



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/14/2011		
Department:		Human Resources		
Department Head		Jim Parrish		
Agenda Coordinator (include phone #): Shirley Montgomery x7296				
CAPTION				
An Ordinance of the City of Plano, Texas amending and restating the Retirement Security Plan generally effective as of January 1, 2011; authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S):				
COMMENTS: The review of the Retirement Security Plan (RSP) Document has been completed and requires City Council approval. This item has no financial impact. STRATEGIC PLAN GOAL: Periodic legal reviews of the Retirement Security Plan document relate to the City's goal of "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Outline of the Retirement Security Plan (RSP) Document Changes				
List of Supporting Documents: Ordinance, Memo, Outline of Changes, Exhibit "A"			Other Departments, Boards, Commissions or Agencies	

November 1, 2011

To: Bruce Glasscock, City Manager
LaShon Ross, Deputy City Manager

Through: Jim Parrish, HR Director

From: Darlene McAndrew, Retirement Administrator

Re: Outline of the Retirement Security Plan (RSP) Document Changes

A few years ago, the decision was made to review the document in its entirety every two years. We have just completed that review. Although our Plan is not subject to ERISA, we do follow many of the ERISA guidelines.

To ensure the update included any federal mandates, our legal department (Victoria Huynh) and I consulted with Brennan Riley, an attorney in Houston.

After several months of reviewing and revising, along with numerous conference calls, the document has been updated and is now ready for council approval.

The outline was developed in an effort to line item the changes made in an easy to follow format. While some are mandated, others are more administrative in nature. All have been reviewed and approved from a legal aspect.

Victoria and I would be happy to answer any questions and/or provide any additional information you feel would be helpful.

Outline of Changes to Retirement Security Plan Document

Table of Contents

- Change to actual page numbers rather than Roman numerals.

Preamble

- Now called “Article 1 Introduction”.
- Made reference to “incidental death benefits” to be consistent with term within Internal Revenue Code.

Article 2. Definitions and Construction

Definitions

(c) “Actuary” - remove reference to Committee selecting vendor for this service.

(f) “Effective date”-corrected to correspond with amended and restated date.

(q) “Normal Retirement Date”-deleted provision referring to “Deferred Vested” as it is not applicable to this section.

(w) “Retirement”-clarification to read termination date.

“Primary social security benefit” moved to Appendix as it no longer applies to a benefit calculation.

Article 3. Service and Participation

3.1 Credited Service:

- Added “unpaid” to leave of absence as paid time is only considered.
- Removed “unless such employee has withdrawn his account balance under TMRS” as the TMRS benefit is no longer considered in the RSP calculation.

3.3 Rehires

- No change in how a benefit is calculated for a rehired employee but added clarification that it will be done in “accordance with actuarial practices.”

3.4 Military Service

- Revisions to this section are federally mandated in order to comply with the “HEART Act”.

Article 5. Requirements for Retirement Benefits

5.3 Disability Retirement

- The definition was moved from this section and placed in the “Definitions” section (j).
- Removed reference to benefit from other employment.

Article 6. Amount of Retirement Benefits

- 6.1 Normal and Late Pension
- Moved reference to social security benefit to the appendix.
- 6.2 Early Pension
- Removed verbiage no longer applicable.
 - Moved reference to social security benefit to appendix.
- 6.3 Disability Pension
- (b) Removed section which referenced workers compensation and/or benefit from outside employment.
- 6.6 Maximum Annual Benefit Under Code Section 415
- Updated to comply with federal regulations

Article 9. Administration

- 9.3 Committee Powers and Duties
- (f) Updated to comply with actual duties related to valuation report
- (i) Removed as not applicable. Plan has no annual report but is instead included in the financial reporting of the City.
- 9.4 Duties and Powers of the Plan Administrator
- (b) Regarding Summary Plan Document, wording change from “to furnish” to “to distribute” to comply with the Government Code
- (e) Removed reference to annual budget as this is not applicable.

An Ordinance of the City of Plano, Texas amending and restating the Retirement Security Plan generally effective as of January 1, 2011; authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, and an effective date.

WHEREAS, the City of Plano, Texas (“Employer”) has established the City of Plano, Texas Retirement Security Plan (“Plan”) for the benefit of its eligible employees and their beneficiaries; and

WHEREAS, by Ordinance 2007-5-20, the City Council amended and restated the Plan to be generally effective as of January 1, 2007; and

WHEREAS, by Ordinance 2008-1-8, the City Council amended Section 6.2, “Early Pension”, of the Plan as Restated January 1, 2007, to identify the calculation method for individuals who retire prior to the normal retirement date; and

WHEREAS, by Ordinance 2008-4-34, the City Council further amended the Plan as Restated January 1, 2007 to 1) update the Plan to recognize that the new Internal Revenue Regulations under Code 415 on the annual maximum limits on benefits payable from a pension plan; 2) provide a formula required by the Internal Revenue Service Regulations for calculating an equivalent annual pension; 3) incorporate the mandatory provisions for rollovers to an eligible retirement plan; and 4) allow non-spouse beneficiaries the right to roll over certain lump sum distributions directly into an eligible Roth IRA; and

WHEREAS, by Ordinance 2009-12-7, the City Council amended the Plan as Restated January 1, 2007 to comply with certain provisions of the Worker, Retiree, and Employee Recovery Act of 2008 and to adopt the provisions of Subchapters A and C of Chapter 804 of the Texas Government Code making the anti-assignment and anti-alienation provisions of Section 12.3 of the Plan applicable to the creation, assignment, recognition, or enforcement of a right to Plan benefits pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order; and

WHEREAS, the Employer further desires to amend and restate the Plan to be generally effective as of January 1, 2011 to incorporate all prior amendments and adopt new legislation as required by law; and

WHEREAS, the City Council has been presented a proposed City of Plano, Texas Retirement Security Plan as Restated January 1, 2011, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the changes to the Plan as shown in Exhibit “A” and all matters attendant and related thereto, the City Council is of the opinion that the City of Plano Retirement Security Plan as Restated January 1, 2011 should be approved, and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the City of Plano Retirement Security Plan as Restated January 1, 2011, attached hereto as Exhibit "A," having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, is hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the City of Plano Retirement Security Plan as Restated January 1, 2011 and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Plan.

Section III. All provisions of the Code of Ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or unconstitutionality of any other portion of this Ordinance.

Section V. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

Section VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 14th day of November, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CITY OF PLANO
RETIREMENT SECURITY PLAN

Restated January 1, 2011

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ARTICLE 1. INTRODUCTION

1.1 Purpose: The purpose of this Plan is to provide retirement and incidental death benefits for all employees of the Employer (as hereinafter defined) who complete a period of faithful service and otherwise become eligible for such benefits in accordance with the terms and provisions hereof. The benefits provided by this Plan will be paid from a Trust Fund established by the Employer.

This Plan is established and shall be maintained for the exclusive benefit of the eligible employees of the Employer and their beneficiaries. Except as hereinafter provided, no part of the Trust Fund can ever revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of the Employees of the Employer and their beneficiaries.

1.2 Effect of Restatement: This amended and restated Plan applies for purposes of determining benefits on and after the Effective Date except as otherwise specified herein. Those provisions of the Plan that are effective as of a date before the Effective Date, and that were not otherwise in effect under the Plan before the Plan's amendment and restatement by this instrument shall nonetheless be applied to determine rights hereunder after the effective date of such provision unless specified otherwise herein. Unless it is inconsistent with the terms of the Plan, any action taken or election made by the Committee or by a Participant, Employee, former Employee, or beneficiary under the Plan before the Plan's amendment and restatement by this instrument shall be regarded as having been taken or made under the Plan as amended and restated and as in effect hereunder unless and until changed in accordance with the terms of the Plan.

