

CITY OF NORWALK

NORWALK CITY EMPLOYEES' PENSION PLAN

July 1, 2012 - December 31, 2018

PREAMBLE

Pursuant to the authority granted to them by an Ordinance adopted by the Common Council of the City of Norwalk, Connecticut, on September 24, 1963 as amended, the Board of Trustees of the Norwalk City Employees' Pension Fund (hereinafter referred to as the "Pension Board") adopted the Norwalk City Employees' Pension Plan (the "Plan") on August 15, 1965 to be effective September 1, 1965, which was amended by the Pension Board effective March 25, 1981, and subsequently amended by pension negotiations with the Norwalk Joint Pension Council during 1985, 1987, 1992-93, and 1999 with such amendments approved by the Common Council of the City of Norwalk, Connecticut on October 22, 1985 to be effective July 1, 1985, on March 22, 1988 to be effective July 1, 1987, and on July 27, 1999 to be effective July 1, 1998. (The Plan was also amended as the result of an arbitration award effective July 1, 1992.)

Prior to this restatement, the Plan was set forth in a document, dated July 1, 1992, and various collective bargaining agreements. The parties agreed to clarify the applicable terms of the Plan in a restated document, effective July 1, 1998. There was an extended delay in the adoption of the restated Plan in order to resolve issues with the bargaining units regarding the terms of the Plan. When the issues were resolved the Plan document and Amendment #1, which incorporated provisions required to be included in a pension plan that is qualified under Internal Revenue Code Section 401(a), were adopted. A restatement, effective July 1, 2010, incorporated Amendments #1 and #2 (which incorporated certain bargaining issues that had been resolved and required provisions), the terms of an Agreement between the City and the Norwalk Employees Pension Coalition, dated October 23, 2009 regarding certain additional bargaining issues, and certain other provisions required to be included in a pension plan that is qualified under Internal Revenue Code Section 401(a). This restatement, effective July 1,

2012, also incorporates the terms of a Bargaining Agreement between the City and the Norwalk Employees Pension Coalition, dated May 16, 2012, to make certain changes in the Plan.

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ARTICLE 1

DEFINITIONS

The definitions set forth in this Article shall apply in the interpretation and application of all provisions of this Plan.

Section 1.01 “Accrued Benefit” shall mean a Member’s Accrued Benefit, at any given point in time, as set forth in Section 5.01.

Section 1.02 “Accumulated Contributions” shall mean the contributions made by a Member to the Plan.

Section 1.03 “Actuarial Equivalent” means, for all purposes other than lump sum cash-outs pursuant to Section 7.06, an equivalent calculated using the Group Annuity Mortality Tables designated by the Actuary, and an annual rate of interest of six percent (6%).

Section 1.04 “Actuary” shall mean the actuary or firm of actuaries employed or retained by the Pension Board at any given time.

Section 1.05 “Bargaining Agreements” shall mean the Bargaining Agreements in effect from time to time between the Bargaining Units and the City.

Section 1.06 “Bargaining Units” shall mean those groups of employees for which the certified exclusive bargaining representatives are AFSCME Council #4, Local 1042, AFSCME Council #4, Local 1303 AFSCME Council #4, Local 2405, Connecticut Health Care Associates, Norwalk Assistants and Supervisors Association, Norwalk Federation of Education Personnel, Norwalk Municipal Employees Association, and United Federation of Technicians, Local 72.

Section 1.07 “Designated Beneficiary” shall mean the person or persons selected by a Member to receive any benefits payable under this Plan upon the death of the Member or

Pensioner. Such selection shall be made in writing by a filing with the Pension Board in the form and manner it prescribes. A Member or Pensioner shall have the right to name a contingent beneficiary and to change the designated beneficiary, but no change shall be recognized unless it is received by the Pension Board in an acceptable written form.

Section 1.08 "Disability" shall mean a permanent and total disability as determined by the Pension Board, in its sole and absolute discretion. Such determination shall be based on medical evidence that:

- (1) such Member is totally unable, as a result of bodily injury or disease, to engage in or perform the duties of any occupation for remuneration or profit, and
- (2) such disability will be permanent and continuous for the remainder of the Member's life.

A Member may be required to submit to an examination by a physician, or physicians, selected by the Pension Board and may be required to submit to reexamination periodically as the Pension Board may direct. The Pension Board, in its sole and absolute discretion, may require or accept, as sole proof of total and permanent disability, a determination by the Social Security Administration that the Member is entitled to a Social Security Disability Benefit.

Section 1.09 "Early Retirement Adjustment Factor" shall mean the appropriate factor used to calculate a Member's Early Retirement Benefit: Effective July 1, 1987, (1) for Members between age 58 and 62, two percent (2%) multiplied by the number of years by which the Member's Early Retirement Date precedes his or her Normal Retirement Date; and (2) for Members between age 55 and 58, three percent (3%) multiplied by the number of years by which the Member's Early Retirement Date precedes his or her Normal Retirement Date; provided, however, effective July 1, 1998, for a Member with 25 Years of Service, two

percent (2%) and three percent (3%) shall be one percent (1%) and one and one half percent (1½%), respectively.

Section 1.10 “Effective Date” shall mean July 1, 2012; originally, the Plan was effective September 1, 1965.

Section 1.11 “Employee” shall mean (a) any regular, full-time paid employee of the Employer, other than an elected official, whose position is not temporary or seasonal and whose regular duties require a minimum of 1200 hours of employment per year, except that the required hours shall be one thousand one hundred (1100) hours of employment per year for ten-month employees of the Board of Education, and (b) effective November 19, 1993 and thereafter, any salaried elected official whose position is not temporary or seasonal and whose regular duties require a minimum of 1200 hours of employment per year. The term “Employee” shall not include employees covered by another retirement plan such as police officers, firefighters, food service employees of the Board of Education and professional employees of the Board of Education employed in positions requiring certification by the State Board of Education and therefore covered under the State Teachers Retirement Board pension plan. With respect to (a) above, prior to March 25, 1981 a minimum of 1500 hours of employment per year was required.

Section 1.12 “Employer” shall mean the City of Norwalk (the “City”) and the City of Norwalk Board of Education.

Section 1.13 “Final Salary” shall mean (i) for Members hired prior to June 30, 1999 who retire on or after July 1, 1987, the highest consecutive twelve (12) months of Salary; (ii) for all Members hired on or after July 1, 1999, the average of the Member’s highest three (3) years of Salary.

Section 1.14 "Fund" shall mean the funds held by the Funding Agent derived from contributions made pursuant to the Plan, any property into which the same or any part thereof may be converted, and any increment thereto or income thereon.

Section 1.15 "Funding Agent" shall mean the Pension Board or any other trustee, insurance company or other person, or any combination of the foregoing, which is maintaining custody of the funds which derive from contributions made pursuant to the Plan and from which benefits shall be paid, or any successor to such person.

