# CITY OF NEWPORT

# EMPLOYEES' RETIREMENT PLAN

## 2016 RESTATEMENT

Saalfeld Griggs PC

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# CITY OF NEWPORT
# EMPLOYEES' RETIREMENT PLAN

## EFFECTIVE DATE

The City of Newport (the "City"), an Oregon municipal corporation, has adopted and maintains the City of Newport Employees' Retirement Plan (the "Plan"). Effective January 1, 2016 (except for those specific provisions that have an earlier effective date), the City hereby amends and restates the Plan. The City adopts this restatement to update plan language, ensure continued compliance with applicable law, incorporate discretionary amendment language, and make other clarifying and administrative changes.

## PREAMBLE

The Plan is funded through a trust. The Plan and its related trust exist for the exclusive benefit of eligible employees of the City and other adopting Employers and are intended to comply with sections 401 and 501 of the Internal Revenue Code (the "Code") and related Treasury Department Regulations.

Before January 1, 1983, the Plan included benefits for police and fire employees of the City. Effective January 1, 1983 retirement benefits for such employees were provided through the Public Employee Retirement System of the State of Oregon ("PERS") and a portion of the Plan's funding was transferred to PERS.

## ARTICLE 1
### RELEVANT DATES; QUALIFICATION

**1.01 Plan Year; Limitation Year**

**1.01-1** The plan year and limitation year shall be a fiscal year ending June 30.

**1.01-2** June 30 of each year shall be the regular valuation date. Each other date on which the Plan assets are valued at the request of the Administrator shall be a special valuation date.

**1.02 Qualification**

**1.02-1** The Plan is maintained for the exclusive benefit of eligible employees and is intended to comply with Code §401 and applicable regulations.

**1.02-2** If the Commissioner of the Internal Revenue Service rules in response to a timely filed determination letter request that this Restatement does not qualify under Code §401(a), the Administrator may amend it retroactively to qualify.

## ARTICLE 2
### APPLICATION TO THE CITY AND AFFILIATES

**2.01 Eligible Employers**

**2.01-1** The City has adopted this Plan, and any Affiliate approved by the City may adopt this Plan for its employees.

**2.01-2** "Affiliate" means a corporation, person or other entity that is a member, with an Employer, of any of the following:

(a) A controlled group under Code §414(b).

(b) A group of trades or businesses under common control under Code §414(c).

(c) An affiliated service group under Code §414(m).

(d) A group of employers required to be aggregated under Code §414(o).

**2.01-3** "Employer" means the City and any adopting Affiliate. This Plan is a single plan which is or may be maintained by multiple employers and in which all of the Plan assets are available to pay benefits for all participants.

**2.02 Service for Affiliates**

**2.02-1** Transfer of employment from an adopting Affiliate to a nonadopting affiliate shall cause a termination of employment.

**2.02-2** Subject to Article 3, Service for any adopting Affiliate shall be counted as Service for eligibility and vesting after the organization becomes an adopting Affiliate or upon such earlier date fixed in the statement of adoption. Service for an adopting Affiliate may be Benefit Service as provided in this Plan or in the statement of adoption.

**2.02-3** If an employee is employed by two or more adopting Affiliates during the same plan year, Service for both Affiliates shall count to determine periods of Service and Benefit Service. If a participant has Benefit Service for more than one adopting Affiliate in a plan year, the pension liability shall be allocated among the Affiliates in accordance with appropriate actuarial principles and Compensation from both Affiliates shall be aggregated to determine the participant's Compensation for the year.

**2.02-4** If an organization is acquired by the City or an adopting Affiliate and not continued as a separate affiliate, Service for employees of the acquired organization who become employees of the City or the acquiring affiliate shall be counted from their date of hire by the City or the Affiliate. Past service for the acquired organization may be counted for eligibility, vesting or benefits from dates fixed by the Administrator and the Administrator shall give notice to all affected employees.

**2.03 Adoption Procedure**

An Affiliate may adopt this Plan by a written statement signed by the Affiliate, approved by the City Council and filed with the Trustee. The statement shall include the effective date of adoption, the starting date for Service and any special provisions that are to be applicable only to employees of the adopting Affiliate.

## ARTICLE 3

### PARTICIPATION AND SERVICE

**3.01 Participation**

**3.01-1** Participation shall start on the first day of the month on or next after the date the employee satisfies the following requirements:

(a) The employee is at least age 18.

(b) The employee has been employed by Employer for six continuous months.

(c) The employee is a Qualified Employee.

**3.01-2** "Qualified Employee" means any employee of Employer except the following:

(a) An employee covered by a collective bargaining agreement that does not provide for participation in this Plan.

(b) A police officer or a fire fighter.

(c) A part-time employee regularly scheduled to work fewer than 30 hours per week.

(d) A temporary employee hired for a specified period or an unspecified period of limited duration.

(e) A worker classified by Employer as an independent contractor or as an employee of a nonaffiliated entity.

**3.01-3** If a worker previously classified by Employer as an independent contractor or as an employee of a nonaffiliated entity is reclassified as an employee of Employer, the exclusion of such worker from the definition of Qualified Employee shall apply to all periods affected by the reclassification. As a result, the worker shall be entitled to Years of Service under the rules in 3.02 for the reclassification period, but shall not be eligible to participate in the Plan and shall not be entitled to Benefit Service for such period.

**3.01-4** Every person who has an account under this Plan or has an accrued benefit shall be known as a participant. The Administrator shall furnish each participant with information about the Plan and benefits under it.

**3.01-5** A police officer or fire fighter for whom an account containing Money Purchase contributions made before July 1, 1973 was held under the Plan is a limited participant in the Plan after October 1, 1993 solely for purposes of investment and administration of the account and distribution under Articles 6, 7 or 8.

**3.02 Service**

**3.02-1** The term "Year of Service" means a 12-consecutive month compensation period during which an employee is employed by the Employer as a Qualified Employee. In determining a participant's Vested Interest under Article 8, a Year of Service is the Plan Year.

**3.02-2** A participant shall be credited with Benefit Years after July 1, 1963 during the following periods:

(a) Periods of employment as a Qualified Employee.

(b) Periods of paid leave of absence under 3.03.

(c) Periods of unpaid leave of absence for military service under 3.03-2(c).

**3.02-3** Service shall accumulate until there is a termination of employment. If a termination occurs and the former employee is later rehired, Service before the termination shall be counted and the employee shall immediately participate in the Plan if (1) the employee had at least three Years of Service before the termination and did not withdraw the Money Purchase contribution accounts under 8.02-1; (2) the employee is a non-collectively bargained Qualified Employee hired after March 5, 2012; or (3) the employee is a Qualified Employee who is a member of the Newport Employees' Association or Newport Police Employees (non-PERS) hired after October 15, 2012. All other rehired former employees shall be treated as new employees and shall participate in the Plan upon satisfaction of the requirements of 3.01-1.

**3.03 Leaves of Absence**

**3.03-1** An employee on paid or unpaid leave of absence shall not be treated as having terminated employment.

**3.03-2** Leave of absence under 3.03-1 means the following:

(a) Leave of absence authorized by Employer if the employee returns or retires within the time prescribed by Employer and otherwise fulfills all conditions imposed by Employer;

(b) Leave of absence in accordance with Employer policies because of illness or accident, including disability that does not result in retirement, if the employee returns promptly after recovery;

(c) Periods of military service if the employee returns with employment rights protected by law; and

(d) Periods of leave covered by the Family and Medical Leave Act of 1993 ("FMLA leave").

**3.03-3** In authorizing leaves of absence, Employer shall treat all employees similarly situated alike as much as possible.

**3.03-4** If an employee on leave fails to meet the conditions of the leave or fails to return to work when required, the following shall apply:

(a) Employment shall be terminated and accrual of Service shall stop when the failure occurs if either of the following applies:

i. The leave is not for military service and the failure is because of death, disability under 7.02 or retirement.

ii. The leave is not FMLA leave.

(b) If (a) does not apply, employment shall be terminated and accrual of Service shall stop as of the date the leave began.

(c) No previous allocation of contributions shall be changed.

(d) Any resulting forfeiture shall occur at the end of the plan year in which the failure occurs.

## ARTICLE 4
## COMPENSATION; MONEY PURCHASE AND VOLUNTARY CONTRIBUTIONS

### 4.01 Compensation

**4.01-1** "Compensation" means the following, subject to 4.01-3 and to the limits in 4.01-2:

(a) For the Annual Addition limit under 4.03 and the limit on benefits under 6.05, Compensation means taxable pay reportable on IRS Form W-2 under Code §401(a), disregarding limitations based on the nature or location of the employment, plus, for limitation years beginning after December 31, 1998, amounts described in (b)(1) below.

(b) For allocation of Money Purchase contributions under 4.02, the limit on voluntary contributions under 4.06, and the determination of Average Monthly Earnings under 6.02, Compensation means the amount under (a) above, adjusted as follows:

i. Any amounts set aside by the participant from otherwise taxable income under an Employer's deferred compensation plan under

Code §457 or a cafeteria plan under Code §125 or a transportation fringe benefit plan qualified under Code §132(f) shall be included.

ii. Any reimbursements or other expense allowances, fringe benefits, moving expenses, severance or disability pay and other deferred compensation and welfare benefits shall be excluded.

iii. Overtime pay shall be excluded.

(c) Effective January 1, 2005, Compensation shall include post-severance compensation. The term post-severance compensation means the following amounts that are paid within 2½ months after an Employee's severance of employment with the Employer: (a) payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation; and (b) payments for accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any other payment that is not described above is not considered post-severance compensation if paid after severance from employment, even if it is paid within 2½ months following severance from employment; for example, post-severance compensation does not include amounts paid after severance from employment that are severance pay, unfunded nonqualified deferred compensation, or parachute payments within the meaning of Code §280G(b)(2).

**4.01-2** Compensation for any participant for a year shall be limited to $200,000, as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). 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. The limit for anyone who first became a participant in the Plan before July 1, 1996 shall be $235,840.

**4.01-3** During any leave of absence for military service under 3.03-2(c), Compensation shall be imputed at the rate the participant would have been paid if not absent. If this amount is not reasonably certain, Compensation shall be based on the participant's average Compensation during the 12 months immediately before the leave began, or all such months if fewer than 12.

**4.02 Money Purchase Contributions**

**4.02-1** Subject to 4.03, for each plan year Employer shall make a Money Purchase contribution of 6 percent of Compensation as a Qualified Employee for each Allocation Period. For purposes of this Section, the term Allocation Period shall mean a period of 12 consecutive months or less for which an Employer contribution is made and allocated under the terms of the Plan.

**4.02-2** Subject to 4.03, the Employer shall make an additional matching Money Purchase contribution, as follows, for (1) non-collectively bargained Qualified Employees hired after March 5, 2012; and (2) Qualified Employees who are members of the Newport Employees' Association or Newport Police Employees (non-PERS) hired after October 15, 2012. Such contributions shall be

matching contributions and made to this Plan only on account of a Qualified Employee's Elective Deferrals to the City of Newport 457(b) Plan.

