

RESOLUTION NO. 3850

A RESOLUTION PROVIDING FOR THE AMENDMENT AND RESTATEMENT OF BOTH THE OVERLAND PARK, KANSAS, FIRE DEPARTMENT RETIREMENT PLAN AND THE OVERLAND PARK, KANSAS, FIRE DEPARTMENT RETIREMENT TRUST AGREEMENT; CONSOLIDATING SAID RETIREMENT PLAN AND RETIREMENT TRUST AGREEMENT INTO A SINGLE PLAN AND TRUST DOCUMENT; AND RESCINDING RESOLUTION NO. 3716 .

WHEREAS, sponsorship of the Overland Park Fire Department, Inc. Restated Retirement Plan, as originally established by the Overland Park Fire Department, Incorporated, as of January 1, 1969, was assumed by the City of Overland Park, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas, as of September 1, 2003, and then renamed the Overland Park, Kansas, Fire Department Retirement Plan (the “Retirement Plan”); and

WHEREAS, in connection with the City’s assumption of the Retirement Plan, the City also replaced the Overland Park Fire Department, Incorporated, as the grantor of the Overland Park Fire Department, Inc. Retirement Plan Restated Retirement Trust Agreement, renaming that Trust Agreement the Overland Park, Kansas, Fire Department Retirement Trust Agreement (the “Retirement Trust Agreement”); and

WHEREAS, the City did, by passing on the 11th day of August, 2003, Charter Ordinance No. Eighty-Three, which became effective the 21st day of October, 2003, reestablish and reaffirm both the Retirement Plan and the Retirement Trust Agreement, and did further give the Governing Body authority to amend said Retirement Plan and Retirement Trust Agreement by resolution; and

WHEREAS, the City did, by passing on the 7th day of January, 2008, Charter Ordinance No. Ninety-two, which became effective the 18th day of March, 2008, again reestablish and reaffirm both the Retirement Plan and the Retirement Trust Agreement, and did further give the Governing Body authority to amend said Retirement Plan and Retirement Trust Agreement by resolution; and

WHEREAS, the City did, on the 15th day of December, 2008, by passing Resolution No. 3716, amend and restate the Retirement Plan, effective as of January 1, 2008; and

WHEREAS, the City did, by passing on the 13th day of September, 2010, Charter Ordinance No. Ninety-Four, which became effective the 29th day of November, 2010, again reestablish and reaffirm the Retirement Plan and Retirement Trust Agreement, and did further give the Governing Body authority to amend said Retirement Plan and Retirement Trust Agreement by resolution; and

WHEREAS, the City now desires, by this Resolution No. 3850, to amend and restate both the Retirement Plan and the Retirement Trust Agreement, consolidating said Retirement Plan and Retirement Trust Agreement into a single document, to be known as the “Overland Park, Kansas, Fire Department Retirement Plan and Trust,” effective as of January 1, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. ADOPTION OF THE AMENDED AND RESTATED PLAN AND TRUST

There is hereby incorporated and adopted by reference herein, and made part of this resolution as if the same had been set out in full herein, the amended and restated "Overland Park, Kansas, Fire Department Retirement Plan and Trust." Said amended and restated Plan and Trust document is set forth in Exhibit "A." That amended and restated Plan and Trust document is hereby approved and accepted, and the Mayor and City Clerk are hereby authorized and directed to execute said amended and restated Plan and Trust document for and on behalf of the City of Overland Park, Kansas. Three copies of the Plan and Trust document shall be marked "Official Copy as incorporated by reference" and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

SECTION 2. EFFECTIVE DATE OF THE AMENDMENT AND RESTATEMENT

This amended and restated Overland Park, Kansas, Fire Department Retirement Plan and Trust shall have an effective date of January 1, 2011.

SECTION 3. RESCISSION OF PRIOR RESOLUTION

Resolution No. 3716 is hereby rescinded.

PASSED by the Governing Body this 6th day of December, 2010.

APPROVED by the Mayor this 6th day of December, 2010.

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Deputy City Attorney

Exhibit A

**OVERLAND PARK, KANSAS, FIRE DEPARTMENT
RETIREMENT PLAN AND TRUST**

Restated as of January 1, 2011

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OVERLAND PARK, KANSAS, FIRE DEPARTMENT

RETIREMENT PLAN AND TRUST

THIS AMENDED AND RESTATED PLAN AND TRUST AGREEMENT is entered into this ____ day of _____, 2011, by the City of Overland Park, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas (hereinafter referred to as the "Employer") and for the purpose of Article VIII, by and between the Employer and U.S. BANK NATIONAL ASSOCIATION, a national bank organized under the laws of the UNITED STATES OF AMERICA (hereinafter referred to as the "Trustee")

PREAMBLE

Effective January 1, 1969, the Overland Park Volunteer Fire Department, Inc., which was then a Kansas corporation with its principal offices located in Overland Park, Kansas (hereinafter referred to as the "Fire Department"), adopted the Retirement Plan Agreement for Overland Park Volunteer Fire Department, Inc. (hereinafter referred to as the "Original Plan"), for the benefit of its eligible employees. (The Fire Department later changed its corporate name to the Overland Park Fire Department, Inc.)

Effective January 1, 1976, the Fire Department amended and restated the Original Plan in its entirety as the 1976 Amendment to Overland Park Volunteer Fire Department, Inc. Retirement Plan Agreement to comply with the Employee Retirement Income Security Act of 1974 (ERISA).

Effective January 1, 1985, the Fire Department amended the 1976 Restated Plan in its entirety as the Overland Park Volunteer Fire Department, Inc. Restated Retirement Plan to comply with the Tax Equity and Fiscal Responsibility Act of 1982, the Tax Reform Act of 1984, and the Retirement Equity Act of 1984.

Effective generally January 1, 1989, the Fire Department amended the 1985 Restated Plan in its entirety as the Overland Park Volunteer Fire Department, Inc. Restated Retirement Plan to comply with the Tax Reform Act of 1986 and subsequent legislation.

Effective generally January 1, 2002, the Fire Department amended and restated the 1989 Restated Plan in its entirety as the Overland Park Fire Department, Inc. Restated Retirement Plan (hereinafter referred to as the "Prior Plan") to comply with the Retirement Protection Act of 1994, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the IRS Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, and certain aspects of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Effective as of September 1, 2003 (the "Acquisition Date"), the Fire Department was acquired by the City of Overland Park, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas. In connection with that acquisition, and effective as of the

Acquisition Date, the Fire Department amended and restated the Plan in its entirety as the Overland Park, Kansas, Fire Department Retirement Plan.

Effective as of January 1, 2008, the Employer amended and restated the Plan.

Effective January 1, 2011, pursuant to Charter Ordinance Number 94, the Plan and Trust are re-established and reaffirmed.

Effective January 1, 2011, the Employer desires to amend and restate the Plan as hereinafter set forth for the principal purposes of:

- (1) incorporating the heretofore separate Overland Park, Kansas Fire Department Retirement Trust Agreement into this amended and restated plan document as set forth in Article VIII hereof;
- (2) to the extent provided in Article VIII hereof, appointing a corporate trustee to serve in lieu of the former Board of Trustees, comprised of individuals appointed by the City and Members;
- (3) authorizing the appointment of an Investment Committee to assist the City Manager as Plan Administrator in the investment of Plan assets; and
- (4) prohibiting any Employee hired after December 31, 2010, from becoming a Member in the Plan.

The primary purpose of the Plan continues to be to provide retirement income to certain Employees of the Employer who become Members of the Plan and qualify for retirement benefits in accordance with the terms and provisions hereinafter set forth. An incidental purpose of the Plan is to provide disability and survivor benefits under certain circumstances. It is intended that this Plan shall be approved and qualified by the Internal Revenue Service as continuing to satisfy the requirements of the federal Internal Revenue Code and any applicable regulations issued thereunder with respect to employee plans and trusts so that (i) the Employer's contributions to the Trust Fund and the income of the Trust Fund shall not be taxable to Members as income until received, and (ii) the income of the Trust Fund shall be exempt from federal income taxes. In addition, it is intended that this Plan shall qualify as a "governmental plan," within the meaning of Section 414(d) of the federal Internal Revenue Code.

ARTICLE I **TITLE**

This Plan shall be known as the Overland Park, Kansas, Fire Department Retirement Plan.

ARTICLE II **DEFINITIONS**

As used herein, the following words and phrases shall have the meaning specified below, unless a different meaning is plainly required by the context in which it is used:

Section 2.01 "**Accrued Benefit**" shall mean the monthly retirement benefit a Member has accrued under the Plan, payable as a monthly benefit for his or her lifetime only, as of the Member's Normal Retirement Date. As of any date, a Member's Accrued Benefit shall be the amount computed under Section 4.03 hereof based on the Member's Average Monthly Earnings and years of Credited Service, computed as of the date of the calculation or the date of the Member's retirement or termination of employment, whichever is applicable.

Section 2.02 "**Acquisition Date**" shall mean September 1, 2003.

Section 2.03 "**Actuarial Equivalent**" shall mean a benefit of equivalent value, as certified by the Actuary, computed on the basis of the following actuarial assumptions:

- a. Interest rate: seven and one fourth percent (7¼%) per annum.
- b. Mortality: 1984 Unisex Mortality Table with ages set back five (5) years.

Section 2.04 "**Actuarial Value**" shall mean the single sum value, as certified by the Actuary, of any income benefit, computed on the basis of the following interest rates and mortality assumptions: For distributions commencing on or after January 16, 2002, the rates and assumptions specified in a or b, below, whichever produces the larger benefit.

a. Interest rate: seven and one-fourth percent (7¼%) per annum (pre- and post retirement).

Mortality: 1984 Unisex Mortality Table with ages set back five (5) years.

c. Interest rate: The "applicable interest rate." For this purpose, the "applicable interest rate" means the rate on 30-year U.S. Treasury securities as specified by the Commissioner for the month of November preceding the Plan Year (the "stability period") in which the calculation is made.

Mortality: The "applicable mortality table." For distributions made before December 31, 2002, the "applicable mortality table" means a fixed blend of fifty percent (50%) of the male mortality rates and fifty percent (50%) of the female mortality rates from the 1983 Group Annuity Mortality Table. For distributions made on or after December 31, 2002, the "applicable mortality table" means the 1994 Group Annuity Reserving Table, as prescribed by Revenue Ruling 2001-62.

Section 2.05 "**Actuary**" shall mean a Fellow of the Society of Actuaries who has been enrolled by the Joint Board for the Enrollment of Actuaries under Section 3042 of the Employee Retirement Income Security Act of 1974 ("ERISA") or a firm of actuaries, at least one of whose members is a Fellow of the Society of Actuaries who has been so enrolled. The Plan Administrator shall designate the Actuary.

Section 2.06 "**Affiliate**" shall mean any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; an organization (whether or not incorporated) which is

a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; any other entity required to be aggregated with the Employer pursuant to regulations under Code Section 414(o); or any other entity designated as an Affiliate by the Governing Body.

Section 2.07 "Anniversary Date" shall mean January 1 of each year.

Section 2.08 "Annuity Starting Date" shall mean the first day of the first period for which an amount is payable as an annuity or any other form.

Section 2.09 "Attained Age" shall mean, unless clearly indicated to the contrary, the age of an Employee or Member as of his or her last birthday.

Section 2.10 "Authorized Leave of Absence" shall mean a leave of absence from employment for (i) accident, illness or disability for which no benefits are paid under the Plan, (ii) job related education or training, (iii) jury duty, (iv) layoffs (both temporary and indefinite), or (v) any other absence approved by the Employer, upon written application, in accordance with standards uniformly applied. An Authorized Leave of Absence, including any periods of layoff (both temporary and indefinite) shall not exceed a two (2) year period, except as provided in Article XIV. An Authorized Leave of Absence shall also include any paid or unpaid leave authorized under the Family and Medical Leave Act of 1993 ("FMLA"), as well as any period of absence for qualified uniformed service described in Article XIV. Except as provided in Article XIV, if an Employee does not return to the employ of the Employer on or prior to the expiration of his or her Authorized Leave of Absence, such Employee shall be deemed to have terminated employment at the beginning of that Authorized Leave of Absence. An Employee shall not be considered an active Member of the Plan during a period of Authorized Leave of Absence, even though he or she may earn years of Service and years of Credited Service during such period.

Section 2.11 "Average Monthly Earning" shall mean the highest average of Monthly Earnings determined on any three (3) consecutive Anniversary Dates coincident with or next preceding a Member's Disability Retirement Date, Early Retirement Date, Normal Retirement Date, or other termination of employment (as determined under Section 5.01 hereof). If the Member has fewer than three (3) Anniversary Dates of continuous employment prior to his or her actual retirement or termination of employment, the Member's "Average Monthly Earnings" shall be the average of his or her Monthly Earnings for all of his or her Anniversary Dates of continuous employment. If a Member is reemployed, any later calculation of Average Monthly Earnings shall be made by assuming that he or she had no break in the continuity of his or her employment (and, as a result, his or her Monthly Earnings as determined on Anniversary Dates both prior to and after his or her reemployment shall be aggregated and treated, for purposes of this Section, as "consecutive").

Section 2.12 "Beneficiary" shall mean any person or persons (including a trust or other entity) designated by a Member, in such form and manner as the Plan Administrator may prescribe, to receive a Death Benefit hereunder if such person or persons survive the Member. Any designation by a married Member of a person other than his or her Spouse shall be effective only with the consent of the Spouse, such consent referring to the person or persons designated, acknowledging the effect of the consent, and being witnessed by a Plan representative or notary

public. In the event no designation is effective, the Member's Beneficiary shall be his or her Spouse, if any, and if none, the estate of the Member.

Any designation may be revoked at any time. If a married Member revokes a designation, it shall not be necessary for the Member's Spouse to consent to a subsequent designation if the consent of the Spouse to the first designation was a general consent, whereby the Spouse acknowledged the right to limit consent to a specified Beneficiary and voluntarily relinquished such right. In the event of the death of a Member's designated Beneficiary prior to the death of the Member, the Member's Contingent Beneficiary shall be entitled to receive the Death Benefit, unless the Beneficiary was named pursuant to Section 4.02.b or 4.02.d, in which case the provisions of such Section shall govern.

Notwithstanding the foregoing, and notwithstanding anything in the Plan to the contrary, in the event a Member is divorced or legally separated from his or her Spouse prior to the Annuity Starting Date, any then-existing designation of such Spouse as the Member's Beneficiary shall automatically be null and void as of the date of such divorce or legal separation, and such Spouse (or former Spouse) shall be considered the Member's Beneficiary only if the Member thereafter affirmatively designates the Spouse (or former Spouse) as such in accordance with the procedures described in this Plan.

Section 2.13 "**Break in Service**" shall mean any Plan Year during which an Employee or former Employee is not credited with more than five hundred (500) Hours of Service. Notwithstanding the above, an Employee shall not incur a Break in Service for a Plan Year during which his or her failure to be credited with more than five hundred (500) Hours of Service is due to an Authorized Leave of Absence. In addition, in accordance with Code Sections 410(a)(5)(E) and 411(a)(6)(E), an Employee shall not incur a Break in Service in the first Plan Year that he or she is not credited with more than five hundred (500) Hours of Service because of an absence from work due to the

- a. pregnancy of the Employee;
- d. birth of a child of the Employee;
- e. placement of a child for adoption with the Employee; or
- f. care by the Employee of a child immediately following such birth or placement.

To avoid incurring a Break in Service, an Employee, at the request of the Plan Administrator, shall establish that the absence was due to one of the reasons described above and the number of days for which there was such an absence.

Section 2.14 "**Code**" shall mean the federal Internal Revenue Code of 1986, as amended.

Section 2.15 "**Committee**" shall mean the Investment Committee described in Section 6.09 of the Plan.

Section 2.16 "Contingent Beneficiary" shall mean the person or persons (including a trust or other entity) duly designated by a Member (with the written consent of the Member's Spouse, if any, such consent referring to the person or persons designated, acknowledging the effect of the consent, and being witnessed by a Plan representative or notary public), to receive a Death Benefit from the Plan in the event the Member's designated Beneficiary does not survive the Member. Notwithstanding the foregoing, such written consent is not required if the Member's Spouse is designated as the Member's Beneficiary.

Section 2.17 "Credited Service" shall mean the number of years for which a Member is given credit in calculating his or her Monthly Retirement Income or Death Benefit. As of any date, a Member's Credited Service shall be equal to his or her Service, as defined in this Article II, subject to any applicable provisions of this Section. However, periods of employment with an Affiliate that is not an Employer shall not be included for purposes of determining a Member's Credited Service.

a. For the Plan Year in which a Member retires or dies, the Member shall be credited with one (1) year of Credited Service if he or she is credited with two thousand (2,000) or more Hours of Service in such Plan Year. If a Member is not credited with two thousand (2,000) Hours of Service for the Plan Year in which he or she retires or dies, the Member shall be credited with a partial year of Credited Service for such Plan Year, equal to the Hours of Service credited to him or her for the Plan Year divided by two thousand (2,000).

g. If a terminated Member who has received a distribution of an amount equal to the Actuarial Value of his or her entire Accrued Benefit is subsequently reemployed by an Employer and again becomes a Member, such Member's Credited Service shall not include any period of employment prior to his or her reemployment.