Section 1.16 "Funding Agreement" shall mean the agreement of trust and/or group annuity contract pursuant to which the Funding Agent maintains custody of the Fund.

Section 1.17 "Member" shall mean an Employee participating in the Plan pursuant to Article 2 hereof.

Section 1.18 "Pensioner" shall mean any person who is retired under this Plan and who is receiving pension benefits provided herein.

Section 1.19 "Pension Board" shall mean the City of Norwalk Pension Board.

Section 1.20 "Plan" shall mean the Norwalk City Employees' Pension Plan.

Section 1.21 "Plan Year" shall mean the twelve (12) month period commencing July 1 and ending June 30.

Section 1.22 "Prior Plan" shall mean the Plan as set forth in the prior document dated February 2005 and various Bargaining Agreements existing from time to time prior to the Effective Date.

Section 1.23 "Salary" shall mean base salary or wages only and shall not include any other compensation such as but not limited to compensation for stipends, incentive or bonus payments, payment for hours worked in addition to those regularly scheduled, overtime, travel, maintenance allowance, fees, or compensation for temporary work in a higher grade or

position (acting pay), even if a collective bargaining agreement provides for their inclusion in base salary or wages. "Salary" shall not include any amount contributed by the Employer to this Plan or any other employee benefit plan.

The annual compensation of each Member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed \$200,000. The \$200,000 limit on annual compensation shall be adjusted for cost-of-living increases in accordance with 401(a)(17)(B) of the Code. (The 2011 limit is \$245,000). The Code's 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. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the "determination period"). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited to \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998 or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

Section 1.24 "Spouse," except as otherwise provided in Section 9.02(f), including as required under federal law, shall be defined pursuant to State law.

Section 1.25 "Year of Service" shall mean a period of twelve (12) calendar months during which an Employee who is a Member of the Plan performs active service that totals the number of hours required by Section 1.11 with the Employer and makes Member contributions to the Plan. The first Year of Service shall begin on the first day of eligibility in the Plan on which a Member first performs an hour of service, and subsequent Years of Service shall begin on anniversaries thereof. Credit for Years of Service shall cease upon the last day of the

Employee's employment and shall not include periods in which a Member is not actively employed except to the extent set forth herein. Years of Service shall include military service purchased in accordance with Section 5.08. In determining the number of Years of Service, all periods of service shall be aggregated. Periods of Disability or authorized leave of absence shall not be considered terminations of employment or interruptions of Years of Service; however, credit shall be granted for such periods only (1) if required by the Family Medical Leave Act ("FMLA"), or other applicable law, (2) for up to thirty (30) calendar days of authorized non-FMLA unpaid leave, or (3) one period of up to twelve (12) months spent on leave due to an injury or illness for which the Employer has accepted a Workers' Compensation claim, provided (i) no additional leave time for the same injury is credited as Service under the Plan, and (ii) the Member makes required contributions to the Plan for such period based on his or her base salary in effect as of the date the leave commenced. For purposes of determining the benefits payable under Article 5, Years of Service shall be determined in years and days. Notwithstanding any provision of this Section to the contrary, an Employee, as defined in Section 1.11(b), shall not receive credit for service prior to November 19, 1993 unless he or she contributes to the Plan all Member contributions due pursuant to Section 3.04 from his or her date of employment.

ARTICLE 2

ELIGIBILITY

Section 2.01 Eligibility to Participate. Each Employee who was a Member in the Prior Plan on June 30, 1998 shall continue as a Member. Any other Employee hired by the Employer prior to July 1, 2012 shall become a Member on the date the Employee commences making Member contributions.

Section 2.02 Reemployment. If a Member ceases to be an Employee and subsequently becomes an Employee again, the Member shall be eligible to participate in the Plan as of the date on which the Member again becomes an Employee and commences making contributions. In order to receive credit for prior Years of Service, a Member shall reimburse the Employer for any Member contributions previously refunded to the Member, with interest. Effective July 1, 1985, the interest rate shall be equal to the interest assumption in effect for the Fund for valuation purposes on the date of reemployment. Such reimbursement may be arranged on an installment basis through a doubling of the Member's rate of contribution or through any other means acceptable to the Pension Board or its designee. If complete reimbursement is not effected by the Retirement Date, only the Years of Service for which the Member has made reimbursement prior to retirement shall be credited in determining the Member's Retirement Benefit.

ARTICLE 3

FUNDING POLICY

Section 3.01 The Fund. The Employer shall maintain a Fund pursuant to one or more Funding Agreements with one or more Funding Agents for the purpose of receiving, administering, investing and reinvesting contributions made hereunder, and the proceeds thereof, and for the purpose of providing for the payment of the benefits provided under the Plan.

Section 3.02 Contributions by the Employer. The Employer shall contribute to the cost of the Plan by making periodic contributions to the Funding Agent on the basis of actuarial calculations.

Section 3.03 Member Contributions and Employer Pick-Up Contributions.

- (a) Effective the first week of May 1988, each Member shall contribute two and three-quarter percent (2-3/4%) of the Member's Salary. Effective upon the implementation of the Employer pickup of mandatory Member contributions pursuant to Section 3.03(b), each Member shall contribute three and three quarter percent (3-3/4%) of the Member's Salary for the Plan Year. Effective July 1, 2012, each Member shall contribute four percent (4.00%) of the Member's Salary for the Plan Year. Effective July 1, 2013, each Member shall contribute four and one-half percent (4.50%) of the Member's Salary for the Plan Year. Effective July 1, 2014, each Member shall contribute four and three-quarters percent (4.75%) of the Member's Salary for the Plan Year. Effective July 1, 2015, each Member shall contribute five and one-quarter percent (5.25%) of the Member's Salary for the Plan Year. Effective July 1,

2016, each Member shall contribute five and one-half percent (5.50%) of the Member's Salary for the Plan Year. Effective July 1, 2017, each Member shall contribute five and three-quarters percent (5.75%) of the Member's Salary for the Plan Year. Effective July 1, 2018, each Member shall contribute six percent (6.00%) of the Member's Salary for the Plan Year. Notwithstanding the above, no Member contributions shall be required after a Member completes thirty-five (35) Years of Service.

- (b) Notwithstanding (a) above, following approval by the Norwalk City Council of a resolution providing that the Employer shall pick up mandatory Member contributions to the Plan, the Employer shall contribute to the Plan on behalf of each Member the annual amount described in 3.03(a) of the Member's Salary. Such contributions are hereby designated as Member contributions, but shall be treated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code.