(a) Contribution Formula. Except as otherwise provided in this Section, the Employer will make a matching contribution for any Allocation Period equal to 100 percent of each Qualified Employee's Elective Deferrals to the City of Newport 457(b) Plan, not to exceed, for any Allocation Period, 3 percent of his or her Compensation.

(b) True-ups. If (1) the Allocation Period for matching contributions is a computation period that is less than the Plan Year, and (2) on the last day of any Plan Year, the dollar amount of the matching contributions made on behalf of a Qualified Employee is less than the dollar amount that would have been made had the matching contributions been contributed for an Allocation Period of a Plan Year, then the Employer may elect, pursuant to the Employer's discretion, for any Plan Year to make an additional matching contribution so that the matching contribution contributed for a Qualified Employee is equal to the matching contribution that would have been made had the matching contribution been contributed for an Allocation Period of the Plan Year.

**4.02-3** Compensation shall be as defined in 4.01-1. For a new participant, the contribution shall be based on Compensation for the partial plan year after participation in the Plan starts.

**4.02-4** Employer shall make additional Money Purchase contributions as follows for a participant who returns from military leave under 3.03-2(c):

(a) The additional Money Purchase contribution shall be determined separately with respect to each plan year during which the participant was absent on military leave.

(b) The additional Money Purchase contribution with respect to a year during any period of absence for military leave shall equal the amount of additional Money Purchase contribution that would have been made on behalf of the participant for the plan year if the Compensation imputed under 4.01-3 had been paid during the period of absence.

(c) The additional Money Purchase contribution shall be subject to the limit in 4.03 that applied to the plan year for which the additional contribution is made.

**4.03 Limit on Annual Additions**

**4.03-1** Contributions under this Article 4 shall be considered a separate defined contribution plan and limited in accordance with the following rules as provided in Code §415 and related regulations. The following provisions shall be applied in a manner consistent with the Code and regulations, which are incorporated by this reference, including considering benefits under Article 6 as a separate defined benefit plan.

**4.03-2** The "Annual Addition" that may be contributed or allocated to a participant's account under the Plan for any limitation year will not exceed the lesser of (a) $40,000, as

adjusted for increases in the cost-of-living under Code §415(d), or (b) 100 percent of the participant's Compensation, within the meaning of Code §415(c)(3), for the limitation year. The Compensation limit referred to in (b) will not apply to any contribution for medical benefits after separation from service (within the meaning of Code §401(h) or Code §419A(f)(2)) which is otherwise treated as an Annual Addition.

**4.03-3** Annual Addition means for any limitation year the sum of Money Purchase contributions and voluntary contributions for the year. In applying the limitations on Annual Additions, all employers that are Affiliates as described under 2.01-2, with the adjustment provided in Code §415(h), shall be considered a single employer.

**4.03-4** If Employer maintains one or more defined contribution plans at any time, the Annual Additions under all such plans shall be combined for purposes of applying the above limitations.

**4.04 Adjustments to Satisfy Limits**

For any Limitation Year beginning before July 1, 2007, if an Annual Addition for a participant would exceed the limit in 4.03-2 because of an allocation of forfeitures, a reasonable error in estimating a participant's Compensation, a reasonable error in determining the amount of elective contributions (within the meaning of Code §402(g)(3)), or because of other limited facts and circumstances that the Commissioner finds justifies the availability of the rules set forth in this Article 4, then such participant's account will be adjusted as follows in order to reduce the excess Annual Additions:

**4.04-1** Voluntary contributions, if any, to the extent that they would reduce the excess Annual Additions, will be calculated. Such Voluntary contributions, plus attributable gains, will then be distributed to the participant.

**4.04-2** If, after the application of 4.04-1, above, excess Annual Additions still exist and the participant is covered by the Plan at the end of the Limitation Year, the excess Annual Additions in the participant's account will be used to reduce Money Purchase contributions (including any allocation of Forfeitures) for such participant in the next Limitation Year, and in each succeeding Limitation Year, if necessary.

**4.04-3** If, after the application of 4.04-1 and 4.04-2 , above, excess Annual Additions still exist and the participant is not covered by the Plan at the end of a Limitation Year, the excess Annual Additions will be held unallocated in a suspense account and will be applied to reduce future Employer contributions (including the allocation of any forfeitures) for all remaining participants in the next Limitation Year, and in each succeeding Limitation Year if necessary.

**4.04-4** If a suspense account is in existence at any time during a Limitation Year pursuant to 4.04-3, above, then such suspense account will not participate in the allocation of the trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, then all amounts in the suspense account must be allocated and reallocated to participants' accounts before any Employer contributions or any Employee contributions may be made to the Plan for that Limitation Year. A suspense account may not be distributed to participants or former participants.

**4.05 Time of Payment**

Employer shall make payments to the Trustee to cover all contributions as follows:

(a) Payment of employee voluntary contributions shall be paid as soon as the amounts can reasonably be identified and separated from Employer's other assets. Subject to (c), such contribution shall in any event be made not later than 30 days after the participant would otherwise have received the amount deducted from pay on account of the voluntary contributions.

(b) Employer may pay Money Purchase contributions in one sum or in installments.

(c) All contributions for a plan year must be paid no later than 12 months after the end of the plan year.

**4.06 Voluntary Contributions**

**4.06-1** For each plan year Qualified Employees may make voluntary contributions as follows:

(a) Subject to 4.03 and the limits stated below, the contribution for a participant shall be a whole number percentage of Compensation for the year, as defined under 4.01-1, elected by the participant.

(b) The maximum percentage of Compensation that a participant may contribute under (a) shall be 10 percent. In the first year of participation, Compensation shall be counted for the part year after the employee is first eligible to participate.

(c) For purposes of this 4.06 the following Qualified Employees are excluded from making voluntary contributions:

i. Non-collectively bargained Qualified Employees hired after March 5, 2012.

ii. Qualified Employees who are members of the Newport Employees' Association hired after October 15, 2012.

iii. Qualified Employees who are members of the Newport Police Employees (Non-PERS) hired after October 15, 2012.

**4.06-2** Employee voluntary contributions shall be made by payroll deduction. Voluntary contributions shall be accounted for as the Administrator may decide and credited at such intervals as the Administrator may fix. Contributions shall be credited not later than the next regular or special valuation date after payment to the Trustee.

**4.06-3** A participant who returns from military leave under 3.03-2(c) may make voluntary contributions on account of the period of leave as follows:

(a) Subject to (c), make-up voluntary contributions may be made during the contribution make-up period under (b) out of Compensation payable during such make-up period.

(b) The contribution make-up period begins on the date the participant is reemployed and ends on the earlier of the following:

i. The fifth anniversary of reemployment.

ii. The last day of a period that is three times the period of military leave.

(c) To the extent permitted by applicable regulations, make-up contributions may be made out of funds other than Compensation. Each such contribution shall be considered made when the participant delivers funds to the Plan equal to the contribution amount.

(d) The participant shall file an election with the Administrator designating the plan year during military leave to which make-up voluntary contributions under (a) and (c) relate.

## ARTICLE 5
## PARTICIPANTS' ACCOUNTS

### 5.01 Participants' Accounts

**5.01-1** The Administrator shall keep separate accounts for the following contributions, and such additional separate accounts for each participant as may be necessary to administer the Plan properly:

(a) Money Purchase contributions made by the participant prior to July 1, 1973.

(b) Money Purchase contributions made by the participant between July 1, 1973 and July 1, 1980.

(c) Money Purchase contributions made by Employer after July 1, 1980.

(d) Mandatory contributions. For the period beginning December 8, 1994 and ending May 27, 1996, a Mandatory contribution of 6 percent of Compensation as a Qualified Employee was made for each participant. Mandatory contributions were made by Employer as a pick-up under Code §414(h) required by Section 10(1) of Article IX of the Oregon Constitution before such Section was struck down by the Oregon Supreme Court.

(e) Voluntary contributions.

**5.01-2** The Administrator shall furnish each participant annually a statement showing contributions, vesting, and account balances.

**5.02 Valuations and Adjustments**

**5.02-1** As of each regular or special valuation date, the relevant portion of the trust funds shall be valued and the values allocated as follows:

(a) The Trustee shall value the pooled investment funds at their fair market values and report the values to the Administrator.

(b) The Administrator shall allocate the pooled fund values to accounts as of the valuation date as follows:

i. The allocation to accounts shall be in proportion to account balances on the valuation date before adding any allocations or subtracting any withdrawals or other distributions made as of that date.

ii. Appropriate adjustments shall be made for any interim contributions or distributions since the last valuation date.

**5.02-2** Whenever the Administrator finds it desirable to avoid a material distortion in benefits or otherwise, to administer the Plan properly it may do either of the following:

(a) Call for a special valuation.

(b) Defer pending distributions until after the next regular valuation date.

**5.03 Rollovers**

**5.03-1** The Administrator may approve rollover of funds from a tax qualified retirement plan or Individual Retirement Account (IRA) if all of the following criteria are met:

(a) The individual rolling over the funds is a Qualified Employee at the time the rollover is made.

(b) If the rollover occurred on or before January 1, 2004, the funds come from either of the following:

i. An IRA that holds only amounts rolled over from one or more total distributions or eligible rollover distributions from other qualified plans and related earnings.

ii. An eligible rollover distribution from a qualified plan.

(c) If the rollover occurred after January 1, 2004, the funds come from either of the following:

i. An eligible rollover distribution or a participant contribution of an eligible rollover distribution from the following plans: (A) a qualified

Plan described in Code §401(a) or 403(a); (B) an annuity contract described in Code §403(b); and (C) an eligible Plan under Code §457(b) 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.

ii. A portion of a distribution from an individual retirement account or annuity described in Code §408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income.

(d) The funds are paid to this Plan within 60 days after distribution from the other plan or IRA.

(e) The funds do not include any employee contributions.

(f) The Administrator finds that the rollover will not impair the qualified status of this Plan in accordance with Revenue Ruling 2014-9.

**5.03-2** A rollover shall be accounted for in such manner as the Administrator shall decide.

**5.04 Transfers Between Plans**

**5.04-1** The Administrator may approve a transfer from this Plan directly into another qualified plan if all of the following conditions are met:

(a) The account is vested and currently distributable under this Plan.

(b) The individual involved requests that the account be distributed directly to the other plan in which the individual is a participant.

(c) The plan administrator or trustee of the receiving plan has agreed to accept the funds and has affirmed that the receiving plan is authorized to accept the transfer.

**5.04-2** The Administrator may direct the Trustee to accept funds transferred directly to this Plan from another qualified plan if the following conditions are met:

(a) The individual involved has requested the transfer and is a Qualified Employee of Employer at the time the transfer is made.

(b) The Administrator determines that the transfer will not impair the qualified status of this Plan.

(c) Subject to (d) below, none of the amount transferred is subject to any distribution requirement that is inconsistent with the distribution options in this Plan.

(d) The transfer would not satisfy (c) above except that it is an elective transfer under Treasury Regulation 1.411(d)-4 Q&A-3 and all the requirements of the regulation are met.

**5.04-3** An amount received by direct transfer shall be accounted for in such manner as the Administrator shall decide.

**5.05 Withdrawals of Voluntary Contributions**

**5.05-1** A participant may withdraw all or part of the voluntary contribution account before or at retirement. Withdrawals shall be charged in the following order:

(a) Against contributions made before 1987.

