CITY OF RUTLAND POLICE AND FIRE RETIREMENT INCOME PLAN

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CITY OF RUTLAND POLICE AND FIRE RETIREMENT INCOME PLAN

THIS sets forth the Police and Fire Retirement Income Plan agreement for the City of Rutland, Vermont ("Employer").

WITNESSETH:

WHEREAS, the City of Rutland, Vermont established the City of Rutland Employees Retirement System utilizing a defined benefit pension plan and related trust for the exclusive benefit of the Participants and their Beneficiaries on January 1, 1938; and

WHEREAS, the City of Rutland amended the plan effective January 1, 1989, separating the Employees Retirement System into two separate portions consisting of (i) the Police and Fire Retirement Income Plan for Police and Fire Employees and (ii) the Retirement Income Plan for all other employees, with a common trust; and

WHEREAS, the City of Rutland restated the Police and Fire Retirement Income Plan, effective January 1, 2010 to incorporate all amendments to the plan in the intervening period and to comply with the then applicable changes in statutory and regulatory requirements, and

WHEREAS, the City of Rutland now desires to amend the Police and Fire Retirement Income Plan, effective January 1, 2016, to incorporate all amendments to the plan in the intervening period and to comply with the applicable changes in statutory and regulatory requirements,

NOW, THEREFORE, the City of Rutland hereby amends the City of Rutland Police and Fire Retirement Income Plan, effective January 1, 2016, except as to those provisions for which a different effective date is specified, and the Trustee hereby accepts the Plan, to read as follows:

Article 1

PURPOSES

1.1 Plan Name. The Plan is designated the City of Rutland Police and Fire Retirement Income Plan and shall at all times be considered a governmental defined benefit pension plan (within the meaning of Code § 414(d)) for purposes of Code § 401(a). This document is to provide benefits for Eligible Employees who are Police and Fire Employees of the City of Rutland. The Plan shall be considered to be part of the City of Rutland Employees Retirement System.

1.2 Purpose. The purpose of the Plan is to provide retirement and certain survivor benefits for the Participants and their Beneficiaries. To provide such benefits, the Employer shall make contributions to the Plan as provided herein.

1.3 Effect of Restatement. Unless expressly stated otherwise herein, the amount of Accrued Benefit, the rate of accrual of benefits, the vesting rights, and all other benefits for Participants (or their Beneficiaries) who have terminated employment, or whose benefits are in pay status, prior to January 1, 2016 shall be determined under the terms of the City of Rutland Police and Fire Retirement Income Plan in effect during the Participant's employment or at his termination date and not under the Plan as restated by this document.

Article 2

DEFINITIONS

As used in this Plan, the following terms shall have the following meanings, unless a different meaning is stated and clearly indicated by the context:

2.1 "Accrued Benefit" generally means the amount of retirement benefit earned by a Participant hereunder, and payable during the life of the Participant, expressed in the form of an annual benefit payable for the Participant's life, commencing at the Participant's Normal Retirement Date.

(a) A Participant's Accrued Benefit is:

(1) a benefit derived from Employee Contributions that shall be the Actuarial Equivalent of his Employee Contribution Account determined as of that Valuation Date; and

(2) a benefit derived from Employer Contributions (other than Pick-Up Contributions, if applicable) that shall be the excess, if any, of his total Accrued Benefit over the benefit derived from Employee Contributions. The term "Pick-Up Contributions" means amounts described in Code § 414(h)(2).

Where, however, a Participant has also earned retirement benefits in another another plan in the City of Rutland Retirement System, then for purposes of the Plan provisions applicable to the payment of benefits, unless the context requires otherwise, the term "Accrued Benefit" refers to the aggregate of the retirement benefits credited to the Participant as of the date of determination under all plans in that System.

2.2 "Actuarial Equivalent."

(a) An Actuarial Equivalent benefit means a form of benefit differing in time, period or manner of payment from a specific benefit under the Plan, but having the same present value as such specific benefit.