Section 3.04 Historical Member Contribution Rates. Effective for pay received between September 1, 1965 to March 24, 1981 each Member contributed, through payroll deductions, one and one-half percent (1-1/2%) of base salary which is subject to Social Security tax and five percent (5%) of annual base salary covered by the Plan but not subject to Social Security tax. Effective March 25, 1981 the contribution rate was two percent (2%) of base salary subject to Social Security tax and five percent (5%) of base salary under the Plan but not subject to Social Security tax. Effective the third week of February 1986, the contribution rate was be two and one-quarter percent (2 1/4%) of base salary.

Section 3.05 Expenses of Administration. All expenses of the administration of the Plan, as well as the expenses of administration of the Fund, shall be paid from the Fund unless sooner paid by the Employer.

ARTICLE 4

RETIREMENT DATES

Section 4.01 Retirement Date. A Member's Retirement Date shall be the Member's Normal Retirement Date (as defined in Section 4.02), Deferred Retirement Date (as defined in Section 4.03), Disability Retirement Date (as defined in Section 4.04), or Early Retirement Date (as defined in Section 4.05) whichever is applicable to the particular Member.

Section 4.02 Normal Retirement Date. A Member's Normal Retirement Date shall be the later of (i) the Member's sixty-second (62nd) birthday, or (ii) the completion of five (5) Years of Service.

Section 4.03 Deferred Retirement Date. A Member may remain in the Service of the Employer after the Member's Normal Retirement Date. In such event, the payment of a retirement benefit to the Member shall be postponed to a Deferred Retirement Date which shall be the first day of the month after the Member stops working for the Employer.

Section 4.04 Disability Retirement Date. On or after July 1, 1985, if a Member has completed ten (10) Years of Service, the Member's Disability Retirement Date shall be the first day of the month next following the date on which a Member is determined to have a Disability.

Section 4.05 Early Retirement. On or after July 1, 1985, a Member may elect to retire prior to his or her Normal Retirement Date and receive an Early Retirement Benefit provided such Member:

- (1) has attained age fifty-five (55); and
- (2) has completed ten (10) Years of Service.

In such event, the Member's Early Retirement Date shall be the first day of any month coinciding with or next following the date the Member retires.

Section 4.06 Written Retirement Declaration and Commencement of Benefits. Every person retiring under this Plan shall be required to complete a written retirement declaration supplied by the Pension Board. Members requesting Early, Deferred or Disability Retirement Dates must apply in writing in a form and manner prescribed by the Pension Board at least two (2) months in advance of the first month for which benefits are payable. Upon approval by the Pension Board, benefits shall commence as of said retirement date with the first payment occurring on the first day of the month coincident with or next following said retirement date. For Disability Retirement, benefits shall be effective and retroactive to the date of the disability determination, but not earlier than the date of the Member's termination of employment, with the first payment occurring for the month coincident with or next following approval by the Pension Board. Failure on the part of a Member eligible for a Deferred or Disability Retirement benefit to submit an application within the five-year period commencing on the first day of the month for which the applicant would otherwise have been eligible, shall operate to waive all rights to future benefits.

ARTICLE 5

CALCULATION OF RETIREMENT BENEFIT

Section 5.01 Accrued Benefit. Effective July 1, 1998, the Accrued Benefit of a Member, at any date of determination, shall be a monthly annuity commencing at the Member's Normal Retirement Date in an amount equal to one-twelfth of two percent (2.0%) of such Member's Final Salary multiplied by the Member's Years of Service up to a maximum of thirty-five (35) Years of Service.

Section 5.02 Retirement Benefit. A Member's Retirement Benefit shall be the Member's Normal Retirement Benefit (as calculated in Section 5.03), Deferred Retirement Benefit (as calculated in Section 5.04), Disability Retirement Benefit (as calculated in Section 5.05), Early Retirement Benefit (as calculated in Section 5.06), or Retirement Benefit for Terminated Vested Members (as calculated in Section 7.04), whichever is applicable to the particular Member.

Section 5.03 Calculation of Normal Retirement Benefit. A Member's Normal Retirement Benefit shall be the Member's Accrued Benefit calculated as of the Member's Normal Retirement Date.

Section 5.04 Calculation of Deferred Retirement Benefit. A Member who continues to be an Employee of the Employer after the Member's Normal Retirement Date shall receive a Deferred Retirement Benefit, payable commencing on the Member's Deferred Retirement Date, which shall be the Member's Accrued Benefit calculated in accordance with Section 5.01 as of the Member's Deferred Retirement Date, using Final Salary and Years of Service through the Member's Deferred Retirement Date.

Section 5.05 Disability Retirement Benefit.

- (a) Calculation of Disability Retirement Benefit. A Member who is eligible for a Disability Retirement Date, pursuant to Section 4.04, shall receive a Disability Retirement Benefit, payable commencing on the Member's Disability Retirement Date, which shall be the Member's Accrued Benefit calculated as of the Disability Retirement Date. Effective January 1, 1985, there shall be no actuarial reduction in the event the Member did not reach his or her Normal Retirement Date prior to the Member's Disability Retirement Date.
- (b) Offset to Disability Retirement Benefit. Any Disability Retirement Benefit payable under this Plan shall be reduced so that the weekly amount of the combined Disability Retirement Benefit and benefits payable under Chapter 568 of the Connecticut General Statutes as amended from time to time shall not exceed the lesser of (i) one hundred percent (100%) of the Member's Salary in effect immediately prior to the Disability or (ii) if the Member had reached the Member's Normal Retirement Date pursuant to Section 4.02, one hundred percent (100%) of the Member's Normal Retirement Benefit calculated in accordance with Section 5.03.

Section 5.06 Calculation of Early Retirement Benefit. A Member who has elected to receive an Early Retirement Benefit, pursuant to Section 4.05, shall receive an Early Retirement Benefit, commencing on the Member's applicable Early Retirement Date, equal to the Member's Accrued Benefit, calculated at the point in time as of which the Member's employment ceases, reduced by the Early Retirement Adjustment Factor.

Section 5.07 Cost of Living Adjustment for Retirement Benefit. Effective July 1, 1987 and each July 1 thereafter, the Retirement Benefit of each Pensioner who has been retired

for more than six months (i.e., commenced receiving his or her Retirement Benefit in the preceding calendar year, or earlier) shall increase one and one-half percent (1-1/2%). In no event shall Members who retire in any calendar year be eligible for cost of living adjustments prior to July 1 of subsequent years.

Notwithstanding the above, an Employee who retires on or after July 1, 2012 shall not receive any cost of living adjustment to the Retirement Benefit if the Employee has not reached age 60 by the July 1 of the year of the cost-of-living adjustment.

