Under Internal Revenue Code

The City (or any person connected therewith) shall not have any liability to any person by reason of the failure of the Plan to maintain qualified status under Section 401(a) of the Internal Revenue Code, or the failure of the Trust to attain and/or maintain tax exempt status under Section 501(a) of the Internal Revenue Code, regardless of the reason for such failure.

13.2 Construction

(a) General Rules of Constriction

For all purposes of the Plan, where the context admits, the singular shall include the plural, and the plural shall include the singular, and references to persons shall include individuals, receivers, trustees, guardians, fiduciaries, corporations, partnerships, associations, estates and trusts. Headings of sections, subsections, and paragraphs are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

(b) Intended to Comply with Requirements for Qualification Under Internal Revenue Code

The Plan is intended to comply with all requirements for qualification under Section 401(a) of the Internal Revenue Code 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.

(c) References to Governmental Regulations

References in this Plan to regulations issued by the Internal Revenue Service, the Department of the Treasury or other governmental agencies shall include all regulations, rulings, procedures, releases and other position statements issued by any such agency.

(d) Severability

In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(e) Laws of Commonwealth of Virginia Shall Govern

All questions pertaining to the validity, construction and administration of the Plan, and the validity of its respective provisions, shall be determined in accordance with the laws of the Commonwealth of Virginia, except to the extent superseded by the Internal Revenue Code.

13.3 Miscellaneous

(a) Non Guarantee of Employment

Participation under the Plan shall not give any participant the right to be retained in the service of the City nor any right or claim to any benefit under the Plan unless such right or claim to such benefit has specifically accrued hereunder.

(b) Counsel

The City, the Board and the Administrator may consult with legal counsel, who may also serve as counsel for the City, the Administrator or the Board (as the case may be), with respect to the meaning or construction of this Plan and the Trust Agreement, their respective obligations or duties hereunder or with respect to any action or proceeding or any question of law, and they shall be fully protected with respect to any action taken, or omitted by them in good faith pursuant to the advice of legal counsel.

(c) Prohibition Against Assignment Of Benefits

- (1) Except as provided below or as specifically provided by law, no benefit payable at any time under this Plan shall be subject in any manner to anticipation, alienation, attachment, garnishment, sale, transfer, assignment (either at law or in equity), execution, levy, pledge, encumbrance, charge or other legal and equitable process.
- (2) The prohibitions of subsection (c)(1) shall not preclude, and the trustee at the direction of the Administrator or to the extent necessary to comply with a directive of a court or other governmental agency of competent jurisdiction) shall honor (i) the enforcement of a federal tax levy made pursuant to Section 6331 of the Internal Revenue Code; (ii) the collection by the United States on a judgment resulting from an unpaid tax assessment, or (iii) the creation, assignment recognition of a right to any benefit payable with respect to a participant pursuant to a "qualified domestic relations order."
- (3) Further, the prohibitions of subsection (c)(1) shall not preclude any arrangement for: (a) the withholding of taxes from Plan benefit payments, (b) the recovery by the Plan of overpayments of benefits previously made to a Participant, (c) the transfer of benefit rights from the Plan to another plan, or (d) the direct deposit of benefit payments to an

account in a banking institution (if not part of an arrangement constituting an assignment or alienation).

- (4) Notwithstanding the foregoing, a Participant's benefit under the Plan may be offset by the amount that the Participant is ordered or required to pay to the Plan if:
 - (i) the order or requirement to pay arises (i) under a judgment of conviction for a crime involving the Plan or the Fund, or (ii) under settlement agreement or a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of a fiduciary or other obligation of the Participant with respect to the Plan or the Fund, and
 - (ii) the judgment, order, decree or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan.
- (5) For the purposes hereof, a qualified domestic relations order shall mean a judgment, decree or order made pursuant to a state domestic relations law which relates to the provision of child support, alimony payments or marital property rights and
 - (i) which clearly specifies:
 - a. the names and last known mailing addresses of the participant and each payee;
 - b. the amount or percentage of the participant's benefits to be paid by this Plan to each payee (or the manner in which such amount or percentage is to be determined);
 - c. the number of payments or period to which such order relates: and
 - (ii) which does not:
 - a. require this Plan to provide any type or form of benefit, or any option, not otherwise provided under this Plan;

- b. require this Plan to provide increased benefits (determined on the basis of actuarial value); or
- c. require the payment of the same benefits to any payee which are payable to another payee pursuant to a prior qualified domestic relations order.