ARTICLE 2. DEFINITIONS AND CONSTRUCTION

2.1 Definitions: Where the following words and phrases appear in this Plan, they shall have the respective meanings set forth below, unless their context clearly indicates to the contrary:

- (a) Accrued Benefit: The benefit determined under the Plan, expressed in the form of a monthly benefit commencing at Normal Retirement Date which is applicable to an Employee at any time under the provisions of the Plan.
- (b) Actuarial (or Actuarially) Equivalent: Equality in value of the aggregate amounts expected to be received under different forms of payment, based upon mortality and interest rate assumptions, as defined below:
 - (1) Interest rate assumption – The interest rate used for purposes of computing optional forms of benefit payments shall be Eight Percent (8%).
 - (2) Mortality assumption – The mortality assumption used for purposes of computing optional forms of benefit payments, and for purposes of computing any adjustments called for under the terms of this Plan for benefits commencing other than at Normal Retirement Date when such adjustment is not otherwise provided for in this Plan, shall be taken from the 1983 Group Annuity Mortality Table (GATT mortality) using a unisex rate that is 50% male and 50% female. Notwithstanding the foregoing, the mortality assumptions that are used to compute the actuarially equivalent maximum amounts of retirement income permitted under Section 6.6 on and after January 1, 1995 and before December 31, 2002 shall be based upon the mortality table prescribed by the Secretary of the Treasury pursuant to section 415(b)(2)(E) of the Code. For distributions with annuity starting dates on or after December 31, 2002, the applicable mortality table used for purposes of adjusting any benefit or limitation under section 415(b)(2)(B), (C), or (D) of the Code is the table prescribed in Rev. Rul. 2001-62. For distributions with annuity starting dates on or after January 1, 2009, the applicable mortality table used for purposes of adjusting any benefit or limitation under section 415(b)(2)(B), (C), or (D) of the Code is the mortality table prescribed in section 417(e)(3)(B) of the Code.
- (c) Actuary: An individual or firm providing actuarial services to the Plan.
- (d) Average Monthly Compensation: The result obtained by dividing the total Compensation paid to an Employee during a considered period by the number of months in the considered period. The considered period shall be the thirty-six (36) consecutive calendar months within the last one hundred twenty (120) completed calendar months of Credited Service which yield the highest Average Monthly Compensation. In the event the Employee has completed fewer than thirty-six (36) consecutive months of Credited Service, the considered period shall be all completed months in which Compensation was paid. For the purpose of computation of "Average Monthly Compensation," the Compensation of an

Employee during any month may be determined by deeming such Employee to have earned one-twelfth (1/12) of his or her Compensation for a calendar year during each month.

- (e) City Council: The Plano City Council.
- (f) City Manager: The Chief Executive Officer of the City of Plano, Texas, appointed by the City Council.
- (g) Code: The Internal Revenue Code of 1986, as amended.
- (h) Committee: The persons appointed to administer the Plan in accordance with Article 9.
- (i) Compensation: The base salary or wages paid to an Employee by the Employer for personal services exclusive of any overtime pay, longevity pay, standby pay, bonuses and severance payments, such as accrued vacation or sick pay. The term "Compensation" shall also include any contribution made by an Employee participating in a salary reduction eligible deferred compensation plan (under section 457(b) of the Code) sponsored by the City of Plano, Texas.
 - (1) Compensation taken into account during each of the twelve (12) consecutive month periods used in determining Average Monthly Compensation under (d) above, shall not exceed \$200,000, or such higher amount as in effect for the calendar year in which each such twelve (12) month period begins, as allowed under section 401(a)(17) of the Code. The \$200,000 limit on annual Compensation in the preceding sentence shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year. However, the Accrued Benefit determined in accordance with this provision shall not be less than the Accrued Benefit determined on December 31, 1992.
 - (2) Notwithstanding the above, the Code section 401(a)(17) annual Compensation limit with respect to any given calendar year or other specified 12-consecutive month period beginning on or after January 1, 1994 and ending December 31, 2001, shall be equal to \$150,000 or such increased or decreased amount, as the case may be, that applies as of the January 1 coincident with or immediately preceding the beginning of such given calendar year or other specified 12-consecutive-month period, pursuant to the provisions of section 401(a)(17) of the Code; provided, however, that in determining the Compensation of an Employee who first became a participant in the Plan prior to January 1, 1996, the Code section 401(a)(17) annual Compensation limit shall be determined without regard to this paragraph.
 - (3) In the event that Compensation under the Plan is determined based on a period of time that contains fewer than 12 calendar months, the Code section 401(a)(17) annual Compensation limit for that period of time shall be equal to the Code section 401(a)(17) annual Compensation limit for

the calendar year during which such period of time begins multiplied by the fraction in which the numerator is the number of full months in such period of time and the denominator is 12.

- (4) Any provisions herein to the contrary notwithstanding, an Employee's accrued benefit as of December 31, 1993 shall not be reduced due to the Code section 401(a)(17) annual Compensation limit imposed effective as of January 1, 1994 on the amount of his Compensation. In the event that the Code section 401(a)(17) annual Compensation limit is reduced effective as of any date subsequent to January 1, 1994, a Participant's accrued benefit immediately prior to the date that such reduction becomes effective shall not be reduced due to the reduction in such limit.
- (j) Disability: A physical or mental condition which, in the judgment of the Committee, totally and presumably permanently prevents the Employee from engaging in any substantial gainful employment. Disability under the Plan shall be considered total and presumably permanent if, on the basis of a medical examination by a doctor or clinic appointed by the Committee, the Committee finds that the Employee has a physical or mental condition which totally and presumably permanently prevents him from engaging in any substantial gainful employment with the Employer. The Committee shall, however, have the right to waive the requirement for a medical examination if it is determined that such an examination is unnecessary.
- (1) Notwithstanding anything herein to the contrary, no Employee shall be considered to have incurred a Disability or shall qualify for a Disability Pension if the Committee determines that his physical or mental condition results from (A) addiction to narcotics or hallucinogenic drugs, (B) an injury suffered while engaged in a felonious or criminal act or enterprise, (C) service in the armed forces of the United States which entitles the Employee to a veteran's disability pension; or (D) injury or disease sustained by the Participant which was diagnosed or discovered subsequent to the date his employment was terminated.
- (2) Disability shall be considered to have ended if, prior to his Normal Retirement Date, the Employee (A) engages in any substantial gainful activity, except for such employment as is found by the Committee to be for the primary purpose of rehabilitation or not incompatible with a finding of Disability; (B) has sufficiently recovered, in the opinion of the Committee based on a medical examination by a doctor or clinic appointed by the Committee, to be able to engage in regular employment with the Employer and refuses an offer of employment by the Employer; or (C) refuses to undergo any medical examination requested by the Committee, provided that a medical examination shall not be required more frequently than twice in any calendar year.
- (k) Effective Date: January 1, 2011 as to this amended and restated Plan. The original effective date was January 1, 1983.
- (l) Employee: Any person who receives compensation from the Employer for regular, full-time services other than persons under separate employment

contract; provided, however, that the term "Employee" shall not include any person:

(1) as to any service for which he would be eligible to be included in and for which he is entitled to receive credit in the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the Judicial Retirement System of Texas, the Texas County and District Retirement System, or any other pension fund or retirement system supported wholly or partly at public expense, but not including participation in the Texas Municipal Retirement System (TMRS);

(2) who is elected to office by vote of the people, it being further specifically provided, however, that a voluntary fireman or elected official who meets the definition of Employee in some capacity other than as a voluntary fireman or elected official shall be considered as an "Employee" for purposes of this Plan to the extent of such other capacity.

(m) Employer: The City of Plano, Texas.

(n) Highly Compensated Employee: Effective January 1, 1997, an employee who is a "highly compensated employee" within the meaning of section 414(q) of the Code.

(o) Investment Manager(s): An investment advisor registered under the Investment Advisors Act of 1940, a bank (as defined in that Act), or an insurance company qualified to perform investment management services under State law in more than one State.

(p) Leave of Absence: Any absence from Service authorized by the Employer under the Employer's standard personnel practices for reasons other than termination of employment, death, discharge or Retirement.

(q) Normal Retirement Date: The later of the sixty-fifth (65th) birthday of an Employee, or the date on which the Employee completes five (5) years of Credited Service.

Any benefits which are to commence as of an Employee's Normal Retirement Date shall not actually commence until the first day of the month coinciding with or next following said Normal Retirement Date.

(r) Participant: An individual who participates in the Plan in accordance with Section 3.2 and whose benefit has not been fully distributed or forfeited.

(s) Pension: A series of monthly amounts which are payable to a person who is entitled to receive benefits under the Plan.

(t) Plan: City of Plano, Texas, Retirement Security Plan, as amended from time to time.