Section 5.08 Military Service

- (a) Military Service Adjustment (Employment Interrupted). For purposes of calculating a Member's Accrued Benefit, a Member shall receive credit for military service in the Armed Forces of the United States in time of war, national emergency or pursuant to a national conscription law, which is immediately preceded and immediately followed (within 90 days after discharge or separation) by employment with the Employer. For such credited service, the Member shall not be required to make any contribution to the Plan. Periods of voluntary reenlistment not effected during national emergency or time of war shall not be counted in determining Years of Service.
- (b) Purchase of Military Service. Employees hired prior to July 2, 2012, will have a window of eighteen (18) months within which to elect purchase of military service. Employees hired on or after July 1, 2012, will be required to make the purchase election within eighteen (18) months of date of hire. Purchase of military service shall be subject to the following:

- (i) An employee may purchase up to twenty-four (24) months of credited service. An employee may purchase any amount up to the twenty-four (24) months.
- (ii) Credit shall only be granted for periods of full-time, active (not reserve) service in the regular armed forces of the United States. (Service with a private contractor or with a government agency that provides service to the military shall not qualify.)
- (iii) Once an employee has decided to purchase military service credit, he/she shall contribute eight (8%) percent of his/her annual salary at the time of election for each year or portion thereof of military service credit purchased. The employee may make payment of the amount due in installments over a period of up to twenty-four (24) months.

Section 5.09 Norwalk Federation of Educational Personnel ("NFEP") Service Adjustment.

- (a) For purposes of calculating an NFEP Member's Accrued Benefit, a Member may purchase Years of Service for the NFEP Member's period of employment prior to the date of his or her participation in the Plan provided the purchase of such service does not violate Section 415 of the Internal Revenue Code.
- (b) The cost to an NFEP Member for purchasing Years of Service pursuant to this Section 5.09 shall be the increase in the present value of the Member's Accrued Benefit as of the actuarial valuation date immediately preceding the Member's election. The Member may pay this amount in a lump sum, or in installments with eight and one half (8-1/2%) interest per annum, over a period of not more

than five (5) years, but in no event shall the payment period extend beyond the Member's Retirement Date.

- (c) Any purchase of service pursuant to this section must be elected not later than September 1, 2012 and payment must be completed not later than June 30, 2017 or the Member's Retirement Date, whichever is earlier. No other purchase of service shall be allowed.

ARTICLE 6

FORMS OF PAYMENT OF RETIREMENT BENEFIT

Section 6.01 Standard Form. The standard form of Retirement Benefit shall be an amount equal to the amount determined in the applicable Section of Article 5, payable as a monthly annuity commencing on said Retirement Date and payable on the fifteenth (15th) day of each month thereafter during the life of the Pensioner, but guaranteed for a period of sixty (60) months measured from said Retirement Date. If the Pensioner dies before the expiration of the sixty month period, payments will be continued to the Designated Beneficiary during the balance of the sixty month certain period.

Section 6.02 Optional Forms Of Benefits.

(a) A Member who receives a Disability Retirement Benefit shall not be eligible for the optional forms of benefits provided by this Section 6.02 unless, as of the date of commencement of such Disability Retirement Benefit, the Member has reached his/her sixty-second (62nd) birthday.

(b) Subject to paragraph (a) above, a Member retiring under this Plan may elect to receive the Actuarial Equivalent of the standard form of Retirement Benefit set forth in Section 6.01, commencing on his or her applicable Retirement Date, in an optional form. Prior to said Retirement Date, the Member shall designate, in writing, his or her joint annuitant, who must be the spouse of the Member on the Member's Retirement Date. The spouse of the Member must consent to the optional form of benefit elected by the Member. The following optional forms will be provided:

Option 1 - Joint And Survivor - 50% Basis

A monthly annuity payable during the Pensioner's lifetime, with one-half of that amount continued to the joint annuitant during such joint annuitant's remaining lifetime, if any, after the death of the Pensioner.

Option 2 - Joint And Survivor - 100% Basis

A monthly annuity during the Pensioner's lifetime, with the same amount continued to the joint annuitant during the joint annuitant's remaining lifetime, if any, after the death of the Pensioner.

Option 3 - Life With 10-Year Certain

A monthly annuity payable during the Pensioner's lifetime, but guaranteed for a period of ten (10) years measured from the Pensioner's Retirement Date. If the Pensioner dies before the expiration of the ten (10) year period, payments will be continued to the Designated Beneficiary during the balance of the ten (10)-year certain period.

Option 4 - If Actuarial Equivalent of Member's vested Accrued Benefit is no greater than \$5,000 - Lump Sum

If the Actuarial Equivalent of the Member's vested Accrued Benefit is not greater than five thousand dollars (\$5,000), a single lump sum payment.

(c) The Pension Board shall prescribe forms and procedures by which Members may elect the options permitted by this section. The election of a joint annuitant who is to share part of the Retirement Benefit otherwise available to the Pensioner shall not be effective unless it shall be made in writing in the form and manner prescribed by the Pension Board. No such election shall take effect until it has been received in writing by the Pension Board.

No election, or change to a prior election, shall be permitted after the Member's applicable Retirement Date.

Section 6.03 Latest Date for Commencement of Payments.

(a) General Rules.

- (i) For Plan Years beginning prior to January 1, 1997, the required beginning date of a Member shall be the first day of April of the calendar year following the calendar year in which the Member attains age 70-½;
- (ii) On or after January 1, 1997, the required beginning date of a Member who attains age 70-½ in 1997 or later shall be the first day of April of the calendar year following the later of the calendar year in which the Member attains age 70-½ or terminates employment;
- (iii) A Member shall commence his or her benefit distributions (in amounts which at least satisfy the minimum required distributions of Section 401(a)(9) of the Code) no later than the required beginning date applicable to such Member.

- (b) Special Rule. For any Member who attains age 70-½ on or after January 1, 1997, and on or before December 31, 2002, unless such Member elects to commence or continue receiving his or her benefit distributions in accordance with the time set forth in subsection (a)(i) above, then the benefit distributions to the Member (in amounts which at least satisfy the minimum required distributions of Section 401(a)(9) of the Code) shall be deferred until such time as is required by subsection (a)(ii) above.

- (c) Overall General Rule. Payment of benefits shall commence not later than the 60th day after the close of the Plan Year in which the latest of the following events have occurred:
- (i) The Member has attained the earlier of age 65 or the normal retirement age;
 - (ii) The tenth anniversary of the year in which a Member first became a Member has occurred; or
 - (iii) The Member has terminated service with the Employer.
- (d) Actuarial Adjustments. For a Member whose required beginning date is the April 1 of the calendar year following the calendar year of the Member's termination of employment, as determined by Section 401(a)(9)(c)(i)(II), in the event such Member terminates employment in a calendar year after the calendar year in which the Member attains age 70-½, then such Member's retirement benefit shall be actuarially increased in accordance with Section 401(a)(9)(c)(iii) and any applicable regulations or other IRS guidance issued thereunder.