(b) An Actuarial Equivalent benefit shall be determined by using the following assumptions:

Interest Rate -6%

Mortality - 1971 Group Annuity Mortality Table for male lives, with ages for Participants set back 1 year and ages for Spouses and Contingent Annuitants set back 5 years.

2.3 "Adjusted Retirement Age" " is the term the Plan uses to describe the earliest date where a Participant, who is no longer an Employee and whose Adjusted Retirement Age occurs before his or her Normal Retirement Age, may elect to begin receiving retirement benefits, with those benefits not being subject to a reduction even though they begin before Normal Retirement Age.

A Participant's Adjusted Retirement Age is the date when:

(a) The sum of the Participant's age plus Years of Participation equals at least 75.

(b) For purposes of this section, a Participant's age and Years of Participation are each measured in whole years and twelfths of a year. A Participant may qualify to have an Adjusted Retirement Age even though he or she terminates from employment before having reached the date specified in (a), as long as the above requirements are satisfied on a date before his or her Normal Retirement Date.

(c) In the event a Participant has service with more than one employee group in the City of Rutland Retirement System, the Adjusted Retirement Age rules that will apply to that individual are the rules for the employee group in which the individual is a member on the date of determination

2.4 "Administrator" or **"Plan Administrator"** means the person or entity that administers the Plan, as further described in Article 14.

2.5 "Anniversary Date" means the first day of the Plan Year.

2.6 "Annuity Starting Date" means (i) the first day of the first period for which an amount is paid as an annuity (whether by reason of retirement or disability or death) or (ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the recipient to such benefit.

2.7 "Beneficiary" means the person(s) determined under the provisions of section 6.3 to receive any Plan benefits payable after the Participant's death.

2.8 "City of Rutland Retirement System" refers to three pension plans maintained by the City of Rutland for its Employees. These are the City of Rutland Retirement Income Plan (the "DPW and General Employees Plan"), the City of Rutland Police and Fire Retirement Income Plan (the "Police and Fire Employees Plan"), and the City of Rutland School Department Employees Retirement Income Plan (the "School Department Employees Plan").

2.9 "Code" means the Internal Revenue Code of 1986, as amended from time to time, any regulations thereunder, and any rulings issued by the Internal Revenue Service. Reference to any Code Section shall include any successor provision thereto.

2.10 "Dependent Children" means the children born to the Participant or legally adopted by him, or the Participant's step-child living with the Participant in a normal parent-child relationship. Such child shall be unmarried, primarily dependent upon the Participant for support, and under 19 years of age, or if a student, under 23 years of age.

2.11 "Disability Retirement Date" means the first day of any month following the date the Participant receives his or her final paycheck for actual hours worked after terminating Employment due to becoming Disabled.

2.12 "Disabled" means the Participant has a total and permanent disability. A Participant shall be considered to be "Disabled" for the period the individual is determined by the Administrator to have a physical or mental condition resulting from bodily injury, disease, or mental disorder which renders him incapable of continuing his usual and customary employment. The disability of a Participant shall be determined by the Administrator in its sole discretion based upon the factors demonstrating the existence or nonexistence of disability as the Administrator may deem appropriate. The Administrator may, in its discretion, accept as determinative of total and permanent disability: (1) the receipt by the Participant of Social Security disability payments, or (2) if the Participant is also covered by an insured non-governmental long term disability plan, the determination of disability by the insurer, or (3) the determination of a disinterested third-party expert in disability claim matters hired by the Administrator.

2.13 "Early Retirement Age" is the term the Plan uses to describe the earliest date on which a Participant, who is no longer an Employee and whose Early Retirement Age occurs before his or her Normal Retirement Age, may elect to begin receiving reduced retirement benefits. This date will be when the Participant has both reached at least age 55 and has at least 10 Years of Participation.

2.14 "Employee" means any person who is employed by the Employer as a common law employee, including elective and appointive employees. For purposes of the Plan, no independent contractor or leased employee shall be considered an Employee. The rules for determining who is an "Eligible Employee" who may participate in the Plan are contained in Section 3.1.

2.15 "Employee Contributions" means the amount a Participant is required to contribute to the Plan pursuant to Section 11.3 in order to be eligible to participate in the Plan.

