

ORDINANCE 1764 - 2019

AN ORDINANCE OF THE CITY OF ROCKLEDGE, BREVARD COUNTY, FLORIDA, RESTATING THE CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Rockledge originally adopted a retirement plan for General Employees of the City through resolutions and amendments; and

WHEREAS, now, the City Council of the City of Rockledge desires to consolidate such resolutions and amendments into one restated document; and

WHEREAS, it is in the best interest of the Participants and Beneficiaries of the Plan to so restate the Retirement Plan; and

WHEREAS, the City has received and reviewed a statement of no impact for such restatement of the Plan; and

WHEREAS, the City Council of the City of Rockledge desires to restate its General Employees Retirement Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCKLEDGE, FLORIDA:

SECTION 1. That the City of Rockledge General Employees Retirement Plan, as amended, is hereby restated in its entirety as follows:

CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN

AS AMENDED AND RESTATED EFFECTIVE _____, 2019

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CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN
AS AMENDED AND RESTATED EFFECTIVE _____, 2019

INTRODUCTION

The Retirement Plan for Employees of the City of Rockledge and the Retirement Trust for Employees of the City of Rockledge was effective November 1, 1969. This plan and trust agreement, as originally adopted and subsequently amended embodied within said documents the provisions of the City's retirement plan, which provided certain benefits, including retirement income, to Employees who were eligible to participate thereunder. This retirement plan and trust, as in effect on December 31, 1981, is hereinafter referred to as the "Superseded Plan."

Effective January 1, 1982, the Superseded Plan was amended and restated. This plan and the accompanying trust agreement, as originally adopted and subsequently amended embodied within said documents the City's retirement plan, which provided certain benefits, including retirement income, to Employees who were eligible to participate thereunder. This retirement plan and trust agreement, as in effect on September 30, 1991, is hereinafter referred to as the "Prior Plan."

Effective October 1, 1991, the Prior Plan was amended and restated. This plan and the accompanying trust agreement, as originally adopted and subsequently amended embodied within said documents the City's retirement plan, which provided certain benefits, including retirement income, to Employees who were eligible to participate thereunder. This retirement plan and trust agreement, as in effect on March 31, 1998, is hereinafter referred to as the "Prior Plan Two."

Effective April 1, 1998, the Prior Plan Two was amended and restated. This plan and the accompanying trust agreement, as originally adopted and subsequently amended embodied within said documents the City's retirement plan, which provided certain benefits, including retirement income, to Employees who were eligible to participate thereunder. This retirement plan and trust agreement, as in effect on September 30, 1999, is hereinafter referred to as the "Prior Plan Three."

Effective October 1, 1999, in order to comply with Chapter 99-1 of the Florida Statutes, the above described Prior Plan Three was amended and restated as set forth in three separate Trust Agreements entered into by the **CITY OF ROCKLEDGE** (hereinafter referred to as the "City") and each respective **BOARD OF TRUSTEES**, as plan administrator, entitled **CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT TRUST**, **CITY OF ROCKLEDGE POLICE EMPLOYEES RETIREMENT TRUST** and **CITY OF ROCKLEDGE FIRE EMPLOYEES RETIREMENT TRUST** (formerly known as the Retirement Trust for Employees of the City of Rockledge), (hereinafter referred to as the "Trust Agreement"), to which this document (**CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN**) is attached and forms a part thereof.

The amended and restated retirement plan, as set forth herein, shall continue to be known as the **CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN** (formerly known as the Retirement Plan for Employees of the City of Rockledge), (hereinafter referred to as the "Plan"). The Trust Agreement, and any future amendments thereto, shall form a part of the Plan and any amendments hereto, in the same manner as if all terms and provisions were copied herein in detail; the terms and provisions of the Plan, and any future amendments hereto, shall form a part of said Trust Agreement, as from time to time it may be amended, in the same manner as if the same were copied in said Trust Agreement in detail. Words and phrases are used interchangeably in the Plan and said Trust Agreement, as amended and restated effective _____, 2019, and a word, term, or phrase, defined in either, is similarly defined for the purposes of the other.

The Plan as set forth herein is an amendment, restatement and continuation of the Prior Plan Three as it applies to all eligible General Employees, and as in effect on October 1, 2019, and it is intended that there be no lapse either in time or effect between this Plan and such Prior Plan Three.

Under the Prior Plan Three, all benefits provided thereunder were funded through a Trust Fund established and maintained for the purposes of the Prior Plan Three; under this restatement of the Plan effective October 1, 2019, all benefits shall continue to be funded through the Trust Fund established and maintained for the purposes of the Plan, for the exclusive benefit of the Employees covered under the Plan and their Beneficiaries.

The Plan is applicable to all eligible General Employees of the City, as provided hereunder. Benefits payable to a Participant under this Plan shall be determined in accordance with the terms hereof, except as otherwise provided herein, or except as otherwise provided under any subsequent restatement or amendment of the Plan. Benefits for a vested Participant whose Service is terminated on or after October 1, 2019, but prior to his retirement hereunder, shall be determined in accordance with Section 2.1 hereof. Any Employee of the City who was a Participant in the Prior Plan Three and who had reached his Normal Retirement Age, retired due to normal retirement, early retirement, disability, death, or terminated with a vested benefit under such Prior Plan Three on, or prior to October 1, 2019, and who was no longer in the active full-time Service of the City as of such date, shall be eligible to receive the vested retirement income to which he was entitled under the Prior Plan Three, as amended, and shall not receive any additional benefits under this restatement.

SECTION 1
DEFINITIONS – PARTICIPATION – AFFILIATES

1.1 DEFINITIONS

(A) The following words and phrases shall have the meanings stated below unless a different meaning is plainly required by the context:

(1) **Accrued Benefit:**

As of a given date, Accrued Benefit shall mean a Participant's monthly retirement income computed in accordance with Section 2.2 based on the Participant's Average Monthly Compensation as of such given date and the Credited Service that he has accrued to such given date. The Accrued Benefit of a Participant who has satisfied the requirements for early retirement shall not be less than his largest Accrued Benefit after satisfying the early retirement requirements.

For the purposes of determining a Participant's Accrued Benefit, at any moment in time on or before his Normal Retirement Age, the Accrued Benefit shall be considered as payable commencing on the Normal Retirement Age in the Normal Form of Payment unless elsewhere herein modified as to right of payment, timing of payment, amount of payment, or form of payment.

(2) **Actuarial Equivalent:**

The equality in value of aggregate amounts expected to be received under different forms of payment. The assumptions as to interest and mortality used in such calculations shall be those in effect on the specified date.

(3) **Anticipated Average Monthly Compensation:**

The Average Monthly Compensation determined on the assumption that the Basic Compensation paid the Participant in the last Plan Year (in which he was paid for 12 months of Service) next preceding his date of death, Termination of Service, or disability, whichever is applicable, would have been paid each Plan Year, without change, to his Normal Retirement Age.

(4) **Anticipated Credited Service:**

The sum of the Credited Service actually earned by the Participant as of the end of the Plan Year next preceding the date of Termination of Service for any reason plus the additional years and fractions thereof, from the end of the Plan Year next preceding such date until his Normal Retirement Age.

(5) **Anticipated Monthly Retirement Income at Normal Retirement Age:**

The Participant's retirement income calculated as for normal retirement as set forth in Section 2.2, but based on his Anticipated Credited Service and Anticipated Average Monthly Compensation.

(6) **Average Monthly Compensation:**

The Participant's average monthly rate of Basic Compensation from the City for the five [5] successive Plan Years out of the ten [10] Plan Years immediately preceding the date on which his Service terminates for any reason, which give the highest average monthly rate of Basic Compensation for the Participant. The Participant's average monthly rate of Basic Compensation will be determined by dividing the total of the Basic Compensation received during the five [5] Plan Year period by 60. If there are less than five [5] Plan Years in total, the total Basic Compensation received during those Plan Years will be divided by the product of 12 times the number of Plan Years.

(7) **Basic Compensation:**

The total compensation actually paid to a Participant in a Plan Year by the City, excluding any overtime pay, payments for accrued annual leave, payments for accrued sick leave, payments for accrued compensatory leave, commissions, bonus payments, expense allowances and all other forms of extraordinary compensation, plus all tax deferred or tax exempt items of compensation.

(8) **Beneficiary(ies):**

The Participant's spouse or any other individual(s) designated in accordance with Section 4.2 to receive benefits that may be payable upon the death of the Participant.

(9) **Board of Trustees or Trustees**

Collectively the individuals designated in accordance with the Trust Agreement and with Section 6.2 to administer the Plan.

(10) **City:** City of Rockledge

(11) **Credited Service:**

As defined in Section 1.4.

(12) **Early Retirement Age:**

As defined in Section 2.3.

(13) **Effective Date of the Plan:** November 1, 1969

(14) **Employee:**

Any duly employed General or Waste Water Employee in the regular full-time Service of the City; provided, however, that such term shall not include the Mayor, City Council members, the City Attorney and assistants, Police

Officers, Firefighters or any person employed for a temporary period or for a temporary job. A City Manager, initially employed as a City Manager, shall have the option to irrevocably opt out of the Plan before the commencement date of employment with the Employer.

(15) **Employer:** City of Rockledge

(16) **Leave of Absence:**

A temporary absence from the active Service of the City because of sickness, disability, jury duty, compulsory military duty, a temporary layoff by the City, or any other reason on the basis of uniform policy applied by the City without discrimination, which absence does not result in a Termination of Service if the Employee returns to the active employment of the City at or prior to the expiration of the Leave of Absence or, if not specified therein, within the period of time which accords with the City's policy with respect to permitted absences. If the absence results in a Termination of Service because the Employee does not return to the active Service of the City at or prior to the expiration of the Leave of Absence as above defined, his or her Service will be considered terminated as of the date on which the Leave of Absence began.

A **Maternity or Paternity Leave of Absence** shall mean an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. Such a Leave of Absence will not terminate an Employee's Service provided he or she returns to the active employment of the City at or prior to the expiration of the Leave of Absence or, if not specified therein, within the period of time which accords with the City's policy with respect to permitted absences. If the Employee does not return to the active Service of the City at or prior to the expiration of the Leave of Absence as above defined, his or her Service will be considered terminated as of the date on which the Leave of Absence began.

(17) **Normal Form of Payment:**

A monthly income payable until the death of the pensioner.

(18) **Normal Retirement Age:**

As defined in Section 2.2.

(19) **Participant:**

Any Employee who has met the requirements of Section 1.2 and any retired, disabled or terminated person who has rights to benefits under the provisions of the Plan.

(20) **Participant Contribution Account:**

A separate account which consists of mandatory Participant contributions as provided in Section 1.3, including credited interest.

(21) **Plan:**

The Retirement Plan for Employees of the City of Rockledge, effective November 1, 1969, as amended and restated effective January 1, 1982, and subsequently amended, and as amended and restated effective as of October 1, 1991, and subsequently amended, and as amended and restated effective April 1, 1998, as amended and restated effective October 1, 1999, and as amended and restated herein, effective October 1, 2019, and as it may hereafter be amended from time to time.

(22) **Plan Year:**

Prior to October 1, 1984, a Plan Year was the 12-month period beginning on a January 1st and ending on the next December 31st, except for the period January 1, 1984 through September 30, 1984 (nine [9] months) which shall be a short Plan Year.