If a terminated Member who has received a distribution of an amount equal to less than the Actuarial Value of his or her entire Accrued Benefit is subsequently reemployed by an Employer and again becomes a Member, such Member's Credited Service shall not include any period of employment prior to his or her reemployment, unless such Member repays the amount distributed, plus interest from the date of distribution to the date of repayment at the rate determined under Code Section 411(c)(2)(C) and regulations thereunder, before the earlier of (i) five (5) years after the date the Member is reemployed, or (ii) the end of the first period of five (5) consecutive Break in Service years commencing after the distribution.

h. Effective January 1, 1988, the exclusion from Credited Service for employment after a Member's Normal Retirement Age was removed for all Members credited with at least one (1) Hour of Service on or after January 1, 1988. Any Member with Credited Service previously excluded under this provision shall receive credit for Credited Service excluded prior to January 1, 1988, immediately upon completing such an Hour of Service.

i. Credited Service shall be credited to a Member for a period of qualified uniformed service to the extent required under Article XIV.

j. Credited Service shall be credited to a Disabled Member in accordance with Section 4.06.

k. Credited Service under this Plan shall include any Credited Service accumulated under the Prior Plan.

Section 2.18 "**Death Benefit**" shall mean any benefit paid to a Beneficiary, Contingent Beneficiary, or other person at the death of a Member, Disabled Member or Retired Member, as provided under the terms of the Plan.

Section 2.19 "**Dependent Child**" shall mean a Member's child who is under Attained Age eighteen (18). A "Dependent Child" shall also include a Member's child who is under Attained Age twenty-three (23) in the case of a child who is enrolled in a secondary educational institution for at least six (6) hours per school day, or in a post-secondary educational institution for at least twelve (12) credit hours during the term or semester in which the Member dies.

Section 2.20 "**Disability Payment**" shall mean any monthly benefit payable under this Plan to a Disabled Member, as provided in Section 4.06.

Section 2.21 "**Disability Retirement Date**" shall mean the first day of the month coincident with or immediately following the date a Member becomes Totally and Permanently Disabled.

Section 2.22 "**Disabled Member**" shall mean any Member who is Totally and Permanently Disabled.

Section 2.23 "**Early Retirement Date**" shall mean, in the case of a Member who has been credited with at least twenty (20) years of Service and whose Attained Age is at least forty five (45), the first day of the month coincident with or immediately following the later of (i) the date such Member terminates employment in accordance with Section 4.05 hereof, or (ii) the date the Member directs in writing shall be his or her Early Retirement Date, which date shall not be later than the Member's Normal Retirement Date.

Section 2.24 "**Effective Date**" shall mean the effective date of this amendment and restatement which is January 1, 2011.

Section 2.25 "**Employee**" shall mean any common-law employee of the Employer who is either a "fireman," as defined in K.S.A. Section 74-4952, or an "emergency medical service technician," as defined in K.S.A. Section 74-4954a; provided, however, no person hired after December 31, 2010, shall be considered an Employee for purposes of this Plan. In no event shall any self-employed individual or independent contractor rendering services to the Employer, or any Leased Employee, be an Employee for purposes of this Plan. A person who is not considered by the Employer on its payroll records to be a common-law employee, but who is later determined by a court of competent jurisdiction or an agency of the Federal or State government to be a common-law employee, shall nevertheless not be considered an Employee for purposes of this Plan for periods prior to the date on which such determination is made.

Section 2.26 "**Employer**" shall mean, for the period on and after the Acquisition Date, the City of Overland Park, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas, and, subject to the provisions of Article XIII, any entity into which the Employer may be merged or consolidated or to which all or substantially all of its assets may be transferred. For the period prior to the Acquisition Date, the term "Employer" shall mean the Overland Park Fire Department, Inc., a Kansas corporation with its principal offices located in Overland Park, Kansas.

Section 2.27 "**Expected Pension**" shall mean, in calculating a Death Benefit, the amount computed under Section 4.03, based on a deceased Member's Average Monthly Earnings as of his or her date of death and assuming that the Member would have accrued Credited Service until his or her Normal Retirement Date.

Section 2.28 "**Governing Body**" shall mean the Governing Body of the Employer.

Section 2.29 "**Hour of Service**" shall mean any hour for which an Employee is directly or indirectly compensated (or entitled to be compensated) by the Employer

- a. for the performance of duties for the Employer;
 - l. for other reasons not requiring the performance of duties, such as vacation, holiday, illness, incapacity (including disability), jury duty, or a paid leave of absence; or
 - m. as a result of back pay (irrespective of mitigation of damages) that has been awarded to the Employee or agreed to by the Employer.

Hours of Service for the performance of duties shall be credited as of the date the duties were performed; Hours of Service for other reasons not requiring the performance of duties shall be credited to the period or periods for which the payment was made; Hours of Service resulting from back pay, to the extent not previously credited, shall be credited for the period or periods to which the back pay relates.

The Hours of Service to be credited to an Employee under a. and/or c. above for which duties were performed shall be based upon the actual number of Hours of Service for which the Employee is directly or indirectly compensated.

The number of Hours of Service to be credited to an Employee under b. and/or c. above for which no duties were performed shall be calculated on the basis of the number of hours regularly scheduled for the performance of duties during the period of time for which the Employee received compensation or back pay. If an Employee has no regular work schedule, the number of Hours of Service shall be calculated on the basis of an eight (8) hour day or forty (40) hour week.

If an Employee receives direct or indirect compensation under b. and/or c. above for which no duties were performed and that was not based upon "units of time," the Hours of Service to be credited shall be calculated pursuant to the regulations found at 29 C.F.R. § 2530.200b2(b) and (c) or any successor thereto.

Notwithstanding the foregoing:

- i. except as provided in Section 4.06 for periods of disability, no more than five hundred one (501) Hours of Service shall be credited under b. and/or c. above for any single continuous period during which no duties were performed by the Employee;
- ii. no Hours of Service shall be credited under b. above if the indirect compensation was paid pursuant to workers' compensation, unemployment compensation, or disability insurance laws; and
- iii. no Hours of Service shall be credited for any payment to an Employee which solely reimburses the Employee for medical or medically related expenses.

Section 2.30 "**Inactive Civilian Member**" shall mean any individual who was an active Member of the Prior Plan on the day before the Acquisition Date, but who does not fall within the Plan's definition of "Employee" on the Acquisition Date.

Section 2.31 "**Late Retirement Date**" shall mean the first day of any month subsequent to a Member's Normal Retirement Date and coincident with or immediately following the date the Member (i) terminates employment with the Employer and all Affiliates (for any reason other than death), or (ii) changes employment classification so that he or she should thereafter be credited with less than forty (40) Hours of Service a month, whichever occurs later.

Section 2.32 "**Leased Employee**" shall mean any person (other than an employee of the Employer) who, pursuant to an agreement between the Employer and any other person, has performed services for the Employer (or for the Employer and related persons, as determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, with such services performed under the primary direction or control of the Employer.

Section 2.33 "**Life Insurance Proceeds**" shall mean any benefit payable on the death of a Member of this Plan under an insured life insurance program sponsored by the Employer, but only to the extent attributable to Employer premiums.

Section 2.34 "**LTD Benefits**" shall mean any disability benefits payable to a Member of this Plan under a long-term disability program sponsored by the Employer.

Section 2.35 "**Member**" shall mean any Employee of the Employer who has become a Member in accordance with Article III hereof. Where the context so requires, "Member" may also refer to a Disabled Member, an Inactive Civilian Member, or a Retired Member.

Section 2.36 "**Monthly Earnings**" shall mean a Member's regular basic rate of earnings in effect on any Anniversary Date (including the Anniversary Date of the year in which such Member retires or terminates), exclusive of all forms of extraordinary compensation, such as reimbursed expenses, overtime, commissions or bonuses. In no event shall a Member's Monthly Earnings for any Plan Year exceed one twelfth (1/12th) of the limit prescribed by Code

Section 401(a)(17), as in effect for such year. Such amount may be adjusted by the Secretary of the Treasury.

Section 2.37 "Monthly Retirement Income" shall mean the monthly retirement income due a Retired Member, which shall commence as of an Early, Normal or Late Retirement Date, the date determined under Section 5.01, or the date benefit payments are resumed under Section 4.07 or Section 4.08, and which shall continue for the period specified under the form of payment elected under Section 4.02.

Section 2.38 "Normal Retirement Age" shall mean a Member's fifty-fifth (55th) birthday.

Section 2.39 "Normal Retirement Date" shall mean the first day of the month coincident with or immediately following a Member's fifty-fifth (55th) birthday.

Section 2.40 "Original Plan" shall mean the Retirement Plan Agreement for Overland Park Volunteer Fire Department, Inc., as in effect from January 1, 1969, to December 31, 1975.

Section 2.41 "Partial Lump-Sum Actuarial Equivalent" shall mean a benefit of equal value, as certified by the Actuary, computed on the basis of the following actuarial assumptions:

- a. Interest rate: eight percent (8%) per annum (pre and post retirement).
- n. Mortality: 1984 Unisex Pension Mortality Table (without regard to the five-year setback that applies under Section 2.03(b)).

Section 2.42 "Plan" shall mean the Overland Park, Kansas, Fire Department Retirement Plan, as herein restated.

Section 2.43 "Plan Administrator" shall mean the City Manager.

Section 2.44 "Plan Year" shall mean the calendar year.

Section 2.45 "Prior Plan" shall mean the version of the Plan in effect on the day before the Acquisition Date.

Section 2.46 "Retired Member" shall mean any Member of the Plan who has qualified for retirement and who is properly receiving a Monthly Retirement Income.

Section 2.47 "Service" shall mean an Employee's period (or periods) of employment with the Employer or an Affiliate that are recognized under this Plan for the purpose of determining his or her eligibility for benefits (*i.e.*, for vesting purposes). As of any date, an Employee's years of Service shall be equal to the sum of his or her years of "Past Service" under a below, if any, and years of "Future Service" under b. below, subject to the remaining provisions of this Section.

- a. If an Employee was a Member of the Original Plan on December 31, 1975, he or she shall receive credit for Past Service. "Past Service" shall mean the

number of years of the Employee's "continuous service" (as specified in Section 9 of Article I of the Original Plan) with the Employer or an Affiliate from his or her most recent date of hire to January 1, 1976.

o. Years of "Future Service" shall mean the total number of Plan Years, commencing on or after January 1, 1976, during which an Employee has at least one thousand (1,000) Hours of Service for the Employer or an Affiliate.

p. A Disabled Member who is entitled to receive Service for certain periods after his or her termination of employment due to Total and Permanent Disability (pursuant to Section 4.06 hereof) shall be credited during such period with Hours of Service at the rate of eight (8) hours per day or forty (40) hours per week.

q. If a Member terminates employment on or after January 1, 1985, with no vested interest in his or her Accrued Benefit (pursuant to Section 5.01 hereof), and is subsequently reemployed, his or her years of Service as of the earlier termination of employment shall be disregarded hereunder until the Member has completed a year of Service (following the reemployment), at which time his or her earlier years of Service shall be counted. Such earlier years of Service shall not be counted, however, if, as of the date of his or her reemployment, the Member has incurred consecutive Break in Service years that equal or exceed the greater of (i) five (5) years, or (ii) the Member's years of Service as of the date of his or her earlier termination of employment.

r. Any period that an Employee is on a leave of absence from the Employer or an Affiliate for qualified uniformed service (as described in Article XIV) shall be recognized as years of Service to the extent provided in such Article. Any period of such service prior to January 1, 1976, shall be recognized as continuous employment by the Employer or an Affiliate.

s. Effective as of December 1, 1993, Service shall also include the period of time a Member was a member of the Overland Park Volunteer Fire Department, Inc. Retirement Plan for Volunteer Employees, though solely for purposes of determining the Member's eligibility for an Early Retirement Benefit under Section 4.05. A Member's service under the Overland Park Volunteer Fire Department, Inc. Retirement Plan for Volunteer Employees shall not be considered for any other purposes under this Plan.

Section 2.48 "**Spouse**" shall mean the legally married husband or wife of a Member at the earlier of the Member's date of death or the date benefits commence to the Member under this Plan. To the extent required by a "qualified domestic relations order," as defined in Code Section 414(p), the term "Spouse" shall also include the former husband or wife of a Member.

Section 2.49 "**Total and Permanent Disability**" or "**Totally and Permanently Disabled**" shall mean a Member's physical or mental condition, arising during his or her active employment as an Employee, on account of which the Member is entitled to disability benefits under either:

a. Any long-term disability plan sponsored by the Employer but administered by an independent third party; or

- t. The federal Social Security Act in effect at the date of disability.

Section 2.50 "**Trust**" shall mean the agreement set forth herein entered into between the Employer and the Trustee to hold and administer the Trust Fund.

Section 2.51 "**Trust Fund**" shall mean the cash and other properties held and administered in accordance with the provisions of the Trust.

Section 2.52 "**Trustee**" shall mean the corporation appointed by the Employer to administer the Trust, and any duly appointed successor Trustee

Any words herein used in the masculine shall be read and construed in the feminine where they would so apply. Words used in the singular shall be read and construed as though used in the plural in all cases where they would so apply.

ARTICLE III **MEMBERSHIP IN THE RETIREMENT PLAN**

Section 3.01 **Membership**. Each Employee who was a Member of the Prior Plan on the day before the Acquisition Date shall become a Member of this Plan on the Acquisition Date, without any further action on his or her part. Thereafter, any Employee who is not yet a Member shall become a Member as of the first day of the month coincident with or immediately following the date he or she satisfies each of the following requirements:

- a. his or her Attained Age is at least eighteen (18); and
- b. he or she has completed at least six (6) complete calendar months of employment as an Employee, without regard to whether such months are consecutive.

A terminated Member who later resumes his or her employment with the Employer as an Employee shall become a Member on his or her reemployment date.

A terminated Employee who is reemployed by the Employer before incurring a Break in Service shall become a Member on the date he or she otherwise would have become a Plan Member or his or her reemployment date, whichever is later. A terminated Employee who is reemployed by the Employer after incurring a Break in Service shall become a Member on the later of his or her reemployment date or the first day of the month on or after satisfying each of the requirements of Plan membership set forth in this Section 3.01 (counting, for this purpose, periods of employment both before and after the earlier termination). However, if such an Employee incurs consecutive Break in Service years that equal or exceed the greater of: (i) five (5) years, or (ii) the Employee's years of Service at the time of his or her earlier termination of employment, he or she shall be treated the same as a new Employee for membership purposes.

Section 3.02 **Inactive Civilian Members**. The following provisions shall apply to Inactive Civilian Members:

- a. Each Inactive Civilian Member's Accrued Benefit as of the Acquisition Date shall be fully vested, without regard to his or her period of Service;

b. There shall be no further increase in an Inactive Civilian Member's Accrued Benefit after the Acquisition Date (unless he or she subsequently returns to employment as an "Employee"); and

c. For all other purposes under the Plan (including, without limitation, the distribution of benefits), an Inactive Civilian Member shall be treated as an "Employee" for so long as he or she remains employed by the Employer.

Section 3.03 Plan and Trust Binding. Each Member shall be bound by the terms of this Plan and the Trust, including any amendments that may hereafter be made to the Plan.

ARTICLE IV **MONTHLY RETIREMENT INCOME**

Section 4.01 Election Procedures. Within the ninety (90) day period ending on a Member's Annuity Starting Date, the Member may elect, in accordance with procedures established by the Plan Administrator, to receive his or her Monthly Retirement Income in one of the forms listed in Section 4.02. An election by a married Member to have benefits paid in a form other than that set forth in Section 4.02.b (the "normal form" of payment for Members who have a Spouse on their Annuity Starting Date) or Section 4.02.d shall be effective only with the written consent of the Member's Spouse. Such consent must specify the form of payment elected and, if applicable, any nonspouse Beneficiary. The Member's Spouse must acknowledge the effect of the consent, and the Spouse's signature must be witnessed by a notary public. Except as otherwise provided in Section 4.02, each of the alternative forms shall be the Actuarial Equivalent of the Monthly Retirement Income payable under the basic form, determined as of the Annuity Starting Date. Payment under the basic form or any alternative form shall commence as of the Member's Annuity Starting Date.

a. Between thirty (30) and ninety (90) days prior to a Member's Annuity Starting Date, the Member shall be provided a written explanation of (i) each form of payment available, (ii) the respective values of each form of payment the Member may elect, (iii) any right of the Member to defer commencement of his or her Monthly Retirement Income, (iv) the right of a single Member to elect a form of payment other than that set forth in Section 4.02.a, and (v) the terms and conditions under which a married Member may elect a form of payment other than that set forth in Section 4.02.b or Section 4.02.d with the written consent of the Member's Spouse.

b. Notwithstanding the provisions of a. above, if a Member, after having received the written explanation described therein, elects a form of distribution (and his or her Spouse consents to that election, if necessary), the Member's Annuity Starting Date may precede the date on which the written explanation is provided, so long as:

i. The Plan Administrator provides information to the Member clearly indicating that the Member has at least 30 days to consider whether to waive the normal form of payment that applies to him or her and consent to a distribution in an alternative form;

ii. the Member is permitted to revoke an affirmative distribution election at any time prior to the expiration of the seven-day period that begins on the date the explanation is provided; and

iii. benefit payments commence to the Member at least seven (7) days after the date the explanation is provided.

c. Any election pursuant to the provisions of this Section 4.01 may be revoked in writing at any time prior to the Member's Annuity Starting Date. After such written revocation, the Member may make another election in the form and manner prescribed in this Section 4.01. In the event that (i) no written election is effective, and (ii) the Member has a Spouse on his or her Annuity Starting Date, the Member's benefit shall be paid as provided in Section 4.02.b. In all other instances where the Member makes no written election, his or her benefit shall be paid as provided in Section 4.02.a.

d. If any alternative form under Section 4.02.c or 4.02.d is elected:

i. the Actuarial Value of the benefits payable to the Member shall be equal to fifty percent (50%) or more of the Actuarial Value of the benefits payable to the Member and his or her Spouse or Beneficiary; and

ii. any term certain shall not extend for a period longer than the joint life expectancy of the Member and his or her Beneficiary.

e. The provisions of this Section 4.01 and of Section 4.02 shall not apply to any Disability Payments described in Section 4.06. Instead, such Payments shall be made in accordance with the provisions of that Section.