ARTICLE 7

RETIREMENT BENEFIT FOR TERMINATED VESTED MEMBERS

Section 7.01 Retirement Benefit for Terminated Vested Members. A Member who terminates employment with the Employer prior to the Member's Normal Retirement Date and who is vested in the Member's Accrued Benefit, is a Terminated Vested Member and shall receive a Retirement Benefit for Terminated Vested Members as defined in Section 7.04. The Retirement Benefit for a Terminated Vested Member shall commence at such time as provided by Section 7.05.

Section 7.02 Vesting of Accrued Benefit Attributable to Employer Contribution. A Member shall be vested in the Member's Accrued Benefit attributable to Employer Contributions upon the occurrence of one of the following events:

- (a) Upon completing five (5) Years of Service; or
- (b) Upon the termination of the Plan as provided in Article 11 hereof.

Until the occurrence of one of such events, the Member's vested percentage shall be zero percent (0%).

Section 7.03 Vested Percentage in Member Contribution. A Member shall always be one-hundred percent (100%) vested in the Member contributions that a Member makes to the Plan.

Section 7.04 Calculation of Retirement Benefit for Terminated Vested Members. The Retirement Benefit for a Terminated Vested Member shall be the Member's Accrued Benefit, calculated as of the date of the Member's termination of employment. Such Accrued Benefit

shall be determined under Plan provisions in effect on the Member's date of termination of employment. The Retirement Benefit for a Terminated Vested Member shall commence at such time as provided by Section 7.05.

Section 7.05 Time of Commencement and Manner of Payment of Benefit for Terminated Vested Members. A Terminated Vested Member shall begin receiving the Member's Retirement Benefit upon attaining age 62, or, if applicable, upon such earlier date as elected by the Terminated Vested Member pursuant to Section 4.05. The form of benefit shall be determined in accordance with the rules set forth in Article 6.

Section 7.06 Cash-Out Option Upon Termination of Employment. Notwithstanding Section 7.05, a Member who ceases to be employed by the Employer shall receive a lump-sum cash-out of the value of the vested portion of the Member's Accrued Benefit (including a deemed distribution of zero if the Member has a zero vested percentage) as soon as practicable if the Actuarial Equivalent value of such Member's vested Accrued Benefit is not greater than five thousand dollars (\$5,000) [one thousand dollars (\$1,000 prior to July 1, 2006)] as of the date that the benefit is to be distributed to the Member.

Section 7.07 Return of Member Contributions. A Member who is separated from employment without a vested Accrued Benefit shall receive a refund of the Member's Member contributions to the Plan, plus interest at the rate of three percent (3%) per annum. A Member who is separated from employment with a vested Accrued Benefit may elect to receive a refund of the Member's contributions to the Plan, plus interest at the rate of three percent (3%) per annum. Effective July 1, 2012, the interest rate on any return of contributions on and after that date shall be the rate of the two-year T-bill in effect on the first business day of each plan year, to a maximum of five percent (5%) per annum. Election of such a refund shall cause the Member to forfeit any remaining interest in the Member's Accrued Benefit.

Section 7.08 Forfeitures. Any forfeitures on termination of service, or for other reason, shall be used as soon as possible to reduce the amount of contributions by the Employer.

Section 7.09 Procedure for Missing Persons or Beneficiaries. The Plan Administrator, as defined in Section 10.01, must use all reasonable measures to locate Members or Beneficiaries who are entitled to distributions from the Plan. In the event that the Plan Administrator cannot locate a Member or Beneficiary who is entitled to a distribution from the Plan without further election, after using all reasonable measures to locate him or her, the Plan Administrator shall, after the expiration of one (1) year after the benefit becomes payable, treat the amount distributable as a forfeiture in accordance with Section 7.08. Except as otherwise provided in Section 4.6, if the Member or Beneficiary is later located the Plan Administrator shall restore to the Plan the amount forfeited, without interest.

ARTICLE 8

DEATH BENEFITS

Section 8.01 Death of Active Member Prior to Becoming Eligible to Commence Receiving a Retirement Benefit. If a Member dies while employed by the Employer, the Designated Beneficiary or contingent beneficiary, or, if none has been designated, the Member's estate, shall be entitled to a refund of the Member's contributions to the Plan, plus interest at the rate of three percent (3%) per annum.

Section 8.02 Death of Active Member After Becoming Eligible to Commence Receiving a Retirement Benefit. If a Member dies while employed by the Employer and after satisfying the eligibility requirements for an Early Retirement Benefit or a Normal Retirement Benefit, the Member's Designated Beneficiary or contingent beneficiary, or, if none has been designated, the Member's estate may elect either: (i) the benefit described in Section 8.01, or (ii) the Retirement Benefit that the Designated Beneficiary would have received for if the Member's Retirement Date had been the day immediately preceding his or her death. A Member who dies while employed by the Employer shall be presumed to have elected Option 1 set forth in Section 6. 02(b) - 50% Joint and Survivor - provided that the Member has been married for at least one year prior to his/her death. If the member has no spouse then the standard form (60 months) shall apply.

Section 8.03 Death Benefit of Terminated Vested Member. If a Terminated Vested Member dies prior to his or her Retirement Date, the Designated Beneficiary or contingent beneficiary, or, if none has been designated, the Terminated Vested Member's estate, shall be entitled to a death benefit. The death benefit shall be the greater of: (i) the refund of the Member's contributions, or, (ii) the standard form of the Retirement Benefit that the

Designated Beneficiary would have received for sixty (60) months if the Member's Retirement Date had been the day immediately preceding his or her death. The death benefit in (ii) above shall commence on the first day of the month following the date the Terminated Vested Member, if living, would have attained age sixty two (62).

Section 8.04 Cost of Living Adjustment. If the surviving spouse of a Member who was employed as of July 1, 1999 is eligible for a death benefit for sixty (60) months pursuant to Section 8.02, then such surviving spouse shall receive the same post-retirement increases, as would have been received by the Member pursuant to Section 5.07. For purposes of Section 5.07, the day immediately preceding the Member's death shall be treated as the date he or she retired. Except as otherwise provided in Section 9.02(f), including as required under federal law, the term "spouse" shall be defined, for purposes of this Section and the Plan generally, pursuant to state law.

ARTICLE 9

ROLLOVER CONTRIBUTIONS

Section 9.01 Rollover Contributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this subsection, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator in accordance with applicable regulations, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

- (a) A Distributee who is entitled to elect a Direct Rollover with respect to all or any portion of a distribution but who does not make any election shall be deemed to have rejected the Direct Rollover option.
- (b) A Distributee who elects a Direct Rollover with respect to any Eligible Rollover Distribution that is one in a series of installment payments made at least annually over a period of less than ten (10) years shall be deemed to have made the same election with respect to all subsequent Eligible Rollover Distributions in the series unless and until the Distributee changes the election. A change of election shall be accomplished by notifying the Plan Administrator of the change in the form and manner prescribed by the Plan Administrator.
- (c) Within a reasonable period of time before an Eligible Rollover Distribution is to be made, and in accordance with section 402(f) of the Internal Revenue Code and applicable regulations, the Plan Administrator shall provide to the Distributee an explanation of the right to elect a Direct Rollover, the federal tax withholding consequences of failing to elect a Direct Rollover, the tax effects of

making a rollover (other than a Direct Rollover) to an Eligible Retirement Plan, and the tax rules applicable to lump sum distributions, if applicable. A Distributee who elects a Direct Rollover must provide all information that the Plan Administrator may require to complete the Direct Rollover.