Effective October 1, 1984, a Plan Year is the 12-month period beginning on October 1st and ending on the next September 30th.

(23) **Prior Plan:**

Retirement Plan for Employees of the City of Rockledge, as amended and restated effective January 1, 1982, and subsequently amended.

Prior Plan Two:

Retirement Plan for Employees of the City of Rockledge, as amended and restated effective October 1, 1991, and subsequently amended.

Prior Plan Three:

Retirement Plan for Employees of the City of Rockledge, as amended and restated effective April 1, 1998, and subsequently amended.

(24) **Qualified Joint and Contingent Annuity:**

An annuity for the life of the Participant with a survivor annuity for the life of the Participant's surviving spouse which is 50% of the amount of the annuity payable during the joint lives of the Participant and spouse. A Qualified Joint and Contingent Annuity shall be the Actuarial Equivalent of the Normal Form of Payment payable under the provisions of the Plan.

(25) **Service:**

Employment by the City in a position included within the definition of Employee.

(26) **Single-Sum Value:**

The present value, as of a specified date, of a series of defined payments, where each payment is multiplied by the probability of survival to the time of that payment and then discounted back to the specified date at an assumed rate of interest. All computations shall be on the basis of the interest and mortality assumptions in effect on the specified date for the purposes of the definition of Actuarial Equivalent.

(27) **Superseded Plan:**

The Retirement Plan for Employees of the City of Rockledge effective November 1, 1969, and subsequently superseded by the Prior Plan.

(28) **Termination of Service:**

The separation of an Employee from Service prior to the attainment of Normal Retirement Age for any reason other than Leave of Absence, Early Retirement, Disability Retirement, or Death.

(29) **Total and Permanent Disability:**

As defined in Section 2.4.

(30) **Trust Agreement:**

The Retirement Trust for Employees of the City of Rockledge, as in effect on October 1, 1991, as amended and restated effective April 1, 1998, as amended and restated effective October 1, 1999, as set forth in that Trust Agreement to which this Plan is attached and as such Trust Agreement may thereafter be amended from time to time.

(31) **Trust Fund:**

The Trust Fund established pursuant to the terms of the Trust Agreement.

(32) **Vested Percentage:**

The percentage of the Participant's Accrued Benefit that is not subject to forfeiture on account of Termination of Service. Vesting Percentage shall be determined in accordance with the following schedule:

<u>Service</u>	<u>Vested Percentage</u>
Less than 10 years	0%
10 years or more	100%

Provided, however, a Participant who is also an Employee who meets the early retirement provisions of Section 2.3 shall be 100% vested regardless of the above schedule. For the purposes of vesting, a Participant shall earn credit for "contiguous service" within the meaning of the Internal Revenue Code.

- (B) The terms "**herein**" and "**hereunder**" and similar terms refer to this document, including the Trust Agreement of which this document is a part, unless otherwise qualified by the context.
- (C) The pronouns "**he**", "**him**" and "**his**" used in the Plan shall also refer to similar pronouns of the feminine gender unless otherwise qualified by the context.
- (D) The Board of Trustees shall provide each person receiving payment of a benefit hereunder with an officially approved notice supplied by the Secretary of the Treasury which specifies certain information regarding the income tax treatment of certain Plan benefits.

1.2 PARTICIPATION

The date of participation for all Employees hired prior to May 1, 1985, shall be as follows:

- (A) With regard to an Employee in the Service of the City on January 1, 1982, who was a Participant in the Superseded Plan, January 1, 1982.
- (B) With regard to an Employee in the Service of the City on January 1, 1982, who had completed two [2] years of Credited Service and who had not attained the age of 60 years as of his date of employment, January 1, 1982.
- (C) With regard to an Employee who is not in either of the aforementioned categories, the date such Employee completed two [2] years of Credited Service, provided, however, that he had not attained the age of 60 years as of his date of employment.

The participation date of all Employees hired on or after May 1, 1985, but prior to May 1, 1987, is May 1, 1987, unless the Employee elected to participate upon the completion of two [2] years of Credited Service, in which case the Employee's participation date shall be the date upon which the Employee completed two [2] years of Credited Service, provided, however, that he had not attained the age of 60 years as of the date of employment.

Employees hired on or after May 1, 1987, but prior to October 1, 1991 who had not attained the age of 55 years as of the date of hire, on the date of employment may elect to participate in the Plan, or defer participation to either the first anniversary of employment or the second anniversary of employment.

Effective October 1, 1991, any Employee hired on or after that date shall participate in the Plan as of the date of hire.

Each such Employee who meets the eligibility requirements as set forth above shall, as a condition of continued employment, become a Participant in the Plan, make contributions to the Plan as required in Section 1.3, and will be subject to all other provisions in the Plan beginning on such date of participation.

Provided: any person initially employed as City Manager shall elect, prior to the commencement of employment with the Employer, to participate or not participate in the Plan. Such election shall be irrevocable. A City Manager who opts out of the Plan shall not be considered a Participant.

1.3 PARTICIPANT'S CONTRIBUTION ACCOUNT

Effective October 1, 1994 each Participant shall contribute 6% of the Participant's Basic Compensation. Prior to October 1, 1994 each Participant contributed 5% of the Participant's Basic Compensation.

Each Participant shall continue to contribute to the Plan until the applicable following date:

- (A) the date the Participant retires under the early, normal, late, or disability retirement provisions of the Plan;
- (B) the date of death of the Participant; or
- (C) the date of Termination of Service.

Throughout the Plan, where reference is made to a Participant's contributions, such contributions shall include the contributions credited to his account which he has made under the Superseded Plan, the Prior Plans and the Plan unless otherwise specifically indicated.

The Participant's contributions made prior to October 1, 1984 shall be credited with interest at the rate of 3%, compounded annually, from the January 1st next following the date on which such contributions were made to January 1, 1982 and 5%, compounded annually on a Plan Year basis; thereafter, from January 1, 1982 to September 30, 1984. Beginning October 1, 1984 such contributions shall be credited with interest at the rate of 5%, compounded annually on a Plan Year basis thereafter to the first of the month in which the date of his Termination of Service occurs.

If a terminated Participant who is vested elects to withdraw his contributions prior to the Participant's Normal Retirement Age, the Participant will be entitled only to a return of his Participant Contribution Account, in lieu of all other benefits payable under the Plan. Contributions cannot be withdrawn while a Participant remains an Employee or after the payment of benefits under the Plan has commenced.

Effective October 1, 1994 or at such date determined in the future, whichever is applicable, the contributions made by all Participants shall be designated as City contributions pursuant to Section 414(h) of the Internal Revenue Code of 1986 and amendments thereto. The "pick up" by the City of a Participant's contribution which meets the requirements of Section 414(h) shall be considered Employee contributions for the purposes of the Plan. Also, such "pick up" contributions shall not be used to reduce the City's obligation to maintain the Plan on a sound actuarial basis, as specified in the actuary's valuation reports for the applicable periods of time.

1.4 CREDITED SERVICE

Except as otherwise provided in this Section, an Employee's Credited Service shall equal the total period of an Employee's Service computed in years and completed calendar months from his date of hire until his date of Termination of Service or his date of retirement, whichever is applicable, provided that for Employees hired on or after May 1, 1987, but prior

to October 1, 1991, the period of Credited Service shall begin on the last date of participation in the Plan.

Unless otherwise required by applicable law, the period of any Leave of Absence of 31 days or more will be excluded from an Employee's Credited Service unless he receives regular compensation from the City during such absence.

Vesting and Credited Service for any period of absence covered under the Uniformed Services Employment and Reemployment Rights Act of 1994 shall be governed by the provisions of said Act.

An Employee who was absent prior to the Effective Date of the Plan because of his engagement in military service will be credited for the full period of such absence if such absence was covered by a Leave of Absence granted by the City or was because of compulsory military service, provided such period would otherwise have been included as Credited Service if the Employee had been in the active Service of the City.

SECTION 2
RETIREMENT AND RETIREMENT INCOME

2.1 TERMINATION OF SERVICE PRIOR TO NORMAL RETIREMENT AGE

(A) Termination of Service prior to Vesting

In the event of a Termination of Service prior to obtaining a vested interest in benefits under the plan, the Participant shall be entitled only to the return of his Participant Contribution Account with interest. No other benefits under the plan shall be payable.

(B) Termination of Service after Vesting

(1) In the event of a Termination of Service after obtaining a vested interest in benefits under the plan, the Participant will be entitled to a monthly vested retirement income to commence on the later of the date of attainment of Normal Retirement Age and the first day of the month following the month in which an application is filed with the Board of Trustees, provided his Employee contributions remain in the Plan. If the Participant reaches Early Retirement Age after the date of his Termination of Service, the Participant may elect to commence monthly retirement payments as of the later of the date upon which he attains Early Retirement Age and the first day of the month following the month in which an approved application is filed with the Board of Trustees. Such monthly retirement income payable to a Participant under the provisions of this Section 2.1(B) shall be equal to:

- (a) the product of his Vested Percentage at the date of his Termination of Service and his Accrued Benefit as of the date of his Termination of Service. If the monthly retirement income is to commence prior to the Participant's Normal Retirement Age, the benefit in this Section 2.1(B)(1)(a) shall be multiplied by the applicable Early Retirement Reduction Factor set forth in Section 2.3, provided, however,
- (b) if the Participant had reached Early Retirement Age as of or prior to the date of his Termination of Service, the benefit computed in (a) above will not be less than the monthly retirement income which can be provided by the Single-Sum Value of the monthly early retirement income which would have been payable to the Participant in accordance with the provisions of Section 2.3 if he had retired on the date of his Early Retirement Age, accumulated with interest from the date of his Early Retirement Age to the date as of which his monthly retirement income payments are to commence in accordance the provisions above.

All computations under this Section 2.1(B)(1), and under Section 2.1(B)(3) below, shall be on the basis of the interest and mortality assumptions in effect

on the date of actual retirement for the purposes of the definition of Actuarial Equivalent.

- (2) The retirement income payable under Section 2.1(B)(1) above will be payable on the first business day of each month in the Normal Form of Payment subject to Section 3.1.
- (3) In the event that the terminated Participant dies prior to the date as of which retirement income payments are to commence as described above (without having received, in accordance with Section 3.2, the value of the benefit in Section 2.1(B)(1) above), his designated Beneficiary will receive the monthly retirement income, payable for 10 years certain and life thereafter and beginning on the first day of the month coincident with, or next following, the date of the terminated Participant's death, which can be provided by the Single-Sum Value of the benefit determined in accordance with Section 2.1(B)(1) above as of the date of the Participant's death, provided, however, in lieu of payment of such benefit in the form of the monthly income described above, the Single-Sum Value of such benefit may be paid on an Actuarial Equivalent basis to the Participant's spouse or designated Beneficiary in such other manner and form as the Participant may elect and the Board of Trustees may approve. Payments to a Beneficiary shall be made in accordance with Section 2.5.
- (4) If a vested Participant who incurs a Termination of Service re-enters the Service of the City without having withdrawn his participant contributions and without having received benefits under this Section, he will be entitled upon such re-entry to the Credited Service he had on the date of his Termination of Service in lieu of the benefits provided under Section 2.1(B)(1); provided, however, that the monthly retirement income payable to such Participant commencing on or after his Normal Retirement Age shall not be less than the amount to which he was entitled under Section 2.1(B)(1) prior to his re-entry into the Service of the City. Except as provided in Section 2.4 with respect to disability retirement, any other Participant will, on re-entry into the Service of the City (unless he has been on Leave of Absence), be treated as if he then first entered the Service of the City.