Section 4.02 Forms of Payment. The "basic form" of Monthly Retirement Income (to which the formula in Section 4.03 applies) shall be a monthly income commencing on the Member's Annuity Starting Date and continuing for his or her lifetime thereafter. The normal and alternative forms of payment are as follows:

a. A Monthly Retirement Income payable for the Member's lifetime (*i.e.*, the "basic form," and the "normal form" for Members who have no Spouse on their Annuity Starting Date).

b. A Monthly Retirement Income entirely in the form of a "qualified joint and survivor annuity," which shall be payable for the lifetime of the Member and continuing thereafter in an amount one-half (1/2) as large to the Member's Spouse for the lifetime of said Spouse (the "normal form" for Members who have a Spouse on their Annuity Starting Date). Should the Spouse die after Monthly Retirement Income payments have commenced to the Member, no alternative Beneficiary can be named and monthly benefits shall cease on the Member's death.

The amount payable under this Section 4.02.b shall be determined by multiplying the amount payable under the basic form set forth in Section 4.02.a by the following factor:

.886 minus the product of .005 and (the Attained Age of the Member minus the Attained Age of the Spouse).

c. A Monthly Retirement Income payable for the Member's lifetime with either sixty (60), one hundred twenty (120), or one hundred eighty (180) payments guaranteed, as elected by the Member (an alternative form). The amount payable under this Section 4.02.c shall be determined by multiplying the amount payable under the basic form set forth in Section 4.02.a by the factor set forth in (i), (ii) or (iii), whichever is appropriate:

i. For a Member who elects sixty (60) guaranteed payments:

1.03503 minus the product of .00084 and the Attained Age of the Member.

ii. For a Member who elects one hundred twenty (120) guaranteed payments:

1.12729 minus the product of .00309 and the Attained Age of the Member.

iii. For a Member who elects one hundred eighty (180) guaranteed payments:

1.24934 minus the product of .00614 and the Attained Age of the Member.

d. A monthly income payable for the lifetime of the Member, with a monthly income continuing thereafter to the Member's Spouse equal to one hundred percent (100%), seventy-five percent (75%), sixty-six and two thirds percent (66-2/3%), or fifty percent (50%) of the amount payable to the Member, as elected by the Member (an alternative form). Should the Member's Spouse die prior to the Member's Annuity Starting Date, such an election shall be void and the Member's Monthly Retirement Income shall be paid as if no election were in effect. Should the Spouse die after the Annuity Starting Date, no alternative Beneficiary may be named and monthly payments shall cease on the Member's death.

The amount payable under this Section 4.02.d shall be determined by multiplying the amount payable under the basic form set forth below in Section 4.02.a by the factor set forth below in i, ii, iii or iv, whichever is appropriate:

i. For a Member who elects a joint and one hundred percent (100%) survivor annuity:

.796 minus the product of .008 and (the Attained Age of the Member minus the Attained Age of the Spouse).

ii. For a Member who elects a joint and seventy-five percent (75%) survivor annuity:

.838 minus the product of .007 and (the Attained Age of the Member minus the Attained Age of the Spouse).

iii. For a Member who elects a joint and sixty-six and two-thirds percent (66-2/3%) survivor annuity:

.854 minus the product of .006 and (the Attained Age of the Member minus the Attained Age of the Spouse).

iv. For a Member who elects a joint and fifty percent (50%) survivor annuity:

.886 minus the product of .005 and (the Attained Age of the Member minus the Attained Age of the Spouse).

e. A lump-sum payment to the Member, but only to the extent provided, and subject to the conditions set forth, in Section 5.05 hereof (an alternative form).

f. A Monthly Retirement Income payable for the Member's lifetime, with payments in an amount equal to the Actuarial Equivalent of the Member's Accrued Benefit guaranteed (an alternative form). For purposes of the preceding sentence, the Actuarial Equivalent of the Member's Accrued Benefit shall be determined as of the Member's Annuity Starting Date. The benefits payable pursuant to this provision shall be the Actuarial Equivalent of the benefits that would have been payable to the Member under the basic form of benefit described in Section 4.02.a had the Member elected the basic form of benefit.

g. A partial lump-sum amount, with the remainder of the Member's benefit paid in a monthly amount under the provisions of Section 4.02.a, 4.02.b., 4.02.c., 4.02.d., or 4.02.f. (an alternative form). The portion of the Member's benefit to be paid in a partial lump sum shall be designated by the Member, but shall be in a ten percent (10%) increment of the Member's total Accrued Benefit and shall not exceed fifty percent (50%) of that benefit. The Member must elect to begin receiving payment of the remainder of his or her benefit at the same time the lump-sum amount is paid. The amount of any partial lump-sum payment shall be the Partial Lump-Sum Actuarial Equivalent of the portion of the Member's Accrued Benefit that is to be paid as a partial lump sum; provided, however, that any partial lump-sum payment to a Member who is eligible for a total lump-sum payment under Section 4.02.e. shall be determined in accordance with Section 5.05 (*i.e.*, having the same Actuarial Value as the portion of the Accrued Benefit to be paid as a partial lump sum).

Section 4.03 Normal Retirement. If a Member remains in the employ of the Employer or an Affiliate until his or her Normal Retirement Age, he or she shall be entitled to retire and receive a Monthly Retirement Income in an amount calculated by the Actuary and approved by the Plan Administrator. The amount of the Member's Monthly Retirement Income,

payable under the basic form and commencing on his or her Normal Retirement Date, shall be equal to two percent (2%) of the Member's Average Monthly Earnings multiplied by the Member's years of Credited Service.

Section 4.04 Late Retirement. If a Member remains in the employ of the Employer or an Affiliate after his or her Normal Retirement Date, the following rules shall apply:

a. If the Member is in an employment classification pursuant to which he or she is credited with less than forty (40) Hours of Service per month, his or her Monthly Retirement Income shall commence as of his or her Normal Retirement Date. However, if such Member should accrue an additional benefit under the terms of the Plan during a Plan Year, the additional benefit shall be reduced to reflect the Actuarial Equivalent of the Monthly Retirement Income the Member received during such Plan Year.

b. If the Member is in an employment classification pursuant to which he or she is credited with forty (40) or more Hours of Service per month, no Monthly Retirement Income shall be paid until the Member's Late Retirement Date. Upon the Member's actual retirement, he or she shall be entitled to a Monthly Retirement Income, calculated as follows:

i. Prior to January 1, 1988. For any Credited Service accrued after such a Member's Normal Retirement Date and prior to January 1, 1988, the Member's Monthly Retirement Income shall be the Actuarial Equivalent of his or her Normal Retirement Benefit as of his or her Normal Retirement Date. If such a Member remains in the employ of the Employer or an Affiliate beyond January 1, 1988, his or her benefit shall be calculated as of January 1, 1988, in accordance with the preceding sentence, as if he or she had retired on that date, and any subsequent increase in the Member's Monthly Retirement Income shall be determined in accordance with ii and iii of this Section 4.04.b.

ii. January 1, 1988, Through August 31, 2003. For any Credited Service accrued after such a Member's Normal Retirement Date and during the period from January 1, 1988, through August 31, 2003, the Member's Monthly Retirement Income shall be equal to the greater of

A. the Actuarial Equivalent of his or her Normal Retirement Benefit calculated as of his or her Normal Retirement Date, or

B. the amount calculated in the manner described in Section 4.03, based upon his or her Credited Service and Average Monthly Earnings up to his or her Late Retirement Date.

If such a Member remains in the employ of the Employer or an Affiliate beyond September 1, 2003, his or her benefit shall be calculated as of August 31, 2003, in accordance with the preceding sentence, as if he or she had retired on that date, and any subsequent increase in the Member's Monthly Retirement Income shall be determined solely in accordance with iii of this Section 4.04.b.

iii. On or After September 1, 2003. For any Credited Service accrued after such a Member's Normal Retirement Date and on or after September 1, 2003, the Member's Monthly Retirement Income shall be calculated in the manner described in Section 4.03, based upon his or her Credited Service and Average Monthly Earnings up to his or her Late Retirement Date (with no further actuarial increase in the Member's benefit after September 1, 2003). Thus, the provisions of this iii. shall apply in calculating the Monthly Retirement Income of any such Member who attains his or her Normal Retirement Date on or after September 1, 2003.

Section 4.05 Early Retirement. If a Member whose Attained Age is at least forty five (45) and who has been credited with twenty (20) or more years of Service terminates employment with the Employer and all Affiliates (for any reason other than death), he or she shall be entitled to the commencement of benefits as of his or her Early Retirement Date.

a. Commencing on his or her Early Retirement Date, such a Member shall be entitled to a reduced Monthly Retirement Income equal to his or her Accrued Benefit as of that Early Retirement Date, reduced by three-twelfths (3/12) of one percent (1%) for each month by which the commencement of benefits precedes his or her Normal Retirement Date.

b. If a Member who has Attained Age forty-five (45) and been credited with twenty-five (25) or more years of Service terminates employment with the Employer and all Affiliates (for any reason other than death), he or she shall be entitled to the commencement of a Monthly Retirement Income equal to his or her Accrued Benefit as of that Early Retirement Date, with no reduction for early retirement.

Section 4.06 Disability Retirement. When a Member is determined to be Totally and Permanently Disabled, such Disabled Member shall be entitled to Disability Payments from the Plan in accordance with the following provisions:

- a. Such Disability Payments
 - i. shall commence as of the later of
 - A. the Member's Disability Retirement Date, or
 - B. the date the Member is no longer entitled to LTD Benefits on account of that Disability; and
 - ii. shall end with the payment immediately preceding the earlier of the Member's
 - A. recovery from that Disability (if such recovery occurs before the Member's Normal Retirement Date), or
 - B. death.

b. Except as otherwise provided below, during the period between a Member's Disability Retirement Date and the commencement of Disability Payments (*i.e.*, while the Member is continuing to receive LTD Benefits), a Disabled Member shall continue to be credited with Hours of Service (as provided in Section 2.48.c) until his or her Normal Retirement Date. Throughout this same period, a Disabled Member shall be deemed to have continued receiving Monthly Earnings at the rate in effect on the Anniversary Date coincident with or immediately following his or her Disability Retirement Date.

c. A Disabled Member's Disability Payments shall be based on his or her Accrued Benefit on the date such Disability Payments commence. If such Disabled Member has attained his or her Early Retirement Date when such Payments commence, the amount of each Payment shall be reduced in accordance with Section 4.05. If such Disabled Member has not attained his or her Early Retirement Date when such Payments commence, the amount of each Payment shall be reduced to the Actuarial Equivalent of the Member's Accrued Benefit.

d. If a Member either (i) recovers from Total and Permanent Disability prior to his or her Normal Retirement Date, (ii) fails to submit proof of continued Disability when so requested by the Plan Administrator, or (iii) fails to notify the Plan Administrator, in writing, within sixty (60) days after ceasing to be entitled to disability benefits under either the Employer's long-term disability plan or the federal Social Security Act on account of ceasing to be disabled, the Member's Disability Payments shall be discontinued immediately. Moreover, any benefits to which the Member is entitled under the Plan shall be reduced by the Actuarial Equivalent of any Disability Payments received hereunder.

e. If a Member recovers from Total and Permanent Disability prior to his or her Normal Retirement Date and returns to the employ of the Employer within six (6) months after such recovery, he or she shall again become an active Member, with (i) all years of Service and Credited Service prior to his or her Disability Retirement Date recognized for all purposes under this Plan, and (ii) the period of such Disability included in his or her Service and Credited Service.

f. If a Member recovers from Total and Permanent Disability prior to his or her Normal Retirement Date and does not return to the employ of the Employer within six (6) months after such recovery, he or she shall be deemed to have terminated employment as of his or her Disability Retirement Date.

Section 4.07 Reemployment After Commencement of Plan Benefits and Before Normal Retirement Date.

a. If a Retired Member who is receiving a Monthly Retirement Income is reemployed before his or her Normal Retirement Date, payment of the Member's Monthly Retirement Income shall be suspended as of the first day of the month coincident with or immediately following his or her reemployment. Upon such reemployment, he or she shall become an active Member and may accrue additional

benefits under the Plan for the period from his or her reemployment date to the date of his or her later termination of employment.

b. Upon such a Member's later termination of employment (for any reason other than death), his or her Accrued Benefit shall be equal to (i) less (ii) plus (iii), but in no event less than his or her Accrued Benefit as of the earlier termination of employment, where:

i. is an amount equal to the Member's Accrued Benefit determined as of his or her earlier termination of employment;

ii. is an amount equal to the Actuarial Equivalent of the Monthly Retirement Income and any partial lump-sum amount paid during the Member's earlier period (or periods) of retirement; and

iii. is an amount equal to any Accrued Benefit earned by the Member from his or her reemployment date to the date of his or her later termination of employment. The determination of the Accrued Benefit earned during the period from the Member's reemployment date to his or her later retirement shall be based on:

A. his or her Average Monthly Earnings (the calculation of which shall include Monthly Earnings determined as of the Anniversary Dates both prior to and after the Member's reemployment date); and

B. his or her years of Credited Service both before and after his or her reemployment date to his or her later termination of employment.

c. Such a Member's Monthly Retirement Income shall be resumed, effective as of the first day of the month coincident with or immediately following his or her retirement, in the form elected by the Member at his or her later termination of employment, in accordance with the provisions of this Article IV.

d. If such a Member's period of reemployment is terminated by reason of death, his or her Spouse or children shall be entitled to any benefits that may be payable under Section 5.02 hereof.

Section 4.08 Reemployment After Commencement of Plan Benefits and After Normal Retirement Date.

a. If a Retired Member who is receiving a Monthly Retirement Income is reemployed after his or her Normal Retirement Date in an employment classification pursuant to which he or she should be credited with less than forty (40) Hours of Service a month, he or she shall continue to receive his or her Monthly Retirement Income. If such a Member shall accrue an additional benefit under the terms of the Plan during any

Plan Year, the additional benefit shall be reduced to reflect the Actuarial Equivalent of the Monthly Retirement Income he or she received during such Plan Year.

b. If a Retired Member who is receiving a Monthly Retirement Income is reemployed after his or her Normal Retirement Date in an employment classification pursuant to which he or she would customarily be credited with forty (40) or more Hours of Service a month, payment of the Member's Monthly Retirement Income shall be suspended as of the first day of the month coincident with or immediately following his or her reemployment. Upon such reemployment, he or she shall become an active Member and may accrue additional benefits under this Plan.

i. If such a Member subsequently changes to an employment classification pursuant to which he or she would customarily be credited with less than forty (40) Hours of Service per month, or upon the Member's later termination of employment (for any reason other than death), payment of his or her Monthly Retirement Income shall recommence and his or her Accrued Benefit shall be redetermined by taking into account his or her Credited Service and Monthly Earnings both before his or her earlier termination of employment and after his or her reemployment; provided, however, that such Accrued Benefit shall be reduced to reflect the Actuarial Equivalent of the benefits paid prior to his or her reemployment. The Member's Monthly Retirement Income at his or her later retirement will be paid in the form elected by the Member at such later retirement date, in accordance with the provisions of this Article IV.

ii. If such a Member's period of reemployment is terminated by death, his or her Spouse or Beneficiary shall be entitled to receive any benefits that may be payable under the form of payment elected under Section 5.02 hereof at the time of his or her earlier retirement.

Section 4.09 Plan in Effect at Termination of Employment Controls. The terms and provisions of the Prior Plan (and not the terms and provisions of this Plan) shall apply in determining the benefits payable to any individual who was a Member of the Prior Plan but who is never an Employee at any time on or after the Acquisition Date; provided, however, that the administrative provisions of this Plan (and not the administrative provisions of the Prior Plan) shall apply to such an individual.

Section 4.10 Qualified Domestic Relations Orders. Notwithstanding any provisions contained herein to the contrary, if any benefits are paid hereunder pursuant to a "qualified domestic relations order," as defined in Code Section 414(p), any other benefits payable to, or on behalf of, the affected Member shall be adjusted in an amount determined by the Actuary, in accordance with procedures approved by the Plan Administrator.