2.16 "Employee Contribution Account" means the theoretical account, maintained for the Participant and used to fund his Accrued Benefit, as determined under the rules of Article 11.

2.17 "Employer" means the City of Rutland, Vermont.

2.18 "Employment" or "Service" refers to the individual's status as an Employee and the period of time during which the individual was an Employee.

2.19 "Entry Date" means the first day of a calendar month.

2.20 "Final Earnings" means the Participant's highest average Rate of Earnings on any 5 consecutive January 1's during the last 10 years prior to the Participant's Termination of Employment, including termination by reason of retirement, Disability or death.

2.21 "**Fiscal Year**" means the period beginning July 1 and ending on the following June 30.

2.22 "Forfeiture" means that portion of a Participant's Accrued Benefit that is not Vested and which is forfeited pursuant to the terms of this Plan.

2.23 "Investment Manager" means any person or entity who:

(a) is registered as an investment adviser under the Investment Advisers Act of 1940, a bank (as defined in the Investment Advisers Act of 1940), or an insurance company qualified to manage, acquire and dispose of Plan assets under the laws of more than one state;

(b) acknowledges in writing that it is a fiduciary with respect to the Plan; and

(c) is granted the power to manage, acquire or dispose of any asset of the Plan pursuant to its provisions.

2.24 "Late Retirement Date" means the first day of the month coinciding with or next following a Participant's Termination from Employment after having reached his Normal Retirement Date. Due to the Employer's policy of mandatory retirement for Participants in this Plan, it is not anticipated that any Participant will have a Late Retirement Date.

2.25 "Normal Retirement Age" is the term the Plan uses to describe the date when a Participant can retire and receive an unreduced retirement benefit (see the definition of "Adjusted Retirement Age" for certain exceptions to this general rule).

(a) A Fire Employee has a Normal Retirement Age of age 65. It is the Employer's policy that age 65 is the mandatory retirement age for Fire Employees.

(b) A Police Employee who is a Sworn Officer has a Normal Retirement Age of age 60, *except that* a Sworn Officer whose age plus Years of Creditable Service as of March 10, 2014 was less than 75 has a Normal Retirement Age of 62. It is the Employer's policy that age 60 (or age 62, as applicable) is the mandatory retirement age for Police Employees who are Sworn Officers.

(c) A Police Employee who is a Non-Sworn Officer has a Normal Retirement Age of 62. It is the Employer's policy that age 62 is the mandatory retirement age for Police Employees who are Non-Sworn Officers.

In the event a Participant has earned retirement benefits with more than one employee group, the Participant will be deemed to have reached Normal Retirement Age as to all plans in the City of Rutland Retirement System based on the definition that applies to the individual's employee group at the date the determination is being made.

2.26 "Normal Retirement Benefit" means a Participant's Accrued Benefit earned for Service up to his Normal Retirement Age expressed in the form of an annual benefit commencing at his Normal Retirement Date.

2.27 "Normal Retirement Date" means the first day of the month coincident with or next following the date a Participant attains his Normal Retirement Age.

2.28 "Participant" means (i) an Employee who has met the eligibility requirements for participation in the Plan and who continues to participate in this Plan ("Active Participant"), and

(ii) an individual whose Accrued Benefit under this Plan has not yet been fully distributed to him or forfeited under the terms of the Plan ("Inactive Participant").

2.29 "Pension Board" means the Pension Board of the City of Rutland as defined in the ordinances of the City of Rutland and as they may be amended from time to time.

2.30 "Pension Commissioner" means the City Treasurer for the City of Rutland

2.31 "Plan" means the defined benefit plan and trust as set forth in this document.

2.32 "Plan Year" means the 12-month period beginning January 1st and ending December 31st.

2.33 "Rate of Earnings" means the rate of annual base compensation received from the Employer on January 1st of each Plan Year. The Rate of Earnings for a Participant shall not exceed $200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code §401(a)(17)(B).

2.34 "Retirement Age" means the date a Participant reaches his or her Normal Retirement Age, or if the Participant satisfies the criteria for Early Retirement Age or Adjusted Retirement Age on an earlier date, that earlier date.