2.2 NORMAL RETIREMENT AND RETIREMENT INCOME

(A) Normal Retirement Age:

A Participant becomes eligible for normal retirement upon satisfaction of each of the following requirements:

- (1) A written application for retirement has been filed with the Board of Trustees;
- (2) The Employee separates from Service; and
- (3) The Participant reaches Normal Retirement Age.

A Participant's Normal Retirement Age shall be the first day of the month coincident with or next following both the attainment of age 65 and the completion of 10 years of Credited Service. A Participant who is an Employee and who has attained his Normal Retirement Age shall be entitled to a Vested Percentage of 100%.

(B) Amount of Retirement Income:

(1) To a Participant Who Retires at Normal Retirement Age:

The monthly amount of retirement income payable to a Participant who retires on the date of attainment of Normal Retirement Age shall be equal to (a) multiplied by (b), where:

- (a) is 2.75% (.0275) of the Participant's Average Monthly Compensation; and
- (b) is the Participant's Credited Service on the date of retirement (maximum of 30 such years).

(2) To a Participant Who Retires After Normal Retirement Age:

The monthly amount of retirement income payable to a Participant who continues in Service and retires after reaching his Normal Retirement Age shall be the larger of (a) or (b), where:

- (a) is the monthly retirement income which can be provided on an Actuarial Equivalent basis by the sum of (i) and (ii), where:
 - (i) is the Single-Sum Value as of his Normal Retirement Age of the normal monthly retirement income which would have been payable to the Participant in accordance with the provisions of Section 2.2(B)(1) above if he had retired on the date of attainment of Normal Retirement Age, and
 - (ii) is the amount of interest on such Single-Sum Value in (i) above, where the interest shall be compounded annually from the Participant's Normal Retirement Age to his actual retirement date, where all computations shall be on the basis of the interest and mortality assumptions in effect on the date of actual retirement for the purposes of the definition of Actuarial Equivalent; and
- (b) is the monthly retirement income computed according to Section 2.2(B)(1) above using Credited Service and Average Monthly Compensation as defined herein on the date of the Participant's actual retirement.

(C) Payment of Retirement Income:

The benefits provided in this Section are payable in the Normal Form of Payment subject to Section 3.1 and shall be effective as of the later of the Participant's Normal Retirement Age and the first day of the month following the month in which the

Participant files an application for retirement that is approved by the Board of Trustees.

2.3 EARLY RETIREMENT AND RETIREMENT INCOME

(A) Early Retirement Age:

A Participant becomes eligible for early retirement upon satisfaction of each of the following requirements:

- (1) A written application for retirement has been filed with the Board of Trustees;
- (2) The Employee separates from Service;
- (3) The Participant reaches Early Retirement Age.

A Participant’s Early Retirement Age shall be the first day of the month coincident with or next following both the attainment of age 55 and the completion of 10 years of Credited Service.

(B) Amount of Retirement Income:

The monthly amount of retirement income payable to a Participant who retires prior to his Normal Retirement Age under the provisions of this section shall be an amount equal to (1) multiplied by (2), where:

- (1) is the Accrued Benefit computed in accordance with 2.2(B)(1); and
- (2) is the applicable Early Retirement Reduction Factor set forth below, provided that the minimum monthly early retirement income for a Participant who has at least 25 years of Credited Service at retirement shall not be less than 60% of his Average Monthly Compensation.

(C) Early Retirement Reduction Factors:

**Months by Which the Early Retirement
Age Precedes the Normal Retirement Age**

No. of		No. of		No. of	
<u>Months</u>	<u>Factor</u>	<u>Months</u>	<u>Factor</u>		
<u>Months</u>	<u>Factor</u>				
120	.5000	80	.6111	40	.7778
119	.5028	79	.6139	39	.7833
118	.5056	78	.6167	38	.7889
117	.5084	77	.6195	37	.7944
116	.5112	76	.6223	36	.8000
115	.5140	75	.6250	35	.8056

114	.5167	74	.6278	34	.8111
113	.5195	73	.6306	33	.8167
112	.5223	72	.6334	32	.8222
111	.5250	71	.6361	31	.8278
110	.5278	70	.6389	30	.8333
109	.5306	69	.6417	29	.8389
108	.5334	68	.6445	28	.8444
107	.5361	67	.6473	27	.8500
106	.5389	66	.6500	26	.8556
105	.5417	65	.6528	25	.8611
104	.5445	64	.6556	24	.8667
103	.5473	63	.6584	23	.8722
102	.5500	62	.6611	22	.8778
101	.5528	61	.6639	21	.8833
100	.5556	60	.6667	20	.8889
99	.5584	59	.6722	19	.8944
98	.5611	58	.6778	18	.9000
97	.5639	57	.6833	17	.9056
96	.5667	56	.6889	16	.9111
95	.5695	55	.6944	15	.9167
94	.5723	54	.7000	14	.9222
93	.5750	53	.7056	13	.9278
92	.5778	52	.7111	12	.9333
91	.5806	51	.7167	11	.9389
90	.5834	50	.7222	10	.9444
89	.5861	49	.7278	9	.9500
88	.5889	48	.7333	8	.9556
87	.5917	47	.7389	7	.9611
86	.5945	46	.7444	6	.9667
85	.5973	45	.7500	5	.9722
84	.6000	44	.7556	4	.9778

83	.6028	43	.7611	3	.9833
82	.6056	42	.7667	2	.9889
81	.6084	41	.7722	1	.9944
				0	1.0000

(D) Payment of Retirement Income:

The benefits provided in this Section are payable in the Normal Form of Payment subject to Section 3.1 and shall be effective as of the later of the Participant's Early Retirement Age, and the first day of the month following the month in which the Participant files an application for retirement that is approved by the Board of Trustees.

2.4 DISABILITY RETIREMENT AND RETIREMENT INCOME

(A) Disability Retirement:

A Participant may retire from the Service of the City under the Plan if his Service is terminated by reason of his Total and Permanent Disability as defined in Section 2.4(B) below and on or after October 1, 1987, but prior to his Normal Retirement Age. Such retirement from the Service of the City shall herein be referred to as a disability retirement.

(B) Total and Permanent Disability:

A Participant may be considered totally and permanently disabled by the Board of Trustees if, in the opinion of two [2] of the three [3] following:

- (1) a duly licensed physician selected by the Board of Trustees,
- (2) a duly licensed physician selected by the Participant, and
- (3) a duly licensed physician mutually agreeable to the physicians selected in (1) and (2) above,

such Participant is so disabled as to be permanently unable to execute the regular duties of his usual course of employment with the City.

A Participant may be deemed to be partially disabled if he is able to perform the duties of such other position or job which the City makes available to him and for which such Employee is qualified by reason of his training, education or experience.

A Participant will not be deemed totally and permanently disabled if his disability is from a cause specified in Section 2.4(C) below. In any event, a Participant who is disabled for Non-Line of Duty Disability must be disabled for at least a period of five [5] months.

(C) Non-admissible Causes of Disability:

A Participant will not be entitled to receive any disability retirement income if, in the opinion of the Board of Trustees, the disability is a result of:

- (1) excessive use by the Participant of drugs, intoxicants or narcotics;
- (2) injury or disease sustained by the Participant while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony;
- (3) injury or disease sustained by the Participant diagnosed or discovered subsequent to the date his employment has terminated;
- (4) injury or disease sustained by the Participant after commencing employment with the City and while working for anyone other than the City and arising out of such employment;
- (5) injury or disease sustained by the Participant while serving in any armed forces; or
- (6) injury or disease sustained by the Participant as a result of an act of war, whether or not such act arises from a formally declared state of war;
- (7) a condition pre-existing the Employee's employment by the City. No Employee shall be entitled to a disability benefit because of or due to the aggravation of a specific impairment or other medical condition pre-existing at the date of employment, provided that such pre-existing condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability benefit to an employee who, after employment by the City suffers an injury, impairment or other medical condition different from some other injury, impairment or other medical condition existing at or prior to said date of employment.

(D) **Proof of Disability:**

The Board of Trustees before approving the payment of any disability retirement income shall require satisfactory proof, in the form of a certificate from the duly licensed physician(s) selected as set forth in Section 2.4(B), that the Participant has become disabled as provided herein. Every six [6] months after commencement of disability retirement income, or more frequently, the Board of Trustees may similarly require proof of the continued disability of the Participant.

(E) **Disability Retirement Income:**

(1) **Non-Line of Duty Disability**

(a) **Less Than 10 Years of Service:**

The benefit which is payable to a Participant who retires from the Service of the City under the provisions of this Section 2.4(E)(1)(a), due to Total and Permanent Disability, is the monthly retirement income payable for 10 years certain and life thereafter which can be provided by [i] or [ii], whichever is greater, where:

- [i] is the Single-Sum Value of the Participant's Accrued Benefit, which has accrued to the date of his separation from Service due to disability; and
- [ii] is two [2] times the Basic Compensation paid in the Plan Year immediately preceding the Participant's date of separation from Service due to disability; provided, however, the monthly retirement income provided by this Section 2.4(E)(1)(a)(ii) shall be limited to 60% (.60) of the Participant's Anticipated Monthly Retirement Income at Normal Retirement Age.

(b) **10 Years of Credited Service or More:**

The monthly amount of retirement income which is payable for 10 years certain and life thereafter to a Participant who retires from the Service of the City under the provisions of this Section 2.4(E)(1)(b) due to Total and Permanent Disability, shall be the larger of the monthly retirement income determined under [i] or [ii], where:

- [i] is the monthly retirement income which can be provided by the Single-Sum Value of the Participant's Accrued Benefit, which he has accrued to the date of his separation from Service due to disability; and
- [ii] is 30% (.30) of the Participant's Basic Compensation paid in the Plan Year immediately preceding the date of separation from Service due to disability; provided, however, the Single-Sum Value of the monthly amount so computed shall not exceed 100 times the Participant's Anticipated Monthly Retirement Income at Normal Retirement Age.

(2) **Line of Duty Disability**

The benefit which is payable for 10 years certain and life thereafter to a Participant who retires from the Service of the City under the provisions of this Section 2.4(E)(2), due to Total and Permanent Disability shall be an amount equal to 50% (.50) of the Participant's Basic Compensation paid in the Plan Year immediately preceding the date of separation from Service due to disability; provided, however, the Single-Sum Value of the monthly amount so computed shall not exceed 100 times the Participant's Anticipated Monthly Retirement Income at Normal Retirement Age.

(F) **Payment of Disability Retirement Income:**

The monthly retirement income to which a Participant is entitled in the event of his disability retirement will be payable on the first business day of each month. The first payment will be made on the first day of the month coincident with or next following the date the Board of Trustees approves the Participant's disability retirement. The last payment will be as follows:

- (1) if the Participant recovers from the disability prior to his Normal Retirement Age, the last payment will be the payment due next preceding the date of such recovery;
- (2) if the Participant dies prior to his Normal Retirement Age without recovering from his disability, or if the Participant attains his Normal Retirement Age while still disabled, the last payment will be the payment due next preceding the date of his death or the 120th payment, whichever is later.