Section 4.11 Payment of Benefits Only From the Trust Fund. Monthly Retirement Income payable under the terms of Article IV or Article V shall be subject to the restrictions and limitations set forth elsewhere in the Plan, and shall be paid from the Trust Fund only by or at the direction of the Plan Administrator. Neither the Employer nor the Trustee shall be under any obligation to pay any Monthly Retirement Income other than from the Trust Fund.

ARTICLE V
OTHER BENEFITS

Section 5.01 Termination of Employment. If a Member's employment with the Employer and all Affiliates is terminated for any reason other than death or retirement (including disability retirement and early retirement), either voluntarily or involuntarily, such Member shall cease to be an active Member of the Plan and the following provisions of this Section 5.01 shall apply:

a. If such a terminated Member has not been credited with at least five (5) years of Service, no benefit shall be payable under this Plan.

b. Subject to the limitations and restrictions set forth elsewhere in the Plan, such a Member who has been credited with five (5) or more years of Service with the Employer shall be entitled, at his or her Normal Retirement Date, to receive a Monthly Retirement Income equal to his or her Accrued Benefit at his or her termination date.

c. In lieu of the Monthly Retirement Income payable at Normal Retirement Date, as provided above, a terminated Member who, at the time of termination of employment, has been credited with twenty (20) or more years of Service may elect, at any time after reaching Attained Age forty-five (45), the commencement of benefits hereunder. Commencing on the first day of the month coincident with or immediately following such election, the terminated Member shall be entitled to a Monthly Retirement Income equal to his or her Accrued Benefit at that Early Retirement Date, reduced by three-twelfths (3/12) of one percent (1%) for each month by which such Early Retirement Date precedes his or her Normal Retirement Date.

d. A terminated Member who has been credited with twenty-five (25) or more years of Service shall be entitled, after reaching Attained Age forty-five (45), to elect the commencement of benefits hereunder. Commencing on the first day of the month coincident with or immediately following such election, such terminated Member shall be entitled to an unreduced Monthly Retirement Income equal to his or her Accrued Benefit at his or her termination date.

e. The provisions of Section 5.02 hereof shall apply if either (i) a vested terminated Member who terminated employment on or after August 23, 1984, dies prior to the commencement of benefits and is survived by a Spouse or Dependent Child, or (ii) a terminated Member who terminated employment on or after January 1, 1976, but prior to August 23, 1984, with ten (10) or more years of Service dies after August 23, 1984, but prior to the commencement of benefits and is survived by a Spouse or Dependent Child. In the event a terminated Member, not otherwise described in the preceding sentence, dies prior to the commencement of benefits, no Death Benefit shall be payable hereunder.

f. Notwithstanding any provision of the Plan to the contrary, if a Member has no vested interest in his or her Accrued Benefit as of his or her termination of

employment, a distribution of such vested interest shall be deemed to occur upon such termination of employment.

Section 5.02 Pre-Retirement Death Benefit. If an active Member, vested terminated Member, or Retired Member dies before the commencement of his or her Monthly Retirement Income (or, if Section 4.07 applies, before the resumption of monthly payments after his or her reemployment), or if a Disabled Member dies before commencement of Disability Payments under Section 4.06, and if any such Member is survived by a Spouse or Dependent Child, a Death Benefit shall be payable first to his or her Spouse, and if none, his or her Dependent Children, as follows:

a. Except as provided in Section 5.02.c or 5.02.d, the Death Benefit payable to the Spouse or Dependent Children shall be equal to fifty percent (50%) of the Actuarial Value of the Member's Expected Pension as of the Member's date of death reduced by any Life Insurance Proceeds payable with respect to that Member.

b. Any such Death Benefit shall be paid as soon as administratively practicable following the Member's death. The Death Benefit shall be paid to the Member's surviving Spouse, if any. If the Member is not survived by a Spouse, then the Death Benefit shall be divided equally among the Member's surviving Dependent Children.

c. Notwithstanding the above, if an active Member dies after reaching Attained Age fifty-five (55), his or her Spouse or Dependent Children shall be entitled to a Death Benefit equal to the Actuarial Value of the Member's Accrued Benefit as of the Member's Normal Retirement Date reduced by any Life Insurance Proceeds payable with respect to that Member.

d. If a Member's death does not result in the payment of Life Insurance Proceeds, the Death Benefit payable to the Spouse or Dependent Children shall be equal to fifty percent (50%) of the Actuarial Value of the Member's Accrued Benefit as of the Member's date of death.

Section 5.03 Post-Retirement Death Benefit. Upon the death of a Retired Member who is receiving benefits hereunder, his or her Spouse or Beneficiary shall be entitled to any benefits due under the form of payment elected by the Member when his or her Monthly Retirement Income commenced. Should any period of guaranteed payments elected under Section 4.02.c be exhausted at the death of the Retired Member, no Death Benefit shall be payable. If a Death Benefit is payable under any alternative form, the Plan Administrator shall pay the Actuarial Value of the benefit in a single lump sum if the Spouse or Beneficiary so elects in writing.

Section 5.04 Beneficiary's Death. If a Death Benefit becomes payable due to a Member's election under Section 4.02.c, but the Member's designated Beneficiary has predeceased the Member, the Death Benefit shall be paid to the Member's Contingent Beneficiary. If neither the Beneficiary nor the Contingent Beneficiary is living at the time of the Member's death, the Death Benefit shall be paid to the Member's Spouse, if known and living; if

not, then equally to the Member's children, if known and living; if none, then in a single lump sum to the estate of the deceased Member. If the Beneficiary or Contingent Beneficiary is living at the death of the Member, but such person dies prior to receiving the entire Death Benefit, the remaining portion of such Death Benefit shall be paid in a single sum to the estate of such deceased Beneficiary or Contingent Beneficiary.

Section 5.05 Lump-Sum Payments. Notwithstanding any provisions contained herein to the contrary, upon a Member's termination of employment or retirement, certain benefits may, as hereinafter provided, be paid in a lump-sum cash payment.

a. If the Actuarial Value of a terminating or retiring Member's vested Accrued Benefit, determined as of the date of termination of employment or retirement, does not exceed \$1,000, the Actuarial Value of such retiring or terminating Member's vested Accrued Benefit shall be paid in a lump-sum cash payment, in lieu of any other Plan benefits. Any such lump-sum benefit shall be paid as soon as reasonably practicable after the Member's termination of employment or retirement occurs.

If the Actuarial Value of such a Member's vested Accrued Benefit, determined as of the date of termination of employment or retirement, is greater than \$1,000 but no greater than \$5,000, the Member may elect to receive the Actuarial Value of his or her vested Accrued Benefit in a lump-sum cash payment. Once entitled to the election of such a lump-sum payment, a Member shall remain so entitled, even if the Actuarial Value of his or her vested Accrued Benefit later grows to more than \$5,000; provided, however, that:

i. any such election with respect to an Accrued Benefit with an Actuarial Value of more than \$5,000 shall be subject to the election procedures of Section 4.01; and

ii. such a Member shall not be entitled to elect to receive his or her vested Accrued Benefit in any of the optional forms of payment set forth in Section 4.02 unless the Actuarial Value of such Accrued Benefit, determined as of his or her Annuity Starting Date, is greater than \$5,000.

b. If the terminating or retiring Member was employed by the Employer prior to August 1, 1984, and the Actuarial Value of his or her Accrued Benefit, determined as of the date of termination of employment or retirement, exceeds \$5,000, the Member may, with the written consent of his or her Spouse, if any, witnessed by a notary public, elect that such Actuarial Value be paid in a lump-sum cash payment, in lieu of any other Plan benefits. Any such lump-sum payment shall be paid as soon as reasonably practicable after the end of the Plan Year in which the Member's termination of employment or retirement occurs.

Notwithstanding any provision of this Plan to the contrary, if such a Member has terminated employment prior to becoming eligible to retire, instead of receiving a lump-sum payment, a Member who does not have a Spouse at his or her Annuity Starting Date may elect to have the Actuarial Equivalent of his or her Accrued Benefit payable as of the first day of the month of the first Plan Year immediately following his or her termination

of employment in the basic form of benefit payment. If such a Member has a Spouse at his or her Annuity Starting Date, the Member may elect to receive such a benefit in the qualified joint and survivor annuity form described in Section 4.02.b. Any election under this Section 5.05.b shall be made in accordance with Section 4.01.

c. If any terminated or Retired Member who receives a lump-sum payment is subsequently reemployed and again becomes a Member, his or her years of Credited Service shall be determined in accordance with Section 2.17.

Section 5.06 Time of Commencement of Benefit Payments. Unless a Member cannot be located after reasonable efforts, any payment of benefits to the Member hereunder shall begin not later than sixty (60) days after the close of the Plan Year in which occurs the later of:

- a. the Member's Normal Retirement Age; or
- b. the Member's termination of employment by the Employer and all Affiliates.

Notwithstanding any provision of the Plan to the contrary, if the Actuarial Value of a Member's Accrued Benefit exceeds \$1,000 at the time such benefit becomes payable, no payment of benefits shall be made or begin prior to the Member's attainment of Normal Retirement Age without the Member's written consent, obtained in accordance with Section 4.01.

Section 5.07 Duration of Benefit Payments. Whenever this Plan provides that benefit payments shall be made for the lifetime of a Retired Member, Spouse or Beneficiary, the last monthly benefit payment shall be made on the first day of the month coincident with or next preceding the death of such Retired Member, Spouse or Beneficiary. Notwithstanding the above, the last benefit payment payable pursuant to Section 4.02.c shall be the later of (i) the first day of the month coincident with or next preceding the Member's death, or (ii) the first day of the last month of the guaranteed period of payment.

Section 5.08 Required Distributions. The provisions of this Section 5.08 shall be effective for purposes of determining required minimum distributions made on or after January 1, 2003. The requirements of this Section 5.08 shall take precedence over any inconsistent provisions of the Plan. All distributions required under this Section 5.08 shall be determined and made in accordance the provisions of Code Section 401(a)(9) and the regulations promulgated thereunder.

a. **Definitions.**

i. **"Designated Beneficiary"** means the individual who is designated under Section 2.12 and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation 1.401(a)(9)-1, Q&A-4.

ii. **"Distribution Calendar Year"** means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year

immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 5.08.b.ii.

iii. "**Life Expectancy**" means the life expectancy as computed by use of the Single Life Table in Treasury Regulation 1.401(a)(9)-9.

iv. The "**Required Beginning Date**" of a Member is the first day of April of the calendar year following the calendar year in which occurs the later of the date benefits would otherwise begin under the Plan or attainment of age seventy and one-half (70 ½).

b. **Time and Manner of Distribution.**

i. The Member's entire vested interest will be distributed, or begin to be distributed, to the Member no later than the Member's Required Beginning Date.

ii. If the Member dies before distributions begin, the Member's entire vested interest will be distributed, or begin to be distributed, no later than as follows:

A. If the Member's surviving spouse is the Member'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 Member died, or by December 31 of the calendar year in which the Member would have attained age 70 ½, if later; provided, however, that the surviving spouse may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made by no later than the earlier of September 30 of the calendar year in which the distribution would otherwise be required to begin under this Section 5.08.b.ii.A or September 30 of the calendar year that contains the fifth anniversary of the Member's death.

B. If the Member's surviving spouse is not the Member'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 Member died; provided, however, that the Designated Beneficiary may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made by no later than the earlier of September 30 of the calendar year in which the distribution would otherwise be required to begin under this Section 5.08.b.ii.B or September 30 of the calendar year that contains the fifth anniversary of the Member's death.

C. If there is no designated beneficiary as of the September 30 of the year following the year of the Member's death, the Member's entire vested interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

D. If the Member's surviving spouse is the Member's sole Designated Beneficiary, and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Section 5.08.b.ii, other than Section 5.08.b.ii.A, shall apply as if the surviving spouse were the Member.

For purposes of this Section 5.08.b.ii and Section 5.08.a, distributions are considered to begin on the Member's Required Beginning Date (or, if Section 5.08.b.ii.D applies, the date distributions are required to begin to the surviving spouse under Section 5.08.b.ii.A). If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.08.b.ii.A), the date distributions are considered to begin is the date distributions actually commence.

iii. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions shall be made in accordance with Sections 5.08.c, 5.08.d and 5.08.e. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the regulations promulgated thereunder.

c. **Determination of Amount to be Distributed Each Year.**

i. **General Annuity Requirements.** If the Member's interest is paid in the form of an annuity distribution under the Plan, payments under the annuity will satisfy the following requirements:

A. the annuity distribution will be paid in periodic payments made at intervals not longer than one year;

B. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in either of Sections 5.08.d or 5.08.e;

C. once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; and

D. payments will either be nonincreasing, or increase only (1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics, (2) to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 5.08(d) dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order with the meaning of Code Section 414(p), (3) to provide cash refunds of employee contributions upon the Member's death, or (4) to pay increased benefits that result from a Plan amendment.

ii. **Amount Required to Be Distributed by Required Beginning Date.** The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under either of Sections 5.08.b.i or 5.08.b.ii) 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 Member'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 Member's Required Beginning Date.

iii. **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Member 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.

d. **Requirements for Annuity Distributions that Commence During Member's Lifetime.**

i. If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the Designated Beneficiary after the Member'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 Member using the table set forth in Treasury Regulation Section 1.401(a)(9)-6T, Q&A-2. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

ii. Unless the Member's spouse is the sole Designated Beneficiary and the form of distribution is a period certain with no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9 for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9 plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole Designated Beneficiary and the form of distribution is a period certain with no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this Section 5.08.d.ii, or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Member's and the spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the annuity starting date.

e. Requirements for Minimum Distributions Where Member Dies Before Distribution Begin.

i. If the Member dies before the date distribution of his or her interest begins, and there is a Designated Beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in either of Sections 5.08.b.i or 5.08.b.ii, over the life of the Designated Beneficiary or over a period certain not exceeding:

A. unless the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

B. if the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

ii. If the Member dies before the date distributions begin, and there is no Designated Beneficiary as of the September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

iii. If the Member dies before the date distribution of his or her interest begins, the Member's surviving spouse is the Member's sole Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 5.08.e will apply as if the surviving spouse were the Member, except that the time by which the distributions must begin will be determined without regard to Section 5.08.b.i.

Section 5.09 Eligible Rollover Distributions. Notwithstanding any provisions 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 Plan Administrator, to have any portion of an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the distributee in a "direct rollover," but only if that eligible retirement plan agrees to accept such eligible rollover distribution. For purposes of this Section, the following definitions shall apply:

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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); or any hardship distribution. Effective January 1, 2008, a rollover may be made to a Roth IRA, subject to limitations set forth in Code Section 408A.

b. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified plan described in either of Code Sections 401(a) or 403(a), a tax-sheltered annuity plan described in Code Section 403(b), or an eligible plan under Code Section 457(b) that 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 that agrees to separately account for amounts transferred into such plan from this Plan.

c. Distributee: A distributee includes an Employee or former Employee. In addition, an Employee's or former Employee's surviving spouse, and an Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

Effective January 1, 2009, a non-spouse beneficiary (including a trust) who is a "designated beneficiary" under Code Section 401(a)(9)(E) of the Code shall be considered a distributee and may elect an eligible rollover distribution to an individual retirement account that the beneficiary establishes for purposes of receiving the distribution.

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

ARTICLE VI
PLAN ADMINISTRATION

Section 6.01 Administrative Authority. The City Manager shall be responsible for and shall control and manage the operation and administration of the Plan. The City Manager shall be the "Plan Administrator."

Section 6.02 Powers, Duties and Responsibilities of the Plan Administrator. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Members and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Plan Administrator shall be conclusive and binding upon all persons. The Plan Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code Section 401(a), and all regulations issued pursuant thereto.

a. The Plan Administrator shall have all powers necessary or appropriate to accomplish his or her duties under this Plan but not limited to, the following:

- i. the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Member hereunder and to receive benefits under the Plan;
- ii. to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Member shall be entitled hereunder;
- iii. to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust Fund;
- iv. to appoint one or more investment managers and to allocate to such investment manager(s) such duties and responsibilities with respect to any part or all of the assets of the Trust Fund as the Plan Administrator shall specify in such allocation or appointment;
- v. to maintain all necessary records for the administration of the Plan;
- vi. to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;

vii. to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;

viii. to compute and certify to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;

ix. to consult with the Trustee regarding the short and long-term liquidity needs of the Plan;

x. to prepare and implement a procedure for notifying Members and Beneficiaries of their rights to elect Joint and Survivor Annuities and Pre-Retirement Survivor Annuities if required by the Plan, Code and Regulations thereunder;

xi. to assist Members regarding their rights, benefits, or elections available under the Plan;

xii. to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it.

b. In addition to the general powers and responsibilities otherwise provided for in this Plan, the Plan Administrator shall be empowered to remove the Trustee from time to time as he or she deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Members and their Beneficiaries in accordance with the terms of the Plan, the Code, and applicable law.

c. The Plan Administrator shall establish a "funding policy and method," *i.e.*, he or she shall determine whether the Plan has a short run need for liquidity (*e.g.*, to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so.

d. The Plan Administrator may in his or her discretion, appoint a Committee of one or more persons to provide investment direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Plan Administrator in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Committee shall have the authority to direct the investment. In the event the Plan Administrator does appoint a Committee, unless otherwise directed by the City Manager, the Committee shall conduct its activities in accordance with the provisions of Section 6.08 below.

e. The Plan Administrator shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by him or her under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Plan Administrator or by a qualified person specifically designated by the Plan Administrator, through day-to-day conduct and evaluation, or through other appropriate ways.