(u) Plan Administrator: Such person or persons as designated by the City Manager, and who shall have the duties and powers described in Article 9.

- (v) Plan Year: The twelve (12) month period beginning on January 1 and ending on December 31.
- (w) Retirement: Termination of employment after an Employee has fulfilled all Service requirements for a Pension. Retirement shall be considered as commencing on the day immediately following an Employee's termination date.
- (x) Service: A period or periods of employment of an Employee by the Employer used in determining eligibility or the amount of benefits as described in Article 3 hereof.
- (y) TMRS: Texas Municipal Retirement System.
- (z) Trust or Trust Fund: The fund maintained in accordance with the terms of this Plan.
- (aa) Trustee: The Corporation or individuals selected by the City Council to administer the Trust.
- (bb) U.S. Consumer Price Index: As of any date, the Consumer Price Index for all items for the prior calendar year as reported in the Monthly Labor Review for each calendar month by the United States Department of Labor. The Index to be used shall be the annual average over such calendar year which is most recent and designated in said Monthly Labor Review as "Consumer Price Index for Urban Wage Earners and Clerical Workers -- U.S. City Average -- All Items."

2.2 Construction: The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender; the singular may include the plural; and vice versa, unless the context clearly indicates to the contrary. The words "hereof," "herein," "hereunder" and other similar compounds of the word "hereof shall, unless otherwise specifically stated, mean and refer to the entire Plan, not to any particular provision or Section. The word "including" and words of similar import when used in this Plan shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified. Article and Section headings are included for convenience of reference and are not intended to add to, or subtract from, the terms of the Plan. The Plan and Trust shall each form a part of the other by reference and terms shall be used herein interchangeably.

ARTICLE 3. SERVICE AND PARTICIPATION

3.1 Credited Service: Credited Service is the period of employment used in determining both eligibility for benefits and the amount of benefits. An Employee's Credited Service shall be all his full-time employment with the Employer as an Employee that is taken into account under TMRS, excluding any periods of unpaid Leave of Absence. Credited Service shall also include any employment with the Employer as an Employee that is not taken into account under TMRS if: (a) the Employee was not then eligible to make contributions to TMRS, and (b) any such employment was part of a continuous uninterrupted period of employment that was continuing on the Effective Date. Credited Service shall cease accruing upon an Employee's separation from the service of the Employer or upon the completion of twenty-five (25) years of Credited Service, whichever first occurs.

If an Employee incurs a period of separation which is equal to or longer than one year, then he shall lose all his prior Credited Service. An Employee who incurs a period of separation of less than one year shall retain all prior Credited Service.

Effective January 1, 2002, for purposes of the five (5) year Credited Service requirement in the definition of Normal Retirement Date and in determining eligibility for commencement of Early Pensions and Deferred Vested Pensions, and for purposes of the twenty (20) year Credited Service requirement for an Early Pension, all prior employment taken into account under TMRS will be counted, regardless of whether such employment is with the Employer.

3.2 Participation: Employees who were Participants in the Plan immediately prior to the Effective Date and who are in the employ of the Employer on the Effective Date shall remain Participants as of the Effective Date.

Each other Employee hired on or after the Effective Date shall become a Participant in the Plan as of his date of hire.

3.3 Rehires: Employees who, after receiving an RSP payment, are rehired within a one year period from the date of termination, thus retaining RSP service credit, will have the benefit value from the first date of termination subtracted from the benefit value due at the second termination date in accordance with actuarial practices.

3.4 Military Service:

(a) Effective December 12, 1994, absence from the active service of the Employer because of engagement in qualified military service will not terminate the service of the Employee and will be treated under the Plan as a leave of absence granted by the Employer if the Employee is entitled under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") to reemployment by the Employer upon the completion of his period of service and if he returns to the active service of the Employer within the period of time during which he has reemployment rights under USERRA. The following special provisions apply to such an Employee:

(1) Each period of qualifying military service of the Employee shall, upon such reemployment, be counted toward determining the Employee's service with the Employer for all purposes of the Plan, including

determining the amount of the Employee's Accrued Benefit and the vested percentage in his Accrued Benefit.

- (2) For all purposes under the Plan, an Employee shall be treated as having received Compensation from the Employer based on the rate of Compensation the Employee would have received during the period of qualifying military service, or if that rate is not reasonably certain, on the basis of the Employee's average rate of Compensation during the 12-month period immediately preceding such period.
- (b) To the extent provide under Code section 401(a)(37) and effective as of January 1, 2007, in the case of an Employee whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor(s) of such Employee shall be entitled to any additional benefit (other than benefit accruals) that would have been provided under the Plan had the Employee resumed and then terminated employment on account of death.
- (c) Effective as of January 1, 2009, an Employee who receives a differential wage payment (within the meaning of Code section 414(u)(12)(D)) from the Employer with respect to a period during which the Employee is performing uniformed service while on active duty for a period of more than 30 days, shall be treated as an Employee of the Employer, and the differential wage payment shall be treated as Compensation for all purposes under the Plan (including Section 6.6). Compensation recognized under this Section 3.4(c) shall not duplicate Compensation already recognized under Section 2.1(i) or Section 3.4(a)(2), and therefore if the same item of Compensation is recognized under this Section and Section 2.1(i) or Section 3.4(a)(2), such item of Compensation shall be recognized under only one Section.

ARTICLE 4. CONTRIBUTIONS

4.1 Contributions by Employer: The Employer, acting under the advice of the Actuary for the Plan, intends to make contributions to the Trust in such amounts and at such times as are required to maintain the Plan on a sound actuarial basis. All contributions made by the Employer to the Trust shall be used to pay benefits under the Plan or to pay expenses of the Plan and Trust and shall be irrevocable, except for any residual amounts after satisfying all liabilities of the Plan. Forfeitures arising because of severance of employment before the Employee becomes eligible for a Pension or for any other reason shall be applied to reduce the costs of the Plan, not to increase the benefits otherwise payable to the Employees.

4.2 Contributions by Employees: Employees are neither required nor permitted to make contributions under this Plan.

ARTICLE 5. REQUIREMENTS FOR RETIREMENT BENEFITS

5.1 Normal and Late Retirement: An Employee shall be eligible for a Normal Pension if his employment with the Employer is terminated on his Normal Retirement Date. An Employee shall be eligible for a Late Pension if his employment with the Employer is terminated after his Normal Retirement Date. Payment of a Normal or Late Pension shall commence as of the first day of the month coinciding with or next following the Employee's date of Retirement and, unless an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, shall be made in the form of an annuity for the life of the Participant only subject to the minimum payment term of sixty (60) months pursuant to Section 7.1.

5.2 Early Retirement: Effective January 1, 2002, an Employee shall be eligible for an Early Pension if his employment with the Employer is terminated before his Normal Retirement Date and either (a) on or after his sixtieth (60th) birthday and completion of five (5) or more years of Credited Service or (b) after his completion of twenty (20) or more years of Credited Service.

Unless the Employee requests otherwise, payment of an Early Pension shall commence as of the Employee's Normal Retirement Date if he is then living. If the Employee requests the commencement of his Early Pension as of the first day of the month coinciding with or next following his Retirement, or as of the first day of any subsequent month which precedes his Normal Retirement Date, his Pension shall commence as of the beginning of the month so requested, but the amount thereof shall be reduced as provided in Section 6.2. Unless an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, payment shall be made in the form of an annuity for the life of the Participant only subject to the minimum payment term of sixty (60) months pursuant to Section 7.1.

5.3 Disability Retirement: An Employee shall be eligible for a Disability Pension if his employment with the Employer is terminated by reason of Disability. Payment of a Disability Pension shall commence as of the first day of the month coinciding with or next following such termination of employment. The last payment shall be made as of the earliest of the first day of the month in which (a) such Disability ceases, (b) the death of the retired Employee occurs, and (c) the Normal Retirement Date of the retired Employee occurs. If Disability continues to the Employee's Normal Retirement Date, his Pension thereafter will be a Normal Pension (in a sixty (60) month certain and life form) determined according to Section 6.3(b) hereof. If Disability ceases prior to the Employee's Normal Retirement Date, no Disability Pension shall continue to be paid to or for him. An Employee may elect, in lieu of the Disability Pension provided hereunder (including any Pension payable after his Normal Retirement Date under Section 6.3(b) hereof), to receive an Early Pension if he had met the requirements for an Early Pension on the date of his Retirement for Disability.