2.35 "Retirement Benefit" means the Participant's Accrued Benefit, determined as of the date the benefit is to begin to be paid. If the Participant has earned benefits with more than one employee group in the City of Rutland Retirement System, this is the aggregate of those benefits.

2.36 "Spouse" means the person to whom a Participant is legally married. However, a former spouse shall be treated as the Participant's Spouse to the extent specifically required in a Qualified Domestic Relations Order that applies to the Participant's benefit under this Plan.

2.37 "Termination of Employment" means severance of employment so that the individual is no longer an Employee of the Employer, including a severance of employment by reason of a Participant's death, Disability or retirement. For example, an individual who transfers between employee groups in the DPW and General Employees Plan and the Police and Fire Employees Plan will not be considered to have had a Termination of Employment.

2.38 "Trust" means the City of Rutland Retirement Income Trust, the Trustee of which receives, holds, invests and disburses funds to or for the benefit of Participants and their Beneficiaries.

2.39 "Trust Fund" means all property of every kind held or acquired by the Trustee under the Trust.

2.40 "Trustee" or **"Trustees"** means the party or parties, individual or corporate, as named in the Trust and any duly appointed additional or successor Trustee or Trustees acting thereunder.

2.41 "Valuation Date" means the first day of the Plan Year or any other day agreed upon by the Employer, Plan Administrator and Trustee.

2.42 "Vested" means that portion of a Participant's Accrued Benefit which is nonforfeitable. A Participant who is an Employee upon reaching Retirement Age shall be 100% Vested in his or her Accrued Benefit.

2.43 "Year of Creditable Service" A Participant's Years of Creditable Service equal the number of the Participant's Months of Creditable Service divided by 12. The Plan will recognize fractional parts of a Year of Creditable Service. Years of Creditable Service are used to determine the amount of the Accrued Benefit earned while a Participant is in any one employee group.

(a) Except as expressly provided otherwise, a Participant will be credited with a Month of Creditable Service, starting with when he or she enters the Plan, for each calendar month in any part of which:

(1) the Participant is an Eligible Employee, and

(2) the Participant makes the required Employee Contribution described in Section 11.3.

(b) Periods of authorized absence of up to 12 months will count as Creditable Service provided the Participant is making the required Employee Contributions. Authorized absence shall include approved leave, authorized vacation, temporary illness or temporary disability, and other absences approved in writing by the Pension Board.

(c) A Participant who had earned Years of Creditable Service under this Plan in a prior period of employment with the Employer in which the individual was part of the same employee group, and who has not received any distribution of Plan benefits, will have those prior Years of Creditable Service recognized upon once again becoming an active Participant in the Plan. Whether any Years of Creditable Service earned with another employee group in a plan in the City of Rutland Retirement System will be recognized in determining the pension benefit under this Plan will be determined under the rules of Article 4.

(d) A Participant, who was an Employee on July 1, 2007 or who became an Employee after that date, will receive credit for an additional number of Years of Creditable Service equal to his or her years of prior military service, up to a maximum of 4 years. These additional years will be credited to service with the employee group which the individual first joined upon becoming an Employee after that period of military service. This additional service will only be credited after the Employee's satisfaction of all of the requirements, including but not limited to the individual's having received an honorable discharge, established by the Administrator in connection with this provision.

2.44 "Year of Participation" A Year of Participation is measured in the same way, and over the same period, as a Year of Creditable Service. However, a Participant's Years of

Participation represents the sum of all of the Participant's Years of Creditable Service earned with any employee group in the City of Rutland Retirement System (less any Years of Creditable Service that are not counted because the Participant received a total distribution of his or her vested Accrued Benefit with respect to those Years). Years of Participation are used to measure a Participant's Vested interest in the Plan, and the Participant's satisfaction of the requirements for an Adjusted Retirement Age and Early Retirement Age.