Section 6.03 Records and Reports. The Plan Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Members, Beneficiaries and others as required by law.

Section 6.04 Appointment of Advisers and Delegation. The Plan Administrator may appoint investment managers, counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Plan Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to delegate such duties as the Plan Administrator may, in his or her discretion, appoint.

Section 6.05 Information from the Plan Administrator. The Plan Administrator shall advise the Trustee in a full and timely fashion of all facts as may be pertinent to the Trustee's duties under the Plan.

Section 6.06 Payment of Expenses. All expenses of administration may be paid out of the Trust Fund unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, investment managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Plan Administrator or Trustee and other specialists and their agents, the costs of any bonds, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

Section 6.07 Claims Procedure. Claims for benefits under the Plan shall be made in writing to the Plan Administrator. If the Plan Administrator wholly or partially denies a claim for benefits, the Plan Administrator shall, within a reasonable period of time, but no later than 90 days after receiving the claim, notify the claimant in writing of the denial of the claim. If the Plan Administrator fails to notify the claimant in writing of the denial of the claim within 90 days after the Plan Administrator receives it, the claim shall be deemed denied. A notice of denial shall be written in a manner calculated to be understood by the claimant, and shall contain:

- a. the specific reason or reasons for denial of the claim;
- b. a specific reference to the pertinent Plan provisions upon which the denial is based;
- c. a description of any additional material or information necessary for the claimant to perfect the claim, together with an explanation of why such material or information is necessary; and
- d. an explanation of the Plan's review procedure.

Within 60 days of the receipt by the claimant of the written notice of denial of the claim, or within 60 days after the claim is deemed denied as set forth above, if applicable, the claimant may file a written request with the Plan Administrator that he or she conduct a full and fair

review of the denial of the claimant's claim for benefits, including the conducting of a hearing, if the Plan Administrator deems one necessary. In connection with the claimant's appeal of the denial of his benefit, the claimant may review pertinent documents and may submit issues and comments in writing. The Plan Administrator shall render a decision on the claim appeal promptly, but not later than 60 days after receiving the claimant's request for review, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case the 60-day period may be extended to 120 days. The Plan Administrator shall notify the claimant in writing of any such extension. The decision upon review shall (i) include specific reasons for the decision, (ii) be written in a manner calculated to be understood by the claimant, and (iii) contain specific references to the pertinent Plan provisions upon which the decision is based.

Section 6.08 Investment Committee.

a. The members of the Committee shall serve at the pleasure of the Plan Administrator; they may be employees or any other individuals; provided, that the City Manager shall appoint at least one Member of the Plan to serve on the Committee. The Plan Administrator shall designate the Committee chair. The Committee shall designate by a majority vote of the Committee, a secretary, who need not be a member of the Committee. Any member may resign by delivering his written resignation to the Plan Administrator and to the Committee. Vacancies in the Committee shall be filled by the Plan Administrator. The Plan Administrator shall advise the Trustee in writing of the names of the members of the Committee and of changes in membership from time to time.

b. The Committee shall have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset, including the authority to engage the services of an investment manager or managers, each of whom will have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under such investment manager's control. The principal responsibilities of the Committee are as follows:

- i. oversee the objectives and the financial, investment and actuarial policies of the Plan;
- ii. establish and carrying out a funding policy for the Plan;
- iii. establish asset mix to achieve objectives and to ensure adequate liquidity and asset diversification;
- iv. select investment options;
- v. with the approval of the Plan Administrator, adopt an investment policy statement; and
- vi. review at least annually the investment performance of the Plan.

c. The Committee may authorize any of its members or any other persons to execute any document or documents on behalf of the Committee, in which event the Committee shall notify the Trustee in writing of such action and the name or names of such members or persons. The Trustee thereafter shall accept and rely upon any document executed by such members or persons as representing action by the Committee, until the Committee shall file with the Trustee a written revocation of such designation.

d. The Committee may adopt such bylaws and regulations as it deems desirable for the conduct of its affairs and, with the consent of the Plan Administrator, may appoint such accountants, counsel, specialists, and other persons as it deems necessary or desirable in connection with its duties under the Plan. The Committee shall be entitled to rely conclusively upon any opinions or reports that shall be furnished to it by any such accountant, counsel, specialist or other person.

e. The Committee shall meet at least once each quarter. Additional meetings may occur as the Committee or its chair deems advisable. The Committee will cause to be kept adequate minutes of its proceedings, and periodically will report its actions to the Plan Administrator. Committee members, as well as the Plan Administrator, will be furnished with copies of the minutes of each meeting and any action taken by unanimous consent.

f. The Committee shall keep a record of all its proceedings and acts and shall keep all such books of account, records, and other information as may be necessary for the proper investment of Plan assets. The Committee shall notify the Trustee and the Plan Administrator of any action taken by the Committee and, when required, shall notify any other interested person or persons.

g. With the exception of the regular compensation paid to them as an employee of the Employer, the members of the Committee shall serve without additional compensation for services as such, but all reasonable expenses incurred by the Committee incident to the investment of Plan assets shall be borne by, and paid out of the Plan assets, except to the extent the Employer elects to have such expenses paid directly by the Employer.

ARTICLE VII

CONTRIBUTIONS BY THE EMPLOYER

Section 7.01 Employer Contributions. It is the intention of the Employer, but it does not guarantee to do so, to contribute to the Trust Fund, from time to time, the amounts estimated by the Actuary as necessary to provide the benefits promised by the Plan, in a manner consistent with the funding standards set forth in K.S.A. Section 12-5002, as well as the provisions of Code Section 412 applicable to governmental plans. Employees who become Members of this Plan are neither required nor permitted to make contributions hereunder.

Section 7.02 Plan and Fund Expenses. The Employer shall pay, or cause to be paid from the Trust Fund, all the expenses of administering this Plan and the Trust Fund as may be mutually agreed upon from time to time.

Section 7.03 Actuarial Valuations. The Actuary shall perform periodically an actuarial valuation of the Plan and the Trust Fund and shall certify to the Plan Administrator in writing the results of the valuation. The Actuary in his actuarial valuation shall apply all gains arising in the operation of the Plan including, but not necessarily limited to, gains resulting from the termination of employment of Members prior to qualifying for benefits hereunder to reduce the contributions of the Employer pursuant to the funding method and actuarial tables then in use. In addition, the Actuary, in his actuarial valuation, shall not anticipate any cost-of-living adjustments which may be made by the Commissioner of Internal Revenue in any later year pursuant to Code Section 415(d)(1).

ARTICLE VIII **THE TRUST FUND AND THE TRUSTEE**

Section 8.01 Basic Responsibility of Trustee.

a. The Trustee is accountable to the Employer and the Plan Administrator for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan (or the funding requirements of applicable law). The Trustee is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan; rather, the Trustee will be subject to the Plan Administrator's direction with regard to such matters.

b. The Trustee will credit and distribute the Trust Fund as directed by the Plan Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator.

c. In the event that the Trustee shall be directed by the Plan Administrator, the Committee, an investment manager or other agent appointed by the Plan Administrator with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

i. The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Plan Administrator and the Trustee, including but not limited to, voice recorded) instructions of the Plan Administrator, the Committee or any fiduciary or nonfiduciary agent of the Plan Administrator, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

ii. The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee.

iii. The Trustee will maintain records of receipts and disbursements and furnish to the Plan Administrator for each Plan Year a written annual report pursuant to Section 8.04.

iv. With the approval of the Plan Administrator, the Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

Section 8.02 Investment Powers and Duties of the Nondiscretionary Trustee.

a. The Trustee shall have no discretionary authority to invest, manage, or control Plan assets, but must act solely as a directed Trustee of those Plan assets. As directed Trustee of the Plan, it is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein each of which the Trustee shall exercise solely as a directed Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets. If no directions are provided to the Trustee, the Employer will provide necessary direction.

b. Subject to section 8.02.a. the Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Plan, shall have the following powers and authorities:

i. To invest the assets, without distinction between principal and income, in securities or property, real or personal, wherever situated, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein (In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust.);

ii. To purchase, or subscribe for, any securities or other property and to retain the same;

iii. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contractor at public auction;

iv. At the direction of the Committee, to vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or

without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;

v. To cause any securities or other property to be registered in the Trustee's own name, in the name of one or more of the Trustee's nominees, in a clearing corporation, in a depository, or in book entry form or in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

vi. To deposit and hold Trust assets in, to pool Trust assets with other participating trusts in, and to withdraw Trust assets from, a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee hereunder pursuant to Revenue Ruling 81-100, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts; such governing instruments are listed on Exhibit A attached hereto, are hereby incorporated by reference, and will prevail over contrary provisions of this Agreement, and the subject trusts are hereby adopted as part of the Plan;

vii. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

viii. To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in, all suits and legal and administrative proceedings; without limiting the generality of the foregoing, the Plan Administrator hereby directs the Trustee to file any proof of claim received by the Trustee regarding class action litigation over a security held in the Trust during the class action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such filing;

ix. To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);

x. To invest in Treasury Bills and other forms of United States government obligations;

xi. To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under

the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

xii. To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee); and

xiii. To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests.

Any of the foregoing investments may include, but are not limited to, investments which are administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by the Trustee or any of the Trustee's affiliates.

Section 8.03 Trustee's Compensation and Expenses and Taxes. The Trustee shall be paid such reasonable compensation as set forth in Exhibit B (Benefit Plan Fee Disclosure and Authorization) attached hereto. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

Section 8.04 Annual Report of the Trustee.

a. Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Plan Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- i. the net income, or loss, of the Trust Fund;
- ii. the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- iii. the increase, or decrease, in the value of the Trust Fund;
- iv. all payments and distributions made from the Trust Fund; and
- v. such further information as the Trustee and/or Plan Administrator deems appropriate.

b. The Plan Administrator, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee of its approval or disapproval thereof. Failure by the Plan Administrator to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Plan Administrator of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

Section 8.05 Resignation, Removal and Succession of Trustee.

a. Unless otherwise agreed to by both the Trustee and the Plan Administrator, a Trustee may resign at any time by delivering to the Plan Administrator, at least thirty (30) days before its effective date, a written notice of resignation.

b. Unless otherwise agreed to by both the Trustee and the Plan Administrator, the Plan Administrator may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

c. Upon the resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Plan Administrator; and such successor, upon accepting such appointment in writing and delivering same to the Plan Administrator, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. To the extent the Plan Administrator fails to deliver a successor trustee's signed, written acceptance of trusteeship on or before the effective date of the Trustee's resignation or removal, the Trustee may immediately petition a court for appointment of a successor trustee, and the cost of such a petition will be a cost of the Trust.

d. The Plan Administrator may designate one or more successors prior to the resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Plan Administrator and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the resignation, incapacity, or removal of the predecessor.

e. Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Plan Administrator a written statement of account with respect to the portion of the Plan Year during which it served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 8.04 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Plan Administrator no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 8.04

for the approval by the Plan Administrator of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Plan Administrator of any such special statement in the manner provided in Section 8.04 shall have the same effect upon the statement as the Plan Administrator's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required hereunder.

Section 8.06 Limitation on Duties and Liabilities.

a. The Trustee shall have no right or duty to examine the records of the Employer to determine whether the amount of any contribution to the Plan has been correctly computed or to compel the performance of any duty imposed upon the Employer, Plan Administrator or the Committee by this Plan.

b. The Trustee shall be fully protected in relying and acting upon any notice, instruction, certification or other document in writing that was made or purports to have been made in accordance with this Plan, is believed by the Trustee to be genuine, and has been signed and delivered by the proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to the truth and accuracy of the statements contained therein.

c. Without limiting the generality of the foregoing, the Trustee has the right, but not the duty, to require a directing fiduciary to provide (i) a written representation that any directed action satisfies the requirements of, and is entitled to, full exemptive relief under a particular prohibited-transaction exemption under applicable fiduciary law and the Code, and a specific reference to such exemption and (ii) an opinion of the directing fiduciary's legal counsel to that effect.

d. The Trustee is not responsible for any delay or failure in performing its obligations hereunder resulting from any cause beyond the Trustee's control, including without limitation, acts of nature, acts of war, governmental actions, fire, labor strikes, work stoppages, civil disturbances, interruptions or unavailability of power or other utilities.

Section 8.07 Rights of Successor Trustee. If a successor Trustee is appointed, such successor Trustee will succeed as of the effective date of its appointment to all the rights, title and estate of the succeeded Trustee, and no instrument of transfer, conveyance or assignment or order of any Court shall be necessary in connection therewith. Notwithstanding the foregoing, however, the succeeded Trustee shall deliver to the successor Trustee such instruments of transfer, conveyance, assignment and further assurance as it may reasonably require. No successor Trustee shall be personally liable for any act or omissions that occurred prior to the time it became a Trustee.

Section 8.08 Incapacity of Committee and Employer. If at any time the Employer, Committee or Plan Administrator, or any successor thereof, be incapable of giving the Trustee directions, instructions or authorizations as herein provided, the Trustee may act as it, in its sole

discretion, deems appropriate and advisable in the circumstances for the carrying out of the provisions of the Plan and Trust Fund. Even so, the Trustee will have no duty to act to interpret the Plan document, determine eligibility for benefits, or otherwise act as the Plan administrator.

Section 8.09 Tax Withholding, Reporting, Remitting.

a. Designation. The Plan Administrator hereby designates the Trustee as payor in making disbursements from the Trust to Plan participants ("Participants") and Beneficiaries, and the Trustee agrees to serve as payor.

b. Disbursements. The Plan Administrator will periodically deliver to the Trustee written directions, including a list of Participants or Beneficiaries to whom disbursements are to be made. The list will identify the amount to be disbursed to each payee, the mailing address and Social Security number of each payee, the payment period over which any periodic payments are to be made to a payee, the states of the United States and localities therein which each payee is subject to income tax withholding (collectively, the "States and Localities"), and such information as the Trustee may reasonably require in order to carry out its duties as payor. Upon receipt of the written directions and accompanying information, the Trustee will make the instructed disbursements, including any required remittances of withheld income tax to the Internal Revenue Service and to the taxing authorities of the States and Localities. To that end, the directions will specify whether the distribution is periodic or non-periodic; whether the distribution is an eligible rollover distribution; and which portion, if any, of the distribution is a direct rollover. In the case of a direct rollover, the directions will also specify the one and only recipient plan or IRA, as well as the trustee or custodian thereof, as the case may be. In any event, the Plan Administrator will give the Trustee timely written notice of the death of any individual whose death (i) affects the period over which periodic payments are to be made or the amount of such payments or (ii) requires a change in payee.

c. Transfer of Liability. This Trust will be deemed to be the Plan Administrator's direction to the Trustee under Temporary Treasury Regulations Section 35.3405-1T, Q&A E-2 to withhold federal income tax. This transfer of the Plan Administrator's duty to withhold to the Trustee will not be effective, however, unless the Plan Administrator provides the Trustee with all information and directions necessary to compute correctly the federal withholding tax liability. To satisfy this requirement, the Plan Administrator will explicitly inform the Trustee of the information that would be reportable on the Form 1099-R or that such information is not applicable to a particular payee or to any payments under the Plan.

d. Annual Notices. In the case where periodic payments are being made, the Trustee will give the payee the annual written notice, required by Temporary Treasury Regulations Section 35.3405-1T, Q&A D-4, of the right to elect not to have withholding apply or to revoke such election.

e. Forms 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) and 945 (Annual Return of

Withheld Federal Income Tax: For Withholding Reported on Forms 1099 and W-2G). The Trustee will prepare and file Form 1099-R with respect to each payee and comparable information returns with respect to the States and Localities. However, the preparation of these forms will be based solely on data furnished by the Plan Administrator, and this data will indicate the distribution code or codes required by Form 1099-R. The Trustee will also prepare and file Form 945 and any comparable required state return with respect to the States and Localities.

Section 8.10 Employer's Representations.

a. The Employer hereby represents as follows: The Plan is a defined-benefit employee pension benefit plan; a "governmental plan" as defined in ERISA Section 3(32); and not subject to Title I (Protection of Employee Benefit Rights) of ERISA.

b. The Employer will take all steps required to preserve the Trust's qualified (under Code Section 401(a)) and tax-exempt (under Code Section 501(a)) status.

c. All directions provided hereunder to the Trustee will be consistent with the terms of the Plan and applicable law.

d. Any expense directed to be paid from the Trust is a permissible Plan expense (and is not a settlor expense).

e. The Employer is not subject to any pending bankruptcy or insolvency proceeding, and the Employer will notify the Trustee promptly of any such proceeding.

f. Any investment manager appointed hereunder (a) is either a registered investment adviser under the Investment Advisers Act of 1940, a bank as defined in such Act, or an insurance company qualified to manage plan assets in more than one state and (b) has acknowledged in writing fiduciary status with respect to the Plan.