If the retired Employee's Disability ceases prior to his Normal Retirement Date, and he is not reemployed by the Employer as an Employee, and if he had met the requirements for an Early or Deferred Vested Pension on the date of his Retirement for Disability, he shall be entitled to receive, commencing on the first day of the month coinciding with or next following his Normal Retirement Date, a Pension equal in amount to the Early or Deferred Vested Pension to which he would have been entitled, as of the date of his Disability, considering his Compensation and Credited Service as if he had had no Disability; provided, however, effective January 1, 2002, if the Employee had completed five (5) years of Credited Service and requests the commencement of his Early or Deferred Vested Pension as of the first day of any

subsequent month which precedes his Normal Retirement Date, his Pension shall commence as of the beginning of the month so requested, but the amount thereof shall be reduced in accordance with Section 6.2 or 6.4 hereof, based on the number of years by which the starting date of the Pension payment precedes the Employee's Normal Retirement Date.

An Employee must apply for a Disability Pension under the Plan within six (6) months after the date of termination of his service due to Disability; provided, however, that such six (6)-month application period may be extended by the Committee if it determines, in its sole discretion, that reasonable cause exists for doing so.

Effective January 1, 2001, if a retired Employee's Disability is determined by the Committee to have ended and payment of a Disability Pension has ceased, but the Committee subsequently determines that such Disability has continued or recurred, then the Committee, in its sole discretion, may reinstate the Disability Pension payment to such Employee.

If Disability ceases before a retired Employee attains his Normal Retirement Date and the Employee is reemployed by the Employer, the Pension payable upon his subsequent Retirement shall be determined based on his Credited Service and Compensation prior to the date of his previous retirement, as well as his Credited Service and Compensation during the period of his reemployment.

5.4 Deferred Vested Retirement: An Employee shall be eligible for a Deferred Vested Pension if his employment with the Employer is terminated, for reasons other than death or Normal, Late, Early or Disability Retirement, on or after the completion of five (5) or more years of Credited Service. Payment of a Deferred Vested Pension shall commence as of the first day of the month coinciding with or next following the Employee's Normal Retirement Date if he is then living. Effective January 1, 2002, if the Employee had completed five (5) years of Credited Service and requests the commencement of his Deferred Vested Pension as of the first day of the month coinciding with or next following his sixtieth (60th) birthday, his Pension shall commence as of the first day of the month so requested, but the amount thereof shall be subject to reduction as provided in Section 6.4. Such a request must be received by the Committee at least thirty (30) days before the first Pension payment is due. Unless an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, payment shall be made in the form of an annuity for the life of the Participant only subject to the minimum payment term of sixty (60) months pursuant to Section 7.1.

5.5 Required Minimum Distributions. All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under section 401(a)(9) of the Code. Notwithstanding the other provisions of this Section, other than the immediately preceding sentence, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

(a) Time and Manner of Distribution.

- (1) Mandatory Commencement. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest, if any under

Section 7.4, will be distributed, or begin to be distributed, no later than as follows:

- (A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
- (B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (D) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this paragraph (a)(2), other than subparagraph (a)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of this paragraph (a)(2) and paragraph (d), distributions are considered to begin on the Participant's Required Beginning Date (or, if paragraph (a)(2)(D) applies, the date distributions are required to begin to the surviving spouse under paragraph (a)(2)(A)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (a)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (3) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with paragraphs (b), (c), and (d) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.

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

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

- (A) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in paragraphs (c) or (d);
- (C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (D) payments will either be nonincreasing or increase only as follows:
 - (i) 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;
 - (ii) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in paragraph (c) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code section 414(p);
 - (iii) to provide cash refunds of employee contributions upon the Participant's death; or
 - (iv) to pay increased benefits that result from a Plan amendment.

(2) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under paragraph (a)(2)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

- (3) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (c) Requirements For Annuity Distributions That Commence During Participant's Lifetime.
- (1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a 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.
- (2) Period Certain Annuities. Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this paragraph (c)(2), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

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

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in paragraphs (a)(2)(A) or (B), over the life of the designated beneficiary or over a period certain not exceeding:
 - (A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - (B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this paragraph (d) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to paragraph (a)(2)(A).

(e) Definitions.

- (1) Designated beneficiary. The individual who is designated as the beneficiary under Section 8.3 of the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-I, Q&A-4, of the Treasury Regulations.
- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (a)(2).

- (3) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury Regulations.
- (4) Required Beginning Date. In the case of an Employee who terminates employment prior to attaining age 70½, the Required Beginning Date is April 1 of the calendar year following the calendar year in which the former employee attains age 70½. In the case of an Employee who continues in employment after attaining 70½, the Required Beginning Date is April 1 of the calendar year following the calendar year in which he terminates employment.

ARTICLE 6. AMOUNT OF RETIREMENT BENEFITS

6.1 Normal and Late Pension: Subject to the minimum pension under Section 6.1A of Appendix A (if applicable), an Employee who meets the requirements for a Normal Pension and retires on his Normal Retirement Date shall receive a monthly amount equal to Seven-Tenths of One Percent (.7%) of his Average Monthly Compensation, multiplied by his Credited Service from January 1, 1983, not to exceed twenty-five (25) years.

Subject to the minimum pension under Section 6.1A of Appendix A (if applicable), an Employee who meets the requirements for a Normal Pension and retires after his Normal Retirement Date shall receive a Late Pension which shall be computed as for a Normal Pension in accordance with the provisions of this Section 6.1 above, considering his Average Monthly Compensation and Credited Service to his actual date of Retirement.

6.2 Early Pension: Subject to the minimum pension under Section 6.2A of Appendix A (if applicable), an Employee who meets the requirements for an Early Pension shall receive a monthly amount equal to his Accrued Benefit. An Employee's Accrued Benefit shall be equal to Seven-Tenths of One Percent (.7%) of his Average Monthly Compensation, multiplied by his Credited Service from January 1, 1983, not to exceed twenty-five (25) years.

If payment of an Early Pension commences prior to the Employee's Normal Retirement Date, the amount determined above shall be reduced by one-fifteenth (1/15th) for each of the first five (5) years and one-thirtieth (1/30th) for each of the next five (5) years (and on an Actuarial Equivalent basis thereafter) by which the starting date of Pension payments precedes the Employee's Normal Retirement Date.

6.3 Disability Pension: An Employee who meets the requirements for a Disability Pension shall receive a monthly amount payable prior to Normal Retirement Date computed as set forth in (a) below and a monthly amount payable on or after Normal Retirement Date as set forth in (b) below computed as follows:

- (a) Disability Pension Payable Prior to Normal Retirement Date: An amount equal to Sixty Percent (60%) of the greater of the Employee's monthly base rate of pay exclusive of overtime pay, longevity pay, standby pay, bonuses and severance payments, or Average Monthly Compensation, as of the month prior to his termination of employment by reason of Disability, *minus* the amount of disability benefit to which he is entitled under TMRS.
- (b) Disability Pension Payable on and After Normal Retirement Date: An amount equal to the Normal Pension that would have been payable to the Employee, in accordance with the provisions of Section 6.1 hereof, if he had continued in active employment with the Employer until his Normal Retirement Date, assuming his Compensation had continued at the same rate as in effect at the date of his Disability Retirement until his Normal Retirement Date, and no increases occurred in the Social Security or TMRS benefits, if applicable. This pension will not be less than the Disability Pension commencing prior to his Normal Retirement Date determined under paragraph (a) above.

6.4 Deferred Vested Pension: An Employee who meets the requirements for a Deferred Vested Pension shall receive a nonforfeitable right to his Accrued Benefit (computed

in accordance with the provisions of Section 6.2 hereof). Effective January 1, 2002, if the Employee has fewer than five (5) years of Credited Service, the Accrued Benefit will be adjusted by the following schedule:

<u>Years of Credited Service</u>	<u>Nonforfeitable Percentage</u>
Less than 5	0%
5 or more	100%

If an Employee is eligible and payment of a Deferred Vested Pension commences prior to the first day of the month coincident with or next following the Employee's 65th birthday, the amount determined above shall be reduced by one-fifteenth (1/15th) for each year by which the starting date of Pension payments precedes such first day of the month.