Any monthly retirement income payments due after the death of a disabled Participant shall be paid to the Participant's designated Beneficiary as provided in Sections 4.2 and 4.3.

(G) **Benefit Payable in the Event of Death of Disabled Participant Prior to Commencement of Disability Income:**

In the event that the death of a disabled Participant occurs prior to the date on which his retirement income payments are to commence in accordance with Section 2.4(F) above, his designated Beneficiary will receive a monthly retirement income, payable for 10 years certain and life thereafter. The monthly retirement income shall be payable beginning on the first day of the month coincident with or next following the date of the disabled Participant's death. The amount of retirement income shall be that which can be provided on an Actuarial Equivalent basis by (1) or (2), whichever is greater, where:

- (1) is the Single-Sum Value, as of the date of the Participant's death, of the Participant's Accrued Benefit as of the date of his separation from Service due to disability, and
- (2) is [i] or [ii], whichever is smaller, where [i] is two [2] times his Basic Compensation paid in the Plan Year immediately preceding the date of separation from Service due to disability, and [ii] is 100 times the Participant's Anticipated Monthly Retirement Income at the Normal Retirement Age.

Provided, however, in lieu of payment of such benefit in the form of the monthly income described above, the Single-Sum Value of such benefit may be paid on an Actuarial Equivalent basis to the Participant's designated Beneficiary in such other manner and form as the Participant may elect and the Board of Trustees may approve or, in the event no election is made by the Participant prior to his death, as the Beneficiary may elect and the Board of Trustees may approve.

(H) **Recovery from Disability:**

If the Board of Trustees finds that a Participant who is receiving a disability retirement income is, at any time prior to his Normal Retirement Age, no longer disabled, as provided herein, the Board of Trustees shall direct that the retirement income payments be discontinued. However, any such Participant who recovers from disability and whose retirement income is discontinued by the Board of Trustees and who, as of the date of separation from Service due to disability, had met the early retirement eligibility requirements set forth in Section 2.3) or had a Vested

Percentage greater than 0%, shall, if he does not re-enter the Service of the City, be entitled to the vested deferred retirement income or early retirement income as provided in Sections 2.1 and 2.3, respectively, based on his Average Monthly Compensation and his Credited Service as of the date of separation from Service due to disability and upon his attained age as of the date of his recovery from disability, and the amount of the retirement income upon early retirement will be reduced to take into account the Participant's younger age and earlier commencement of retirement income payments as provided in Section 2.3.

(I) Re-employment by the City:

If the Participant recovers from disability and re-enters the Service of the City within 30 days after the date of his recovery, his Service will be deemed to have been continuous for vesting purposes but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he re-entered the Service of the City will not be considered as Credited Service for the purpose of the Plan.

2.5 BENEFITS UPON DEATH

(A) Benefit Payable in the Event of Death While in Service on or Prior to Normal Retirement Age:

If the Service of the Participant is terminated by reason of his death on or prior to his Normal Retirement Age, there shall be payable to his Beneficiary a monthly income beginning on the first day of the month coincident with or next following the date of his death, which can be provided by (1) or (2), whichever is greater, where:

- (1) is the Single-Sum Value of the Participant's Accrued Benefit which he has accrued to the date of his death; provided, however, if the Participant had met the requirements for early retirement as set forth in Section 2.3, the Single-Sum Value as used in this section shall not be less than the Single-Sum Value of the early retirement benefit as set forth in Section 2.3, which would have been payable if the Participant had retired early on the date of his death; and
- (2) is [i] or [ii], whichever is smaller, where [i] is two [2] times the Basic Compensation paid in the Plan Year preceding the date of death, and [ii] is 100 times the Participant's Anticipated Monthly Retirement Income at the Normal Retirement Age.

All computations shall be on the basis of the interest and mortality assumptions in effect on the date of the Participant's death for purposes of the definition of Actuarial Equivalent.

(B) Benefit Payable in Event of Death While in Service After Normal Retirement Age:

If the Service of a Participant is terminated by reason of his death after his Normal Retirement Age, there shall be payable to his Beneficiary a monthly income beginning on the first day of the month coincident with, or next following, the date of

his death, which can be provided on an Actuarial Equivalent basis by the Single-Sum Value of the late retirement income computed as of the Participant's date of death in accordance with Section 2.2(B)(2).

(C) **Death while performing USERRA-qualified active military service.**

In the case of a Member who dies on or after January 1, 2007, while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the Plan that are contingent upon a Member's termination of employment due to death shall be determined as though the Member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the Member's absence from covered employment during "Qualified Military Service."

(D) **Manner of Payment of Death Benefits:**

The normal form of payment of the death benefit provided in Sections 2.5(A) and 2.5(B) is a monthly income payable for 10 years certain and life thereafter which provides monthly income payments payable for the life of the Beneficiary and further provides that, in the event of such Beneficiary's death within a period of 10 years after the Participant's death, the same monthly amount shall be continued for the remainder of such 10-year period.

In lieu of payment of such benefit in the form of monthly income described above, the Single-Sum Value of such benefit may be paid on an Actuarial Equivalent basis to the Participant's designated Beneficiary in such other manner and form as the Participant may elect and the Board of Trustees may approve; provided, however, the death benefit payable to a designated Beneficiary other than the spouse shall be paid as set forth below.

A Participant is eligible for the death benefit upon becoming eligible to participate in the Plan. Under the terms of Section 2.5 there is no election to be made on the part of a Participant to receive the death benefit. Also the death benefit payable under the terms of the Plan is always greater than the Pre-Retirement Survivor Annuity benefit. The Single-Sum Value of the death benefit computed under Section 2.5 at the date of death is converted into a monthly income payable to the spouse or the designated Beneficiary. For terminated Participants, as described in Section 2.1(B)(3), the vested Accrued Benefit at the date of termination is converted into the Single-Sum Value of such benefit at the date of death and this amount is converted into a monthly income payable to the spouse or the designated Beneficiary.

The term "Pre-Retirement Survivor Annuity" shall mean an annuity payable to the Participant's spouse or designated Beneficiary as set forth in this Section 2.5 herein.

SECTION 3
PROVISIONS REGARDING PAYMENT OF BENEFITS

3.1 PAYMENT OF RETIREMENT INCOME

Unless a Participant elects otherwise as provided below, vested retirement, normal retirement, early retirement, and disability retirement benefits as provided in Sections 2.1 (other than 2.1(B)(3)), 2.2, 2.3, and 2.4 (other than 2.4(G)) respectively, shall be paid in the Normal Form of Payment if the Participant is not married. If the participant is married, benefits shall be paid in the form of a Qualified Joint and Contingent Annuity that is the Actuarial Equivalent of the Normal Form of Payment.

A Participant may elect to receive benefits in one of the optional forms below. Any such election must be in writing, and, in the case of a married Participant, must bear the notarized consent of the spouse, which spousal consent must conform with the rules under Section 4.2 for spousal consent to change the Beneficiary of death benefits.

Regardless of the form of payment, in the event that payments for vested retirement, normal retirement, early retirement, disability retirement or death benefits as provided in Sections 2.1, 2.2, 2.3, 2.4 or 2.5 respectively, terminate before there has been paid an aggregate amount equal to the Participant Contribution Account at the date of retirement or death, the difference between the Participant Contribution Account and the aggregate amount of payments made shall be paid to the person(s) entitled pursuant to Sections 4.2 and 4.3.

The optional forms are as follows:

Option 1:

A retirement income of a lesser monthly amount, payable to the Participant for his lifetime, except that in the event the Participant dies before he has received 120 monthly payments, the same monthly benefit will be paid to the Beneficiary or Beneficiaries designated by the Participant until the 120th monthly payment has been made.

Option 2:

A retirement income of a modified monthly amount, payable to the Participant during the joint lifetime of the Participant and a joint pensioner designated by the Participant, and following the death of the Participant, payable to the joint pensioner for the lifetime of the joint pensioner as follows:

- (A) one hundred percent (100%), or
- (B) seventy-five percent (75%), or
- (C) sixty-six and two thirds percent (66 2/3%), or
- (D) fifty percent (50%).

In the event the joint pensioner predeceases the Participant, the Participant shall thereafter continue to receive the same monthly amount payable during their joint lifetime.

However, at the time of selecting such joint pensioner option a Participant may elect an additional option as follows:

In the event the joint pensioner predeceases the Participant, the Participant shall thereafter receive an adjusted (pop-up) monthly amount equal to and payable in the Normal Form of Payment thereafter.

Participants retiring prior to enactment of this ordinance on July 2, 2008 shall not be entitled to change the optional form elected to this pop-up form.

Option 3:

Such other amount and form of retirement income payments or benefits as, in the opinion of the Board of Trustees, will best meet the circumstances of a Participant and not substantially affect the actuarial soundness of the plan but shall not include a lump sum payment except for that defined under Section 3.2 and as described under Sections 4.2 and 4.3 for Beneficiaries.

Option 4:

Deferred Retirement Option Program. A Participant may enter into the deferred retirement option program (DROP), which program is to be created and administered by the Board of Trustees, on the first day of any month following both the attainment of age 55 and has earned Credited Service equal to or exceeding 25 years. The maximum duration of participation in the DROP shall not exceed five (5) years and participation will end if the employee resigns, dies or is terminated for just cause prior to completion of said five (5) years.

A Participant may participate in the DROP only once and after commencement in the DROP he or she shall not be eligible to be a contributing Participant of the retirement trust fund during such participation in the DROP.

Upon the effective date of the commencement of participation in the DROP, a member is considered retired for purposes of the Plan. The employee contributions to the retirement trust fund, including those picked up by the City, shall cease. For purposes of this section, Average Monthly Compensation and Credited Service shall remain as they existed on the effective date of commencement of participation in the DROP.

The monthly retirement benefits that would have been payable, had the Participant elected to cease employment and receive a service retirement allowance, shall be credited to a DROP account.

The DROP account shall earn interest at a rate equal to the Trust Fund's net rate of investment return for the year and shall be credited to each individual DROP account on a quarterly basis, unless the DROP participant, as a onetime irrevocable option, elects a self-directed DROP as approved by the Board of Trustees.

The DROP account shall be subject to an annual administrative fee equal to the annual expenses of the Trust Fund as established in the annual actuarial valuation report stated as a percentage, charged quarterly calculated on the balance at the end of each calendar quarter. Such administrative fee shall be reviewed by the Board of Trustees annually. In the event a DROP Participant elects a self-directed DROP, then the investments, any returns thereon, and the fees for administering the self-directed DROP shall be in accordance with the self-directed DROP options selected by the DROP participant. In addition, the administrative fee described above shall be charged to Participants electing the self-directed DROP option. Neither the City, nor the Trust Fund, nor the Board of Trustees shall have any responsibility or liability for any of the options selected by the DROP participant.

Participants electing a self-directed DROP must do so no later than sixty (60) days after the effective date of DROP participation.

Upon termination of employment, a participant in the DROP shall receive a lump sum payment from the account equal to the payments to the account, plus earned interest, or the participant may elect any other method of payment if approved by the Board of Trustees to include direct trustee to trustee roll over to another qualified fund. The monthly benefits that were being paid into the fund during the period of DROP participation shall begin being paid to the retiree.