2.45 "Differential Wage Payments" means any payment as defined in Code section 3401(h) which is made for a Plan Year beginning on or after January 1, 2009 which (a) is made to an individual with respect to any period during which the individual is performing Military Service while on active duty for a period of more than 30 days; and (b) represents all or a portion of the Compensation such individual would have received from the Employer if the individual was performing services for the Employer.

Article 3

ELIGIBILITY REQUIREMENTS

3.1 Eligibility Requirements and Participation.

(a) Except as otherwise provided in this section:

(1) any Eligible Employee who was a Participant in the City of Rutland Police and Fire Retirement Income Plan on December 31, 2015, shall continue as a Participant in the Plan as long as he or she continues to meet the Plan's participation requirements; and

(2) On and after January 1, 2016, an Eligible Employee who agrees to make Employee Contributions as stated in Section 11.3 shall become a Participant (unless he can and does specifically waive participation) as of the Entry Date coincident with or otherwise next following the date on which he or she has started active Employment and satisfied all of the requirements to become a Participant.

(b) The following Employees shall not be eligible to participate in the Plan:

(1) an Employee whose customary employment is (i) for less than 20 hours per week and (ii) for less than 5 months per calendar year, and

(2) an Employee who is not an Eligible Employee as defined in (c) because of the employee group in which he or she is employed or for any other reason, and

(3) an Employee who is classified by the Employer as a Fixed Term Without Benefits Employee. A Fixed Term Without Benefits Employee is any Employee whose terms of employment provides that he or she will not work in excess of 700 hours during any calendar year, and

(4) an Employee who is permitted to, and has, waived participation in the Plan. An Employee who fails to make required Employee Contributions shall be deemed to have waived participation in the Plan and

(5) an Employee who becomes a Fire Employee (as defined in (c)) after February 5, 2013, except for an individual who, immediately prior to becoming a Fire Employee was an Active Participant in this Plan as a Police Employee or in the DPW and General Employees Plan, and who became a Fire Employee with no intervening Termination of Employment, and

(6) an Employee who becomes a Police Employee (as defined in (c)) after October 31, 2014, except for an individual who, immediately prior to becoming a Police Employee was an Active Participant in this Plan as a Fire Employee or in the DPW and General Employees Plan, and who became a Police Employee with no intervening Termination of Employment.

(c) The following Employees, as long as they are not described in (b), are "Eligible Employees" who may participate in the Plan:

(1) Fire Employees, which group is limited to Employees in the City of Rutland Fire Department, other than those Fire Employees described in (b) above, and

(2) Police Employees, which group is limited to Employees in the City of Rutland Police Department other than those Police Employees described in (b) above.

(d) Where the Plan provides certain benefits or rules for Employees in a particular group or subgroup, the Employee's membership in the group or subgroup, as determined from the Employer's records, at the time the benefit or rule is to be applied will be determinative, regardless of the Employee's prior membership in a different group or subgroup where the Employee may have earned Years of Creditable Service as to that group.

3.2 Participation Upon Reemployment. Because the Plan is closed to new entrants, individuals who are reemployed as Police Employees or Fire Employees may not become Active Participants in the Plan. Except the rules that apply to a Participant who has received a disability retirement benefit and who returns to active employment are contained in Section 5.4.

3.3 Change in Status.

(a) Because the Plan is closed to new entrants, a change in status or conditions of employment will not result in an Employee who was not eligible for participation in this Plan becoming an Eligible Employee, except as the Plan provisions specifically provide for eligibility.

(b) In the event a Participant who has been an Eligible Employee ceases to be an Eligible Employee for any reason, he or she shall not earn any additional credit for Years of Creditable Service or Years of Participation in the Plan, and shall be classified as an Inactive Participant.

Article 4

CREDITED SERVICE FOR BENEFIT ACCRUAL

4.1 Benefit Accrual. Benefit accrual under this Plan is measured in terms of whole and fractional Years of Creditable Service. A Participant's Years of Creditable Service equals the Participant's Months of Creditable Service divided by 12.