Section 8.11 Employer's Acknowledgments. The Employer hereby acknowledges as follows:

a. The Trustee is subject to the direction as provided under this Agreement, including but not limited to the direction of the Plan Administrator and such other persons authorized by the Plan Administrator, if any. The Trustee's responsibilities as a Plan fiduciary are limited to the extent the Trustee's actions are not contrary to such directions.

b. Without limiting the generality of the foregoing, the Employer has reserved to the Plan Administrator sole authority to invest and reinvest Trust assets and to direct the Trustee accordingly, except to the extent the Plan Administrator has delegated such authority to an investment manager or to the Committee. The Trustee will invest and reinvest Trust assets only as directed.

c. The Trustee's signature below notwithstanding, the Trustee is not responsible for the design of the Plan.

Section 8.12 Limitations on Trustee's Duties. The Trustee has no duty to

a. prescribe or maintain a Plan document or forms (including but not limited to forms for electing participation, distribution, withdrawal and for providing notices to Participants and Beneficiaries);

b. request or obtain a ruling or other guidance from the Internal Revenue Service or any other governmental authority as to (or to otherwise determine or monitor) the tax consequences of the form and operation of the Plan, Plan document and Trust;

c. construe the terms of the Plan, determine eligibility for Plan benefits (including eligibility for participation, vesting, and distribution, as well as the timing, amount, and form thereof), resolve benefit claims or claim appeals, maintain participant-level records, determine whether any expense is a proper Plan expense, or perform any functions of a plan administrator; or

d. give notices or make filings required by applicable law regarding the Plan or Trust, including calculating, withholding, disclosing, reporting, or remitting to the appropriate taxing authority, Participants, or Beneficiaries any federal, state, or local taxes that may be required to be calculated, withheld, disclosed, reported, or remitted with respect to the Plan (such as paying Plan benefits) or the Trust, except as otherwise expressly provided under this Plan.

Section 8.13 Authorized Persons. The Plan Administrator will identify each person who is authorized to act on the Plan Administrator's, Employer's, or Committee's behalf hereunder, by giving the Trustee (i) a certificate of incumbency signed by the Plan Administrator, indicating which persons have such authority; and (ii) the specimen signature of such persons. The Plan Administrator will also identify each employee of a third-party agent who is authorized to act on the Plan Administrator's, Employer's, or Committee's behalf hereunder, by giving the Trustee an authorization letter setting forth the name of such agent and the names and specimen signatures of such employees of the agent. The Trustee may assume that any person so identified continues to be so authorized, until the Employer gives the Trustee written notice to the contrary. In any event, the Plan Administrator hereby represents that any person authorized to act on behalf of the Plan Administrator hereunder was duly appointed pursuant to a procedure specified in the Plan; that such person is appropriately monitored; and that the Plan Administrator has furnished such person with the documents and instruments governing the Plan to the extent needed for that person to fulfill such appointment, and the Plan Administrator hereby acknowledges that any such person's actions or omissions are binding hereunder upon the Employer and the Plan Administrator.

Section 8.14 Delivery of Directions. Any direction or other communication to or from the Trustee under this Agreement will be given in writing and, unless the recipient has first delivered a superseding address, addressed as indicated below. The Trustee will not be charged

with knowledge of an emailed direction to the Trustee's detriment if the email cannot be shown to have been sent to the Trustee return-receipt requested.

If to the Trustee:

U.S. Bank National Association
c/o Bryce Buster, Vice President and Relationship Manager
8600 Shawnee Mission Parkway, Suite 105
Merriam, Kansas 66202
Phone: (913) 671-2745
Email: Bryce.buster@usbank.com

If to the Plan Administrator, the Employer, or the Committee:

City Manager
City of Overland Park
8500 Santa Fe Drive
Overland Park, Kansas 66212-2866

with a copy to:

City of Overland Park
Attn: Manager Retirement Plans
8500 Santa Fe Drive
Overland Park, Kansas 66212-2866

ARTICLE IX
RESERVATION OF RIGHTS BY THE EMPLOYER
AND LIMITATIONS ON RIGHTS OF MEMBERS

Section 9.01 Plan Voluntary. Although it is the intention of the Employer that this Plan shall be continued and contributions made regularly each year, this Plan is entirely voluntary on the part of the Employer and the continuance of the Plan and the payments thereunder are not assumed as a contractual obligation of the Employer. The Employer does not guarantee or promise to pay or cause to be paid any of the benefits provided by this Plan.

Section 9.02 Reservation of Employer's Right to Suspend or Discontinue Contributions. The Employer specifically reserves the right, in its sole and uncontrolled discretion and by official and authorized act, to modify or suspend (in whole or in part, at any time or from time to time, and for any period or periods), or to discontinue at any time, the contributions specified in Article VII of this Plan.

Section 9.03 No Guarantee of Employment. This Plan shall not be deemed to constitute a contract between the Employer and any Member, nor to be a consideration or inducement for the employment of any Member or Employee. Nothing contained in this Plan shall be deemed to give any Member or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Member or Employee at

any time, regardless of the effect such discharge might have upon him or her as a Member of the Plan.

Section 9.04 Spendthrift Clause. Except for benefits that are the subject of a "qualified domestic relations order," as defined in Code Section 414(p), none of the benefits under the Plan are subject to the claims of creditors of Members, Retired Members, Disabled Members, Inactive Civilian Members, vested terminated Members, or their Beneficiaries or Spouses, and shall not be subject to attachment, garnishment or other legal process. Neither a Member, a Disabled Member, a Retired Member, an Inactive Civilian Member, a vested terminated Member, a Beneficiary, a Contingent Beneficiary, nor a Spouse may, except pursuant to a "qualified domestic relations order," assign, sell, borrow on, or otherwise encumber his or her beneficial interest in this Plan, nor shall such benefits be in any manner liable for or subject to the deeds, contracts, liabilities, engagements, or torts of any Member, Disabled Member, Retired Member, Inactive Civilian Member, vested terminated Member, Beneficiary, Contingent Beneficiary, or Spouse.

Notwithstanding the foregoing, such benefits may be assigned or alienated to the extent permitted by Code Section 401(a)(13).

Section 9.05 Recapture of Employer Contributions. The contributions made to the Plan by the Employer are conditioned upon there having been no good faith mistake of fact. If, within one (1) year of making a contribution, it is discovered that a good faith mistake of fact was made, the Employer shall withdraw the portion of the contribution attributable to the mistake within one (1) year of the contribution.

ARTICLE X **AMENDMENTS**

Section 10.01 Employer May Amend Plan. The Employer reserves the right, at any time and from time to time, without the consent of the Trustee or of Members, Disabled Members, Retired Members, vested terminated Members, Beneficiaries, Spouses, or any person or persons claiming through them, by action of the Employer's Governing Body, to modify or amend, in whole or in part, any or all of the provisions of the Plan, including specifically the right to make any such amendments effective retroactively, if necessary to bring the Plan into conformity with any governmental regulations which must be complied with in order to make the Plan eligible for tax benefits; provided that no such modification or amendment shall make it possible for any part of the assets of the Plan to be used for or diverted to purposes other than for the exclusive benefit of Members, Disabled Members, Retired Members, vested terminated Members, and their Beneficiaries and Spouses under the Plan prior to the satisfaction of all liabilities with respect to such Members, Disabled Members, Retired Members, vested terminated Members, and their Beneficiaries and Spouses under the Plan; and provided further, that notwithstanding anything herein to the contrary, no amendment which affects the duties or obligations of the Trustee is enforceable against the Trustee unless the amendment bears the Trustee's signature.

Section 10.02 Preservation of Vesting and Accrued Benefits. Any amendment which modifies the vesting provisions of the Plan shall either

- a. provide for a rate of vesting which is at least as rapid as the vesting schedule previously in effect; or
- b. provide that any Member with at least three (3) years of Service may elect, in writing, to remain under the vesting schedule in effect prior to the amendment. Such election must be made within (60) days after the latest of
 - i. adoption of the amendment,
 - ii. the effective date of the amendment, or
 - iii. issuance by the Employer of written notice of the amendment.

No amendment shall reduce the Accrued Benefit of a Member, except as permitted under the Code.

ARTICLE XI

PLAN TERMINATION

Section 11.01 Employer May Terminate Plan. The Employer, by action of its Governing Body, may suspend payments to the Trust Fund for any year and, subject to the provisions of this Article XI hereof, may terminate this Plan at any time.

Section 11.02 Valuation of Plan Assets and Liabilities. If the Employer terminates this Plan or permanently suspends contributions, the Plan Administrator shall direct the computation of the value of the Trust Fund held for the benefit of Members, Retired Members, vested terminated Members, Disabled Members, Beneficiaries, Contingent Beneficiaries, and Spouses otherwise eligible to receive benefits hereunder. The Plan Administrator, based upon the certification of the Actuary, shall apportion the amount so valued to all such Members, Retired Members, vested terminated Members, Disabled Members, and/or their Beneficiaries, Contingent Beneficiaries, and Spouses in shares as determined under Section 11.03.

Section 11.03 Allocation of Plan Assets and Liabilities. The value of that portion of the Trust Fund computed under Section 11.02, after providing for the expenses of administration of the Plan and Trust Fund, shall be allocated for purposes of paying Monthly Retirement Income, Disability Payments, and Death Benefits in the order of precedence indicated, and in the amounts indicated, in Section 4044 of the Employee Retirement Income Security Act of 1974 (ERISA), as said Section 4044 may be amended, according to the principles set forth in said Section 4044 and such other portions of ERISA as it incorporates by reference. For the purpose of making such allocation, any regulations issued pursuant to Section 4044 of ERISA shall be deemed part of said Section 4044.

The allocation of the Trust Fund, in accordance with this Section 11.03, shall be based on the method of payment of Monthly Retirement Income, Disability Payments, or Death Benefits specified in the Plan. In the event that the Trust Fund assets on or after the date of termination are insufficient to fund all benefits within any class, the benefits of each higher order of precedence shall be funded, the benefits of each lower order of precedence shall be unfunded,

and the assets remaining shall be allocated among Members of that class on the basis of their respective actuarial reserves, subject to the provisions of Section 4044 of ERISA.

Section 11.04 Lien For Expenses. In the event of failure of the Employer, upon termination of the Plan, to pay or reimburse the Trustee or Actuary for any then outstanding Plan or Trust Fund charges or expenses incurred hereunder, the Trustee or Actuary is empowered to satisfy such claims by a lien upon that portion of the Trust Fund, prior to making any allocation to Members, Retired Members, vested terminated Members, Disabled Members, Beneficiaries, Contingent Beneficiaries, and Spouses in accordance with Sections 11.02 and 11.03 hereof.

Section 11.05 Payment of Benefits Upon Plan Termination. The application of the Trust Fund on the foregoing basis shall be calculated by the Actuary and certified to the Plan Administrator as of the date on which the Plan terminated. When the calculations have been completed, the Plan Administrator shall direct that the Trust Fund be liquidated and the interest of each Member, Disabled Member, vested terminated Member, Retired Member, Beneficiary, and Spouse be distributed in the form of an annuity contract, annuity payments, installments, or lump-sum cash payment, based upon the assumptions used by the Pension Benefit Guaranty Corporation to value immediate or, if applicable, deferred annuities under Section 4044 of ERISA on the date of the Plan termination; provided, however, that any funds remaining after the satisfaction of all liabilities to Members, vested terminated Members, Disabled Members, Retired Members, Beneficiaries, and Spouses that are due to erroneous actuarial computations shall be returned to the Employer. In the alternative, the Plan Administrator may, in its discretion, and if permitted by the Code and regulations thereunder, direct that the interest of each person continue to be held in the Trust Fund and distributed in accordance with the terms of the Plan upon the Member's retirement, death or disability. The provisions of this Section 11.05 shall not limit a Member's right to obtain distribution of his or her benefit in the forms of distribution provided in Article IV. Further, the distribution of such benefit shall be made in accordance with the Member and Spouse consent provision of Code Sections 411(a)(11) and 417, to the extent such consent provisions are applicable to distributions of interests having an Actuarial Value of more than \$5,000.

In the event the Trustee, upon termination of the Plan, is unable to locate one or more Members for purposes of paying to any such Member his or her Accrued Benefit upon Plan termination, the Trustee shall comply with the requirements of Section 4050(a)(1) of ERISA with respect to any such missing Member.

Section 11.06 Full Vesting to Extent Funded Upon Plan Termination or Partial Termination. Notwithstanding any other provision herein contained, should the Plan terminate or partially terminate, the rights of all affected Members to benefits accrued to the date of such termination or partial termination, to the extent then funded, shall be nonforfeitable.

ARTICLE XII **ACTUARY**

Section 12.01 Duties of Actuary. The Actuary shall make such actuarial calculations and perform such duties as may be required of him or her hereunder. In making an actuarial valuation of the Plan from time to time, the Actuary may rely upon the written statements of the

Employer and its agents concerning the assets in the Trust Fund and shall not be required to make any independent calculations with respect thereto. The Actuary shall certify to the Plan Administrator, in writing, the results of the calculations required of him or her, and the Plan Administrator may rely thereon. In making its calculations hereunder, the Actuary shall use such actuarial tables as he or she deems appropriate, but shall use the same tables in making all his or her calculations during a specified period. The Actuary shall employ actuarial assumptions and methods that are reasonable, taking into the account the experience of the Plan and reasonable expectations, and that offer the Actuary's best estimate of anticipated experience under the Plan. The Actuary may from time to time change the actuarial tables and other assumptions used by him or her hereunder.

Section 12.02 Data to be Furnished Actuary. The Employer shall furnish the Actuary such information on Employees, payrolls and other related data as the Actuary may require from time to time.

Section 12.03 Actuary May Rely on Employer Data. The Actuary may rely upon any information furnished him or her by the Employer or the Trustee.

ARTICLE XIII MISCELLANEOUS

Section 13.01 Authority of the Plan Administrator to Promulgate Regulations and Procedures. Any rules, regulations or procedures that may be necessary for the proper administration or functioning of this Plan that are not covered in this Plan shall be promulgated and adopted by the Plan Administrator.

Section 13.02 Construction of Plan Document. Any headings or subheadings in this Plan are inserted for convenience of reference only and are to be ignored in the construction of any provisions hereof.

Section 13.03 Governing Law. This Plan shall be construed in accordance with the laws of the State of Kansas.

Section 13.04 Facility of Payment. In making any distribution to or for the benefit of any minor or incompetent, the Trustee, in its sole, absolute and uncontrolled discretion may, but need not, make such distribution to a legal or natural guardian of such minor or incompetent, and any such guardian shall have full authority and discretion to expend such distribution for the use and benefit of such minor or incompetent. The receipt of such guardian shall be a complete discharge, without any responsibility on the Trustee's part, to see to the application thereof.

Section 13.05 Executed Documents to be Furnished to Trustees and Actuary. An executed copy of this Plan shall be furnished to the Trustee and to the Actuary.

Section 13.06 Severability Clause. In case any provision of this Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts of this Plan, and this Plan shall be construed and enforced as if such illegal or invalid provisions had never been inserted herein.

Section 13.07 Correction of Misstatements. A misstatement of the age, sex, years of Service or Credited Service, date of employment, date of birth, or Monthly Earnings of a Member, or any other such matter, shall be corrected when it becomes known that any such misstatement of fact has occurred.

Section 13.08 Successor Employers. In the event of a merger or consolidation of the Employer, or transfer of all or substantially all of its assets to any other corporation, partnership or association, provision may be made by such successor corporation, partnership or association, at its election, for the continuance of this Plan by such successor entity. Such successor shall, upon its election to continue this Plan, be substituted in place of the Employer by an instrument duly authorizing such substitution and duly executed by the Employer and its successor. Upon notice of such substitution, accompanied by a certified copy of the resolutions of the Governing Body of the Employer and of its successor authorizing such substitution and delivered to the Trustee and all Members hereunder shall be authorized to recognize such successor in the place of the Employer.

Section 13.09 Plan Merger, Consolidation or Transfer of Plan Assets. In the case of any merger or consolidation with, or transfer of assets or liabilities of the Plan to, any other plan, such merger, transfer or consolidation shall, by its terms, provide that each Member of the Plan would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer, if this Plan had then terminated.

Section 13.10 Nondiversion of Plan Assets. The Employer shall not be entitled to any part of the corpus or income of the Trust Fund, and no part thereof shall be used for or diverted to purposes other than for the exclusive benefit of the Members and Beneficiaries hereunder, except as otherwise expressly provided in this Plan.

Section 13.11 Cash Basis Law. The parties acknowledge that the City/Employer is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City/Employer's current budget year. In the event the City/Employer does not so budget and appropriate the funds, City/Employer shall send written notice to Trustee of the lack of budgeted funds for this Agreement and the parties shall be relieved from all further obligations, without penalty under this Agreement except that the City/Employer shall pay Trustee for all services rendered under this Agreement prior to the date the written notice is received by Trustee.

Section 13.12 Insurance. Trustee agrees to maintain insurance coverage of the type, with the amounts of deductibles and limits, and for the duration of the term of this Agreement, as set forth in Exhibit C attached hereto; provided, Trustee reserves the right to amend Exhibit C from time to time, and will provide an updated certification to the City/Employer upon request.