Section 9.02 Rollover Definitions. For the purposes of this section, the following definitions will apply:

- (a) An “Eligible Rollover Distribution” is any distribution of all or any portion of the balance of the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (at least annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (b) A distribution of less than two-hundred dollars (\$200) that would otherwise be an Eligible Rollover Distribution with the meaning of item (a) shall not be an Eligible Rollover Distribution if it is reasonable to expect that all such distributions to the Distributee from the Plan during the same calendar year will total less than two-hundred dollars (\$200).
- (c) An “Eligible Retirement Plan” is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity

described in Section 408(b) of the Internal Revenue Code or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective for distributions made after December 31, 2001, the definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code. For distributions made after December 31, 2007, a Member may elect to roll over directly an Eligible Rollover Distribution to a Roth IRA described in section 408A(b) of the Code.

- (d) A "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the spouse or former spouse. Effective July 1, 2010, a non-spouse Beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E), by a Direct Rollover (as defined below), may roll over all or any portion of his or her distribution to an individual retirement account that the Beneficiary establishes for purposes of receiving the distribution. In order to roll over the distribution, the distribution

otherwise must satisfy the definition of an Eligible Rollover Distribution (as defined above). Any distribution made prior to July 1, 2010 is not subject to the direct rollover requirements of section 401(a)(31) of the Code (including section 401(a)(31)(B) of the Code, the notice requirements of section 402(f) of the Code, or the mandatory withholding requirements of section 3405(c) of the Code). If the Participant dies before his or her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution.

- (e) A "Direct Rollover" is a payment by the Plan directly to the Eligible Retirement Plan specified by the Distributee.
- (f) A "Spouse", notwithstanding the terms of Section 8.04, where the term "spouse" is used in this Plan in accordance with the requirements of federal law, including but not limited to the rollover provisions of this Section 9.02, the term "spouse" shall be defined, in accordance with federal law.

ARTICLE 10

ADMINISTRATION

Section 10.01 Pension Board and Responsibilities of the Board as Plan Administrator.

The Pension Board or its designee shall be the Plan Administrator of the Plan. The composition of the Pension Board shall be as follows:

- (a) a public member, who shall be the Chairman of the Pension Board, appointed by the Mayor of the City;
- (b) five (5) public members appointed by the Mayor of the City;
- (c) the City's Director of Finance or his/her designee;
- (d) five (5) Members (as defined in Section 1.17) designated by the Coalition of unions representing Members.

A quorum of the Pension Board shall be a minimum of four and a majority of the public members.

The Plan Administrator shall have the following powers and responsibilities as Plan Administrator of the Plan:

- (a) To determine benefit rights;
- (b) To adopt such method for the computation of periods of service and participation as shall be permitted by law;
- (c) To instruct the Funding Agent in the disbursement of benefits;
- (d) To make such rules and regulations as it may deem necessary to carry out the provisions of the Plan;
- (e) To employ, where necessary or desirable in the administration of the Plan, actuaries, attorneys, accountants and other individuals, who shall not be

fiduciaries merely as a result of their employment hereunder, and to delegate to such individual such powers and responsibilities as it shall determine;

- (f) To determine, in accordance with uniform standards, any question arising in the administration, interpretation and application of the Plan, such determination to be conclusive and binding to the extent the same shall not be plainly inconsistent with the terms of the Plan or any applicable law;
- (g) To decide any disputes which may arise;
- (h) To give instructions and directions to the Funding Agent as necessary; and
- (i) To keep records of all allocations and designations of fiduciary duties made in accordance with the provisions of this Article.

The Pension Board may allocate some or all of its powers and responsibilities as Plan Administrator, as enumerated above, to such individuals, committees of individuals, firms or corporations as it shall determine, in which case such individuals, committees of individuals, firms or corporations shall be named fiduciaries. Such allocations shall be made in writing and shall name the entity to whom the allocation has been made and describe the fiduciary duties allocated to it.

During any month in which the Pension Board does not have a regularly scheduled meeting, the Director of Personnel and Labor Relations may approve applications for pensions and, such approval shall be subject to ratification by the Pension Board at its next regularly scheduled meeting.

Section 10.02 Responsibilities of the Pension Board. The Pension Board shall have the following powers and responsibilities with regard to the Plan, apart from any powers and responsibilities it shall have as Plan Administrator:

- (a) To appoint and change the Funding Agent;

- (b) To periodically review the performance of all entities to which the Pension Board allocates or delegates responsibilities under this Section and under Section 10.01.

Section 10.03 Responsibilities of the City. The City shall have the following powers and responsibilities with regard to the Plan:

- (a) To amend or terminate the Plan;
- (b) To determine the funding policy of the Plan; and
- (c) To designate, consistent with sound standards, the actuarial basis to be used for all actuarial calculations.

Section 10.04 Responsibilities of the Funding Agent. The Funding Agent shall have the following powers and responsibilities:

- (a) To maintain custody of the Fund;
- (b) To manage and control the investment of the Fund;
- (c) To disburse benefits as instructed by the Plan Administrator or the Plan Administrator's agent;
- (d) To perform any other functions which are specifically allocated to it in its agreement with the Pension Board.

Section 10.05 Limitation of Responsibilities. The responsibility of the City, Pension Board, Plan Administrator, and Funding Agent, or any individuals, committees of individuals, firms or corporations, to which responsibilities are allocated, or who are designated to perform fiduciary responsibilities, as provided herein, shall be limited to that expressly granted and neither the City, Pension Board, Plan Administrator, and Funding Agent, nor any such individuals, committees of individuals, firms or corporations shall be responsible except for his, her, its or their own acts or omissions.

Section 10.06 Finality of Plan Administrator's Determinations and Authority. In exercising its powers and responsibilities as the Plan Administrator, the Pension Board, or, when appropriate, the individuals, committees of individuals, firms or corporations to whom any power and responsibility is allocated, shall have full and uncontrolled discretion to make any determination or decision and, when made, such determination and decision shall be final, conclusive and binding.

Section 10.07 City to Act by Common Council. Whenever the City is required to make any appointment or allocate or delegate any responsibilities, such action may be taken by the Common Council. Without limiting the generality of the foregoing, the Common Council may confer upon any individual, committee of individuals, firm or corporation further power to delegate responsibilities.