(b) Against contributions made after 1986 and a proportionate share of related earnings.

(c) Against earnings related to contributions before 1987.

**5.05-2** The withdrawal date shall be fixed by the Administrator after application by the participant under procedures fixed by the Administrator. The Administrator may require a minimum advance notice and may delay payment of a withdrawal to permit a special valuation of the fund, to permit liquidation of necessary assets or for other pertinent reasons.

## ARTICLE 6
### BENEFITS ON RETIREMENT

**6.01 Entitlement; Retirement Dates; Participation After Mandatory Benefit Starting Date**

**6.01-1** Qualified Employees hired on or before March 5, 2012 shall be entitled to benefits on retirement under this Article 6. Non-collectively bargained Qualified Employees hired on or after March 5, 2012 shall not be entitled to benefits on retirement under this Article 6. Qualified Employees who are members of the Newport Employees' Association or the Newport Police Association (Non-PERS) hired on or after October 15, 2012, shall not be entitled to benefits on retirement under this Article 6. Qualified Employees who are excluded under this Article 6 shall continue to be Qualified Employees for the purpose of receiving benefits under Article 4 of the Plan if they meet all other eligibility and participation requirements of the Plan.

**6.01-2** Retirement shall occur on termination of employment after reaching one of the following dates:

(a) Normal retirement date, which shall be the first day of the month on or after age 62.

(b) Early retirement, which date shall be the first day of any month on or after age 55 and 10 Years of Service.

(c) Deferred retirement date, which shall be the first day of any month after normal retirement date.

**6.01-3** A person shall be considered retired after termination under 6.01-2 as a Qualified Employee and rehired as a non-Qualified Employee.

## 6.02 Normal Retirement Basic Benefit

**6.02-1** Subject to 6.02-2 and 6.05, the basic benefit on normal retirement is a monthly pension for life equal to the sum of the following:

(a) A defined benefit equal to Years of Benefit Service ("BY") times 1.2 percent of Average Monthly Earnings ("AME") as follows:

**BY x 1.2% x AME**

(b) An annuity equal in value to the combined balances of the participant's employee and Money Purchase contribution accounts.

(c) An annuity equal in value to the balance of the participant's Mandatory contribution account, if not withdrawn under 8.02-2.

(d) An annuity equal in value to the balance of the participant's voluntary contribution account, if not withdrawn under 5.05 or 8.02-2.

**6.02-2** The defined benefit portion of a participant's normal retirement basic benefit shall not be less than either of the following:

(a) The participant's accrued benefit as of September 30, 1993.

(b) The greatest early retirement benefit the participant could have received under 6.03.

**6.02-3** "Average Monthly Earnings" means the average of the participant's Monthly Earnings in the three consecutive plan years of highest Compensation as follows:

(a) "Monthly Earnings" for a plan year means one-twelfth of the participant's Compensation for the plan year.

(b) Compensation shall be as defined in 4.01-1.

(c) Compensation shall be considered only during the last 10 plan years of employment by Employer.

(d) Years separated by a period when the participant is not employed by Employer shall be treated as consecutive.

(e) For a participant with fewer than three plan years of Compensation, all years shall be used.

(f) During periods of reduced Compensation because of such causes as illness, disability, leave of absence or layoff, Compensation shall be figured at the last regular rate before the start of the period.

**6.02-4** Conversion to annuities under 6.02-1(b), (c), and (d) shall be based on actuarial equivalency under 12.09.

**6.02-5** Benefits shall start on the Benefit Starting Date after the retirement date and be paid as soon as practicable.

**6.03 Early Retirement Basic Benefit**

**6.03-1** Subject to 6.05, on early retirement the basic benefit shall be the same as on normal retirement, adjusted as follows:

(a) For a participant with 25 or more Years of Service who starts benefits at age 60 or over, no reduction in the benefit shall be made.

(b) For a participant with 30 or more Years of Service who starts benefits at age 55 or over, no reduction in the benefit shall be made.

(c) For any participant not covered by 6.03(a) or 6.03(b), the defined benefit portion under 6.02-1(a) shall be reduced by .6 percent for each month by which the Benefit Starting Date precedes age 62.

**6.03-2** Benefits after early retirement date shall be paid as follows:

(a) Benefits shall start on the participant's normal retirement date unless the participant elects to start benefits earlier under (b).

(b) The participant may elect to start benefits on the first day of any month after early retirement by applying for benefits under 6.06.

(c) If the participant has not applied under (b) and dies before the Benefit Starting Date, benefits shall be limited to the amounts provided by 7.01.

(d) The participant must apply for benefits under 6.06. The benefit shall be paid at the time provided in 6.07 and in a form determined under 6.08.

**6.04 Deferred Retirement Basic Benefit**

**6.04-1** Subject to 6.04-2 and 6.05, on deferred retirement, the basic benefit shall be the participant's benefit determined as for normal retirement based on Years of Benefit Service and Average Monthly Earnings as of the end of the Plan Year of deferred retirement. In calculating the basic benefit, such amount shall be offset by the actuarial value of any distributions received from the Plan prior to the close of the Plan Year.

**6.04-2** For participants who retire after age 65, the defined benefit portion of the participant's basic benefit on deferred retirement shall be actuarially adjusted under 12.09.

**6.05 Limit on Benefits**

**6.05-1** The defined benefit portion of the basic benefit in 6.02-1(a) shall be considered a separate defined benefit plan and limited in accordance with the following rules as provided in Code §415 and related regulations. The following provisions shall be applied in a manner

consistent with the Code and regulations, which are incorporated by this reference, including considering contributions under Article 4 as a separate defined contribution plan.

**6.05-2** Subject to 6.05-3, the actuarially equivalent straight life annuity defined benefit under 6.02-1(a), and as expressed below, on normal, early or deferred retirement expressed as an annual benefit shall not be more than $160,000 plus a cost-of-living adjustment authorized by applicable regulations for that year.

(a) The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this Section if the form of the participant's benefit is either:

i. a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant; or

ii. an annuity that decreases during the life of the participant merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments.

(b) If the annuity starting date of the participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of: (1) the interest rate and the mortality table or other tabular factor specified in the Plan for adjusting benefits in the same form; (2) a 5.5 percent interest rate assumption and the applicable mortality table; and (3) the applicable interest rate under Code §417(e)(3) and the applicable mortality table, divided by 1.05.

(c) If the annuity starting date of the participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the Plan for adjusting benefits in the same form; and (2) 5.5 percent interest and the applicable mortality table.

(d) If the annuity starting date of the participant's form of benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, and the Plan applies the transition rule in section 101(d)(3) of PFEA '04 in lieu of the rule in (c), the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, determined in accordance with Notice 2004-78.

**6.05-3** The maximum permissible benefit in 6.05-2 shall be adjusted in accordance with the following rules:

(a) If the participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the

numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is 10. In the case of a participant who has fewer than 10 Years of Service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Employer and (ii) the denominator of which is 10.

(b) The limitation in 6.05-2 shall not be lower for any participant than the participant's accrued benefit under the Plan on either of the following dates:

i. June 30, 1983.

ii. June 30, 1987.

(c) Adjustment of defined benefit dollar limitation for benefit commencement before age 62.

i. If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table under Code §417(e)(3).

ii. If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using whichever the following produces the greater annual amount: (1) the interest rate and mortality table or other table factor specified in the plan for adjusting benefits in the same form; and (2) a 5 percent interest rate assumption and the applicable mortality table.

iii. Notwithstanding the other requirements of this paragraph (c), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a participant's death between the annuity starting date and age 62.

(d) Adjustment of defined benefit dollar limitation for benefit commencement after age 65.

i. If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, the defined benefit dollar limitation for the participant's annuity

starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table under Code §417(e)(3).

ii. If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using whichever the following produces the greater annual amount: (1) the interest rate and mortality table or other table factor specified in the plan for adjusting benefits in the same form; and (2) a 5 percent interest rate assumption and the applicable mortality table.

iii. Notwithstanding the other requirements of this paragraph (d), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a participant's death between age 65 and the annuity starting date.

(e) Actuarial equivalencies shall be based on the assumptions set forth in 12.09, except as otherwise indicated in this Article 6.

(f) The Plan provides either the option to commence benefits at normal retirement date regardless of continued employment, or an actuarial increase in benefits commenced after normal retirement age.

(g) If, as a result of additional accruals after a participant attains normal retirement age, the accrued benefit of such participant would exceed the limitations under this Article 6 for the Limitation Year, then immediately before the additional benefit accrues that would cause such participant's accrued benefit to exceed the limitations of this Article 6, payment of benefits to such participant will be suspended.

**6.05-4** If the benefit is paid in the form of a contingent annuity under 6.08-3 with payments continued to the participant's spouse, the limitations in 6.05-2 shall be applied to the participant's actual benefit rather than the actuarially equivalent single life annuity.

**6.05-5** In applying the limitations on Annual Additions, all employers that are Affiliates as described under 2.01-2, with the adjustment provided in Code §415(h) shall be considered a single employer.

**6.05-6** If benefits under another defined benefit pension plan maintained by Employer, when combined with the benefits under this Plan, exceed the above limitations, the benefits

under this Plan shall be reduced to the extent of the excess and the benefits under the other Plan shall stand.

**6.06 Application for Benefits**

**6.06-1** A participant, spouse or beneficiary eligible for benefits must apply in writing on a form prescribed by the Administrator. If an application is not filed by the Benefit Starting Date or the participant specifies a starting date later than that in 6.07-1, then 6.07-2 shall apply.

**6.06-2** Subject to 6.06-3, application shall be made within 180 days (90 days for Plan Years beginning before January 1, 2007) after receiving the explanation in 6.06-3.

**6.06-3** A participant shall receive a general explanation of annuity benefits in accordance with the following rules:

(a) On or before 180 days (90 days for Plan Years beginning before January 1, 2007) prior to the Benefit Starting Date, the Administrator shall give the participant or other eligible recipient an explanation of the following:

i. The right to defer payment until normal retirement age, if applicable, and of the benefit options in 6.08-3 and their financial effect.

ii. The form of benefit election under 6.08-2 and of the effect of failure to elect.

iii. The right to elect to have a direct rollover under 6.06-4 if applicable.

iv. The applicability of mandatory withholding if a direct rollover could be elected under 6.06-4 and is not.

v. The applicable rules on rollover and taxation of the distribution as required by Code §402(f).

(b) The participant may make or revoke an election under 6.08-2 at any time within the period starting 180 days (90 days for Plan Years beginning before January 1, 2007) before the Benefit Starting Date and ending with the later of the following:

i. 180 days (90 days for Plan Years beginning before January 1, 2007) after the participant has received the information in (a).

ii. The Benefit Starting Date.

(c) A participant entitled to the information (a) is also entitled to a specific written explanation of the benefit options under 6.08-3 and the financial effect on the participant of receiving a contingent annuity or electing not to do so. The information shall be furnished by the Administrator after request by the participant.

**6.06-4** An eligible recipient of an eligible rollover distribution may elect before the benefit is paid to have the benefit distributed by a direct rollover into an eligible retirement plan and the following shall apply:

(a) The recipient shall furnish the Administrator sufficient information to identify the eligible retirement plan or IRA and the fund holder to whom the direct rollover shall be paid.