6.5 Cost-of-Living Adjustment: The monthly amount of Pension payable to a retired Employee, provided such Employee had received such payments for at least twelve (12) months, shall be adjusted annually, as of each April 1st, to reflect increases in the U.S. Consumer Price Index. Such annual increase, if any, shall be limited to a maximum change of four percent (4%). In no event shall any cost of living adjustment under this 6.5 be applied to increase the amount of monthly pension (or other alternative form of payment) payable to the spouse or beneficiary of an Employee after the Employee's death.

6.6 Maximum Annual Benefit Under Code Section 415: Notwithstanding any other provision contained herein to the contrary, the benefits payable to an Employee from this Plan, shall be subject to the limitations of Code section 415. For purposes of this Section, the term "Limitation Year" shall mean the year used in applying the limitations of Code section 415, which year shall be a Plan Year. Effective for Limitation Years beginning on and after July 1, 2007, the benefits payable to an Employee from this Plan shall in all events comply with the provisions of Code section 415 and the applicable Treasury Regulations published thereunder, the provisions of which are specifically incorporated herein by reference. To the extent any portion of this Section conflicts with such Regulations, the provisions of such Regulations shall govern.

Any annual Pension payable to an Employee hereunder (including any annual Pension paid to such Employee from another defined benefit plan of the Employer) shall not exceed subsection (a) below, subject to subsections (b) through (d) below. The provisions of subsections (a) and (b) below shall be effective for limitation years ending after December 31, 2001. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to all Employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

- (a) Defined Benefit Dollar Limitation: The "defined benefit dollar limitation" is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- (b) Maximum Permissible Benefit: The "maximum permissible benefit" is the defined benefit dollar limitation adjusted where required, as provided in paragraph (1) and, if applicable, in paragraph (2) or (3) below.

- (1) If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (A) the numerator of which is the number of years (or part thereof) of participation in the Plan and (B) the denominator of which is ten (10).
- (2) If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under paragraph (1) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (A) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in Section 2.1(b) of the Plan and (B) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent (5%) interest rate and the applicable mortality table as defined in Section 2.1(b) of the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (2) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
- (3) If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 (adjusted under paragraph (1) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as the lesser of (A) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in Section 2.1(b) of the Plan and (B) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 2.1(b) of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.
- (4) Effective January 1, 2004, with respect to the limitations of this Section, for purposes of adjusting the annual Pension to a straight life annuity, the equivalent annual Pension shall be the greater of the equivalent annual Pension computed using the Plan interest rate and Plan mortality table (or other tabular factor) and the equivalent annual Pension computed using five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 2.1(b). However, for purposes of adjusting the annual Pension to a straight life annuity, if the annual Pension is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a Participant or, in the case of a pre-retirement survivor annuity (if applicable under Section 7.4), the life of the surviving spouse, then the equivalent annual Pension shall be

the greater of the equivalent annual Pension computed using the Plan interest rate and Plan mortality table (or other tabular factor) and the equivalent annual Pension computed using the applicable interest rate (as defined in Code section 417(e)(3)) and the applicable mortality table as defined in Section 2.1(b). With respect to benefits with annuity starting dates occurring in 2004 and 2005, for purposes of adjusting the annual Pension to a straight life annuity, if the annual Pension is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a Participant or, in the case of a pre-retirement survivor annuity (if applicable under Section 7.4), the life of the surviving spouse, then the equivalent annual Pension shall be the greater of the equivalent annual Pension computed using the Plan interest rate and Plan mortality table (or other tabular factor) and the equivalent annual Pension computed using five and one-half percent (5.5%) and the applicable mortality table as defined in Section 2.1(b). With respect to Limitation Years beginning on and after January 1, 2008, for purposes of adjusting the annual Pension to a straight life annuity, if the annual Pension is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse, then the equivalent annual Pension shall be the greatest of (A) the equivalent annual Pension computed using the Plan interest rate and Plan mortality table (or other tabular factor); (B) the equivalent annual Pension computed using five and one-half percent (5.5%) and the applicable mortality table as defined in Section 2.1(b); or (C) the equivalent annual Pension computed using the applicable interest rate under Treasury Regulations section 1.417(e)-1(d)(3) and the applicable mortality table under Treasury Regulations section 1.417(e)-1(d)(2), divided by 1.05.

- (c) In no event shall an Employee's maximum annual Pension allowable under this Section be less than the annual amount of Pension (including early Pension and qualified joint and survivor annuity amounts) duly accrued by such Employee (under Code section 415 limitations then in effect) as of the last day of the Limitation Year beginning in 1982, or as of the last day of the Limitation Year beginning in 1986, whichever is greater (disregarding any Plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount).
- (d) Effective January 1, 1995, the provisions of subsection (b) shall not apply for limitation years beginning after 1994 to (1) income received as a pension, annuity, or similar allowance as a result of an Employee's disability due to personal injuries or sickness, or (2) amounts received as a result of an Employee's death by the Employee's beneficiaries, survivors, or estate.

ARTICLE 7. DEATH BENEFITS

7.1 Death After Commencement of Normal, Late, Early or Deferred Vested Pension:

The beneficiary or beneficiaries of an Employee who, on the date of his death, was receiving a Normal, Late, Early, or Deferred Vested Pension hereunder (including a Normal Pension that has commenced to a Disabled Employee at his Normal Retirement Date), shall be eligible for a Death Benefit in the form of a monthly Pension if the Employee had not received sixty (60) monthly payments of such Pension. The monthly amount of such Pension shall be equal to the monthly Pension, which the Employee was receiving on the date of his death. Payment of such Pension shall commence on the first day of the month coinciding with or next following the Employee's date of death. The last payment shall be made as of the first day of the month in which sixty (60) monthly payments have been made in the aggregate to the Employee and his beneficiary or beneficiaries.

If an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, no such Death Benefit shall be paid, but shall be thereby cancelled and inapplicable.

7.2 Death Pending Payment: If an Employee has completed at least ten (10) years of Credited Service, terminates employment with the Employer, and dies after attainment of age sixty (60), but before the date of commencement of his Pension, his surviving spouse, or if none, his surviving child or children under the age of eighteen (18), shall be entitled to receive a benefit hereunder. Such benefit shall be a monthly Pension payable for a period of sixty (60) months equal to the Pension the Employee would have received under Section 6.4 hereof had he commenced payment on the first day of the month coinciding with or next following the Employee's date of death. With the approval of the Committee, this benefit may be paid in a lump sum amount equal to the Actuarially Equivalent lump sum value of the sixty (60) monthly payments otherwise provided. If this benefit becomes payable to a minor child or children, and more than one such child is eligible, the benefit determined above shall be divided in equal parts among such children.

7.3 Vested Terminated Employee Death Benefits:

- (a) In the event that a terminated Employee entitled to a deferred vested benefit under the plan above dies prior to his commencement date of benefits and without his having received the value of his benefit in accordance with Article 6 of the Plan, his surviving spouse, if any, will be entitled to receive a monthly retirement income. This monthly income, payable for life, will be in an amount that is the actuarial equivalent of the accrued monthly retirement income as of the Employee's Normal Retirement Date that would have been payable to such surviving spouse, commencing on the Early Pension commencement date under the 50% Joint and Survivor Option, if such surviving spouse is then living. It is determined as if:
 - (1) the terminated Employee had survived to his earliest Early Pension commencement date or immediately if he has already survived to that date; and

- (2) the terminated Employee had died immediately after such commencement of payments under the 50% Joint and Survivor Option described in Section 8.1(e).
- (b) Alternatively, if there is no surviving spouse at the time of the vested terminated Employee's death, the Employee's dependent child or children, including legally adopted children, if any, will be entitled to receive a monthly income, provided he has not received the value of his benefit from the Plan. A dependent child will be defined as any child under the age of 18, any child under the age of 23 and a full-time student at an educational institution, or any child, regardless of age, that is considered permanently disabled on a nondiscriminatory basis. Such determinations will be made by the Committee. The benefit payable to the dependent child or children described above shall be a monthly Pension determined in accordance with Article 6 of the Plan and equal to the income the Employee would have received under the Plan, if:
 - (1) the terminated Employee had survived to his earliest Early Pension commencement date or immediately if he had already survived to that date; and
 - (2) the terminated Employee had died immediately after such commencement of payments under the Five (5) Year Certain and Life Option described in Section 8.1(c).