If a participant dies during the period of participation in the DROP, a lump sum payment equal to his or her account balance shall be paid to the Participant's named Beneficiary in accordance with Section 4.2; in addition, any survivor benefits payable based on the optional form of benefit selected by the participant shall be payable.

If employment is not terminated at the end of the period specified for participation in the DROP, payments into the account shall cease and no further interest shall be earned or credited to the individual account for the duration of employment. The amount in the DROP account shall not be payable to the individual until he or she terminates employment.

If a DROP Participant dies after the maximum period of participation in the plan but is still an employee, a lump sum payment equal to his or her account balance shall be paid to the Participant's named Beneficiary in accordance with Section 4.2; in addition, any survivor benefits payable based on the optional form of benefit selected by the participant shall be payable.

Notwithstanding any other provision of this Plan to the contrary, the accrual and payment of benefits under this Option 4 shall be limited, to the extent applicable, in accordance with the provisions of Internal Revenue Code Section 415I and all regulations issued thereunder, which Section and regulations are hereby incorporated by reference.

The Participant upon electing any option of this section will designate the joint pensioner or Beneficiary to receive the benefit, if any, payable under the Plan in the event of his death and will have the power to change such designation from time to time, but any such change shall

be deemed a new election and will be subject to approval by the Board of Trustees. If a Participant has elected an option with a joint pensioner and his retirement income payments have commenced, he may not change his designated joint pensioner.

Retirement income payments will be made under the option elected in accordance with the provisions of this section and will be subject to the following limitations:

- (A) If a Participant or terminated Participant dies prior to the date that his retirement income commences under the Plan, no benefits will be payable under the option to any person, but benefits will be payable only as provided in Sections 2.1(B)(3), 2.4(G) and 2.5.
- (B) If the designated Beneficiary or joint pensioner dies before the date that the Participant's retirement income commences under the Plan, the option elected will be canceled automatically and a retirement income in the Normal Form of Payment will be payable to the Participant as if the election had not been made, unless a new election is made in accordance with the provisions of this section or unless a new Beneficiary or joint pensioner is designated by the Participant prior to the date that his retirement income commences under the Plan and within 90 days after the death of the prior Beneficiary or joint pensioner.
- (C) If both the Participant and the Beneficiary designated by him die after the date that the Participant's retirement income commences under the Plan but before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of this Section 3.1, the Board of Trustees may, in its discretion, direct that the Single-Sum Value of the remaining payments be paid in a lump-sum and in accordance with Section 4.3.
- (D) Once retirement income payments have commenced, including the crediting of monthly benefits to the DROP account upon DROP entry, a Participant may not request a change of the optional form of payment elected.

3.2 LUMP-SUM PAYMENT OF SMALL RETIREMENT INCOME

In addition to any other provision of the Plan, if the Single-Sum Value of the vested accrued retirement income is less than \$3,500 as of the date of retirement or Termination of Service, whichever is applicable, the Board of Trustees may, in the exercise of its discretion, specify that the Actuarial Equivalent value of such retirement income be paid in a lump-sum or in monthly installments for a period certain of not more than 60 months, where such Actuarial Equivalent value is based upon the mortality and interest assumptions in effect on such date for the purposes of the definition of Actuarial Equivalent.

3.3 IN-SERVICE DISTRIBUTIONS

Notwithstanding the fact that a monthly retirement income is payable for life, if any person (other than a Beneficiary or vested City Manager who elected to opt out of the Plan) receiving a monthly retirement income should receive or become entitled to receive any

compensation for personal services currently performed under substantially full-time continuous employment by the City at regular compensation, the monthly retirement income shall cease during the period for which such compensation is payable. Such monthly retirement income shall, however, be resumed again at the same rate when such compensation thereafter ceases to be payable.

3.4 FUNDING OF BENEFITS THROUGH PURCHASE OF INSURANCE CONTRACT OR CONTRACTS

In lieu of paying benefits from the Trust Fund to a Participant or the Participant's Beneficiary, upon direction of the Board of Trustees, with specific prior authorization by the City, the Trustees may purchase with funds in the Trust Fund, an individual retirement income or retirement annuity contract from an insurance company which, as far as possible, provides benefits equal to (or the Actuarial Equivalent of) those provided in the Plan for such Participant or Beneficiary, whereupon such contract shall thereafter govern the payment of the amount of benefit, if any, represented by such contract which is payable under the Plan upon the Participant's normal retirement, early retirement, death or Termination of Service, and the liability of the Trust Fund and of the Plan will cease and terminate with respect to such benefits that are purchased and for which the premiums are duly paid. Such individual retirement income or retirement annuity contract may be purchased by the Board of Trustees on a single-premium basis or on the basis of annual premiums payable over a period of years, as determined by the Board of Trustees and as agreed upon by the insurance company; and such individual retirement income or retirement annuity contract may be purchased, as directed by the Board of Trustees, at any time, on or after the Participant's date of retirement to provide the benefits due under the Plan to the Participant or the Participant's Beneficiary, on or after the date of such purchase.

No insurance company which may issue any contract upon the application of the Board of Trustees shall be required to take or permit any action contrary to the provisions of such contract; or be bound to allow any benefit or privilege to any person interested in any contract it has issued which is not provided in such contract; or be deemed to be a party to this Plan for any purpose; or be responsible for the validity of this Plan; or be required to look into the terms of this Plan; or question any act of the Board of Trustees hereunder; or be required to see that any action of the Board of Trustees is authorized by this Plan. Any such issuing company shall be fully discharged from any and all liability for any amount paid and no issuing company shall be obligated to see to the application of any monies so paid by it. Any such issuing company shall be fully protected in taking or permitting any action on the faith of any instrument executed by the Board of Trustees and shall incur no liability for so doing.

3.5 FORFEITURES AND DIVIDENDS

Forfeitures shall not be used to increase the benefits that any Participant would otherwise receive under the Plan at any time prior to the termination of the Plan or the complete

discontinuance of contributions to the Plan but shall be anticipated in determining the costs under the Plan. Likewise, any dividends under any contract issued in accordance with Section 3.4 shall not be used to increase the benefits that any Participant would otherwise receive under the Plan but shall be anticipated in determining the costs under the Plan.

3.6 BENEFITS NONFORFEITABLE IF PLAN IS TERMINATED OR CONTRIBUTIONS COMPLETELY DISCONTINUED

In the event that the Plan is partially terminated, or contributions to the Trust Fund are completely discontinued, the rights of each Participant in the Plan to benefits accrued to such date of termination or discontinuance, shall be nonforfeitable, and such benefits shall be determined and distributed as provided in Section 7.4.

3.7 INTERNAL REVENUE CODE COMPLIANCE

(A) MAXIMUM AMOUNT OF RETIREMENT INCOME

- (1) The limitations of this Subsection (A) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this Subsection (A) shall supersede any provisions of the Plan to the extent such provision is inconsistent with this Subsection.

The Annual Pension as defined in Paragraph (2) below otherwise payable to a Member at any time shall not exceed the Dollar Limitation for the Member multiplied by a fraction whose value cannot exceed one, the numerator of which is the Member's number of years (or part thereof, but not less than one year) of service with the City and the denominator of which is 10. For this purpose, no more than one year of service may be credited for any Plan year. If the benefit the Member would otherwise accrue in a limitation year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Dollar Limitation.

- (2) "Annual Pension" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:
 - (I) For limitation years beginning on or after July 1, 2007
 - (i) the straight life annuity (if any) payable to the Member under the Plan commencing at the same Annuity Starting Date as the Member's form of benefit, or
 - (ii) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00%

interest rate and the mortality basis prescribed in Code Section 415(b)(2)I(v).

- (II) For limitation years beginning before July 1, 2007
 - (i) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified in Section 1.1(A)(2) used for Actuarial Equivalence for the particular form of payment under the Plan), or
 - (ii) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)I(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417I(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (A), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (A) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (i) “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Member’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the Member when the benefit begins as follows:
- (III) For Annuity Starting Dates in limitation years beginning on or after July 1, 2007
 - (i) If the Annuity Starting Date for the Member’s benefit is after age 65

- (a) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)I(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

- (b) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection 3.7(A), and (bb) the limitation determined under Subparagraph 3.7(A)(3)(a)(I)(i). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same Accrued Benefit as the Member.

- (IV) Except with respect to a Member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Member's benefit is before age 62

- (i) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)I(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

- (ii) If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section 3.7(A), and (bb) the limitation determined under Subparagraph 3.7(A)(3)(a)(II)(i).

- (V) For Annuity Starting Dates in limitation years beginning before July 1, 2007

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	<p>The smaller of: (a) the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified in Section 1.1(A)(2), or</p> <p>(b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)I(v).</p> <p>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</p>
62 to 65	No adjustment.
Less than 62	<p>The smaller of: (a) the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified in Section 1.1(A)(2), or</p> <p>(b) the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)I(v).</p> <p>This adjustment shall not apply to any “Qualified Member” as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</p>

With respect to clause (3)(a)(I)(i), clause (3)(a)(II)(i) and Paragraph (3)(b) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Member’s death between the Annuity Starting Date and age 62, or

between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Member's death.

- (3) The term "limitation year" is the 12-month period which is used for application of the limitations under Code Section 415 **and shall be the calendar year.**
- (4) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed \$10,000 provided the Member has never participated in a Defined Contribution Plan maintained by the City.
- (5) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
- (6) In the case of a Member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (A) shall be multiplied by a fraction – (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.
- (7) Any portion of a Member's benefit that is attributable to mandatory Member contributions (unless picked-up by the City) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.
- (8) Should any Member participate in more than one defined benefit plan maintained by the City, in any case in which the Member's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the Member's benefit under this Plan shall be reduced so that the Member's combined benefits will equal the Dollar Limitation.
- (9) For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

- (10) The determination of the Annual Pension under Paragraph (A)(1) of this Subsection (A) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (11) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (A) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (A) shall be used to decrease future employer contributions.
- (12) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this Subsection (A), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2 and ½ (two and one-half) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.

(B) Required Beginning Date.

Notwithstanding any other provision of the Plan, payment of a participant's retirement benefits under the Plan shall commence not later than the participant's Required Beginning Date, which is defined as the later of:

- April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or
- April 1 of the calendar year that next follows the calendar year in which the participant retires.

(C) Required Minimum Distributions.

- (1) Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's Required Beginning Date as defined in Subsection (B) of this Section 3.7.
- (2) Death of participant Before Distributions Begin.
 - (a) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
 - (ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
 - (iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - (b) The participant's entire interest shall be distributed as follows:
 - (I) Participant Survived by Designated Beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(a) above, over the life of the designated beneficiary or over a period certain not exceeding:
 - (i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
 - (ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of

the beneficiary's birthday in the calendar year that contains the annuity starting date.

- (II) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
 - (c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(a) and 2(b) above shall apply as though the surviving spouse were the participant.
- (3) Requirements For Annuity Distributions That Commence During Participant's Lifetime.
- (a) Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
 - (b) Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the

excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Subparagraph (3)(b), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

- (4) Form of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subparagraphs (4)(a), (4)(b) and (4)(c) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.
 - (a) General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
 - (i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection I;
 - (iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 - (iv) payments will either be non-increasing or increase only as follows:
 - (a) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index

that is based on prices of all items and issued by the Bureau of Labor Statistics;

- (b) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
 - (c) to provide cash refunds of employee contributions upon the participant's death; or
 - (d) to pay increased benefits that result from a Plan amendment.
- (b) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's Required Beginning Date (or, if the participant dies before distributions begin, the date distributions are required to begin under Subparagraph (2)(a)(i) or (2)(a)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's Required Beginning Date.
- (c) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (5) For purposes of this Subsection I, distributions are considered to begin on the participant's Required Beginning Date. If annuity payments irrevocably commence to the participant (or to the participant's Surviving Spouse) before the participant's Required Beginning Date (or, if to the participant's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(a) above), the date distributions are considered to begin is the date distributions actually commence.
- (6) Definitions.
- (a) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under

Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury regulations.