4.2 Calculation of Accrued Benefit.

(a) If a Participant's entire period of employment has been spent in a single employee group within the City of Rutland Retirement System, and the Participant has never received a distribution from any pension plan in that System, the calculation of the Participant's Accrued Benefit is done under the rules of this subsection. As of the date for which the Accrued Benefit is being determined, multiply the specified benefit percentage for the applicable employee group by the Participant's Final Earnings. The specified benefit percentages for employee groups under this Plan are:

(1) Police Employees:

(A) 2% for each Year of Creditable Service prior to January 1, 2007, and

(B) 2.5% for each Year of Creditable Service after December 31, 2006.

(2) Fire Employees: 2.34% for each Year of Creditable Service.

(b) If a Participant has earned retirement benefits in more than one employee group within this Plan and the DPW and General Employees Plan, *and is still credited with a deferred retirement benefit* under that plan, the calculation of the Participant's Accrued Benefit is done under the rules of this subsection.

(1) With respect to each deferred retirement benefit earned with a prior employee group, determine the total benefit percentage for the Participant. This is the specified benefit percentage for the employee group earned while a member of that group.

(2) Determine the sum of the percentages calculated in (1).

(3) As of the date for which the Accrued Benefit is being determined, determine the specified benefit percentage for the Participant's current employee group earned while a member of that group, then add the percentage determined in (2).

(4) The Participant's Accrued Benefit is the percentage in (3) multiplied by the Participant's Final Earnings.

(c) If a Participant has earned retirement benefits in more than one employee group within this Plan and the DPW and General Employees Plan, but is not credited with a deferred

retirement benefit under either plan, for instance because upon prior termination of employment the individual received a distribution of his or her Vested Accrued Benefit, there is no benefit credit for that prior period in any other employee group and the calculation of the Participant's Accrued Benefit under the Plan is as described in subsection (a) above.

(d) If a Participant had terminated or retired and begun to receive periodic pension payments from a pension plan in the City of Rutland Retirement System, upon qualifying to enter the Plan, the payment of those retirement benefits will be suspended. At the time of the Participant's subsequent retirement, the Participant's Accrued Benefit for the current period of service will be aggregated with the Participant's Accrued Benefit from the prior period of service, except that under rules determined by the Pension Board, the Accrued Benefit will be reduced to reflect the actuarial value of the retirement benefits previously received.

(e) If a Participant had earned retirement benefits under the School Department Employees Plan, those benefits and the Years of Creditable Service with respect to those benefits shall not be taken into account in determining the Participant's Accrued Benefit under this Plan. The Participant's aggregate Accrued Benefit from the plans in the City of Rutland Retirement System will be the sum of the Accrued Benefits under all of those plans.

(f) If the Employer does not make the required contributions as provided in §11.2, the Administrator reserves the right to adjust the benefits in subsection (a) of this section prospectively to comply with its fiduciary duty to ensure the health and solvency of the Retirement System.

Article 5

RETIREMENT BENEFITS

5.1 Normal Retirement Benefit. A Participant who has a Termination of Employment and who begins receiving his or her pension as of Normal Retirement Date shall be entitled to receive a monthly pension for his or her life in the amount of 1/12th of the Accrued Benefit. If the Participant is credited with Accrued Benefits from more than one employee group as of Normal Retirement Date, this amount will be the aggregate of the Accrued Benefits under the City of Rutland Retirement System. This is referred to as the "normal form" of payment. The actual form in which benefits will be paid will be determined under the rules of Article 9.

5.2 **Early Retirement Benefit**. A Participant who has a Termination of Employment and who can and does elect to receive a retirement benefit after reaching Retirement Age but before his or her Normal Retirement Date is considered to be receiving an Early Retirement Benefit. The actual form in which benefits will be paid will be determined under the rules of Article 9.

The Plan provides for two different types of Early Retirement Benefit.

(a) **Early Retirement Age Benefit**. This type of benefit is available to any Participant who has both reached age 55 and has at least 10 Years of Participation. This benefit is the Participant's Accrued Benefit (or aggregate Accrued Benefit if the individual is credited with Accrued Benefits from service with more than one employee group), reduced by ½ of 1% per month by which the benefit commencement date precedes his Normal Retirement Date.