If this benefit becomes payable to a minor child or children, and more than one such child is eligible, the benefit determined above shall be divided in equal parts among such children.

- (c) With the approval of the Committee, the death benefit may be paid in a lump sum amount equal to the actuarially equivalent lump sum value of the payments otherwise provided.
- (d) No vested terminated death benefit shall be payable for any Employee without either a spouse or dependent child at the time of death.

7.4 Other Death Benefits: No other benefits shall be payable hereunder upon the death of an Employee other than those specified in Section 7.1 hereof, or benefits payable under an optional form of payment under the provisions of Article 8 hereof; provided, however, if the amount of insurance coverage provided any Employee under the City of Plano, Texas, Employee's Group Term Life Insurance Plan (disregarding for this purpose any insurance coverage paid for by the Employee) is limited by the application of Title 7 of the Texas Insurance Code, the amount of death benefit not payable thereunder as a result of such limitation shall be payable upon the Employee's death under this Plan.

ARTICLE 8. OTHER OPTIONAL FORMS OF PAYMENT

8.1 Other Options: An Employee or beneficiary may elect that any benefit provided by the Plan shall be paid in an optional payment form set forth below, provided that payments in such other form shall be the Actuarial Equivalent of the benefit otherwise payable. The optional forms of payment are as follows:

- (a) Lump Sum Payment: A lump sum payment, in cash or kind (at fair market value), but only if the present value of the Employee's nonforfeitable Accrued Benefit is greater than Five Thousand Dollars (\$5,000), but less than Twelve Thousand Dollars (\$12,000), effective August 28, 1995, for all current vested terminated members and all active members of the Retirement Security Plan.
- (b) Life Only Option: A monthly retirement income payable to the retiree during his lifetime. Upon the death of the retiree, payments shall cease.
- (c) Five (5) Year Certain and Life Option: A monthly retirement income payable to the retiree during his lifetime, with the provision that, if the retiree's death occurs before he has received sixty (60) monthly payments (5 years), the remaining number of such payments shall be paid to his designated beneficiary.
- (d) Ten (10) Year Certain and Life Option: A monthly retirement income payable to the retiree during his lifetime, with the provision that, if the retiree's death occurs before he has received one hundred twenty (120) monthly payments (10 years), the remaining number of such payments shall be paid to his designated beneficiary.
- (e) 50% Joint and Survivor Option: A monthly income payable to the retiree during his lifetime, with the provision that, upon his death, his designated beneficiary shall receive a monthly income equal to 50% of the income that the retiree was receiving at the time of his death.
- (f) 100% Joint and Survivor Option: A monthly income payable to the retiree during his lifetime, with the provision that, upon his death, his designated beneficiary shall receive a continuation of 100% of the income the retiree was receiving at the time of his death.

Effective March 28, 2005, in the event of a mandatory distribution greater than \$1,000 but not exceeding \$5,000 in accordance with this paragraph, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. For accrued benefits of \$1,000 or less and the Participant does not elect to have such distribution to be paid directly to an eligible retirement plan specified by the Participant, the amount shall be distributed to the Participant in a lump sum.

Any optional form of payment elected under this paragraph must provide that the entire interest of the retiree be expected to be distributed to the retiree and his beneficiary over a period certain not exceeding beyond the life expectancy of the retiree or beyond the joint life and last survivor expectancy of the retiree and beneficiary.

8.2 Other Benefits Cancelled by Option: Any Pension, Death Benefit, or other benefit that would otherwise have become payable under this Plan, shall be cancelled and superseded by an option or any other form of payment elected under this Article 8 as of the date such option or other form of payment becomes operative.

8.3 Designation of Beneficiary: Each active or retired Employee may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive any benefit that may become payable under this Plan by reason of his death (other than a benefit payable only to his spouse or other qualified contingent pensioner). Such designation shall be made upon the forms furnished by the Committee, and may at any time and from time to time be changed or revoked without notice to the beneficiary or beneficiaries, and shall not be effective unless and until filed with the Committee.

If any Employee shall fail to designate a beneficiary or beneficiaries, or if all those designated by him predecease him, then the beneficiary shall be the Employee's Estate.

8.4 Election of Optional Form of Payment: An Employee whose Accrued Benefit is payable may, in writing to the Employer, elect to receive his benefit under one of the optional forms set forth in Section 8.1 above. The Committee shall not permit the retired Employee to change any prior election after commencement of payment of benefits under the Plan. The Employer shall provide to each active Employee, and each terminated Employee with a vested Accrued Benefit whose benefits have not yet commenced, an election form for electing an optional form, as well as a written explanation of the terms, conditions, and effects of such election as soon as administratively practicable, prior to his date of commencement of payment of benefits or, if earlier, prior to his Normal Retirement Date. Such written election must be filed with the Employer prior to commencement of any payments under the Plan.

8.5 Withholding Tax: Distributions from the Plan shall be subject to applicable tax withholding, including mandatory withholding to the extent applicable.

8.6 Direct Rollover Options for Eligible Rollover Distributions: This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this 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. The following definitions apply to this section:

- (a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 - (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
 - (2) any distribution to the extent such distribution is required under section 401(a)(9) of the Code;

- (3) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); provided, however, that effective for distributions made after December 31, 2001 a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions (if applicable under the Plan) which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective January 1, 2008, such portion may also be transferred to an individual retirement plan under section 408A of the Code or to any other qualified plan under Code section 401(a) or annuity contract described in section 403(b) of the Code that agrees to separately account for amounts so transferred in accordance with the foregoing; and
- (4) any other exception permitted by law or rules or regulations of the Internal Revenue Service.
- (b) Eligible retirement plan: An eligible retirement plan is any of the following plans or accounts, provided such plan or account accepts the distributee's eligible rollover distribution and, if applicable, agrees to separately account for amounts transferred into such plan or account from this Plan: an individual retirement account or annuity described in section 408 or 408A of the Code; an annuity plan described in section 403(a) of the Code; an annuity contract described in section 403(b) of the Code; an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or a qualified trust described in section 401(a) of the Code. However, if the distributee is a beneficiary who is not the surviving spouse of the Participant, an eligible retirement plan is an individual retirement account or annuity described in section 408 or 408A of the Code.
- (c) Distributee: The following individuals may be distributees under this Section 8.6: an Employee, a former Employee, an Employee's or former Employee's surviving spouse, an Employee's or former Employee's spouse or former spouse who is an alternate payee under a qualified domestic relations order (as defined in section 414(p) of the Code), and a designated non-spouse beneficiary.
- (d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Any options set forth in this section shall automatically become inoperative and of no effect upon a ruling by the Treasury Department that the options set forth herein are no longer required.

ARTICLE 9. ADMINISTRATION

9.1 Appointment of Committee: The Plan shall be administered by a Committee consisting of at least five (5) but no more than seven (7) persons who shall be appointed as follows:

- (a) Two (2) members of the Committee shall be appointed by the City Council. These appointees must meet the same eligibility requirements as appointees to City of Plano boards and commissions as described in section 4.07 of the City Charter.
- (b) The remaining members of the Committee shall be city employees appointed by the City Manager.

The members of the Committee shall not receive compensation with respect to their services for the Committee.

9.2 Term of Office: Each member of the Committee shall be appointed for a period of two (2) years, except that when initial appointments are made the appointees shall cast lots and two (2) Committee members will serve for one (1) year. It is the intent of this provision that the terms of the Committee members will be so regulated that the Committee shall not consist entirely of newly appointed members at any one time, except at time of original appointment.

9.3 Committee Powers and Duties: The Committee shall have such powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following powers and duties:

- (a) to develop bylaws and procedures necessary to discharge the Committee's responsibilities outlined herein;
- (b) to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder;
- (c) to prescribe procedures to be followed by distributees in obtaining benefits;
- (d) to make a determination as to the right of any person to a benefit and to afford any person dissatisfied with such determination the right to a hearing thereon;
- (e) to receive from the Employer and from Employees such information as shall be necessary for the proper administration of the Plan;
- (f) to receive and review the valuation of the Plan made by the Actuary;
- (g) to appoint an Investment Manager(s) to manage the investment of the assets of the Plan; and
- (h) to receive and review reports of the financial condition and of the receipts and disbursements of the Trust Fund from the Trustee; and

- (i) to recommend to the City Council employment of any agents it deems advisable, including, but not limited to, legal counsel.