- (b) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's Required Beginning Date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (C).
 - (c) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (D) (1) 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.
- (2) Definitions.

The following definitions apply to this Section:

- (A) 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 distributees) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
 - (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;
 - (iii) the portion of any distribution which is made upon hardship of the member; and
 - (iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that 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

transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the 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.

- (3) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the 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 and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.
- (4) **Distributee:** A distributee includes an Employee or former distributee. In addition, the Employee's or former Employee's surviving spouse and the Employee's former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the distributee's spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.
- (5) **Direct rollover:** A distributee is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (E) Notwithstanding any distributee of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1000.

(F) Compensation Limitations Under 401(a)(17).

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the

Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401(a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(G) **Uniformed Services Employment and Reemployment Rights Act.**

The Plan shall at all times be administered in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act, which Act is hereby incorporated by reference.

SECTION 4
MISCELLANEOUS PROVISIONS REGARDING PARTICIPANTS

4.1 PARTICIPANTS TO FURNISH REQUIRED INFORMATION

Each Participant, his Beneficiary and joint pensioner will furnish to the Board of Trustees such information as the Board of Trustees considers necessary or desirable for purposes of administering the Plan, and the provisions of the Plan respecting any payments thereunder are conditional upon the Participant, Beneficiary or joint pensioner furnishing promptly such true, full and complete information as the Board of Trustees may request.

Each Participant will submit proof of his age and proof of the age of each Beneficiary and joint pensioner designated or selected by him to the Board of Trustees at such time as required by the Board of Trustees. If such proof of age is not submitted as required, the Board of Trustees will use as conclusive evidence thereof, such information as is deemed by it to be reliable, regardless of the source of such information. Any adjustment required by reason of lack of proof or the misstatement of the age of persons entitled to benefits hereunder, by the Participant or otherwise, will be in such manner as the Board of Trustees deems equitable.

Any notice of information which, according to the terms of the Plan or the rules of the Board of Trustees, must be filed with the Board of Trustees, shall be deemed so filed at the time that it is actually received by the Board of Trustees.

The City, the Board of Trustees, and any person or persons involved in the administration of the Plan shall be entitled to rely upon any certification, statement, or representation made or evidence furnished by an Employee, Participant, Beneficiary or joint pensioner with respect to his age or other facts required to be determined under any of the provisions of the Plan, and shall not be liable on account of the payment of any monies or the doing of any act or failure to act in reliance thereon. Any such certification, statement, representation, or evidence, upon being duly made or furnished, shall be conclusively binding upon the person furnishing same; but it shall not be binding upon the City, the Board of Trustees, or any other person or persons involved in the administration of the Plan, and nothing herein contained shall be construed to prevent any of such parties from contesting any such certification, statement, representation, or evidence or to relieve the Employee, Participant, Beneficiary or joint pensioner from the duty of submitting satisfactory proof of any such fact.

4.2 BENEFICIARIES

Each Participant shall designate on a form approved by the Board of Trustees a Beneficiary as set forth in Section 1.1(A)(8) to receive the death benefit or the remainder benefit (period certain, participant contribution guarantee), if any, which may be payable under the Plan in the event of his death.

If a Participant is married then his spouse shall be his Beneficiary for any death or remainder benefit payable under the Plan. The Participant may designate someone other than his

spouse as his Beneficiary providing the spouse has acknowledged the designation in writing. Notwithstanding this acknowledgement requirement, if the Participant establishes to the satisfaction of the Board of Trustees that such written acknowledgement may not be obtained because there is no spouse or the spouse cannot be located, a waiver will be deemed a qualified election.

In the event that the participant designates someone other than their spouse and the spouse does not or refuses to sign the spousal acknowledgment of the designation of another beneficiary selection, the Plan administrator shall notify the spouse in writing of the option selection. Such notification shall constitute acknowledgment by the spouse of such selection.

Should an unmarried Participant, or a married Participant, elect the optional benefit of ten (10) years certain (Option 1) the Participant may designate any Beneficiary or Beneficiaries.

Each designation may be revoked by the Participant by signing and filing with the Board of Trustees a new "Designation of Beneficiary" form.

If a deceased Participant failed to name a Beneficiary in the manner prescribed herein or if a Beneficiary named by a deceased Participant predeceases the Participant, the death or remainder benefit, if any, which may be payable under the Plan with respect to such deceased Participant shall be paid as follows: to the Participant's spouse (this would be the case if the spouse were not automatically the Beneficiary because he/she consented to a Beneficiary who predeceased the Participant), if the spouse is still living. If the spouse is not alive at the time of the Participant's death, the Beneficiary(ies) shall be the living children of the member, if any. If no children survive, the Beneficiary(ies) shall be the Participant's parents; otherwise, the beneficiary shall be the Participant's estate. The Board of Trustees may pay the Single-Sum Value of the remaining monthly income payments in a lump-sum. Any payment made to any person pursuant to the power and discretion conferred upon the Board of Trustees by the provisions of this Section 4.2 shall operate as a complete discharge of all obligations under the Plan with respect to such deceased Participant and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

4.3 CONTINGENT BENEFICIARIES

In the event of the death of a Beneficiary who is receiving benefits pursuant to the provisions of the Plan within any certain period specified under the Plan after the Participant's death, the same amount of monthly retirement income which the Beneficiary was receiving shall be payable for the remainder of such specified certain period to a person designated by the Participant (in the manner provided in Section 4.2) to receive the remaining death benefits, if any, payable in the event of such contingency; provided, however, that if no person so designated be living upon the occurrence of such contingency, then the remaining death benefits, if any, shall be payable for the remainder specified certain period to: the Participant's spouse, or if none, the Beneficiary's spouse, or if none, the Participant's descendants, or if none, the Beneficiary's descendants, or if none, the Participant's parents, or if none, the Beneficiary's parents, or if none, the Participant's heirs-at-law, or if none, the

estate of such deceased Beneficiary; provided, further, that in any of such cases the Board of Trustees may, in its discretion, direct the Single-Sum Value of the monthly retirement income payments due for the remainder of the specified certain period to be paid in a lump-sum. Any payments made to any person pursuant to the power and discretion conferred upon the Board of Trustees by the provisions of this Section 4.3 shall operate as a complete discharge of all obligations under the Plan with respect to such deceased Beneficiary and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

4.4 PARTICIPANT'S RIGHTS IN TRUST FUND

No Participant or other person shall have any interest in or any right in, to or under the Trust Fund, or any part of the assets thereof, except as and to the extent expressly provided in the Plan.

4.5 BENEFITS NOT ASSIGNABLE

No benefits, rights or accounts shall exist under the Plan which are subject in any manner to voluntary or involuntary anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be null and void; nor shall any such benefit, right or account under the Plan be in any manner liable for, or subject to, the debts, contracts, liabilities, engagements, torts or other obligations of the person entitled to such benefit or account; nor shall any benefit, right, or account under the Plan constitute an asset in case of bankruptcy or receivership and any such benefit, right or account under the Plan shall be payable only directly to the Participant or Beneficiary, as the case may be; except, effective and retroactive to April 27, 2004, the recipient of any monthly benefit may authorize the Board of Trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the City, to pay the certified bargaining agent of the City, and to make any payments for child support or alimony.

4.6 BENEFITS PAYABLE TO MINORS AND INCOMPETENTS

Whenever any person entitled to payments under the Plan shall be a minor or under legal disability or in the sole judgment of the Board of Trustees shall otherwise be unable to apply such payments to his own best interest and advantage (as in the case of illness, whether mental or physical, or where the person not under legal disability is unable to preserve his estate for his own best interest), the Board of Trustees may in the exercise of its discretion direct all or any portion of such payments to be made in any one or more of the following ways unless claim shall have been made therefor by an existing and duly appointed guardian, tutor, conservator, committee or other duly appointed legal representative, in such event payment shall be made to such representative:

- (A) directly to such person unless such person shall be an infant or shall have been legally adjudicated incompetent at the time of the payment;
- (B) to the spouse, child, parent or other blood relative to be expended on behalf of the person entitled or on behalf of those dependents as to whom the person entitled has the duty of support;
- (C) to a recognized charity or governmental institution to be expended for the benefit of the person entitled or for the benefit of those dependents as to whom the person entitled has the duty of support; or
- (D) by the Board of Trustees itself receiving and expending or directing the expenditure of the same for the benefit of those dependents as to whom the person entitled had the duty of support.

The decision of the Board of Trustees, in each case, will be final and binding upon all persons and, except in the case of (D) above, the Board of Trustees shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power herein conferred upon the Board of Trustees shall operate as a complete discharge of the obligations of the Trustee and of the Board of Trustees.

4.7 CONDITIONS OF EMPLOYMENT NOT AFFECTED BY PLAN

The establishment and maintenance of the Plan will not be construed as conferring any legal rights upon any Participant to the continuation of his employment with the City, nor will the Plan interfere with the right of the City to discipline, lay-off or discharge any Participant. The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the City and any Employee or to be considered for, inducement to, or condition of employment of any person.

4.8 NOTIFICATION OF MAILING ADDRESS

Each Participant and other person entitled to benefits hereunder shall file with the Board of Trustees from time to time, in writing, his post office address and each change of post office address, and any check representing payment hereunder and any communication addressed to a Participant, a former Participant, a Beneficiary or a pensioner hereunder at his last address filed with the Board of Trustees (or, if no such address has been filed, then at his last address as indicated on the records of the City) shall be binding on such person for all purposes of the Plan, and the Board of Trustees shall not be obliged to search for or ascertain the location of any such person.

If the Board of Trustees, for any reason, is in doubt as to whether retirement income payments are being received by the person entitled thereto, it may, by certified or registered mail addressed to the person concerned at his address last known to the Board of Trustees, notify such person that all un-mailed and future retirement income payments shall be henceforth withheld until he provides the Board of Trustees with evidence of his continued

life and his proper mailing address or his Beneficiary provides the Board of Trustees with evidence of his death.

4.9 WRITTEN COMMUNICATION REQUIRED

Any notice, request, instruction, or other communication to be given or made hereunder shall be in writing and either personally delivered to the addressee or deposited in the United States mail fully postpaid and properly addressed to such addressee at the last address for notice shown on the Board of Trustees' records. For purpose of this provision electronic communications shall be deemed written communications.

4.10 CLAIMS PROCEDURE

A Participant or Beneficiary who feels he is being denied any benefit or right provided under the Plan shall have the right to file a written claim with the Board of Trustees. All such claims shall be submitted on a form provided by the Board of Trustees which shall be signed by the claimant and shall be considered filed on the date the claim is received by the Board of Trustees.