Section 13.13 Compliance with Equal Opportunity Laws, Regulations and Rules. Trustee agrees that as required by K.S.A. 44-1030 and K.S.A. 44-1116:

a. Trustee shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, ancestry or age;

b. In all solicitations or advertisements for employees, Trustee shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission (“Commission”);

c. If Trustee fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, it shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City/Employer;

d. If Trustee is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Trustee shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City/Employer; and

e. Trustee shall include the provisions of paragraphs a. through d. above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

Trustee further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*), as well as all other federal, state and local laws, ordinances and regulations applicable to this project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project, and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

The foregoing covenant shall apply to the Trustee only to the extent legally required.

Section 13.14 City/Employer's Right to Access Information and Trustee's Cooperation. The City/Employer may audit any of Trustee’s services related to the performance of this Agreement. Trustee shall cooperate with all reasonable requests for information received from the City/Employer, its auditors, or its representatives in connection with all audits. The City/Employer shall bear the costs and expenses associated with all audits. Trustee shall provide requested documents and data on a timely basis to the City/Employer or Plan Participants.

Section 13.15 Shareholder Communications Act Election. The City/Employer has made its election under the Shareholder Communications Act of 1985 as set forth in Exhibit D attached hereto.

ARTICLE XIV
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT
AND QUALIFIED MILITARY SERVICE

Section 14.01 Application. The provisions of this Article apply to any Member whose return to the employment of the Employer following Qualified Uniformed Service is initiated on or after December 12, 1994. "Qualified Uniformed Service" means military or other service satisfying the requirements described below.

Section 14.02 Conditions for Qualified Uniformed Service Credit. For a Member to receive Service, Credited Service, or both, as described below, for "Qualified Uniformed Service," the following conditions must be satisfied:

a. The Member must have been engaged in "service in the uniformed services." For this purpose:

i. "service" means the performance of duty on a voluntary or involuntary basis under competent authority and includes active duty, active duty for training, inactive duty training, full-time National Guard Duty, and a period for which an individual is absent from employment for the purpose of an examination to determine the fitness of the individual to perform any such duty; and

ii. "uniformed services" means the Armed Forces of the United States, the Army National Guard and the Air National Guard for an individual engaged in active duty for training or inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President of the United States in time of war or emergency.

b. The Member must not have been terminated from service in the uniformed services by reason of a dishonorable or bad conduct discharge or under any other of the circumstances described in Section 4304 of Title 38, United States Code, or its successor.

c. The Member must have satisfied the advance notice, cumulative length of absence, reporting and all other requirements necessary in order for the Member to have been entitled to reemployment rights with the Employer and to pension plan rights pursuant to Chapter 43 of Title 38, United States Code, or its successor.

Section 14.03 General Rule for Credited Service and Years of Service.

a. A period of Qualified Uniformed Service shall be taken into account in computing a Member's years of Service and Credited Service under the Plan, by crediting the Member with the Hours of Service with which he or she reasonably would have been credited but for his or her period of Qualified Uniformed Service, offset by any Years of Service or Credited Service to which the Member is otherwise entitled for such period. No credit shall be provided for any period or portion of a period of Qualified Uniformed Service to the extent the Member would not have received credit for the period or portion

of such period had he or she continued to be employed by the Employer in the position he or she left to enter Qualified Uniformed Service.

b. Where an Employee, immediately prior to his or her Qualified Uniformed Service, was employed by the Employer but was not a Member of the Plan, a special rule applies. In that case, when the Employee does become a Member, the Plan shall credit the Service and Credited Service described in Section 14.03(a), but only for the period commencing on the date the Member would have become a Member (but for the period of Qualified Uniformed Service) and ending on the date the Qualified Uniformed Service ceases.

Section 14.04 Five-Year Limitation. A Member's periods of Qualified Uniformed Service, when aggregated (and regardless of when served), shall not result in credit for more than five (5) years of Service or Credited Service. or such other number of years or partial years required by law. Additional periods, although not credited, shall not give rise to a Break in Service, provided that such periods continue to entitle the Member to reemployment rights pursuant to Chapter 43 of Title 38, United States Code, or its successor.

Section 14.05 Death Benefits under USERRA-Qualified Active Military Service. In the event a Member dies on or after January 1, 2007 while performing "qualified military service" as such term is defined in Code Section 414(u), the survivors of the Member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the Plan had the Member resumed employment with the Employer and then terminated employment on account of death.

ARTICLE XV

CODE SECTION 415 LIMITATIONS

Section 15.01 Annual Benefit.

a. "**Annual Benefit.**" The "Annual Benefit" otherwise payable to a Member under the Plan at any time shall not exceed the "Maximum Permissible Benefit." If the benefit the Member would otherwise accrue in a "Limitation Year" would produce an "Annual Benefit" in excess of the "Maximum Permissible Benefit," then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the "Maximum Permissible Benefit."

b. **Adjustment if in two defined benefit plans.** If the Member is, or has ever been, a Member in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a "Predecessor Employer," the sum of the Member's "Annual Benefits" from all such plans may not exceed the "Maximum Permissible Benefit." Where the Member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the "Maximum Permissible Benefit" applicable at that age, the Employer shall limit a Member's benefit in accordance with the terms of the Plans.

c. **Grandfather of limits prior to July 1, 2007.** The application of the provisions of this Article shall not cause the "Maximum Permissible Benefit" for any

Member to be less than the Member's Accrued Benefit under all the defined benefit plans of the Employer or a "Predecessor Employer" as of the end of the last "Limitation Year" beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last "Limitation Year" beginning before July 1, 2007, as described in Regulations Section 1.415(a)-1(g)(4).

d. **Other rules applicable.** The limitations of this Article shall be determined and applied taking into account the rules in Section 15.03.

Section 15.02 Definitions. For purposes of this Article 15, the following definitions apply.

a. **Annual Benefit.** "Annual Benefit" means a benefit that is payable annually in the form of a "Straight Life Annuity." Except as provided below, where a benefit is payable in a form other than a "Straight Life Annuity," the benefit shall be adjusted to an actuarially equivalent "Straight Life Annuity" that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. 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 Article 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 Annuity Starting Date has occurred shall be made without regard to Regulations Section 1.401(a)-20, Q&A 10(d), and with regard to Regulations Section 1.415(b)1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Member's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any "Limitation Year" shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). 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.

The determination of the "Annual Benefit" shall take into account Social Security supplements described in Code Section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations

Section 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a "Straight Life Annuity" shall be made in accordance with (i) or (ii) below.

i. **Benefit forms not subject to Code Section 417(e)(3).** The "Straight Life Annuity" that is actuarially equivalent to the Member's form of benefit shall be determined under this subsection i if the form of the Member's benefit is either (a) a nondecreasing annuity (other than a "Straight Life Annuity") payable for a period of not less than the life of the Member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (b) an annuity that decreases during the life of the Member merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

A. **"Limitation Years" beginning before July 1, 2007.** For "Limitation Years" beginning before July 1, 2007, the actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

B. **"Limitation Years" beginning on or after July 1, 2007.** For "Limitation Years" beginning on or after July 1, 2007, the actuarially equivalent "Straight Life Annuity" is equal to the greater of (I) the annual amount of 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; and (II) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

ii. **Benefit Forms Subject to Code Section 417(e)(3).** The "Straight Life Annuity" that is actuarially equivalent to the Member's form of benefit shall be determined under this paragraph if the form of the Member's benefit is other than a benefit form described in subsection (i) above. In this case, the actuarially equivalent "Straight Life Annuity" shall be determined as follows:

A. **Annuity Starting Date in Plan Years Beginning After 2005.** If the Annuity Starting Date of the Member's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent "Straight Life Annuity" is equal to the greatest of (I) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Member's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (II) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in the Plan; and (III) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Member's form of benefit, computed using the applicable interest rate and applicable mortality table defined in the Plan, divided by 1.05.

B. **Annuity Starting Date in Plan Years Beginning in 2004 or 2005.** If the Annuity Starting Date of the Member's form of benefit is in a Plan Year beginning in 2004 or 2005, except as provided in the transition rule of (iii) below (if elected), the actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) a 5.5% interest rate assumption and the applicable mortality table defined in the Plan.

b. **Defined Benefit Dollar Limitation.** "Defined Benefit Dollar Limitation" means, effective for "Limitation Years" ending after December 31, 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." (In 2008, the "Defined Benefit Dollar Limitation" is \$185,000.) 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.

c. **Employer.** "Employer" means, for purposes of this Article, the Employer that has adopted the Plan, and all members of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o).

d. **Formerly Affiliated Plan of the Employer.** "Formerly Affiliated Plan of the Employer" means a plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, "cessation of affiliation" means the event that (i) causes an entity to no longer be considered the Employer, such as the sale of a member of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h), to an unrelated corporation, or (ii) causes a plan to not actually be maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

e. **Limitation Year.** The "Limitation Year" for this Plan shall be the Plan Year.

f. **Maximum Permissible Benefit.** "Maximum Permissible Benefit" means the "Defined Benefit Dollar Limitation" (adjusted where required, as provided below).

i. Adjustment for Less Than 10 Years of Participation or Service: If the Member has less than 10 years of participation in the Plan, the "Defined Benefit Dollar Limitation" shall be multiplied by a fraction -- (i) the numerator of which is the number of "Years of Participation" in the Plan (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

ii. Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in "Limitation Years" ending after December 31, 2001, the "Defined Benefit Dollar Limitation" shall be adjusted if the Annuity Starting Date of the Member's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the "Defined Benefit Dollar Limitation" shall be adjusted under subsection A below, as modified by subsection C below. If the Annuity Starting Date is after age 65, the "Defined Benefit Dollar Limitation" shall be adjusted under subsection B below, as modified subsection C below.

A. Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62:

(1) "Limitation Years" Beginning Before July 1, 2007. If the Annuity Starting Date for the Member's benefit is prior to age 62 and occurs in a "Limitation Year" beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for 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 "Defined Benefit Dollar Limitation" (adjusted under subsection f.i. above for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or

(2) a five-percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(2) "Limitation Years" Beginning on or After July 1, 2007.

(a) Plan Does Not Have Immediately Commencing "Straight Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Member's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the Plan does not have an immediately commencing "Straight Life Annuity" payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for 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 "Defined Benefit Dollar Limitation" (adjusted under subsection f.i above for years of participation less than ten (10), if required) with actuarial equivalence computed using a five-percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

(b) Plan Has Immediately Commencing "Straight Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Member's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the Plan has an immediately commencing "Straight Life Annuity" payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Member's Annuity Starting Date is the lesser of the limitation determined under subsection f.ii.A.2.a above and the "Defined Benefit Dollar Limitation" (adjusted under subsection f.i. above for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing "Straight Life Annuity" under the Plan at the Member's Annuity Starting Date to the annual amount of the immediately commencing "Straight Life Annuity" under the Plan at age 62, both determined without applying the limitations of this article.

B. Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement After Age 65:

(1) "Limitation Years" Beginning Before July 1, 2007. If the Annuity Starting Date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for 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 "Defined Benefit Dollar Limitation" (adjusted under subsection f.i above for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five-percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(2) "Limitation Years" Beginning Before July 1, 2007.

(a) Plan Does Not Have Immediately Commencing "Straight Life Annuity" Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Member's benefit is after age 65 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the Plan does not have an immediately commencing "Straight Life Annuity" payable at both age 65 and the age of benefit commencement, the "Defined Benefit 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 "Defined Benefit Dollar Limitation" (adjusted under subsection (f)(i) above for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in the Plan (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

(b) Plan Has Immediately Commencing "Straight Life Annuity" Payable at both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Member's benefit is after age 65 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the plan has an immediately commencing "Straight Life

Annuity" payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Member's Annuity Starting Date is the lesser of the limitation determined under subsection f.ii.B.2.a above and the "Defined Benefit Dollar Limitation" (adjusted under subsection f.i above for years of participation less than ten (10), if required) 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 Article. 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.

C. Notwithstanding the other requirements of this subsection f.ii., no adjustment shall be made to the "Defined Benefit 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.

iii. Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Member under this Plan shall be deemed not to exceed the "Maximum Permissible Benefit" if:

A. the retirement benefits payable for a "Limitation Year" under any form of benefit with respect to such Member under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction – (I) the numerator of which is the

Member's number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the Employer, and (II) the denominator of which is ten (10); and

B. the Employer (or a "Predecessor Employer") has not at any time maintained a defined contribution plan in which the Member participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for post-retirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

g. **Predecessor Employer.** "Predecessor Employer" means, with respect to a Member, a former employer of such Member if the Employer maintains a Plan that provides a benefit which the Member accrued while performing services for the former employer. A former entity that antedates the Employer is also a "Predecessor Employer" with respect to a Member if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity. For this purpose, the formerly affiliated plan rules in Regulations Section 1.415(f)-1(b)(2) apply as if the Employer and "Predecessor Employer" constituted a single employer under the rules described in Regulations Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulations Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the "Predecessor Employer" relationship, such as a transfer of benefits or plan sponsorship.

h. **Straight Life Annuity.** "Straight Life Annuity" means an annuity payable in equal installments for the life of a Member that terminates upon the Member's death.

Section 15.03 Other rules.

a. **Benefits under terminated plans.** If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan Members and a Member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Member's benefits under the terminated plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all Members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

b. **Benefits transferred from the Plan.** If a Member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), then the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Member's benefits under a defined

benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Regulations Section 1.411(d)-4, Q&A-3(c), then the transferred benefits are treated by the Employer's Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Members' benefit liabilities under the plan. If a Member's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Regulations Section 1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

c. **Formerly affiliated plans of the Employer.** A "Formerly Affiliated Plan of an Employer" shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Members' benefit liabilities under the Plan and had purchased annuities to provide benefits.

d. **Plans of a "Predecessor Employer."** If the Employer maintains a defined benefit plan that provides benefits accrued by a Member while performing services for a "Predecessor Employer," then the Member's benefits under a plan maintained by the "Predecessor Employer" shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the "Predecessor Employer" shall be treated as if it had terminated immediately prior to the event giving rise to the "Predecessor Employer" relationship with sufficient assets to pay Members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the "Predecessor Employer" shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the "Predecessor Employer."

e. **Special rules.** The limitations of this Article shall be determined and applied taking into account the rules in Regulations Section 1.415(f)-1(d), (e) and (h).

Section 15.04 Disability or Death Benefits Payable Under the Plan. For "Limitation Years" beginning after December 31, 1994, the provisions of this Article shall not apply to any Disability Payments or Death Benefit payable under the Plan.

Section 15.05 Change of "Limitation Year." The "Limitation Year" may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's "Limitation Year," then the Plan is treated as if the Plan had been amended to change its "Limitation Year."

SIGNATURES

IN WITNESS WHEREOF, the City of Overland Park, Kansas has caused this amendment and restatement of the Plan and Trust to be executed on its behalf, and the Trustee has caused this agreement to be executed on its behalf, all on the day and year first above written, but to be effective January 1, 2011.

CITY OF OVERLAND PARK, KANSAS

By: _____
Title: Mayor

ATTEST:

By: _____
Title: City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Deputy City Attorney

Stinson Morrison Hecker LLP

By: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
Bryce Buster
Title: Vice President and
Relationship Manager

**OVERLAND PARK, KANSAS, FIRE DEPARTMENT
RETIREMENT PLAN AND TRUST**

EXHIBIT A

List of Common, Collective and Pooled Trust Funds

State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans
(SSgA U.S. Aggregate Bond Index Non-Lending Fund).

**OVERLAND PARK, KANSAS, FIRE DEPARTMENT
RETIREMENT PLAN AND TRUST**

EXHIBIT B

Benefit Plan Fee Disclosure and Authorization

See attached Benefit Plan Fee Disclosure and Authorization.

**OVERLAND PARK, KANSAS, FIRE DEPARTMENT
RETIREMENT PLAN AND TRUST**

EXHIBIT C

Insurance

See attached certificates of liability insurance.

**OVERLAND PARK, KANSAS, FIRE DEPARTMENT
RETIREMENT PLAN AND TRUST**

EXHIBIT D

Shareholder Communications Act Election

Under the Shareholder Communications Act of 1985, as amended, the Trustee must try to permit direct communications between a company that issues a security held in Trust (the "Securities-Issuer") and any person who has or shares the power to vote, or the power to direct the voting of, that security (the "Voter"). Unless the Voter registers its objection with the Trustee, the Trustee must disclose the Voter's name, address, and securities positions held in the Trust to the Securities-Issuer upon the Securities-Issuer's request ("Disclosure"). With that in mind, the entity named below hereby (i) represents that it is the Voter and (ii) mindful that failing to check one and only line below will cause the Voter to be deemed to have consented to Disclosure, registers its

_____ consent to Disclosure.

_____ objection to Disclosure.

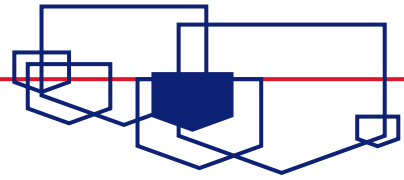
An authorized officer of the Voter hereby executes this form.