(b) "Eligible retirement plan" means an individual retirement account or annuity, an employer-sponsored qualified retirement trust, an employer-sponsored qualified annuity plan, an annuity contract described in Code §403(b), an eligible plan under Code §457(b) which is maintained by a political subdivision of a state or any agency or instrumentality of a state or political subdivision which agrees to separately account for amounts transferred into such plan from the Plan, and to a distribution to an alternate payee under a qualified domestic relations order, as defined in Code §414(p).

(c) "Eligible rollover distribution" means any distribution from the Plan other than the following:

i. One of a series of substantially equal periodic payments over life, or life expectancy, or a period of 10 years or more.

ii. A payment required under Code §401(a)(9).

iii. Any amount of any distribution that is attributable to a financial hardship distribution.

iv. Return of post-tax contributions.

(d) "Eligible recipient" means the participant, the spouse of a deceased participant or a spouse or former spouse who is an alternate payee under a qualified domestic relations order.

**6.07 Time of Payment**

**6.07-1** Benefits shall be paid at a time determined as follows:

(a) The "Benefit Starting Date" means the first day of the first Benefit Month under (b). If payments are delayed under 6.07-2, the Benefit Starting Date shall not change.

(b) "Benefit Month" means a calendar month for which a participant or contingent annuitant or other death beneficiary is entitled to receive a monthly benefit.

(c) The first Benefit Month is the earliest of the following:

i. The first month starting on or after the normal, deferred or disability retirement date.

ii. The month selected for the start of benefits after an early retirement date.

iii. The mandatory Benefit Starting Date under 6.09-2(a).

(d) The last Benefit Month is the month in which the participant or other life annuitant dies or the last payment is made under a term certain annuity.

**6.07-2** If application or the explanation under 6.06-3(a) is delayed beyond the Benefit Starting Date, the following shall apply:

(a) Payment shall be made or commence as soon as practicable after the Benefit Starting Date, and in any event within 60 days after application is made.

(b) Back installments from the Benefit Starting Date shall be paid in a single sum with the first payment. No interest shall be paid on back installments.

**6.08 Form of Retirement Benefit**

**6.08-1** The basic benefit on normal, early or deferred retirement is based on the following:

(a) The normal form for the basic benefit is a single life annuity.

(b) The benefit shall be paid in equal monthly payments on the first day of each Benefit Month.

**6.08-2** A participant shall elect the actual form of distribution from those in 6.08-3 as follows:

(a) Regardless of form, the value of the benefit shall be the actuarial equivalent of the basic benefit the participant would receive under 6.02, 6.03 or 6.04.

(b) The election shall be made and any contingent annuitant or other beneficiary named in the application under 6.06.

(c) If the contingent annuitant or other beneficiary dies before the participant's Benefit Starting Date, the election shall be void.

**6.08-3** The optional forms of benefit shall be the following:

(a) Single life annuity.

(b) Contingent annuity with payments continued to the contingent annuitant in full.

(c) Contingent annuity with payments continued to the contingent annuitant at one-half.

(d) On early retirement, a level income option under which the monthly payments before first eligibility for Social Security retirement benefits are greater than the remaining payments so as to provide approximately equal payments throughout the payment period, including Social Security.

(e) Any other form of distribution approved by the Administrator.

**6.08-4** The benefit shall be provided from the fund by one of the following ways as determined by the Administrator:

(a) Purchasing and delivering a single premium nontransferable annuity in a form and from an insurance company approved by the Administrator.

(b) Paying the benefit directly from the fund.

**6.08-5** Annuities under 6.08-4 shall have terms that comply with the requirements of this Plan. Annuity purchase rates for any plan year shall be the same for males and females.

**6.09 Required Minimum Distributions**

**6.09-1** All distributions from the Plan will be determined and made in compliance with a reasonable good faith interpretation of the final and temporary Regulations under Code §401(a)(9), effective as of April 17, 2002. Pursuant to those Regulations, all distributions will be determined in accordance with the following provisions:

(a) The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(b) The requirements of this Section will take precedence over any inconsistent provisions of the Plan and any prior Plan amendments.

(c) Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Tax Equity and Fiscal Responsibility Act (TEFRA) §242(b)(2) and the provisions of the Plan that relate to TEFRA §242(b)(2).

**6.09-2** All required minimum distributions will be made from the Plan in the following time and in the following manner:

(a) 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. The term "Required Beginning Date" means April 1st of the calendar year following the later of the calendar year in which the participant reaches Age 70½ or the calendar year in which the participant actually retires. Notwithstanding the foregoing to the contrary, if a participant made a distribution election prior to January 1, 1984 pursuant to §242(b) of TEFRA, such participant's benefit will be distributed at the time and in the manner set forth in the election provided such election has not been revoked, and further provided that the election sets forth a method of distribution of benefits which satisfies the provisions of Code §401(a)(9) as in effect prior to enactment of TEFRA.

(b) If the participant dies before distributions begin and there is a Designated Beneficiary, the participant's entire interest will be distributed to the Designated Beneficiary by December 31st of the calendar year containing the fifth anniversary of the participant's death. 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 either the participant or the surviving Spouse begin, this subparagraph will apply as if the surviving Spouse were the participant. This subparagraph also applies to all distributions.

**6.09-3** The amount of required minimum distributions during a participant's lifetime will be determined as follows:

(a) During the participant's lifetime, the minimum amount that will be distributed each Distribution Calendar Year is the lesser of (A) the quotient obtained by dividing the participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the participant's age as of the participant's birthday in the Distribution Calendar Year; or (B) if the participant's sole Designated Beneficiary for the Distribution Calendar Year is the participant's Spouse, then the quotient obtained by dividing the participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the participant's and Spouse's attained ages as of the participant's and Spouse's birthdays in the Distribution Calendar Year.

(b) Required minimum distributions will be determined under this paragraph beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the participant's date of death.

**6.09-4** Required minimum distributions will be made after a participant's death in accordance with the following provisions:

(a) If a participant dies on or after the date distribution begins, then the amount of a required minimum distribution will be determined as follows:

i. If the participant dies on or after the date distributions begin and there is a Designated Beneficiary, then the minimum amount that will be distributed for each Distribution Calendar Year after the year of the participant's death is the quotient obtained by dividing the participant's Account Balance by the longer of the remaining Life Expectancy of the participant or the remaining Life Expectancy of the Designated Beneficiary, determined in accordance with the following provisions:

(i) The participant's remaining Life Expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(ii) If the participant's surviving Spouse is the participant's sole Designated Beneficiary, then the remaining Life Expectancy of the surviving Spouse is calculated for each

Distribution Calendar Year after the year of the participant's death using the surviving Spouse's age as of the Spouse's birthday in that Distribution Calendar Year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining Life Expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(iii) If the participant's surviving Spouse is not the participant's sole Designated Beneficiary, then the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the participant's death, reduced by one for each subsequent calendar year.

(b) If the participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the participant's death, then the minimum amount that will be distributed for each Distribution Calendar Year after the year of the participant's death is the quotient obtained by dividing the participant's Account Balance by the participant's remaining Life Expectancy calculated using the age of the participant in the year of death, reduced by one each subsequent year.

**6.10 Mandatory Cash-Out of Benefits**

Mandatory cash-outs prior to the first date that the automatic rollover provisions of Code §401(a)(31) first apply will be governed by the terms of the Plan (including amendments) as in effect prior to such date. Effective on or after January 1, 2016, mandatory cash-outs will be governed by Code §401(a)(31)(B) to require that mandatory cash-outs of more than $1,000 be paid in a direct rollover to an individual retirement plan (i.e., an individual retirement account as described in §408(a) or an individual retirement annuity described in §408(b)) of a designated trustee or issuer if the participant does not make an affirmative election to have the amount paid in a direct rollover to an eligible retirement plan or to receive the distribution directly. The Administrator must notify the participant in writing that the distribution may be paid in a direct rollover to an individual retirement plan.

**6.11 Reemployment After Retirement**

**6.11-1** Subject to 6.09, benefit payments to a retired participant receiving an annuity form of benefit shall be withheld and accrual of benefits shall resume when all of the following have occurred:

(a) The participant has been rehired by Employer as a Qualified Employee.

(b) The participant has elected to resume participation in the Plan.

**6.11-2** A participant whose benefits have been withheld under 6.10-1 shall receive benefits on a later retirement determined as follows:

(a) The participant shall apply for benefits under 6.06 and select a form of benefit under 6.08 for the benefits attributable to Service after rehire. The benefits

attributable to Service before rehire shall be in the form that applied during the prior period of retirement.

(b) On later retirement the participant's benefit shall be calculated under 6.02, 6.03 or 6.04 as applicable, based on Years of Service and Compensation to the later retirement date and then reduced by the actuarial value of benefits previously received. The monthly benefit shall not be less than that payable on the earlier retirement for the same form of benefit.

**6.11-3** If a person receiving an annuity form of benefit is rehired and does not elect to resume participation, benefits shall not be withheld and no additional benefit shall accrue based on the new period of Service. If a person who has received a lump sum benefit upon retirement is rehired, no additional benefit shall accrue based on the new period of Service.

## ARTICLE 7
## BENEFITS ON DEATH OR DISABILITY

### 7.01 Pre-retirement Death Benefits

**7.01-1** On death of a participant before starting retirement benefits, the participant's beneficiary under 7.01-3 shall receive in a lump sum the total of the following:

(a) The balance of the participant's Money Purchase contribution accounts.

(b) The balance of the participant's Mandatory contribution account.

(c) The balance of the participant's voluntary contribution account.

(d) An amount attributable to the participant's defined benefit as determined under 7.01-2.

**7.01-2** The amount attributable to the participant's defined benefit shall be the greatest of the following:

(a) 50 times the participant's projected monthly pension under 6.02-1(a) assuming continued full-time service to normal retirement date and no change in Average Monthly Earnings.

(b) The actuarial present value of the participant's accrued defined benefit on the date of death.

(c) The amount determined for the participant under this subsection 7.01-2 as in effect on September 30, 1993.

**7.01-3** Each participant shall file with the Administrator a designation of beneficiaries and may change it from time to time. If no beneficiary has been named or no named beneficiary is living when the participant dies, the benefit shall be paid to the following in order of priority:

(a) The participant's surviving spouse.

(b) The participant's surviving children in equal shares.

(c) The participant's surviving parents in equal shares.

(d) The participant's estate.

**7.01-4** In the case of a participant who dies while performing qualified military service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the plan had the participant resumed employment and then terminated employment upon death.

**7.02 Disability Retirement Benefits**

**7.02-1** A participant whose employment terminates due to disability shall be paid in a lump sum the total of the following:

(a) The balance of the participant's Money Purchase contribution accounts.

(b) The balance of the participant's Mandatory contribution account.

(c) The balance of the participant's voluntary contribution account.

(d) An amount attributable to the participant's defined benefit as determined under 7.02-02.

**7.02-2** The amount attributable to the participant's defined benefit shall be the greatest of the following:

(a) 50 times the participant's projected monthly pension under 6.02-1(a) assuming continued full-time service to normal retirement date and no change in Average Monthly Earnings.