The Committee shall have no power to add to, subtract from or modify any of the terms of the Plan, nor to change or add to any benefits provided by the Plan, nor to waive or fail to apply any requirements of eligibility for a Pension under the Plan.

A majority of the members of the Committee shall constitute a quorum for the transaction of business. No action shall be taken except upon a majority vote of the Committee members. An individual shall not vote or decide upon any matter relating solely to himself. If, in any case in which a Committee member is so disqualified to act, and the remaining members cannot agree, the Employer will appoint a temporary substitute member to exercise all the powers of the disqualified member concerning the matter in which he is disqualified.

9.4 Duties and Powers of the Plan Administrator: The Plan Administrator shall have such powers as may be necessary to discharge his duties hereunder, including, but not by way of limitation, the following powers and duties:

- (a) to file with the appropriate government agency (or agencies) any reports or other information that may be required;
- (b) to provide to each Employee and each beneficiary receiving benefits hereunder a summary plan description explaining the Plan;
- (c) to cause benefit payments to be made hereunder if approved by the Committee;
- (d) to maintain all records necessary for verification of information required to be filed with the appropriate government agency (or agencies); and
- (e) to administer the Trust Fund on behalf of the Employer.

9.5 Rules and Decisions: The Committee may adopt such rules and actuarial tables as it deems necessary or desirable. All rules and decisions of the Committee shall be uniformly and consistently applied to all Employees in similar circumstances.

Any rule or decision, except as to benefits, which is not inconsistent with the provisions of the Plan, shall be conclusive and binding upon all persons affected by it, and there shall be no appeal from any ruling by the Committee which is within its authority.

When making a determination or calculation, the Committee shall be entitled to rely upon information furnished by the Employer, the legal counsel of the Employer, or the actuary for the Plan.

The Committee may, from time to time, appoint groups of Employees to advise the Committee on matters being considered. Such appointments should be made on a basis to ensure broad representation of Employee interests.

9.6 Unclaimed Benefits: During the time when a benefit hereunder is payable to any beneficiary or distributee, the Committee, upon request by the Trustee, or at its own instance, shall mail by registered or certified mail to such beneficiary or distributee, at his last known address, a written demand for his then address, or for satisfactory evidence of his continued

life, or both. If such information is not furnished to the Committee within twelve (12) months from the mailing of such demand, then the Committee may, in its sole discretion, determine that such beneficiary or distributee is deceased and may declare such benefit, or any unpaid portion thereof, suspended as if the death of the distributee (with no surviving beneficiary) had occurred on the date of the last payment made thereon or the date such beneficiary or distributee first became entitled to receive benefit payments, whichever is later.

ARTICLE 10. TRUSTEE AND/OR INVESTMENT MANAGER(S)

10.1 Appointment of Trustee: A Trustee (or Trustees) shall be appointed by the City Council to administer the Trust Fund.

10.2 Appointment of Investment Manager(s): The Committee may appoint one or more Investment Manager(s) to manage (including the power to acquire or dispose of) such assets of the Trust Fund as may be delegated to it in writing by the Committee.

10.3 Responsibility of Trustee: All contributions under this Plan shall be paid to and held by the Trustee. The Trustee shall invest and reinvest only those assets of the Trust Fund not delegated in writing by the Committee to an Investment Manager(s) and shall not have exclusive management and control of any assets of the Trust Fund other than those not otherwise delegated to an Investment Manager(s) by the Committee. All property and funds of the Trust Fund, including income from investments and from all other sources, shall be retained by the Trustee for the exclusive benefit of Employees, as provided in the Plan, and shall be used to pay benefits to Employees or their beneficiaries, or to pay expenses of administration of the Plan and Trust Fund to the extent not paid by the Employer, except as provided in Section 12.5.

10.4 Responsibility of Investment Manager(s): The Investment Manager(s) shall invest and reinvest only those assets of the Trust Fund delegated to it in writing by the Committee and shall not have exclusive management and control of any assets of the Trust Fund other than those specifically delegated to it by the Committee.

ARTICLE 11. GUARANTEES AND LIABILITIES

11.1 Non-guarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

11.2 Rights to Trust Assets: No Employee shall have any right to, or interest in, any assets of the Trust Fund upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable to such Employee out of the assets of the Trust Fund. Neither the Employer, the Trustee, nor any member of the Committee shall be liable to any Employee or beneficiary for benefits from this Plan, except for those payable from the Trust Fund in accordance with the terms of the Plan and the Trust.

11.3 Non-alienation of Benefits: Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to being received by the person entitled to the benefit under the terms of the Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits hereunder. None of the unpaid Plan benefits or Trust assets shall be considered an asset of the Member in the event of his insolvency or bankruptcy.

The provisions of Subchapters A and C of Chapter 804 of the Texas Government Code shall apply to the Plan. In accordance with section 804.003(b) of the Texas Government Code, the Plan Administrator has the exclusive authority to determine whether a domestic relations order is a qualified domestic relations order; provided, however, that such a determination by the Plan Administrator may be appealed to the Committee in accordance with rules established by the Committee. Any such determination by the Plan Administrator (or by the Committee if appealed to the Committee) shall be final, binding, and conclusive on all parties. In accordance with section 804.004 of the Government Code, the Committee may establish rules pursuant to which the Plan, in the sole discretion of the Plan Administrator, may pay to an alternate payee a single lump sum or a monthly annuity for the life of the alternate payee in lieu of any interest awarded to the alternate payee by a qualified domestic relations order. In accordance with section 804.101 of the Government Code, any remaining interest of an alternate payee or spouse in the Plan shall be terminated by the death of the alternate payee or spouse.

ARTICLE 12. AMENDMENT AND TERMINATION

12.1 Right to Amend: The Employer reserves the right to make, from time to time, any amendment or amendments to this Plan which do not permit reversion of any part of the Trust Fund to the Employer, except as provided in Section 12.5 and which do not cause any part of the Trust Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Employees included in this Plan. In all cases, amendments to the Plan must be approved by the City Council.

12.2 Right to Terminate and Withdraw: The Employer may at any time terminate the Plan and require the Trustee to liquidate the Trust Fund. If, for any reason, the Employer shall cease to exist, the Plan shall terminate. The termination of the Plan must be approved by the City Council.

12.3 Allocation and Liquidation of Trust Fund: Upon termination of the Plan, the proportionate interests of the Employees of the Employer, and their beneficiaries, respectively, shall be determined by the actuary. The assets of the Trust Fund shall be liquidated and, after the provision is made for the expenses of administration, termination and liquidation, the assets shall be allocated to provide the accrued benefits of Employees and their beneficiaries in the following priority categories:

- (a) Pensions or other benefits in course of payment to retired Employees, and beneficiaries of deceased retired Employees and immediate Pensions for Employees who have reached their Normal Retirement Dates but have not retired.
- (b) Pensions deferred to Normal Retirement Date for Employees who have qualified for an Early Pension.
- (c) Pensions deferred to Normal Retirement Date for Employees who have qualified for a Deferred Vested Pension.

If the funds available in either of categories (a), (b) or (c) are determined to be insufficient to provide all such benefits, the funds and benefits shall be apportioned among the various persons, first in category (a), next in category (b), and next in category (c), in the same proportion as each person's accrued credits bear to the accrued credits of all persons in each such category on an Actuarial Equivalent basis as determined by the actuary.

If the cost of providing for the benefits, first in category (a), next in category (b), and next in category (c) is determined to be less than the total funds available, the balance will be similarly used to the extent available to provide Pensions deferred to Normal Retirement Date for all other Employees under the Plan at the time of termination of the Plan in proportion to the actuarial value of each such Employee's accrued credits, on an Actuarial Equivalent basis as determined by the actuary, as of the date of termination.

The benefit any such participant is entitled to receive under this Section shall be based on the Employee's Compensation and Service accrued with the Employer prior to the date of termination of the Plan, and his right to such benefit shall be considered as vested, regardless of his age and years of Service on the date of termination of the Plan.

12.4 Manner of Distribution: Any distribution after termination of the Plan may be made through the purchase of annuities from a duly licensed insurance company, as determined by the Committee.