CITY OF OVERLAND PARK, KANSAS

By: _____

Its: City Manager _____

Dated: _____



Benefit Plan* Fee Disclosure and Authorization

(PLAN INVESTMENTS DIRECTED BY INDEPENDENT FIDUCIARY OR INVESTMENT MANAGER – NO PARTICIPANT DIRECTION)

Plan Name: **OVERLAND PARK, KANSAS, FIRE DEPARTMENT RETIREMENT PLAN AND TRUST**

The undersigned is the named fiduciary or other fiduciary ("Independent Fiduciary") of the above named plan ("Plan") with authority to select the Plan's investments and approve the fees to be paid from the Plan.

U.S. Bank (as defined below) will act in the following capacity for the Plan:

- Directed Trustee
- Custodian

This Fee Disclosure and Authorization is effective as of _____ (the "Effective Date").

INTRODUCTION

The Independent Fiduciary has selected U.S. Bancorp, acting through its subsidiary, U.S. Bank National Association or one or more of its other subsidiaries or affiliates (collectively, "U.S. Bank"), to provide services to the Plan. This Fee Disclosure and Authorization describes the Plan's services and fee arrangements, as follows:

Part A designates the investments for the Plan, including mutual funds and collective trust funds (the "Funds"), and describes the fees and expenses of the Funds, including compensation (if any) U.S. Bank receives from the Funds;

Part B describes the fees that the Plan will pay directly to U.S. Bank; and

Part C describes the circumstances under which this Fee Disclosure and Authorization may be changed and includes the Independent Fiduciary's approval and authorization of the arrangements described in Parts A, B, and C.

By executing this Fee Disclosure and Authorization, the Independent Fiduciary is authorizing these services, fees, and compensation.

For each Fund selected by the Independent Fiduciary, U.S. Bank provides the Independent Fiduciary a prospectus or a summary description document. The prospectuses and summary description documents contain important information that supplements the information included in this Fee Disclosure and Authorization. The Independent Fiduciary should carefully review the prospectuses and summary description documents.

* To be used for all ERISA-covered benefit plans (including retirement plans and VEBAs) and governmental plans.

Benefit Plan* Fee Disclosure and Authorization

A. FUND SELECTION AND FEE DISCLOSURE

The Independent Fiduciary has selected the following investments in which to invest Plan assets in accordance with the Independent Fiduciary's instructions from time to time.

Proprietary Mutual Funds - The Independent Fiduciary directs U.S. Bank to invest Plan assets in "proprietary" mutual funds affiliated with U.S. Bank, including *First American Investment Funds, Inc.*, *First American Funds, Inc.*, and *First American Strategy Funds, Inc.* (collectively, "*First American Funds*"), set forth below. U.S. Bank provides services to the *First American Funds*, including investment advisory, custodial, administrative and fund transfer agency services, distribution services, shareholder service and other services and receives fees for these services from the Funds. This compensation may include fees paid under a plan of distribution under SEC Rule 12b-1 ("12b-1 fees"). The advisory fee and other fees received by U.S. Bank from each of the *First American Funds* are shown below.

The *First American Funds* selected by the Independent Fiduciary are as follows:

Fund Name	Ticker	Share Class	Advisory Fee	Other Fees Received by U.S. Bank*	Total Expense	Net Expense (after fee waiver)**
First American Prime Obligation Y	FAIX X	Y	0.1	0.37	0.51	0.51

* This amount is based on amounts received by U.S. Bank as reported by the *First American Funds* in the most recent annual report to shareholders. This amount may vary based on actual charges for services rendered, but the basis for calculating this amount does not change. U.S. Bank also receives fees from *First American Funds* for securities lending services; these fees are not included in this column. For more information on how these fees are calculated and actual amounts received by U.S. Bank, please see the applicable prospectus or contact your Relationship Manager.

**U.S. Bank may voluntarily waive a portion of the fees it is entitled to receive for providing advisory and other services to *First American Funds*. If there are any fee waivers in effect, the net Fund expense after the waiver is shown in this column. The fee waivers may be terminated at any time, as described by the applicable prospectus. By authorizing investment in the designated Funds, the Independent Fiduciary is hereby authorizing the fees paid by the Fund (and U.S. Bank's receipt of fees) up to the total annual operating expense as disclosed in the prospectus.

Non-Proprietary Mutual Funds – The Independent Fiduciary directs U.S. Bank to invest Plan assets in "non-proprietary" Funds, not affiliated with U.S. Bank. U.S. Bank may enter into agreements with non-proprietary Funds or their service providers (including advisers, administrators or transfer agents, and underwriters) whereby U.S. Bank provides distribution services, shareholder services, sub-transfer agency, custodial and other administrative support services and receives compensation for the services. Generally, compensation may include fees paid under a plan of distribution under SEC Rule 12b-1. The compensation received by U.S. Bank directly or indirectly from each non-proprietary Fund is based on the value of the Plan's investment in the Fund (an "asset-based" fee) at rates that vary among Funds and share classes selected. The amount of fees U.S. Bank may receive from each of the non-proprietary Funds is identified on the schedule below.

In addition, some non-proprietary Funds pay U.S. Bank a finders fee of up to 125 basis points on new contributions to the Fund. Compensation received by U.S. Bank directly or indirectly from Funds does not increase the Fund fees and expenses the Plan pays as a Fund shareholder, as disclosed in the applicable prospectus.

The non-proprietary Funds selected by the Independent Fiduciary are as follows:

Fund Name	Ticker	Share Class	Fees Received by U.S. Bank*	Total Expense
American Funds EuroPacific Gr R5	RERFX	Retirement	0	0.56
Eaton Vance Structured Emerging Mkts I	EIEMX	Inst	0	1.36
Templeton Global Total Return Adv	TTRZX	Adv	0	0.89

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SHARES OF MUTUAL FUNDS AND COLLECTIVE TRUST FUNDS ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY, ANY BANK, INCLUDING U.S. BANCORP AFFILIATE BANKS, NOR DOES THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE FEDERAL RESERVE BOARD, OR ANY OTHER AGENCY INSURE THEM. INVESTMENT IN MUTUAL FUNDS OR COLLECTIVE TRUST FUNDS INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL, DUE TO FLUCTUATIONS IN EACH FUND'S NET ASSET VALUE.

Benefit Plan* Fee Disclosure and Authorization

* U.S. Bank's affiliates Quasar Distributors, LLC, and/or U.S. Bancorp Fund Services Inc. provide certain distribution, administration, transfer agency, and other services to a limited number of Funds and receive fees for those services which in the aggregate range from .005% to .30% of net assets of the Fund. These fees are in addition to the fees reported in this column. These fees do not increase or decrease the Fund operating expenses as described in the Fund's prospectus. For more information, including information as to whether these affiliates provide services to and receive fees from any particular Fund, please review the Fund's prospectus or contact your Relationship Manager.

Collective Trust Funds – The Independent Fiduciary directs U.S. Bank to invest Plan assets in the following collective trust funds maintained by U.S. Bank. These are not mutual funds. For detailed information about each collective trust fund and its fees, see the Fund's summary description document. [NOTE: U.S. Bank may not offer collective trust funds to VEBAs.]

The collective trust funds selected by the Independent Fiduciary are as follows:

Fund Name	Ticker	Share Class	Total Expense
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Not Applicable

Cash Management Sweep Account – The Independent Fiduciary directs U.S. Bank to invest contributions or other amounts deposited with U.S. Bank for the Plan without an accompanying investment instruction from the Independent Fiduciary or designated investment manager in the Fund designated below until such time as an instruction is received. The service and fee arrangements for this Fund are described above.

The Cash Management Sweep Account Fund is: First American Prime Obligation Fund CI Y (FAIXX)

[NOTE: The Cash Management Sweep Account Fund must be one of the Funds selected in the grids above.]

Fund Changes – The Independent Fiduciary acknowledges that U.S. Bank has established administrative and business relationships with certain mutual funds and other investment vehicles, under which U.S. Bank makes such investment options available on its "menu" of Funds for its employee benefit plan clients. U.S. Bank reserves the right to make changes in the menu of available Funds from time to time. If U.S. Bank makes a change to its Fund menu and such change affects the Funds selected in this Fee Disclosure and Authorization, U.S. Bank shall provide notice reasonably in advance of the effective date of such change, including notice of the reason for any such change. If a Fund will be deleted, U.S. Bank may include in its notice a proposed substitute Fund. The Independent Fiduciary agrees that, in the case of such notice of change to Funds available to the Plan, the Independent Fiduciary's failure to notify U.S. Bank in writing that the Independent Fiduciary rejects the proposed change before the effective date shall constitute the Independent Fiduciary's approval of the change proposed by U.S. Bank.

Other Directed Investments – In a separate instruction document, the Independent Fiduciary or an investment manager designated by the Independent Fiduciary has directed that Plan assets be invested in one or more additional investments. These investments shall be made solely at the direction of the Independent Fiduciary. U.S. Bank has not recommended these additional investment(s), exercises no discretion with regard to the additional investment(s), and shall have no responsibility to review or monitor the additional investments(s). Investment in the additional investment(s) may be subject to additional fees and expenses.

- There are other directed investments, as set forth in a separate instruction document – Appendix A.
- There are no other directed investments.

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SHARES OF MUTUAL FUNDS AND COLLECTIVE TRUST FUNDS ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY, ANY BANK, INCLUDING U.S. BANCORP AFFILIATE BANKS, NOR DOES THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE FEDERAL RESERVE BOARD, OR ANY OTHER AGENCY INSURE THEM. INVESTMENT IN MUTUAL FUNDS OR COLLECTIVE TRUST FUNDS INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL, DUE TO FLUCTUATIONS IN EACH FUND'S NET ASSET VALUE.

Benefit Plan* Fee Disclosure and Authorization

B. FEES PAID BY THE PLAN

The Plan shall pay the following fees ("Plan Fees") directly to U.S. Bank:

Directed Trustee Fee:	4 basis points (.0004) on the first \$40 Million 2 basis points (.0002) on the Balance
Trust Administration Fee:	\$500 per year
Security Transactions:	\$8 per Buy or Sell Transaction (DTC, Fed, Mutual Funds (except money market), Commingled Funds.
Check Disbursements:	\$12 per Transaction
Wire Disbursements:	\$15 per Transaction
Benefit Payments: (with 1099-R tax reporting)	\$2 Periodic, \$15 Lump Sum

Fees are charged to the account(s) Quarterly

The Plan Fees are in addition to fees and expenses the Plan pays as an investor in the Funds ("Fund Fees"). Fund Fees are charged against the Funds' assets and reduce the Funds' average daily balance and investment yields. Each of the Fund's fees and expenses are different and also vary based on share class. As of the Effective Date, each of the Fund's Fees are as set forth in Part A – Fund Selection and Fee Disclosure and are described in more detail by the applicable prospectus.

U.S. Bank's compensation for Plan services includes the Plan Fees and also the compensation received by U.S. Bank directly or indirectly from Funds as a result of the Plan's investment in the Funds, as described in Part A – Fund Selection and Fee Disclosure. Plan Fees may be affected by amounts received by U.S. Bank from the Funds because these amounts may reduce Plan Fees that would otherwise be charged by U.S. Bank. Amounts received by U.S. Bank directly or indirectly from Funds vary among the Funds and Funds' share classes. Therefore, selections among Funds and share classes may affect the amount of Plan Fees.

Pending Transaction Fees. U.S. Bank or its agent (the "Financial Institution") may hold (i) cash awaiting distribution to participants or other proper recipients, including beneficiaries, or (ii) funds held for other purposes (for example, maintaining liquidity) in an interest-bearing or noninterest-bearing deposit account in the Financial Institution's banking department and, thereby, earn and retain the "float" as part of its compensation for servicing the Plan.

For distributions made from the Plan, the float period commences on the date the check, wire transfer, or electronic transfer is issued to the participant or beneficiary (or other proper recipient) and ends on the date the check is presented to the Financial Institution for payment and settles or wire or electronic transfer is accepted by the receiving institution. The time period involved varies for each payment issued, though the average time such payments remain outstanding is one to 15 days from the date of issuance. For funds held for other purposes, the float period commences on the date good funds are deposited in the applicable deposit account and ends on the date the funds are withdrawn or transferred therefrom.

The float rate on (i) uncashed checks, pending wire transfers, and pending electronic transfers and (ii) funds held for other purposes is generally no more than the Target Federal Funds Rate (the "Target Rate") of interest applicable during the period involved. The Target Rate is the short-term rate objective announced by the Federal Reserve. The actual rate of interest paid between banks is the Effective Federal Funds Rate (the "Effective Rate"). The Effective Rate changes daily but is generally close to the Target Rate. Changes to the Target Rate are made by the Federal Reserve's Open Market Committee. The announced Target Rate can be obtained upon request from your account representative or can be found in the Wall Street Journal.

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Benefit Plan* Fee Disclosure and Authorization

U.S. Bank's Provision of Services. Services to the Plan and Funds may be provided by U.S. Bank directly or through one or more of its affiliates, including any subsidiary or affiliate of U.S. Bancorp. In particular, U.S. Bank's affiliate, Quasar Distributors, LLC, a registered broker-dealer, or another affiliate, may provide brokerage and other services to the Plan, including effecting transactions in the Funds. U.S. Bank may also engage third parties to assist it in providing Plan services, including Fidelity Brokerage Services LLC and National Financial Services LLC (together, "Fidelity"), which provide certain brokerage and transaction processing services in connection with the Plan. U.S. Bank may change its arrangements for the provision of Plan services from time to time, including its engagement of any of its affiliates or Fidelity. U.S. Bank is solely responsible for compensating its affiliates and any third parties, and U.S. Bank may pay such compensation from amounts U.S. Bank receives from the Plan and directly or indirectly from Funds. The Plan's fees do not change based on U.S. Bank's decision to engage affiliates or third parties in connection with the Plan services.

Additional information concerning U.S. Bank's compensation is available on request to your account representative, including an estimate of the annual amounts U.S. Bank receives in connection with the Plan's investment in the Funds.

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SHARES OF MUTUAL FUNDS AND COLLECTIVE TRUST FUNDS ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY, ANY BANK, INCLUDING U.S. BANCORP AFFILIATE BANKS, NOR DOES THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE FEDERAL RESERVE BOARD, OR ANY OTHER AGENCY INSURE THEM. INVESTMENT IN MUTUAL FUNDS OR COLLECTIVE TRUST FUNDS INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL, DUE TO FLUCTUATIONS IN EACH FUND'S NET ASSET VALUE.

Benefit Plan* Fee Disclosure and Authorization

C. APPROVAL AND AUTHORIZATION

Changes

This Fee Disclosure and Authorization may be amended from time to time in writing by the parties, or U.S. Bank may propose changes in writing, including any change in fees, or adding, deleting, or substituting any Funds (both proprietary and non-proprietary) designated in Part A – Fund Selection and Fee Disclosure by written notice to the Independent Fiduciary at least 30 days before any change. If the Independent Fiduciary does not object in writing before the change is to be effective in accordance with U.S. Bank's written notice, U.S. Bank shall implement the proposed change as a direction of the Independent Fiduciary.

Acknowledgement

The Independent Fiduciary (or the Independent Fiduciary's authorized representative) hereby confirms and acknowledges that it:

- is independent of U.S. Bank and its affiliates and possesses authority to act as a fiduciary under the Plan;
- understands that the Plan may only be invested in the Funds or investment options designated in this Fee Disclosure and Authorization;
- has received, read, and understands the prospectuses or summary description documents of the *First American Funds* and other Funds designated in Part A – Fund Selection and Fee Disclosure;
- understands and approves the total fees the Plan pays, including (a) the Fund Fees the Plan pays as an investor in the Funds up to the total annual operating expense as disclosed in the applicable prospectuses or summary description documents, (b) Plan Fees paid directly to U.S. Bank, (c) "float" retained by U.S. Bank as compensation for Plan services, and (d) compensation received by U.S. Bank directly or indirectly from the Funds; and
- agrees that a failure to object to an addition, deletion, or substitution of the Funds available for Plan investment or a change in the Plan Fees or Fund Fees may be treated as the Independent Fiduciary's direction, unless the Independent Fiduciary objects in writing before the effective date of such change.

The Independent Fiduciary approves the Plan's fees and services in accordance with the disclosures provided herein.

Independent Fiduciary Authorization

Plan Name: **OVERLAND PARK, KANSAS, FIRE DEPARTMENT RETIREMENT PLAN AND TRUST**

Authorized Signature: _____

Name (Print or Type): _____

Title: _____

Date: _____

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SHARES OF MUTUAL FUNDS AND COLLECTIVE TRUST FUNDS ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY, ANY BANK, INCLUDING U.S. BANCORP AFFILIATE BANKS, NOR DOES THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE FEDERAL RESERVE BOARD, OR ANY OTHER AGENCY INSURE THEM. INVESTMENT IN MUTUAL FUNDS OR COLLECTIVE TRUST FUNDS INVOLVES INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL, DUE TO FLUCTUATIONS IN EACH FUND'S NET ASSET VALUE.

Benefit Plan* Fee Disclosure and Authorization

APPENDIX A

Other directed investments by the Independent Fiduciary:

State Street Global Advisors (SSgA) US Aggregate Bond Index NL Fund

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