ARTICLE 11

AMENDMENT OR TERMINATION OF PLAN

Section 11.01 Right to Amend Plan. The Common Council reserves the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of the Plan, provided that (a) no amendment shall be made which conflicts with the Bargaining Agreements in effect on the effective date of such amendment, and (b) no such amendment shall authorize or permit, at any time prior to the satisfaction of all liabilities with respect to the Plan, any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the persons covered by the Plan.

No such amendment shall have the effect of retroactively changing, or depriving Employees, Beneficiaries and contingent annuitants of, rights already accrued under the Plan, provided that any amendment may be made retroactively which is necessary to bring the Plan into conformity with governmental regulations in order to qualify or maintain the qualification of the Plan for tax exemptions.

Section 11.02 Right to Terminate Plan. The City, by action of the Common Council, reserves the right to terminate the Plan with respect to its Employees and Members at any time, provided that no termination shall be made which conflicts with the Bargaining Agreement in effect. Any such termination shall be set out in an instrument in writing executed on behalf of the City, by action of the Common Council, and this Plan shall be deemed to have been terminated with respect to the Employer in the manner and to the extent set forth in such instrument, accompanied by a duly certified copy of a resolution of the Common Council.

ARTICLE 12

ALLOCATION OF ASSETS

Section 12.01 Allocation of Assets. In the event of termination of the Plan, each Member's benefit, or in the event of the termination of the Plan with respect to a group of Members which constitutes a partial termination of the Plan, the benefit of each Member affected by such partial termination, calculated as of the date of such event, shall become fully vested and non-forfeitable to the extent funded by Plan assets. To the extent that the Plan is not sufficiently funded to pay all benefits that are due Members under this Section, the assets remaining in the Plan shall, after providing for any administrative expenses, be allocated to the extent they are sufficient for the purpose of paying retirement benefits to Members (based on Years of Service to the date of discontinuance of the Plan) in the following order or precedence:

- (a) to provide retirement benefits to Pensioners who shall have retired under the Plan prior to its discontinuance without reference to the order of retirement;
- (b) to provide retirement benefits to Members age sixty-two (62) or over on the date of discontinuance without reference to the order in which they shall have reached retirement age; and
- (c) to provide pensions upon attainment of age sixty-two (62) to Members less than sixty-two (62) years of age on the date of discontinuance without reference to the order in which they will attain age sixty-two (62).

Section 12.02 Impossibility of Diversion of Assets. Anything in this Plan which might be construed to the contrary notwithstanding, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to Members for any part of the corpus or income of the Fund to be used for, or diverted to, purposes other than for the purposes herein stated.

Section 12.03 Permanent Discontinuance of Contributions. In the event contributions hereto are permanently discontinued, the provisions of Section 12.01 shall apply as of the date of discontinuance.

ARTICLE 13

MERGER OR CONSOLIDATION OF PLANS

Section 13.01 Successor Employer. In the event of the dissolution, merger, consolidation or reorganization of the Employer, provision may be made by which the Plan and Funding Agreement will be continued by the successor, and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor, and the successor shall have all the powers, duties and responsibilities of the Employer under the Plan.

ARTICLE 14

THE FUND

Section 14.01 Appointment and Transfer of Funds. To carry out the provisions of the Plan, the Pension Board will provide for the custody and investment of the funds which arise from contributions pursuant to the Plan and for the payment of benefits under the Plan by agreement with such Funding Agent as it may from time to time determine, which agreement shall constitute a part of the Plan.

Section 14.02 Successor Funding Agent; Miscellaneous. The Pension Board in its sole and absolute discretion reserves the right at any time and from time to time to designate a successor Funding Agent; to enter into and make amendments to such contracts or agreements with the Funding Agent as it may deem desirable to accomplish the objectives of the Plan; to provide for the payment thereafter of the contributions hereunder to another Funding Agent; and to require a Funding Agent to transfer funds arising from contributions pursuant to the Plan to another Funding Agent, provided that the Pension Board shall have no power to perform any of such actions in such manner as will cause or permit any part of the funds accumulated pursuant to the Plan to be diverted to purposes other than for the exclusive benefit of Members or their Designated Beneficiaries, survivors or estates, retired employees or their Designated Beneficiaries or as will cause or permit any portion of such funds to revert to or become the property of the Employer prior to the satisfaction of the liabilities under the Plan.

ARTICLE 15

LIMITATION ON BENEFITS

Section 15.01 Limitation of Benefits to Comply With Section 415. Effective for limitation years beginning on or after July 1, 2007, and notwithstanding any Plan provisions to the contrary, in no event may the maximum annual retirement benefit payable to a Member under the Plan and any other defined benefit plan of the Employer at any time within the limitation year exceed the limitations contained in Internal Revenue Code Section 415 (as amended from time to time, including, without limitation, P.L. 108-218, the Pension Funding Equity Act of 2004, P.L. 109-280, the Pension Protection Act of 2006, and P.L. 110-458, the Worker, Retiree and Employer Recovery Act of 2008) and the regulations and guidance issued thereunder, which are hereby incorporated by reference, including, without limitation, the definition of compensation as set out therein. The term "compensation" for purposes of compliance with the limitations under Internal Revenue Code Section 415 shall include the following:

- (i) wages as reported for purposes of federal income tax on Form W-2;
- (ii) elective deferrals as defined in Section 402(g)(3) of the Internal Revenue Code and salary reduction contributions of the Member not includible in his or her gross income by reason of Section 125 (including amounts not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage) or Section 132(f) of the Internal Revenue Code; and
- (iii) compensation paid after severance from employment as set out in Treas. Reg. § 1.415(c)-2(e)(3).

ARTICLE 16

MISCELLANEOUS

Section 16.01 Actuarial Valuation. It is intended that this Plan be financed in accordance with actuarial principles. Accordingly, in accordance with GASB requirements and state law, the City shall be required to have an actuarial valuation of the assets and liabilities of the Plan and of the required contributions from the Employer which, with the further contributions by members of the Plan, will be adequate to finance the benefits under this Plan.

Section 16.02 Administrative Interpretations. The Pension Board may adopt such administrative interpretations of this Plan as they consider necessary to carry out the intent and purpose of the Plan and to provide for effective administration thereof.

Section 16.03 Appeals. A Member or Designated Beneficiary dissatisfied with a decision of the Plan Administrator or its designee with respect to his or her application may, within sixty (60) days, appeal such decision in writing to the Pension Board, with a copy to the City's Director of Personnel and Labor Relations stating the reasons for the appeal. The appeal may request a hearing in person. The appeal may be considered by the Pension Board at a regularly scheduled meeting or a special meeting called for the purpose of considering the appeal. The decision of the Pension Board shall be conveyed to the appellant in writing. The decision of the Pension Board on such appeals shall be final.