In making such distribution, any and all determinations, appraisals, apportionments and allotments shall be made by the Committee acting under the information supplied by the actuary and shall be final and conclusive and not subject to question by any person.

12.5 Amounts Returnable to the Employer: In no event shall the Employer receive any amounts from the Trust, except such amounts, if any, as set forth below:

- (a) Upon termination of the Plan and notwithstanding any other provisions of the Plan, the Employer shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan to its Employees and beneficiaries, and arising out of any variations between actual requirements and expected actuarial requirements.
- (b) In the event of a contribution made by the Employer by a mistake of fact, such contribution shall be returned to the Employer within one (1) year after payment thereof.

ARTICLE 13. MISCELLANEOUS

13.1 Payment in Case of Incapacity: In the event that the Plan Administrator shall find that a Participant or other person entitled to receive payment of benefits under the Plan is unable to manage his own affairs because of illness or accident or is a minor, the Plan Administrator may direct that any benefit payment due him, unless a claim shall have been made therefor by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides. Any such payment shall be a complete discharge of the liabilities of the Plan therefor.

13.2 Recovery of Overpayments: The Plan has a right of reimbursement and recovery against any person who receives or holds a payment from the Plan in excess of the amount to which such person is entitled under the terms of the Plan. The Plan Administrator or the Trustee may recover the amount overpaid in any manner determined by the Plan Administrator or Trustee to be in the best interests of the Plan, including by legal action against the recipient and/or holder of the overpayment or by offset against other or future benefits payable to or with respect to the participant or beneficiary under the Plan. The provisions of this section are intended to clarify existing rights of the Plan and apply to all past or future overpayments.

13.3 Savings Clause: In the event any provision of the Plan is held to be in conflict with or in violation of any applicable state or federal statute, rule, or decision, all other provisions of this Plan shall continue in full force and effect. In the event that the making of any payment or the provision of any other benefit required under the Plan is held to be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable, such conflict, violation, invalidity, or unenforceability shall not prevent any other payment or benefit from being made or provided under the Plan, and in the event that the making of any payment in full or the provision of any other benefit required under the Plan in full would be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable, then such conflict, violation, invalidity, or unenforceability shall not prevent such payment or benefit from being made or provided in part, to the extent that it would not be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable, and the maximum payment or benefit that would not be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable shall be made or provided under the Plan.

13.4 Governing Law: The Plan shall be construed according to the laws of the State of Texas (without giving effect to the conflicts of laws provisions of any state).

13.5 Notices. The Committee and Plan Administrator may give any notice required to be given to a Participant, beneficiary, or any other person entitled to benefits hereunder, by mailing such notice to such person at the address last furnished to the Plan Administrator or Committee.

IN WITNESS WHEREOF, the Employer has caused this instrument to be executed in its name and on its behalf on this ____ day of _____, 2011 effective as stated herein.

CITY OF PLANO, TEXAS

By:

Title:

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

APPENDIX A

MINIMUM PENSION FOR CERTAIN ELIGIBLE PARTICIPANTS

2.1A Definition of Primary Social Security Benefit: The amount of monthly benefits which an Employee would be entitled to receive as his "primary insurance amount" assuming: (1) that he has made or will make appropriate application for such benefit; (2) that no event occurs to delay or forfeit any part of such benefit; (3) that if he retires (except for Disability) before his Normal Retirement Date, he will continue to receive until his Normal Retirement Date, remuneration (which would be treated as taxable wages for purposes of the Social Security Act) at the same rate as at the time of Retirement; or (4) that if he retires under the Plan on account of Disability, his Primary Social Security benefit, as herein defined, shall be the benefit payable if his Social Security disability insurance benefit were to be approved at the same time as his Disability Retirement, if he were eligible for such benefit. As used in this subparagraph, the term "primary insurance amount" shall have the meaning ascribed to it in the federal Social Security Act as amended and in effect on the affected Employee's date of death, date of severance, or Normal Retirement Date, whichever is earlier, assuming (except for Disability) commencement at the Employee's Normal Retirement Date. The Committee may adopt and apply appropriate and nondiscriminatory rules and procedures to determine such amounts.

The Committee may, to determine such amounts, use wage estimates for the Employee's pre-separation period where actual wage history is not furnished by Employee. Any such wage estimates shall be made by applying a salary scale, projected backwards, to the Employee's Compensation at his date of separation. Such salary scale shall be six percent (6%). Notice shall be duly given to each Employee explaining the use of such estimates and informing the Employee that he can obtain his actual wage history from the Social Security Administration. If any Employee shall furnish actual wage history in writing to the Committee no later than a reasonable time after his separation or, if later, after he is informed of his plan benefits, the Committee shall determine his Primary Social Security Benefit on the basis of such actual wage history.

6.1A Minimum Normal and Late Pension: If an Employee had attained age sixty (60) on January 1, 1992, was an active participant hereunder on December 31, 1991, and has not at any time been a Highly Compensated Employee, then in no event will his Normal Pension be less than the monthly amount provided under the prior benefit formula (as set forth under the terms of the Plan as in force and effect as of December 31, 1991), which is set out below and which equals (a) minus (b), subject to (c):

- (a) (1) Three Percent (3%) of his Average Monthly Compensation, multiplied by his Credited Service, not to exceed twenty-five (25) years, minus
- (2) Two Percent (2%) of his Primary Social Security Benefit multiplied by his Credited Service, not to exceed twenty-five (25) years.
- (b) The amount of benefit to which he is entitled under TMRS. The amount of such benefit shall be stated in terms of an Actuarially Equivalent five (5) year certain and life Pension, and shall be computed based upon his Employee and Employer account balances as of his date of Retirement, regardless of vesting, including any updated service credits.

- (c) In no event, however, shall the Actuarially Equivalent lump sum value of the above Normal Pension produced by (a) minus (b) above be less than the accumulated value of a benefit equal to Six and Seven-Tenths Percent (6.7%) of the Employee's Compensation during each Plan Year commencing on and after January 1, 1983.

The minimum Late Pension of an Employee who meets the requirements above for a minimum Normal Pension and who retires after his Normal Retirement Date shall be computed the same as the minimum Normal Pension in accordance with the foregoing, considering his Average Monthly Compensation and Credited Service to his actual date of Retirement, but using his Primary Social Security Benefit as of his Normal Retirement Date.

6.2A Minimum Early Pension: If an Employee had attained age sixty (60) on January 1, 1992, was an active participant hereunder on December 31, 1991, and has not at any time been a Highly Compensated Employee, then in no event will his Early Pension be less than the monthly amount provided under the prior benefit formula (as set forth under the terms of the Plan as in force and effect as of December 31, 1991), which is set out below and which equals (a) minus (b), subject to (c):

- (a)
 - (1) Three Percent (3%) of his Average Monthly Compensation, multiplied by his Credited Service, not to exceed twenty-five (25) years, minus
 - (2) Two Percent (2%) of his Primary Social Security Benefit, multiplied by the number, not to exceed twenty-five (25), of the years of Credited Service he would have accumulated if his employment with the Employer had continued uninterrupted to his Normal Retirement Date, with the result being multiplied by the ratio that the number of his years of Credited Service at Retirement bears to the number of years of Credited Service he would have accumulated if his employment with the Employer had continued uninterrupted to his Normal Retirement Date.
- (b) The amount of benefit to which he is entitled under TMRS. The amount of such benefit shall be stated in terms of an Actuarially Equivalent five (5) year certain and life Pension, and shall be computed based upon his Employee and Employer account balances as of his date of Retirement, regardless of vesting, including any updated service credits, increased with interest at a rate determined by the Committee, to Normal Retirement Date.
- (c) In no event, however, shall the Actuarially Equivalent lump sum value of the above Early Pension produced by (a) minus (b) above be less than the accumulated value of a benefit equal to Six and Seven-Tenths Percent (6.7%) of the Employee's Compensation during each Plan Year commencing on and after January 1, 1983.

If payment of an Early Pension commences prior to the Employee's Normal Retirement Date, the amount determined above shall be reduced by one-fifteenth (1/15th) for each of the first five (5) years and one-thirtieth (1/30th) for each of the next five (5) years (and on an Actuarial Equivalent basis thereafter) by which the starting date of Pension payments precedes the Employee's Normal Retirement Date.