(b) **Adjusted Retirement Age Benefit**. This type of benefit is available to any Participant who has met the requirements to have an Adjusted Retirement Age that is less than Normal Retirement Age. This benefit equals the Participant's Accrued Benefit (or aggregate Accrued Benefit if the individual is credited with Accrued Benefits from service with more than one employee group), with no reduction even though payments begin prior to Normal Retirement Date.

(c) For purposes of this section, a Participant's age and Years of Participation are each measured in whole years and twelfths of a year. A Participant may qualify to have an Early Retirement Benefit even though he or she terminates from employment before age 55, as long as the above requirements are satisfied on a date before his or her Normal Retirement Date.

(d) If the Participant is credited with Accrued Benefits from more than one employee group as of Normal Retirement Date, this Early Retirement Benefit will be the aggregate of the Accrued Benefits under the City of Rutland Retirement System.

5.3 **Late Retirement Benefit**. It is the policy of the Employer that Participants must retire upon reaching Normal Retirement Age. As a result it is not anticipated that this Plan would provide for a Late Retirement Benefit. The provisions of this section would only apply in an exceptional circumstance where a Participant continued as an Eligible Employee after his or her Normal Retirement Age.

(a) An individual who remains an Active Participant after he attains Normal Retirement Age shall continue to accrue benefits under the terms of the Plan.

(b) Payment of the Accrued Benefit of a Participant who continues in the employ of the Employer after attaining his Normal Retirement Age shall be delayed until his Late Retirement Date. At such Late Retirement Date, the Participant shall be entitled to receive a Late Retirement Benefit payable in the normal form in an amount equal to the greater of:

(1) the Actuarial Equivalent of his Normal Retirement Benefit earned as of the date he attained his Normal Retirement Age; or

(2) his Accrued Benefit based on his Years of Creditable Service earned through his Late Retirement Date using the formula set out in Paragraph 5.1 and any limitations described therein (or aggregate Accrued Benefit if the individual is credited with Accrued Benefits from service with more than one employee group).

(c) If under the rules of Article 9 the Late Retirement Benefit is paid in any form other than a life annuity, it shall be the Actuarial Equivalent of the Participant's Late Retirement Benefit described in subparagraph (a).

(d) If the Participant is credited with Accrued Benefits from more than one employee group as of Normal Retirement Date, this Late Retirement Benefit will be the aggregate of the Accrued Benefits under the City of Rutland Retirement System.

5.4 **Disability**.

(a) Disability Retirement Benefits. A Participant who terminates from employment prior to attaining his Normal Retirement Age because of his becoming Disabled shall, if he or she meets the criteria set out in (1) or (2) below, be entitled to receive a monthly retirement benefit ("Disability Retirement Benefit") determined as follows. When this section refers to a Participant's Accrued Benefit, where applicable it means the Participant's aggregate Accrued Benefit from all plans in the City of Rutland Retirement System as described in Section 4.2.

(1) Non-Service Connected Disability Benefit. Each Participant who becomes entitled to a Disability Retirement Benefit due to a Non-Service Connected disability, shall receive a Non-Service Connected Disability Benefit, provided he was actively employed and accruing Years of Creditable Service at the time of his disability and he had at least 15 Years of Participation as of such date. The amount of the monthly benefit payable to the Participant shall be 1/12 of the Participant's annual Accrued Benefit determined under Section 4.2 by applying the relevant factors as of his Disability Retirement Date (or aggregate Accrued Benefit if the individual is credited with Accrued Benefits from service with more than one employee group).

(2) Service Connected Disability Benefit. Each Participant who becomes entitled to a Disability Retirement Benefit due to a Service Connected disability, shall receive a

Service Connected Disability Benefit, provided he was actively employed and accruing Years of Creditable Service at the time of his disability. The amount of the monthly benefit payable to the Participant shall be 1/12 of the Participant's annual Accrued Benefit determined under Section 4.2 by crediting Years of Creditable Service as if his employment continued until his Normal Retirement Age and his Rate of Earnings remained the same. If the individual is credited with an Accrued Benefit for service with another employee group, that Accrued Benefit shall be added in determining this benefit. In no event shall a Service Connected Disability benefit under all of the plans in the City of Rutland Retirement System, together with any regular benefits awarded from Workers Compensation and Social Security, exceed 100% of the Participant's Final Earnings as of the date of disability.