(d) Cooperation of Parties

All parties to this Plan and any person claiming any interest hereunder agree to perform any and all acts and execute any and all documents and papers which are necessary or desirable for carrying out this Plan or any of its provisions.

(e) Incapacity

If the Administrator shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor, or is physically or mentally incompetent to receive such benefit and to give a valid release therefor, and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian, committee or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Administrator may determine to make payments of such benefit otherwise payable to such Participant or Beneficiary to such other person or institution, including a custodian under a Uniform Gifts to Minors Act, or corresponding legislation (who shall be an adult, a guardian of the minor or a trust company), and such payments shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

APPENDIX A

ACTUARIAL ASSUMPTIONS

This Appendix A lists all of the Actuarial Assumptions necessary to be included in a Plan document. This Appendix, which may be amended from time to time by the Administrator (without the necessity of formal amendment to the Plan) to make necessary adjustments in the Actuarial Assumptions, is intended to be incorporated by reference into and made a part of the Plan. Except as otherwise permitted by law, no amendment to this Appendix A shall reduce any Participant's Accrued Pension Benefit calculated as of the later of the effective date or the adoption of such an amendment.

Actuarial Equivalence:

1. Interest Rate: 7.5%
2. Mortality: 1983 Group Annuity Mortality Table for males, with ages set back one year.
3. Cost of Living: 3% (subject to overall Plan limits)

APPENDIX B

CITY OF ALEXANDRIA FIREFIGHTERS AND POLICE OFFICERS PENSION RESTORATION PLAN

- (a) This Appendix B shall constitute a qualified governmental excess benefit arrangement, as described in Section 415(m) of the Internal Revenue Code. The City Of Alexandria Firefighters And Police Officers Pension Restoration Plan (the "Restoration Plan") shall be deemed a separate portion of the Pension Plan which is maintained solely for the purpose of providing to Participants in the Pension Plan whose Accrued Pension Benefit exceeds the limitations imposed by Section 415 of the Internal Revenue Code as a result of an election to exchange the Participant's City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4 of the Pension Plan. Under the Restoration Plan, no election shall be provided at any time to a Participant (directly or indirectly) to defer compensation. Furthermore, no benefits under the Restoration Plan shall be paid from the Trust maintained to fund the Plan.
- (b) In accordance with Section (a) above, any Participant in the Plan whose Accrued Pension Benefit exceeds the limitations imposed by Section 415 of the Internal Revenue Code as a result of an election to exchange the Participant's City Funded Retirement Income Account for Pre-2004 Credited Service pursuant to Section 3.4 of the Pension Plan shall receive such excess amount under the Restoration Plan, subject to applicable taxes. Payments from the Restoration Plan shall be made to Participants at the same time and in the same form as payments are made to Participants under the Pension Plan.
- (c) All of the terms and conditions of the Pension Plan, to the extent not inconsistent with the Restoration Plan, shall control the rights and benefits of Participants and Beneficiaries under the Restoration Plan. In this regard, a Participant's Beneficiary designation under the Pension Plan (and all rules of the Pension Plan incident to such designation) shall control for purposes of the Restoration Plan.
- (d) Participants and their Beneficiaries under the Restoration Plan shall have solely those rights of an unsecured creditor of the City. No assets of the City shall be deemed to be held in trust for any Participants and Beneficiaries, nor shall any assets be considered security for the performance of obligations of the City. The City's obligation under the Restoration Plan shall be unsecured.

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- (e) The Restoration Plan is an unfunded plan maintained to provide retirement benefits for Restoration Plan Participants. Any Participant's benefit under the Restoration Plan is maintained for recordkeeping purposes only and is not to be construed as funded. Notwithstanding the unfunded status of the Restoration Plan, the City may establish a grantor trust to hold assets under the Restoration Plan. Any assets set aside, including any assets transferred to a trust or purchased by the City with respect to amounts payable under the Restoration Plan, shall be subject to the claims of the City's general creditors and no person other than the City shall, by virtue of the provisions of the Restoration Plan, have any interest in such assets.
- (f) Notwithstanding anything in the Pension Plan to the contrary, no Participant or Beneficiary shall not have any right to commute, sell, pledge, assign, transfer or otherwise convey the right to receive any payment under the Restoration Plan and any attempt to accomplish the same shall be void. The right to any payment of benefits shall be non-assignable and non-transferable. Such right to payment shall not be subject to legal process or levy of any kind.