Upon the receipt of such a claim and in the event the claim is denied, the Board of Trustees shall, within a reasonable period of time, provide such claimant a written statement which shall be delivered or mailed to the claimant by certified or registered mail to his last known address, which statement shall contain the following:

- (A) the specified reason or reasons for the denial of benefits;
- (B) a specific reference to the pertinent provisions of the Plan upon which the denial is based;
- (C) a description of any additional material or information which is necessary; and
- (D) an explanation of the review procedure provided below.

Within 90 days after receipt of a notice of denial of benefits as provided above, the claimant or his authorized representative may request, in writing, to appear before the Board of Trustees for a review of his claim. In conducting its review, the Board of Trustees shall consider any written statement or other evidence presented by the claimant or his authorized representative in support of his claim. The Board of Trustees shall give the claimant and his authorized representative reasonable access to all pertinent documents necessary for the preparation of his claim.

Within 60 days after receipt by the Board of Trustees of a written request for review of his claim, or in the event of special circumstances (including a review hearing before the Board of Trustees) which require an extension of time for processing such application for review, but not later than 120 days after receipt of such application, the Board of Trustees shall notify the claimant of its decision by delivery or by certified or registered mail to his last known address. The decision of the Board of Trustees shall be in writing and shall include the

specific reasons for the decision presented in a manner calculated to be understood by the claimant and shall contain references to all relevant Plan provisions on which the decision was based. The decision of the Board of Trustees shall be final and binding.

SECTION 5

MISCELLANEOUS PROVISIONS REGARDING THE EMPLOYER

5.1 CONTRIBUTIONS

The City shall make such contributions as are required, together with contributions of the Participants and other sources, to maintain the Trust Fund established for the purposes of the Plan on a sound actuarial basis, as specified in the actuary's valuation reports for the applicable periods of time.

Employee contributions shall be deposited to the Trust Fund on at least a monthly basis. The City's contributions shall be deposited on at least a quarterly basis.

5.2 CITY'S CONTRIBUTIONS IRREVOCABLE

The City shall have no right, title or interest in the Trust Fund or in any part thereof, and no contributions made thereto shall revert to the City except such part of the Trust Fund, if any, which remains therein after the satisfaction of all liabilities to persons entitled to benefits under the Plan, as described in Section 7.4 with respect to termination of the Plan.

5.3 EXPENSES OF ADMINISTRATION

The City may pay all expenses incurred in the administration of the Plan, including expenses of any member of the Board of Trustees, but it shall not be obligated to do so, and any such expenses not so paid by the City shall be paid from the Trust Fund.

Notwithstanding the above, in no event shall the City pay a fee to an individual Trustee appointed hereunder.

5.4 AMENDMENT OF PLAN

The Plan may be amended from time to time in any respect whatever by Ordinance of the City Council specifying such amendment, subject only to the following limitations:

- (A) Under no condition shall such amendment result in or permit the return or repayment to the City of any property held or acquired by the Board of Trustees hereunder or the proceeds thereof or result in or permit the distribution of any such property for the benefit of anyone other than the Participants and their Beneficiaries or joint pensioners, except to the extent provided by Sections 5.3 and 7.4 with respect to expenses of administration and termination of the Plan, respectively.
- (B) Under no condition shall such amendment change the duties or responsibilities of the Board of Trustees hereunder without the Board of Trustees' written consent.

Subject to the foregoing limitations, any amendment may be made retroactively which, in the judgment of the City, is necessary or advisable provided that such retroactive amendment

does not deprive a Participant, without his consent, of a right to receive benefits hereunder which have already vested and matured in such Participant, except such modification or amendment as shall be necessary to comply with any laws or regulations of the United States or of any state to qualify this as a tax-exempt Plan and Trust Fund.

5.5 TERMINATION OF PLAN

The Plan may be terminated by the City at any time by delivering to the Board of Trustees, in writing, an Ordinance of the City Council, duly certified by an official of the City, specifying that [a] the Plan is being terminated, or [b] contributions thereunder are being permanently discontinued. The Plan shall automatically terminate only upon adjudication by a court of competent jurisdiction that the City is bankrupt or insolvent (whether such proceedings be voluntary or involuntary), upon dissolution of the City or upon its liquidation, merger or consolidation without provisions being made by its successor, if any, for the continuation of the Plan.

SECTION 6 ADMINISTRATION

6.1 GENERAL FIDUCIARY RESPONSIBILITIES

The members of the Board of Trustees, any investment advisor appointed by the Board of Trustees, as well as any custodian, counsel, accountant, and actuary appointed by the Board of Trustees, and any other person who exercises by discretionary authority or control respecting management or administration of the Plan or Trust Agreement or who exercises any authority or control respecting management or disposition of the assets of the Trust Fund shall be deemed to be a fiduciary for the purposes of the Plan and Trust Agreement in accordance with Section 112.656 Florida Statutes.

A fiduciary may, but need not, be a council member, officer, or Employee of any City and may serve in more than one fiduciary capacity.

A fiduciary shall discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan in accordance with Section 112.656, Florida Statutes.

Each fiduciary shall assume no obligation or responsibility with respect to any act or action required under the provisions of the Plan or the Trust Agreement on the part of any other fiduciary unless such fiduciary knowingly participates in or undertakes to conceal a breach of duty committed by any such other fiduciary, it must take reasonable steps under the circumstances prevailing to remedy such breach.

6.2 DUTIES AND RESPONSIBILITIES OF THE CITY COUNCIL

(A) Appointment of the Board of Trustees:

The Plan shall be administered by a Board of Trustees consisting of five [5] members ((2) members who are Participants in the Plan and (2) members who must be legal residents of the City) appointed by the City Council and one [1] member recommended by a majority of all other members of the Board of Trustees and, as a ministerial duty, appointed by the City Council. The term of office for each Participant member and each legal resident member shall be four [4] years. Any member of the Board of Trustees may resign by delivering his written resignation to the City Council of the City of Rockledge and to the other members of the Board of Trustees. In the event of resignation, or an unreasonable number of unexcused absences, or in the event of death, of the appointed Participant member, the City Council shall appoint a new Participant member to serve the balance of the applicable term of office. In the event of resignation, or an unreasonable number of unexcused absences, or in the event of death, of a legal resident member of the Board of Trustees the City Council shall appoint a new legal resident member to serve the balance of the applicable term of office. In the event of resignation, or an unreasonable number of

unexcused absences, or in the event of death, of the member recommended by the other members of the Board of Trustees, the members of the Board of Trustees shall recommend by a majority of all other members of the Board of Trustees a new member to the City Council and he or she shall, as a ministerial duty, be appointed by the City Council.

The Board of Trustees shall have the authority to control and manage the operation and administration of the Plan pursuant to the provisions of Section 6.3.

(B) **Appointment of the Plan Administrator and the Agent for Service of Legal Process:**

The Board of Trustees is the "Plan Administrator" and the "Agent for Service of Legal Process."

6.3 ACTION, AUTHORITY, DUTIES AND RESPONSIBILITIES OF THE BOARD OF TRUSTEES

(A) **Action by the Board of Trustees:**

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business and shall have full power to act hereunder. Any written memorandum signed by the secretary or any member of the Board of Trustees who has been authorized to act on behalf of the Board of Trustees shall have the same force and effect as a formal resolution adopted in open meeting. Minutes of all meetings of the Board of Trustees and a record of any action taken by the Board of Trustees shall be kept in written form by the secretary appointed by the Board of Trustees.

A member of the Board of Trustees may not vote or decide upon any matter relating solely to himself or vote in any case in which his individual right or claim to any benefit under the Plan is particularly involved. If, in any case in which any Board of Trustees member is so disqualified to act, the remaining members cannot agree, the City Council shall appoint a temporary substitute member to exercise all of the powers of the qualified member concerning the matter in which the disqualified member is not qualified to act.

(B) **Authority of the Board of Trustees:**

(1) The Board of Trustees shall have the authority to make such rules and regulations and to take such action as may be necessary to carry out the provisions of the Plan and will, subject to the provisions of the Plan, decide any questions arising in the administration, interpretation and application of the Plan, which decisions shall be conclusive and binding on all parties. The Board of Trustees may delegate any part of its authority and duties as it deems expedient.

(2) In order to effectuate the purposes of the Plan, the Board of Trustees shall have the power to construe the Plan and to make equitable adjustments

for any mistakes or errors made in the administration of the Plan, and all such actions or determinations made by the Board of Trustees in good faith shall not be subject to review by anyone.

- (3) The Board of Trustees shall have the authority to appoint from time to time an actuary to do such actuarial, technical, and advisory work as the Board of Trustees may request including analysis of the experience of the Plan from time to time, the preparation of actuarial tables for the making of computations thereunder, and the submission of an actuarial report each year to the City and the Board of Trustees which report shall contain an actuarial valuation showing the financial condition of the Plan, a statement of the contributions to be made by the City for the ensuing Plan Year, and such other information as may be required by the Board of Trustees. The actuary as appointed by the Board of Trustees shall serve as long as it is mutually agreeable to the Board of Trustees and the actuary. In computing benefits to which a Participant may be entitled upon early retirement, upon the exercise of optional forms of retirement benefits or upon termination of the Plan, and in all other instances in which actuarial computations are required, the actuary shall use such assumptions of mortality and interest rates as were employed in the most recent actuarial valuation of the Plan or, at the option of the actuary and the Board of Trustees as being reasonable at the time such calculations are made. The actuarial assumptions and the computation made therefrom adopted by the Board of Trustees shall be conclusive and binding on all persons whomsoever.
- (4) The Board of Trustees shall have the authority to appoint from time to time one or more investment advisors. Each investment advisor so appointed shall have full discretion to direct the custodian with respect to the acquisition, retention, management, and disposition of the portion of the assets of the Trust Fund for which such investment advisor has been given the authority to administer, subject to the provisions of the Trust Agreement, with respect to permissible investments and subject to the provisions of the Trust Agreement with respect to an investment advisor.
- (5) The Board of Trustees shall appoint a secretary who may, but need not be a member of the Board of Trustees and the Board of Trustees may employ such agents, clerical and other services, legal counsel, and accountants as may be required from time to time for the purpose of administering the Plan.
- (6) The Board of Trustees shall have such other power and authority not listed above as enumerated under any other provision of the Plan and Trust Agreement, or as necessary or convenient to the administration of the Plan.

(C) **Duties and Responsibilities of the Board of Trustees:**

The Board of Trustees shall, as part of its general duty to supervise and administer the Plan as the "Plan Administrator":

- (1) appoint an actuary for purposes of the Plan,
- (2) supervise and direct the distribution of the assets of the Trust Fund upon termination of the Plan,
- (3) maintain the records of the Credited Service and Accrued Benefit, if any, for all Plan Participants,
- (4) give the custodian specific written directions with respect to:
 - (a) the payment of benefits from the Trust Fund, giving the names of the payees, the amounts to be paid, and the time or times when payments shall be made,
 - (b) the making of any other authorized payments from the Trust Fund,
- (5) prepare and furnish to each Participant such forms as are required to be completed by each Participant for the receipt of benefits, and
- (6) prepare and submit such reports as are required to be filed with the State of Florida with regard to the Plan.

The above list of express duties and responsibilities with regard to the Board of Trustees is not intended to be either complete or conclusive, and such list shall in no manner limit the fiduciary responsibilities of the Board of Trustees as the "Plan Administrator".

6.4 APPLICABLE LAW

The Plan will be construed and enforced according to the laws of the State of Florida and all provisions of the Plan will be administered according to the laws of the said State.