Section 16.04 Exclusive Benefit. This Plan shall be for the exclusive benefit of Members and their Designated Beneficiaries and all of the funds held by the Funding Agent shall be exclusively devoted to such purpose. No portion of any such funds shall revert to or become the property of the Employer prior to the termination of the Plan and the satisfaction of all liabilities with respect to Members and their Designated Beneficiaries.

Section 16.05 Facility of Payment. If the Pension Board shall receive evidence satisfactory to it that any person entitled to receive any benefit hereunder is, at the time when such benefit becomes payable, physically, mentally or legally incompetent to receive such benefit and to give a valid receipt therefore and that another individual or institution is then maintaining or has custody of such person and that no guardian, committee or other representative of the estate of such person shall have been duly appointed, the Pension Board may cause payment of such benefit to such individual or institution maintaining or having the custody of such person, and the receipt of such individual or institution shall be a valid and complete discharge for the payment of such benefit. If a person dies before cashing any or all of the checks representing a payment or payments due under the Plan, such payment or payments so payable to such deceased person shall be made in the discretion of the Pension Board either to:

- (a) the person or persons who would be entitled to the deceased person's personal property under the laws of the State of Connecticut (which shall also fix the proportionate interest of such persons) if the person had died intestate a resident of Connecticut at the time for such payment under the provisions of the Plan; or
- (b) such relative or relatives of the deceased person by blood, marriage, or adoption as the Pension Board may select; or
- (c) the estate of the deceased person.

Section 16.06 No Right to Continued Employment. Nothing in this Plan shall be construed as giving any Employee the right to be retained in the Employer's employ or the right to any payment whatsoever except to the extent of the benefits provided for in the Plan. The Employer expressly reserves the right to dismiss any Employee at any time without

liability for the effect which such dismissal might have upon the Employee as a Member in this Plan.

Section 16.07 Sufficiency of Fund. All benefits payable under this Plan shall be paid or provided for solely from the Fund or from accounts segregated from the Fund in accordance with the Plan. The Employer shall not be liable for the payment thereof.

Section 16.08 Qualified Plan. The Plan is intended to be a governmental plan under section 414(d) of the Internal Revenue Code, and “qualified” as such under section 401(a) of the Internal Revenue Code. Any associated trust to the Plan is intended to comply with all provisions of the Internal Revenue Code relating to such a trust. All questions shall be resolved to be consistent with such intent.

Section 16.09 Return of Employer Contributions Under Special Circumstances. Any Employer contribution made under a mistake of fact may be returned to the Employer within one (1) year of such contribution.

Section 16.10 Pensioners Returning to Employer Employment. A Pensioner who returns to employment with the Employer shall not be entitled to pension for any month during such employment. The Pensioner’s Retirement Benefit shall be resumed effective on the first (1st) day of the month following termination of such employment. Notwithstanding the above, a Pensioner who is requested to return to employment with the Employer on or after July 1, 2009 for purposes of providing essential services to the Employer may work up to one thousand (1,000) hours per Plan Year, with no loss of pension benefit during such periods. Such return to work shall not be deemed “Reemployment” pursuant to Section 2.02, or services pursuant to Section 1.24, as the Pensioner shall not satisfy the 1,200 hour requirement to be an Employee.

Section 16.11 Benefits to Survivors. If a Member, or Pensioner, should die at a time when a valid Designated Beneficiary form is not on file with the Pension Board, and there is no contingent beneficiary, the Pension Board shall pay any amounts otherwise due to the Member's estate.

Section 16.12 Incompetence or Incapacity of Pensioner. All benefits payable to a Pensioner shall be paid only to the Pensioner unless the Pension Board has been served, in writing, with notice of the appointment of a legal guardian, committee or legal representative. If payments are made to such legal representative of the Pensioner, the Pension Board shall not have further liability to the Pensioner, or to anyone representing the Pensioner or the Pensioner's interest.

Section 16.13 Non-Assignment of Benefits. It is the intention of the Pension Board to make it impossible for Members or Pensioners covered by this Plan to unwisely imperil the provisions made for their retirement by their assigning, pledging, or otherwise disposing of their retirement payment hereunder. Consequently, it is hereby expressly provided that no Member or Pensioner shall have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge or anticipate any retirement payments, or portions thereof, and any such assignment, alienation, transfer, sale, hypothecation, mortgage, encumbrance, pledge or anticipation shall be void and of no effect whatsoever. To insure that retirement payments, or operations thereof, shall not in any way be subject to any legal process, execution, attachment or garnishment or be used for the payment of any claim against any Member or Pensioner, or be subject to the jurisdiction of any bankruptcy court or insolvency procedure by operation of law, or otherwise, the Pension Board shall have the right to terminate or postpone pension payments to a Pensioner.

Section 16.14 No Vesting. Except as specifically provided in this Plan, no person other than the Pension Board shall have any right, title or interest in any of the income or property of any character received or held by or for the account of the Fund and no person shall have any vested right to benefits provided by the Plan nor shall any employee be entitled to any payment or other equity in the assets of the Plan. All contributions made to the Plan shall be held in trust for the exclusive benefit of Members who qualify for benefits under this Plan.

Section 16.15 Standards of Proof. Every Member, or Pensioner, or anyone making a claim against the Fund on behalf of any of these, shall furnish at the request of the Pension Board any information or proof required for the administration of the Plan, or for the determination of any matter that the Pension Board may have before them. Failure to furnish such information or proof promptly and in good faith shall be sufficient for the denial of benefits to such Member, or the suspension or discontinuance of benefits to such Pensioner. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under this Plan; and in any such case the Pension Board shall have the right to recover any benefit payments made in reliance thereon.

Section 16.16 Special Rules Regarding Qualified Military Service (USERRA).

- (a) General. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.
- (b) Death Benefits. In the case of a death or disability occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in section 414(u) of the Code), the survivors of the Member are entitled

to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Member had resumed and then terminated employment on account of death.

- (c) Benefit Accrual. For benefit accrual purposes, the Plan treats an individual who, on or after January 1, 2007, dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. With respect to the period of said individual's qualified military service, the Plan will treat said service as counting toward said individual's Years of Service under the Plan.
- (d) Determination of Benefits. To the extent the Plan requires employee contributions in order for the Member to accrue benefits under the Plan, then the Plan will determine the amount of employee contributions of an individual treated as reemployed under these provisions for purposes of applying section 414(u)(8)(C) of the Code on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- (e) Differential Wage Payments. For years beginning after December 31, 2008, (1) an individual receiving a differential wage payment from the Employer, as defined by section 3401(h)(2) of the Code, shall be treated as an Employee of

the Employer making the payment, (2) the differential wage payment shall be treated as compensation, and (3) the Plan shall not be treated as failing to meet the requirements of any provision described in section 414(u)(1)(C) of the Code by reason of any contribution or benefit which is based on the differential wage payment.