(b) The actuarial present value of the participant's accrued benefit on the date disability arises.

(c) The amount determined for the participant under 7.02-1(c) as in effect on September 30, 1993.

**7.02-3** A disabled participant is one who as a result of illness or injury suffers from a condition of mind or body that permanently prevents full-time employment by Employer. The Administrator shall determine disability and may rely on advice from a medical examiner satisfactory to the Administrator.

**7.02-4** If benefits after disability would be offset against any other disability benefit, the Retirement Administrator may defer the start of payments until age 65 and adjust the benefit actuarially for the later start unless the participant elects to waive disability and receive benefits under 6.02, 6.03, 6.04 or Article 8.

## ARTICLE 8
### ACCRUED BENEFITS; VESTING

**8.01 Accrued Benefits; Vesting**

**8.01-1** A participant who terminates employment for any reason other than retirement, death or disability shall be entitled only to vested accrued benefits. Once an employee satisfies the participation requirements of Article 3, the participant will have a 100% vested interest in his or her accrued benefits upon reaching normal retirement age prior to termination of employment. A participant will also have a 100% vested interest upon his or her disability prior to termination of employment or his or her death prior to termination of employment.

**8.01-2** A participant's accrued benefit on termination shall be the sum of:

(a) The participant's Money Purchase contribution accounts, Mandatory contribution account and voluntary contribution accounts.

(b) The defined benefit determined under 6.02-1(a) based on Benefit Years and Average Monthly Earnings at the time of termination.

**8.01-3** For a Participant hired before October 1, 1993, the Money Purchase accounts and the voluntary contribution account shall be fully vested at all times. For a participant hired after September 30, 1993, the voluntary contribution account shall be fully vested at all times and the Money Purchase account shall vest in accordance with the schedule in 8.01-4(b). Effective March 5, 2012, non-collectively bargained Qualified Employees who terminated employment with the City and were rehired on or after March 5, 2012 shall receive vesting credit for all Years of Service with the City. Effective October 15, 2012, Qualified Employees who are members of the Newport Employees' Association or the Newport Police Association (non-PERS) and who terminated employment with the City and were rehired on or after October 15, 2012 shall .receive vesting credit for all Years of Service with the City. For all participants the Mandatory contribution account shall be fully vested at all times.

**8.01-4** A Participant's defined benefit accrued under 6.02-1(a) shall be vested as follows:

(a) If the participant withdraws the Money Purchase contribution accounts under 8.02-1 the defined benefit shall be entirely unvested.

(b) If (a) does not apply, the defined benefit shall be vested under the following table:

| Years of Service | Vested Percentage |
|---|---|
| Less than 3 | 0% |
| 3 | 50% |
| 4 | 62% |
| 5 | 75% |
| 6 | 87 ½% |
| 7 or more | 100% |

**8.02 Payment**

**8.02-1** A participant who accrued benefits under Article 6 of the Plan may elect on or before 180 days after termination to withdraw the vested portion of the Money Purchase contribution accounts and all of the Mandatory contribution accounts and voluntary contribution accounts. If the election is made, the vested portion of the accounts shall be paid to the participant in a lump sum within a reasonable time and the participant's defined benefit, if any, and any unvested Money Purchase account shall be forfeited under 8.03. The Administrator may delay payment of the accounts for a valuation of the fund if necessary.

**8.02-2** A participant may elect at any time after termination to withdraw either or both of the participant's voluntary contribution account and Mandatory contribution account. Such a withdrawal shall have no effect on the participant's defined benefit and Money Purchase account.

**8.02-3** A terminated participant who accrued benefits under Article 6 of the Plan does not elect to withdraw all amounts available under 8.02-1 and 8.02-2 shall start receiving vested accrued benefits at normal retirement age. A participant with 10 or more Years of Service may elect to start receiving, on the first day of any month after age 55, the accrued defined benefit adjusted under 6.03-1. If a terminated participant dies before benefits are to start, benefits shall be limited to those payable under 7.01.

**8.02-4** A vested terminated participant who accrued benefits under Article 6 of the Plan must apply for benefits under 6.06 and elect a distribution option between 30 and 180 days before benefits are to start subject to 6.06-3. If an application is not filed by the Benefit Starting Date for normal retirement, 6.07-2 shall apply. The form of benefit shall be determined under 6.08.

**8.02-5** A terminated participant who is not entitled to benefits on retirement under Article 6 of the Plan may elect on or before 180 days after termination to withdraw the vested portion of the Money Purchase contribution accounts. If the election is made, the vested portion of the accounts shall be paid to the participant in a lump sum within a reasonable time and any unvested Money Purchase account shall be forfeited under 8.03. If the election is not made, the vested portion of the accounts shall be distributed by the Administrator subject to 6.10. The Administrator may delay payment of the accounts for a valuation of the fund if necessary.

**8.02-6** All distributions from the Plan will be determined and made in accordance with the regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).

**8.03 Forfeiture of Unvested Benefits**

**8.03-1** A participant who terminates employment before retirement shall forfeit all unvested defined benefits and all of the unvested Money Purchase account. The forfeited defined benefits shall be taken into account in establishing the funding policy.

**8.03-2** The unvested portion of a participant's Money Purchase account shall be forfeited at the first plan year-end at which both of the following are true:

(a) The participant has no vested interest or the participant's vested interest has been distributed fully.

(b) The participant is not then a Qualified Employee.

**8.03-3** Money Purchase forfeitures shall be accounted for as follows:

(a) The amount forfeited shall be based on the balance in the account as of the end of the plan year in which forfeiture occurs.

(b) Forfeitures shall be applied to reduce future Money Purchase contributions or to pay plan expenses.

**8.03-4** A zero vested balance of a participant shall be treated as though it were distributed immediately when employment terminates.

## ARTICLE 9
## PLAN ADMINISTRATION

**9.01 Retirement Plan Administrator**

**9.01-1** The Plan shall be administered by the City's Finance Director ("Administrator").

**9.02 Administrator Powers and Duties**

**9.02-1** The Administrator shall interpret the Plan, shall decide any questions about the rights of participants and their beneficiaries and in general shall administer the Plan. Any decision by the Administrator shall be final and bind all parties. The Administrator shall have absolute discretion to carry out its responsibilities in administering the Plan.

**9.02-2** The Administrator shall be the Plan Administrator under federal laws and regulations applicable to plan administration and shall comply with such laws and regulations. The Administrator shall be an agent for service of process on the Plan at the City's address.

**9.02-3** The Administrator shall keep records of all relevant data about the rights of all persons under the Plan. The Administrator shall determine eligibility to participate and the time, manner, amount and recipient of payment of benefits and the Service of any employee and give instructions on distributions. Any person having an interest under the Plan may consult the Administrator at any reasonable time.

**9.02-4** The Administrator may delegate all or part of its administrative duties to one or more agents and may retain advisors for assistance. The Administrator may consult with and rely upon the advice of counsel, who may be counsel for the City. The Administrator shall retain the enrolled actuary and appoint any independent public accountant or other service provider required for the Plan.

**9.02-5** The Employer shall furnish the Administrator any information reasonably requested by it for Plan administration.

**9.03 Claims Procedure**

**9.03-1** Any person claiming a benefit or requesting information, an interpretation or a ruling under the Plan shall present the request in writing to the Administrator, who shall respond in writing as soon as practicable.

**9.03-2** If the claim or request is denied, the written notice of denial shall state the following:

(a) The reasons for denial, with specific reference to the Plan provisions on which the denial is based.

(b) A description of any additional material or information required for review of the claim and an explanation of why it is necessary.

(c) An explanation of the plan's claim review procedure.

**9.03-3** Any person whose claim or request is denied or who has not received a response within 90 days may request review by notice given in writing to the Administrator. On receipt of the request for review, the administrator shall reconsider the decision. The Administrator shall either affirm the original decision or issue a new decision in writing. The person who filed the required for review may appeal the decision on review to the Trustee by filing an appeal form with the Administrator. The claimant may have representation, examine pertinent documents and submit issues and comments in writing during the review and appeal stages.

**9.03-4** The decision on review shall normally be made within 60 days of the request for review, and the decision on appeal shall be made within 60 days of the filing of the appeal. All decisions on review or appeal shall be in writing and shall state the reasons and relevant plan provisions. Decisions on review shall be final and binding unless an appeal is timely filed, and decisions on appeal are final and binding.

**9.04 Distributions; Conflicting Claims**

**9.04-1** On receipt of appropriate documentation to justify payment to the recipient, the Administrator may provide for payment of a participant's, spouse's contingent annuitant's or other beneficiary's benefits directly to the participant, contingent annuitant or beneficiary or to one or more of the following:

(a) A spouse or parent or to a child of legal age.

(b) A legal guardian or a person or entity having actual custody of the person.

(c) A provider of maintenance, support or hospitalization.

**9.04-2** If a dispute arises over a distribution, the Administrator may withhold payment until a court of competent jurisdiction has ruled on the dispute or it is settled by the parties concerned.

**9.05 City and Employer Functions**

**9.05-1** Except as provided in 9.05-2, all City and Employer functions or responsibilities shall be exercised by the City Manager, who may delegate all or any part of those functions.

**9.05-2** The City Manager or delegate may amend the Plan to make technical, administrative or editorial changes on advice of counsel to comply with applicable law or to clarify Plan terms. All other amendments to the Plan must be approved by the City Council.

**9.05-3** The City Council shall have no administrative or investment authority or functions. Membership on the Council shall not, by itself, cause a person to be considered a plan fiduciary.

**9.06 Expenses**

The City may elect to pay any administrative fees or expenses and may allocate the cost among the Employers. Otherwise the expenses and fees shall be paid from the plan assets.

**9.07 Correcting Administrative Errors**

The Administrator may take such steps as it considers necessary and appropriate in its discretion to remedy administrative or operational errors. Such steps may include, but will not be limited to the following: (a) taking any action required under the employee plans compliance resolution system of the Internal Revenue Service, any asset management or fiduciary conduct error correction program available through the Internal Revenue Service, United States Department of Labor or other governmental administrative agency; (b) a reallocation of Plan assets; (c) adjustments in amounts of future payments to participants, Beneficiaries or Alternate Payees; and (d) institution and prosecution of actions to recover benefit payments made in error or on the basis of incorrect or incomplete information.

## ARTICLE 10
## FUNDING

**10.01 Funding Policy**

The City shall establish the funding policy on the advice of the plan actuary and be responsible for management of the fund. The funding policy shall fix the minimum and maximum Employer contribution for each year.

**10.02 Contributions**

**10.02-1** Each Employer shall make contributions to fund the benefits for its eligible employees. The amount and time of payment shall be determined in conformance with the funding policy established by the Administrator and the rules of this Plan.

**10.02-2** An Employer may suspend or reduce contributions in any year so long as the minimum requirements of the funding policy are satisfied.

**10.03 Trust Fund**

The Plan shall be funded through the City of Newport Retirement Trust, which is administered by a Trustee appointed by the City Council. The Trustee shall receive Employer contributions, hold the fund in accordance with the trust agreement and distribute the benefits under this Plan as directed by the Administrator. Benefits under the Trust shall be paid solely from the trust fund to the extent the fund is sufficient. If the fund is not sufficient, the Trustee shall not be liable for the unfunded benefits. Notice to the Trustee shall be sent to the City's address.