SECTION 7 TRUST FUND

7.1 PURPOSE OF TRUST FUND

A Trust Fund has been created and will be maintained for the purposes of the Plan, and the monies thereof will be invested in accordance with the terms of the Trust Agreement which forms a part of the Plan. All contributions will be paid into the Trust Fund, and all benefits under the Plan will be paid from the Trust Fund.

7.2 BENEFITS SUPPORTED ONLY BY TRUST FUND

Any person having any claim under the Plan will look solely to the assets of the Trust Fund for satisfaction. In no event will the City or any of its officials, Employees, members of its City Council or agents, or any member of the Board of Trustees be liable in their individual capacities to any person whomsoever, under the provisions of the Plan or of the Trust Agreement.

7.3 TRUST FUND APPLICABLE ONLY TO PAYMENT OF BENEFITS

The Trust Fund will be used and applied only in accordance with the provisions of the Plan, to provide the benefits thereof, and no part of the corpus or income of the Trust Fund will be used for, or diverted to, purposes other than for the exclusive benefit of Participants and other persons thereunder entitled to benefits, except to the extent provided in Sections 5.3 and 7.4 with respect to expenses of administration and termination of the Plan, respectively.

7.4 TERMINATION OF PLAN AND DISTRIBUTION OF TRUST FUND

Upon termination of the Plan for any reason, or upon written notice to the Board of Trustees that contributions thereunder are being permanently discontinued, the Trust Fund shall be apportioned and distributed in accordance with the following procedure. A Participant's Accrued Benefit shall become 100% vested upon termination of the Plan.

- (A) The Board of Trustees shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.
- (B) The Board of Trustees shall determine the method of distribution of the asset value - that is, whether distribution shall be by payment in cash, by transfer to Individual Retirement Accounts established under Section 408 of the Internal Revenue Code of 1986 and amendments thereto, by the maintenance of another or substitute trust fund, by the purchase of insured annuities, or in kind based on the then market value - for each class of Participants and other persons entitled to benefits under the Plan, as specified in (C) below.

- (C) The Board of Trustees shall apportion the asset value as of the date of termination of the Plan in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed Single-Sum Value of such retirement income; except that if the method of distribution determined under (B) above involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single-premium payable for such annuity:
- (1) An amount equal to the Participant Contribution Account less the aggregate of any retirement income payments made with respect to such Participant will be determined, and such amount will be apportioned from the asset value. Such asset value, if insufficient to provide such amount in full, will be apportioned among such Participants in proportion to the amounts determined with respect to them.
 - (2) If there be any asset value remaining after apportionment under (1), apportionment shall next be made with respect to each retired Participant receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a deceased Participant or a retired (but since deceased) Participant and each Participant who has, by such date, become eligible for normal retirement but has not yet retired, in the amount to provide such retirement income less any apportionment in (1) above; provided, however, that if the asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to the asset value.
 - (3) If there be any asset value remaining after the apportionment under (1) and (2) above, apportionment shall next be made with respect to each Participant in the Service of the City on such date who is not entitled to an apportionment under (2) above but who has satisfied the requirements for early retirement in the amount required to provide the Actuarial Equivalent Single-Sum Value of the Participant's Accrued Benefit as of the date of termination of the Plan, (i.e., the Actuarial Equivalent Single-Sum Value of the retirement income which the Participant would have been entitled to receive had the Participant retired early on the date of termination of the Plan) less any apportionment made under (1) above, and to each former Participant then entitled to a benefit under the provisions of Section 2.5(A) who has not, by such date, reached his Normal Retirement Age, in the amount required to provide the Actuarial Equivalent Single-Sum Value of the Accrued Benefit to which the Participant is entitled under Section 2.5(A) less any apportionment made in (1) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to the remaining asset value.
 - (4) If there be asset value remaining after the apportionment under (1), (2) and (3) above, apportionment shall lastly be made with respect to each Participant in

the Service of the City on such date who is not entitled to an apportionment under (2) or (3) above, in the amount required to provide the Actuarial Equivalent Single-Sum Value of the Participant's Accrued Benefit as of the date of termination of the Plan, less any apportionment made under (1) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

- (5) In the event that there be asset value remaining after the full apportionments specified in (1), (2), and (3) and (4) above, such excess shall be returned to the City.
- (D) The Board of Trustees, under the direction of the City Council shall direct the Trustee to distribute, in accordance with the manner of distribution determined under (B) above, the amounts apportioned under (C) above.

**SECTION 8
SIGNATURES**

8.1 SIGNATURE PAGE

IN WITNESS WHEREOF, the **CITY OF ROCKLEDGE**, as Employer, has caused these presents to be executed by its duly authorized officers on this the 4th day of December, 2019, effective as of December 4, 2019.

ATTEST:

CITY OF ROCKLEDGE,
as Employer

/s/ Lisa C. Nicholas
City Clerk

/s/ Thomas J. Price
Mayor

SECTION 2. The Mayor and City Clerk of the City of Rockledge are hereby authorized and directed to execute and codify this restatement for and on behalf of the City of Rockledge.

SECTION 3. The provisions of this restatement are severable, and if any section, sentence, clause or phrase hereof is for any reason held to be unconstitutional, invalid or ineffective, such holding shall not affect the validity of the remaining portions of this restatement, it being expressly declared to be the City Council’s intent that it would have passed the valid portions of this restatement without the inclusion therein of any invalid portion or portions.

SECTION 4. This restatement shall be effective immediately upon approval of same by the Mayor; or, in the event this restatement is vetoed by the Mayor, and such veto is overridden by the City Council, it shall become effective immediately upon such veto being

overridden; or, if this restatement is neither approved nor vetoed by the Mayor, it shall become effective ten (10) days after the date of its adoption.

ADOPTED at a regular meeting of the City Council of the City of Rockledge, Florida, this 4th day of December, 2019.

/s/ Thomas J. Price
Chairman, City Council of the City of
Rockledge, Florida

ATTEST:

/s/ Lisa C. Nicholas
City Clerk

1st Reading: 11/20/2019

2nd Reading: 12/04/2019



CITY OF ROCKLEDGE

NOTICE OF PROPOSED ENACTMENT OF CITY OF ROCKLEDGE ORDINANCE AND PUBLIC HEARING WITH RESPECT THERETO

Please take notice that, at the regular meeting of the Rockledge City Council to be held on December 4, 2019, in the Council Chamber of the Rockledge City Hall, 1600 Huntington Lane, Rockledge, Florida, commencing at 6:00 p.m., the Rockledge City Council proposes to enact the following entitled ordinance, to-wit:

AN ORDINANCE OF THE CITY OF ROCKLEDGE, BREVARD COUNTY, FLORIDA, RESTATING THE CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed ordinance may be inspected by the public at the office of the City Clerk, Rockledge City Hall, 1600 Huntington Lane, Rockledge, Florida.

All interested parties are hereby advised that they may appear at said meeting and be heard with respect to the proposed ordinance.

ALL PERSONS AND PARTIES ARE HEREBY ADVISED THAT IF THEY SHOULD DECIDE TO APPEAL ANY DECISIONS MADE BY THE CITY COUNCIL OF THE CITY OF ROCKLEDGE WITH RESPECT TO ANY MATTER CONSIDERED AT THE PUBLIC MEETING OR HEARING IN THIS NOTICE, THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, SAID PERSON OR PARTY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

CITY OF ROCKLEDGE

Lisa C. Nicholas
Public Relations Officer & City Clerk

AD# 3904968 11/21/19
NOTICE OF PROPOSED ENACTMENT OF CITY OF ROCKLEDGE ORDINANCE AND PUBLIC HEARING WITH RESPECT THERETO

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CITY OF ROCKLEDGE
Lisa C. Nicholas
Public Relations Officer & City Clerk

CITY HALL

1600 HUNTINGTON LN.
ROCKLEDGE, FL 32955
TELEPHONE: 321-221-7540
FAX: 321-204-6356

BUILDING DIVISION

1600 HUNTINGTON LN.
ROCKLEDGE, FL 32955
TELEPHONE: 321-221-7540
FAX: 321-204-6356

PUBLIC SAFETY DEPT.

FIRE DIVISION

1776 JACK OATES BLVD.
ROCKLEDGE, FL 32955
TELEPHONE: 321-221-7540
FAX: 321-204-6386

POLICE DIVISION

1776 JACK OATES BLVD.
ROCKLEDGE, FL 32955
TELEPHONE: 321-690-3213
FAX: 321-690-3996

PUBLIC WORKS DEPT.

1400 N. GARDEN RD.
ROCKLEDGE, FL 32955
TELEPHONE: 321-221-7540
FAX: 321-204-6353

WASTEWATER TREATMENT & WATER RECLAMATION DEPT.

1700 JACK OATES BLVD.
ROCKLEDGE, FL 32955
TELEPHONE: 321-221-7540
FAX: 321-204-6377

REDEVELOPMENT

1600 HUNTINGTON LN.
ROCKLEDGE, FL 32955
TELEPHONE: 321-221-7540
FAX: 321-204-6356

www.cityofrockledge.org

NOTICE Ord Restating General Employees Retirement Plan
PUBLISH NOVEMBER 21, 2019

A Daily Publication By:



CITY OF ROCKLEDGE
1600 HUNTINGTON LN
ROCKLEDGE, FL, 32955

STATE OF WISCONSIN COUNTY OF BROWN:

Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the FLORIDA TODAY, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

Legal Notices

as published in FLORIDA TODAY in the issue(s) of:

11/21/19

Affiant further says that the said FLORIDA TODAY is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 21th of November 2019, by legal clerk who is personally known to me

Affiant

Notary State of Wisconsin County of Brown

My commission expires

Publication Cost: \$101.49
Ad No: 0003904968
Customer No: BRE-6CI204
This is not an invoice

AD# 3904968 11/21/19
NOTICE OF PROPOSED ENACTMENT OF
CITY OF ROCKLEDGE ORDINANCE AND
PUBLIC HEARING WITH RESPECT
THERETO

Please take notice that, at the regular meeting of the Rockledge City Council to be held on December 4, 2019, in the Council Chamber of the Rockledge City Hall, 1600 Huntington Lane, Rockledge, Florida, commencing at 8:00 p.m., the Rockledge City Council proposes to enact the following entitled ordinance, to-wit:

AN ORDINANCE OF THE CITY OF ROCKLEDGE, BREVARD COUNTY, FLORIDA, RESTATING THE CITY OF ROCKLEDGE GENERAL EMPLOYEES RETIREMENT PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed ordinance may be inspected by the public at the office of the City Clerk, Rockledge City Hall, 1600 Huntington Lane, Rockledge, Florida.

All interested parties are hereby advised that they may appear at said meeting and be heard with respect to the proposed ordinance.

ALL PERSONS AND PARTIES ARE HEREBY ADVISED THAT IF THEY SHOULD DECIDE TO APPEAL ANY DECISIONS MADE BY THE CITY COUNCIL OF THE CITY OF ROCKLEDGE WITH RESPECT TO ANY MATTER CONSIDERED AT THE PUBLIC MEETING OR HEARING IN THIS NOTICE, THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE SAID PERSON OR PARTY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

CITY OF ROCKLEDGE
Lisa C. Nicholas
Public Relations Officer & City Clerk