## ARTICLE 11
## AMENDMENT; TERMINATION; MERGER

### 11.01 Amendment

**11.01-1** The City may amend this Plan at any time by written instrument, subject to the following:

(a) No amendment shall revest any of the plan assets in any Employer or otherwise modify the Plan so that it would not be for the exclusive benefit of eligible employees, except as required or permitted by applicable law and regulations.

(b) No amendment shall reduce any participant's accrued benefit, or the vested percentage of that accrued benefit, as of the date the amendment is adopted or is effective, whichever is later. Notwithstanding the preceding sentence, a participant's accrued benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under IRC §412(c)(8) (for plan years beginning on or before December 31, 2007) or IRC §412(d)(2) (for plan years beginning after December 31, 2007), or to the extent permitted under §§1.411(d)-3 and 1.411(d)-4 of the regulations.

(c) No amendment shall increase the Years of Eligibility Service required for vesting without providing that each participant with at least three Years of Eligibility Service on the date the amendment is adopted shall have the prior vesting schedule continue to apply to future benefits under the Plan until the participant either has a greater vesting percentage under the new schedule or has become 100 percent vested under the prior schedule.

**11.01-2** Amendments may be made effective retroactively to the extent permitted by applicable law and regulations.

**11.01-3** Except as authorized in 9.05-2, Plan amendments must be approved by the City Council.

### 11.02 Termination

**11.02-1** The City intends this Plan to be permanent but may wholly or partly terminate the Plan at any time. In such event, the rights of all affected participants to the benefits then accrued and funded shall be fully vested and nonforfeitable. The City may request a ruling from the Internal Revenue Service on the effect of termination on the qualification of the Plan. The Trustee may decline to distribute under the following paragraph until notice has been filed and appropriate rulings issued.

**11.02-2** Upon termination, the City may continue the trust to pay benefits as they mature or liquidate and distribute the fund. In any event, the available funds shall be allocated by the Administrator as provided below based on actuarial valuation of accrued retirement benefits as of the date of termination using nondiscriminatory formulas established by the Administrator. The time and method of payment shall be determined by the Administrator in accordance with the Plan and

applicable law. Benefits already distributed in cash or by purchase and delivery of an annuity contract shall not be affected.

**11.03 Allocation of Assets on Termination**

**11.03-1** That portion of the plan assets attributable to voluntary contribution accounts, Mandatory contribution accounts and Money Purchase contribution accounts shall be allocated in proportion to account balances.

**11.03-2** The portion of the trust fund remaining after allocation under 11.03-1 shall be allocated to provide defined benefits under 6.02-1(a). If the funds are insufficient to pay all of the benefits, the amount available shall be allocated among the participants in proportion to their interests.

**11.03-3** In no event shall any part of the contributions or principal or income of the trust be paid to or revested in an Employer or be used for any purpose other than for the exclusive benefit of the employees and their beneficiaries, except that an Employer shall recover any actuarial surplus remaining after satisfaction of all plan liabilities under 11.03-1 and -2.

**11.04 Treatment of Employers**

**11.04-1** All employees of all Employers, including the City, shall be treated as though employed by one Employer for purposes of determining total or partial termination. For this purpose, this Plan shall be treated as one plan and not as a collection of separate plans of the Employers. If some or all of the employees of an Employer terminate employment, this shall be viewed in the context of the whole plan to determine whether there has been a partial termination or curtailment and whether accelerated vesting is required.

**11.04-2** An Employer may be excluded from the Plan with respect to its employees at any time by the Administrator. Such exclusion shall not automatically constitute a termination or partial termination of the Plan. Employees of the excluded Affiliate shall be treated as having terminated employment if the Affiliate ceases to maintain its affiliated status. Unless the Internal Revenue Service rules that the exclusion constitutes a partial termination of the Plan, the rights of employees of the excluded Affiliate shall not become fully vested and nonforfeitable as a result of the exclusion. If the excluded Affiliate retains its affiliated status with the City, its employees shall continue to accrue Service for the purposes of vesting and eligibility, but shall not accrue Benefit Years and shall not be eligible to participate in Money Purchase contributions or elect voluntary contributions without respect to pay after the effective date of the exclusion.

**11.05 Merger**

If this Plan is merged or consolidated with, or the assets or liabilities are transferred to, any other plan or trust, the benefit that each participant would receive if the Plan terminated just afterwards shall be at least as much as if it terminated just before.

## ARTICLE 12
## GENERAL PROVISIONS

**12.01 Information for Retirement Administrator**

**12.01-1** The Administrator may accept as correct and rely on any information furnished by any department or agency of the City or Employer.

**12.01-2** The Administrator may require satisfactory proof of age, marital status or other data from a participant, spouse, contingent annuitant or other beneficiary. Pursuant to 9.07, the Administrator may adjust any retirement benefit if an error in relevant data or in calculation of benefits is discovered.

**12.02 Indemnity and Bonding**

**12.02-1** The City shall indemnify and defend any plan fiduciary who is an official or employee of an Employer from any claim or liability that arises from any action or inaction in connection with the Plan subject to the following rules:

(a) Coverage shall be limited to actions taken in good faith that the fiduciary reasonably believed were not opposed to the best interests of the Plan.

(b) Negligence by the fiduciary shall be covered to the fullest extent permitted by law.

(c) Coverage shall be reduced to the extent of any insurance coverage.

**12.02-2** Plan fiduciaries shall be bonded to the extent required by applicable law for the protection of plan assets.

**12.03 Applicable Law**

This Plan shall be construed according to the laws of Oregon except as preempted by federal law.

**12.04 Plan Binding on All Parties**

This Plan shall be binding upon the heirs, personal representatives, successors and assigns of all present and future parties.

**12.05 Not A Contract of Employment**

This Plan shall not be a contract of employment between an Employer and any employee. No employee may object to any amendment or termination of the Plan. The Plan shall not prevent an Employer from discharging any employee at any time.

**12.06 Notices**

Except as otherwise required or permitted under this Plan or applicable law, any notice or direction under this Plan shall be in writing and shall be effective when actually delivered or when deposited postpaid as first-class mail. Mail shall be directed to the address stated in this Plan or in a statement of adoption or to such other address as a party may specify by notice to the other parties. Notice to the Administrator shall be sent to the City's address.

**12.07 Benefits Not Assignable; Qualified Domestic Relations Order**

**12.07-1** This Plan is for the personal protection of the participants. No interest of any participant or beneficiary may be assigned, alienated, seized by legal process, transferred or subjected to the claims of creditors in any way, except as provided in 12.07-2.

**12.07-2** Benefits may be paid in accordance with a qualified domestic relations order under Code §414(p) pursuant to procedures established by the Administrator.

**12.08 Nondiscrimination**

The City, the Employers, the Trustee and the Administrator shall to the fullest extent possible treat all persons who may be similarly situated alike under this Plan.

**12.09 Actuarial Equivalency**

**12.09-1** Actuarial equivalency shall be determined by the enrolled actuary retained for the Plan. In accordance with IRC §401(a)(25) the actuarial assumptions used to calculate participants' benefits are based on the following assumptions:

(a) Post-retirement: an interest rate of 6 percent and the 1984 Unisex Pension Mortality Table set back 5 years.

(b) Pre-retirement: an interest rate of 6 percent and no mortality assumption.

**12.09-2** If the actuarial factors for determining equivalent benefits are changed by a plan amendment, the benefit actually paid in any form shall not be less than the amount determined for the same form by applying the prior factors to the participant's accrued benefit as of the date the change in factors was effective or adopted, whichever is later.

**12.10 Nonreversion of Assets**

**12.10-1** Subject to 12.10-2 and 12.10-3, no part of the contributions or the principal or income of this Plan shall be paid to or revested in Employer or be used other than for the exclusive benefit of the participants and their beneficiaries.

**12.10-2** If the Plan is terminated, any actuarial surplus remaining after satisfaction of all pension liabilities under 11.03 shall be returned to Employer.

**12.10-3** A contribution may be returned to Employer to the extent that the contribution was made by mistake of fact.

**12.10-4** Return of contributions under 12.10-3 shall be subject to the following:

(a) Any return must occur within one year of the mistaken payment.

(b) The returnable amount shall be reduced by a pro rata share of any investment losses attributable to the contribution.

(c) If an employee voluntary contribution is reduced, Employer shall promptly return the amount to the employee.

**12.10-5** If a mistaken contribution cannot be returned because of the one-year limit in 12.10-4(a), the amount shall be applied as soon as practicable to pay plan expenses or future contributions.

## ARTICLE 13
## DEFINITIONS

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

**13.02 Accrued Benefit.** A Participant's *Accrued Benefit* as of any date means his or her normal retirement benefit, payable in the normal form. If the Participant has not yet reached normal retirement age, his normal retirement benefit for purposes of determining his Accrued Benefit shall be determined assuming he continues in employment as a Qualified Employee to his Normal Retirement Date and continues to receive Compensation to normal retirement age.

**13.03 Actuarial Equivalent.** The term *Actuarial Equivalent* of a value means its equivalent value determined using the actuarial factors specified in the Plan.

**13.04 Administrator.** The term *Administrator* means the City unless the City appoints another Administrator under the Plan.

**13.05 Affiliate.** The term *Affiliate* means any entity, other than the City, which is (1) a member of an affiliated service group (under Code §414(m)) with an Employer, (2) a member of a controlled group (under Code §414(b)) with an Employer, (3) a trade or business under common control (under Code §414(c)) with an Employer, or (4) required to be aggregated with an Employer under Code §414(o).

**13.06 Affiliated Service Group.** The term Affiliated Service Group means a group of employers under Code §414(m).

**13.07 Allocation Period.** The term *Allocation Period* means a period of 12 consecutive months or less for which (a) an Employer contribution is made and allocated under the terms of the Plan; (b) Forfeitures are allocated under the terms of the Plan; and/or (c) earnings and losses are allocated under the terms of the Plan.

**13.08 Annual Addition.** The term *Annual Additions* means the sum of the following amounts credited to a Participant's Account for any Limitation Year: (a) Employer contributions; (b) Employee contributions; (c) Forfeitures; (d) amounts allocated to an individual medical account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the Employer; and (e) amounts derived from contributions paid or accrued that are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code §419A(d)(3), under a welfare fund, as defined in Code §419(e), maintained by the Employer. Notwithstanding the foregoing, a Participant's Annual Additions do not include a Participant's rollovers, loan repayments, catch-up contributions, repayments of either prior Plan distributions or prior distributions of Mandatory Employee Contributions, direct transfers of contributions from another plan to this Plan, deductible contributions to a simplified employee pension plan, or voluntary deductible contributions.

**13.09 Average Monthly Earnings.** The term *Average Monthly Earnings* means the average of the participant's Monthly Earnings in the three consecutive plan years of highest Compensation as follows: (a) "Monthly Earnings" for a plan year means one-twelfth of the participant's Compensation for the plan year; (b) Compensation shall be as defined in 4.01-1; (c) Compensation shall be considered only during the last 10 plan

years of employment by Employer; (d) Years separated by a period when the participant is not employed by Employer shall be treated as consecutive; (e) For a participant with fewer than three plan years of Compensation, all years shall be used; and (f) During periods of reduced Compensation because of such causes as illness, disability, leave of absence or layoff, Compensation shall be figured at the last regular rate before the start of the period.

**13.10 Beneficiary.** The term *Beneficiary* means any beneficiary who is entitled to receive a benefit under the Plan upon the death of the Participant.

**13.11 Benefit Month.** The term *Benefit Month* means a calendar month for which a participant or contingent annuitant or other death beneficiary is entitled to receive a monthly benefit. The first Benefit Month is the earliest of the following:

(a) The first month starting on or after the normal, deferred or disability retirement date.

(b) The month selected for the start of benefits after an early retirement date.

(c) The mandatory Benefit Starting Date under 6.09 2(a).

The last Benefit Month is the month in which the participant or other life annuitant dies or the last payment is made under a term certain annuity.

**13.12 Benefit Starting Date.** The term B*enefit Starting Date* means the first day of the first Benefit Month.

**13.13 Controlled Group.** The term *Controlled Group* means a group of employers under Code §414(b).

**13.14 Compensation.** The term *Compensation* means the following, subject to 4.01-3 and to the limits in 4.01-2:

(a) For the Annual Addition limit under 4.03 and the limit on benefits under 6.05, Compensation means taxable pay reportable on IRS Form W-2 under Code §401(a), disregarding limitations based on the nature or location of the employment, plus, for limitation years beginning after December 31, 1998, amounts described in (b)(1) below.

(b) For allocation of Money Purchase contributions under 4.02, the limit on voluntary contributions under 4.06, and the determination of Average Monthly Earnings under 6.02, Compensation means the amount under (a) above, adjusted as follows:

i. Any amounts set aside by the participant from otherwise taxable income under an Employer's deferred compensation plan under Code §457 or a cafeteria plan under Code §125 or a transportation fringe benefit plan qualified under Code §132(f) shall be included.

ii. Any reimbursements or other expense allowances, fringe benefits, moving expenses, severance or disability pay and other deferred compensation and welfare benefits shall be excluded.

iii. Overtime pay shall be excluded.

(c) Effective January 1, 2005, Compensation shall include post-severance compensation.

**13.15 Contingent Annuity.** The term Contingent Annuity means an annuity that does not begin making payments to the annuitant or the beneficiary until a certain stated event occurs.

**13.16 Defined Benefit.** The term *Defined Benefit* means a benefit upon retirement determined in accordance with Article 6 of the Plan.

**13.17 Defined Contribution.** The term Defined Contribution means a contribution to the Plan determined in accordance with Article 4 of the Plan.

**13.18 Distribution Calendar Year.** The term *Distribution Calendar Year* means, for purposes of required minimum distributions, 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 that 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 under the Plan. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

**13.19 Elective Deferrals.** The term *Elective Deferral* means Employer contributions made to a Plan at the election of the Participant in lieu of cash Compensation, and will include contributions made pursuant to a salary deferral agreement or other deferral mechanism.

**13.20 Eligible Recipient.** The term *Eligible Recipient* means the participant, the spouse of a deceased participant or a spouse or former spouse who is an alternate payee under a qualified domestic relations order.

**13.21 Eligible Retirement Plan.** The term *Eligible Retirement Plan* means with respect to distributions made after December 31, 2001, the term "eligible retirement plan" means an individual retirement account described in Code §408(a); an individual retirement annuity described in Code §408(b); an annuity plan described in Code §403(a); an annuity contract described in Code §403(b); a qualified trust described in Code §401(a); or an eligible deferred compensation plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. This definition of eligible retirement plan will also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relation order, as defined in Code §414(p); such distribution will be made in the same manner as if the Spouse was the Employee.

**13.22 Employer.** The term *Employer* means the City and any entity which has adopted the Plan.

**13.23 Fiduciary.** The term *Fiduciary* means the Administrator or other fiduciary named by the Administrator to control and manage the operation and administration of the Plan. To the extent authorized by the Administrator, a Fiduciary may delegate its responsibilities to a third party or parties. The Employer is also a Fiduciary.

**13.24 Governmental Plan.** The term *Governmental Plan* means a Plan established and maintained for its Employees by the U.S. government, any State or political subdivision of a State, or any Federal or State

agency or instrumentality, as defined under Code §414(d). Governmental Plans are exempt from the following qualification requirements: (a) The minimum vesting requirements under Code §411; (b) The top-heavy rules under Code §401(a)(10)(B)(iii) and §416; (c) The joint and survivor rules under Code §401(a)(11) and §417; (d) The requirements for protecting benefits pursuant to a plan merger or a transfer of plan assets as prescribed under Code §401(a)(12); (e) The anti-assignment rules (other than the rules applicable to Qualified Domestic Relations Orders) under Code §401(a)(13); (f) The commencement of benefits requirements under Code §401(a)(14).

**13.25 Joint and Last Survivor Table.** The term *Joint and Last Survivor Table* means the actuarial table as set forth in Regulation §1.401(a)(9)-9.

**13.26 Limitation Year.** The term *Limitation Year* means the Plan Year. If the Limitation Year is amended to a different 12-consecutive month period, then the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

**13.27 Money Purchase Contributions.** The term *Money Purchase Contributions* means the defined contributions to the Plan as determined in accordance with Article 4.

**13.28 Participant.** The term *Participant* means anyone who has met the eligibility and participation requirements under of the Plan. However, an individual who is no longer an Employee will cease to be a Participant if his or her entire Plan benefit (a) is fully guaranteed by an insurance company and legally enforceable at the sole choice of such individual against such insurance company, provided that a contract, Policy, or certificate describing the individual's Plan benefits has been issued to such individual; (b) is paid in a lump sum distribution which represents such individual's entire interest in the Plan; or (c) is paid in some other form of distribution and the final payment thereunder has been made.

**13.29 PERS.** The term *PERS* means the Oregon Public Employee Retirement System.

**13.30 Plan Year.** The term *Plan Year* means the 12-consecutive-month period ending each December 31st.

**13.31 Post-Severance Compensation.** The term *Post-Severance Compensation* means the following amounts that are paid within 2½ months after an Employee's severance of employment with the Employer: (a) payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation; and (b) payments for accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any other payment that is not described above is not considered post-severance compensation if paid after severance from employment, even if it is paid within 2½ months following severance from employment; for example, post-severance compensation does not include amounts paid after severance from employment that are severance pay, unfunded nonqualified deferred compensation, or parachute payments within the meaning of Code §280G(b)(2).

**13.32 Qualified Domestic Relations Order (QDRO).** The term *Qualified Domestic Relations Order*, or *QDRO*, means a signed domestic relations order issued by a State or a Commonwealth court which creates, recognizes or assigns to an alternate payee(s) the right to receive all or part of a Participant's Plan benefit. An

alternate payee is a Spouse, former Spouse, child, or other dependent of a Participant who is treated as a Beneficiary under the Plan as a result of the QDRO.

**13.33 Qualified Employee.** The term *Qualified Employee* means any employee of Employer except the following: (a) An employee covered by a collective bargaining agreement that does not provide for participation in this Plan; (b) A police officer or a fire fighter; (3) A part-time employee regularly scheduled to work fewer than 30 hours per week; (d) A temporary employee hired for a specified period or an unspecified period of limited duration; or (e) A worker classified by Employer as an independent contractor or as an employee of a nonaffiliated entity.

**13.34 Restatement.** The term Restatement means the plan document, as revised periodically to incorporate statutory and legislative changes.

**13.35 Required Minimum Distributions.** The term *Required Minimum Distributions* means distributions made in accordance with 6.09 of the Plan.

**13.36 Rollover.** The term *Rollover* means a payment by the Plan to the eligible retirement plan that is specified by the Participant.

**13.37 Service.** The term *Service* means a Participant's period of service for purposes of determining his eligibility for a benefit under the Plan.

**13.38 Suspense Account.** The term *Suspense Account* means an account that is established to hold Excess Annual Additions, pursuant to 4.04.

**13.39 True-Up.** The term *True-Up* means a contribution made if (1) the Allocation Period for matching contributions is a computation period that is less than the Plan Year, and (2) on the last day of any Plan Year, the dollar amount of the matching contributions made on behalf of a Qualified Employee is less than the dollar amount that would have been made had the matching contributions been contributed for an Allocation Period of a Plan Year, then the Employer may elect, pursuant to the Employer's discretion, for any Plan Year to make an additional matching contribution so that the matching contribution contributed for a Qualified Employee is equal to the matching contribution that would have been made had the matching contribution been contributed for an Allocation Period of the Plan Year.

**13.40 Trust.** The term *Trust* means the assets of the Plan.

**13.41 Trustee**. The term *Trustee* means the persons or entity named as trustee or trustees of the Trust.

**13.42 Uniform Lifetime Table.** The term *Uniform Lifetime Table* means the actuarial table as set forth in Regulation §1.401(a)(9)-9.

**13.43 Unvested Benefits.** The term *Unvested Benefits* means benefits that are not vested and may be forfeited in accordance with the Plan.

**13.44 Vesting.** The term Vesting means a Participant's nonforfeitable percentage in his or her benefits maintained on his or her behalf under the Plan.

**13.45 Voluntary Contribution.** The term *Voluntary Contribution* means contributions made to the Plan in accordance with 4.06.

**13.46 Years of Service.** The term *Years of Service* means a 12-consecutive month compensation period during which an employee is employed by the Employer as a Qualified Employee.

**13.47 Years of Benefit Service.** The term *Years of Benefit Service* shall be used to determine a Participant's Accrued Benefit, and shall mean an Employee's 1-Year Periods of Service.

This Plan has been approved by the Newport City Council on the following date:

01-04-2016

This Plan has been executed by the City of Newport as Employer on the following date:

01-08-2016

**CITY OF NEWPORT**

**Spencer Nebel, City Manager**

4838-3226-8844, v. 1

**AMENDMENT NO. 1 TO THE**
**CITY OF NEWPORT**
**EMPLOYEES' RETIREMENT PLAN**

The City of Newport, hereinafter "the City," sponsors the City of Newport Employees' Retirement Plan, hereinafter "the Plan." Article 11.01 of the Plan permits the City to make amendments to the Plan from time to time. Accordingly, effective January 1, 2009, the City hereby amends the Plan as requested by the Internal Revenue Service in regards to an IRS Form 5300 submission and issuance of a Favorable Determination Letter, dated May 17, 2011, to provide as follows:

1. ***Section Number 4.01-1 (Compensation) is amended by adding the following subsection (c) to read as follows:***

   **4.01-1(c)** Effective January 1, 2005, Compensation include shall include post-severance compensation. The term post-severance compensation means the following amounts that are paid within 2½ months after an Employee's severance of employment with the Employer: (a) payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation; and (b) payments for accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any other payment that is not described above is not considered post-severance compensation if paid after severance from employment, even if it is paid within 2½ months following severance from employment; for example, post-severance compensation does not include amounts paid after severance from employment that are severance pay, unfunded nonqualified deferred compensation, or parachute payments within the meaning of Code §280G(b)(2).

2. ***Section Number 4.04 (Adjustments to Satisfy Limits) is amended by revising the following sentences contained therein to read as follows:***

   **4.04 Adjustments to Satisfy Limits**

   For any Limitation Year beginning on or after July 1, 2007, if an Annual Addition for a participant would exceed the limit in 4.03-2, contributions shall be reduced pursuant to Department of Treasury Regulation 1.415-1(d) as necessary to eliminate the excess, in the following order: (1) Voluntary contributions, and then (2) Money Purchase contributions. For any Limitation Year beginning before July 1, 2007, if an Annual Addition for a participant would exceed the limit in 4.03-2 because of an allocation of forfeitures, a reasonable error in estimating a participant's Compensation, a reasonable error in determining the amount of elective contributions (within the meaning of Code §402(g)(3)), or because of other limited facts and circumstances that the Commissioner finds justifies the availability of the rules set forth in this section, then such participant's account will be adjusted as follows in order to reduce the excess Annual Additions:

   (a) Voluntary contributions, if any, to the extent that they would reduce the excess Annual Additions, will be calculated. Such Voluntary contributions, plus attributable gains, will then be distributed to the participant.

   (b) If, after the application of paragraph (a), above, excess Annual Additions still exist and the participant is covered by the Plan at the end of the Limitation Year, the excess Annual Additions in the participant's account will be used to reduce Money Purchase contributions (including any

allocation of Forfeitures) for such Participant in the next Limitation Year, and in each succeeding Limitation Year, if necessary.

(c) If, after the application of paragraph (a), above, excess Annual Additions still exist and the Participant is not covered by the Plan at the end of a Limitation Year, the excess Annual Additions will be held unallocated in a suspense account and will be applied to reduce future Employer contributions (including the allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and in each succeeding Limitation Year if necessary.

(d) If a suspense account is in existence at any time during a Limitation Year pursuant to paragraph (c), above, then such suspense account will not participate in the allocation of the trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, then all amounts in the suspense account must be allocated and reallocated to participants' accounts before any Employer contributions or any Employee contributions may be made to the Plan for that Limitation Year. A suspense account may not be distributed to participants or former participants.

3. ***Section Number 6.05-2 (Limit on Benefits) is amended by revising the following sentences contained therein to read as follows:***

**6.05-2** Subject to 6.05-3, the actuarially equivalent straight life annuity defined benefit, under 6.02-1(a) and as expressed below, on normal, early or deferred retirement expressed as an annual benefit shall not be more than $160,000 plus a cost-of-living adjustment authorized by applicable regulations for that year.

(a) The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this section if the form of the participant's benefit is either:

(i) a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant; or

(ii) an annuity that decreases during the life of the participant merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments.

(b) If the annuity starting date of the participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of: (1) the interest rate and the mortality table or other tabular factor specified in the Plan for adjusting benefits in the same form; (2) a 5.5 percent interest rate assumption and the applicable mortality table; and (3) the applicable interest rate under section 417(e)(3) and the applicable mortality table, divided by 1.05.

(c) If the annuity starting date of the participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the Plan for adjusting benefits in the same form; and (2) 5.5 percent interest and the applicable mortality table.

(d) If the annuity starting date of the participant's form of benefit is on or after the first day of the

first Plan Year beginning in 2004 and before December 31, 2004, and the Plan applies the transition rule in section 101(d)(3) of PFEA '04 in lieu of the rule in (c), the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, determined in accordance with Notice 2004-78.

4. ***Section Number 6.05-3(a) through 6.05-3(d) (Limit on Benefits) is amended by revising the following sentences contained therein to read as follows:***

**6.05-3** The maximum permissible benefit in 6.05-2 shall be adjusted in accordance with the following rules:

(a) If the participant has fewer than 10 Years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10. In the case of a participant who has fewer than 10 years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Employer and (ii) the denominator of which is 10.

(b) The limitation in 6.05-2 shall not be lower for any participant than the participant's accrued benefit under the Plan on either the following dates:

(i) June 30, 1983, or

(ii) June 30, 1987.

(c) Adjustment of defined benefit dollar limitation for benefit commencement before age 62.

(i) If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table under section 417(e)(3).

(ii) If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using whichever the following produces the greater annual amount: (1) the interest rate and mortality table or other table factor specified in the plan for adjusting benefits in the same form; and (2) a 5 percent interest rate assumption and the applicable mortality table.

(iii) Notwithstanding the other requirements of this paragraph (c), no adjustment shall be

made to the defined benefit dollar limitation to reflect the probability of a participant's death between the annuity starting date and age 62.

(d) Adjustment of defined benefit dollar limitation for benefit commencement after age 65.

(i) If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table under section 417(e)(3).

(ii) If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than 10, if required) with actuarial equivalence computed using whichever the following produces the greater annual amount: (1) the interest rate and mortality table or other table factor specified in the plan for adjusting benefits in the same form; and (2) a 5 percent interest rate assumption and the applicable mortality table.

(iii) Notwithstanding the other requirements of this paragraph (d), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a participant's death between age 65 and the annuity starting date.

5. ***Section Number 6.05-3(g) (Limit on Benefits) is amended by revising the following sentences contained therein to read as follows:***

**6.05-3(g)** If, as a result of additional accruals after a participant attains normal retirement age, the accrued benefit of such participant would exceed the limitations under this Article 6 for the Limitation Year, then immediately before the additional benefit accrues that would cause such participant's accrued benefit to exceed the limitations of this Article 6, payment of benefits to such participant will be suspended.

6. ***Section Number 6.06-4(c)(3) (Application for Benefits) is amended by revising the following sentence contained therein to read as follows:***

**6.06-4(c)(3)** Any amount of any distribution that is attributable to a financial hardship distribution.

7. ***Section Number 8.01-1 (Accrued Benefits; Vesting) is amended by revising the section to read as follows:***

**8.01-1** A participant who terminates employment for any reason other than retirement, death or disability shall be entitled only to vested accrued benefits. A participant will have a 100% vested interest in his or her accrued benefits upon reaching normal retirement age prior to termination of employment. A participant will also have a 100% vested interest upon his or her disability prior to termination of employment or his or her death prior to termination of employment.

**IN WITNESS WHEREOF**, the Employer has caused this Amendment No. 1 to be executed this 8th day of January, 2016.

**CITY OF NEWPORT**

By: _____
Spencer Nebel, City Manager

**AMENDMENT NO. 3 TO THE**
**CITY OF NEWPORT**
**EMPLOYEES' RETIREMENT PLAN**

City of Newport, hereinafter "the Employer," sponsors the City of Newport Employees' Retirement Plan, hereinafter "the Plan." Pursuant to Section 2.07 of Appendix B of Rev. Proc. 2013-12, a plan may be amended retroactively to conform the plan document to plan operation. Accordingly, effective as October 15, 2012, the Employer hereby amends the Plan to provide as follows:

1. ***Section Number 3.02-3 (Participation and Service) is amended by replacing the following section to read as follows:***

   Service shall accumulate until there is a termination of employment. If a termination occurs and the former employee is later rehired, Service before the termination shall be counted and the employee shall immediately participate in the Plan only if (1) the employee had at least three Years of Service before the termination and did not withdraw the Money Purchase contribution accounts under 8.02 1; (2) the employee is a non-collectively bargained Qualified Employee hired after March 5, 2012; or (3) the employee is a Qualified Employee who is a member of the Newport Employees' Association or Newport Police Employees (non-PERS) hired after October 15, 2012. . All other rehired former employees shall be treated as new employees and shall participate in the Plan upon satisfaction of the requirements of 3.01-1.

2. ***Section Number 4.02-2 (Money Purchase Contributions) is amended by replacing the following section to read as follows:***

   Subject to Section 4.03, the Employer shall make an additional matching Money Purchase contribution, as follows, for (1) non-collectively bargained Qualified Employees hired after March 5, 2012; and (2) Qualified Employees who are members of the Newport Employees' Association or Newport Police Employees (non-PERS) hired after October 15, 2012. Such contributions shall be matching contributions and made to this Plan only on account of a Qualified Employee's Elective Deferrals to the City of Newport 457(b) Plan.

   (a) Contribution Formula. Except as otherwise provided in this Section, the Employer will make a matching contribution for any Allocation Period equal to 100 percent of each Qualified Employee's Elective Deferrals to the City of Newport 457(b) Plan, not to exceed, for any Allocation Period, 3 percent of his or her Compensation.

(b) True-ups. If (1) the Allocation Period for matching contributions is a computation period that is less than the Plan Year, and (2) on the last day of any Plan Year, the dollar amount of the matching contributions made on behalf of a Qualified Employee is less than the dollar amount that would have been made had the matching contributions been contributed for an Allocation Period of a Plan Year, then the Employer may elect, pursuant to the Employer's discretion, for any Plan Year to make an additional matching contribution so that the matching contribution contributed for a Qualified Employee is equal to the matching contribution that would have been made had the matching contribution been contributed for an Allocation Period of the Plan Year.

3. ***Section Number 4.06-1 (Voluntary Contributions) is amended by adding the following section to read as follows:***

(c) For purposes of this Section 4.06 the following Qualified Employees are excluded from making voluntary contributions:

i. Non-collectively bargained Qualified Employees hired after March 5, 2012.

ii. Qualified Employees who are members of the Newport Employees' Association hired after October 15, 2012.

iii. Qualified Employees who are members of the Newport Police Employees (non-PERS) hired after October 15, 2012.

4. ***Section Number 6.01-1 (Entitlement; Retirement Dates; Participation After Mandatory Benefit Starting Date) is amended by adding the following sentence to read as follows:***

Qualified Employees hired on or before March 5, 2012 shall be entitled to benefits on retirement under this Section 6. Non-collectively bargained Qualified Employees hired on or after March 5, 2012 shall not be entitled to benefits on retirement under this Section 6. Qualified Employees who are members of the Newport Employees' Association or the Newport Police Association (non-PERS) hired on or after October 15, 2012, shall not be entitled to benefits on retirement under this Section 6. Qualified Employees who are excluded under this Section 6 shall continue to be Qualified Employees for the purpose of receiving benefits under Section 4 of the Plan if they meet all other eligibility and participation requirements of the Plan.

5. ***Section Number 8.01-3 (Accrued Benefits; Vesting) is amended by replacing the following section to read as follows:***

For a Participant hired before October 1, 1993, the Money Purchase accounts and the voluntary contribution account shall be fully vested at all times. For a participant hired after September 30, 1993, the voluntary contribution account shall be fully vested at all times and the Money Purchase account shall vest in accordance with the schedule in 8.01 4(b). Effective March 5, 2012, non-collectively bargained Qualified Employees who terminated employment with the City and were rehired on or after March 5, 2012 shall receive vesting credit for all Years of Service with the City. Effective October 15, 2012, Qualified Employees who are members of the Newport Employees' Association or the Newport Police Association (non-PERS) and who terminated employment with the City and were rehired on or after October 15, 2012 shall receive vesting credit for all Years of Service with the City. For all participants the Mandatory contribution account shall be fully vested at all times.

IN WITNESS WHEREOF, the Employer has caused this Amendment to be executed this 8th day of January, 2016.

**CITY OF NEWPORT**

By: _____
Spencer Nebel, City Manager
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