(3) The Employer shall determine a Participant's disability to be "Service Connected" if such disability occurred as a result of an incident which took place in the course of his performance of the customary duties of an Employee of the Employer. Where the Employer or its insurer has paid Worker's Compensation benefit to the date of determination with respect to a disability shall not determine whether a disability is Service Connected for purposes of this Paragraph.

(b) Payment of Disability Benefit. A Participant's Disability Retirement Benefit shall be payable as a monthly income for the life of the Participant, beginning as of his or her Disability Retirement Date. The Disability Retirement Benefit shall only be payable after the Administrator has made a final determination that the Participant is Disabled. Once that determination has been made, a lump sum payment of the monthly benefit amounts, if any, payable from the Participant's Disability Retirement Date to the date that regular monthly benefit payments actually began shall be made.

If the Administrator determines that the Participant is no longer Disabled, including but not limited to a situation where the Participant becomes ineligible for Social Security disability benefits or payments under an Employer-provided and funded non-governmental benefit program providing for total and permanent disability benefits for the Participant, as applicable, his Disability Retirement Benefit payments shall cease. After such a cessation of the Disability Retirement Benefit, the Participant's qualification for payment of benefits under the Plan due to attainment of Retirement Age, Termination of Employment, or death will be determined under the Plan's regular rules. A Participant who fails to comply with the reasonable requirements of the Administrator to verify that he or she continues to be Disabled shall be deemed to no longer be Disabled for purposes of this Plan.

If the Participant's Disability Retirement Benefit continues after his or her Normal Retirement Date, and the individual had been credited with an Accrued Benefit under any other plan in the City of Rutland Retirement System, the portion of the benefit payable under this Plan shall be reduced by the amount of the Accrued Benefit that becomes payable under the terms of that other plan.

(c) Re-employment of a Disabled Participant. If a Participant receiving disability benefits under this Plan resumes Employment and he or she meets the requirements to once again participate in the Plan or in any plan in the City of Rutland Retirement System, his disability

benefits shall cease. In addition, his Years of Creditable Service (if reemployed in the same employee group in which he or she participated at the time of Disability) and Years of Participation for the period prior to his becoming Disabled shall be reinstated, and he shall be treated in the same manner as any other Employee.

Article 6

DEATH BENEFITS

6.1 Preretirement Death Benefits. The provisions of this section describe the Plan benefit payable with respect to a Participant who dies prior to beginning to receive a Retirement Benefit under the Plan.

(a) **Preretirement Spouse Benefit – Non-Service Connected Death.** If a Participant dies and is survived by a Spouse, the Spouse will be entitled to receive the benefit described in (2) if the eligibility requirements of (1) are all satisfied, and if the death is not service-connected, as described in (b) below.

(1) To be eligible for this benefit, as of the date of the death of the Participant, all of the following were true:

(A) The Participant was an Employee with a payroll deduction order in effect for Employee Contributions and,

(B) The Participant and Spouse had been married for at least 1 year, and

(C) The Participant had reached Retirement Age, and

(D) The Spouse is the sole primary Beneficiary of the Participant.

(2) The amount of the spousal benefit under this subsection is equal to 75% of the survivor annuity that would have been payable if the Participant had retired on the day before his death, elected a joint life and 50% survivor annuity, and died the day after payments had commenced. This benefit will be paid to the Spouse monthly, beginning as of the first of the month following the Participant's death, and continuing until the Spouse's death.

(b) **Preretirement Spouse Benefit –Service Connected Death.** If a Participant dies and is survived by a Spouse, the Spouse will be entitled to receive the benefit described in (2) if the eligibility requirements of (1) are all satisfied.

(1) To be eligible for this benefit, as of the date of the death of the Participant, all of the following were true:

(A) The Participant's death occurred within 2 years after, and resulted from, a "service-connected incident." A Participant's death is considered to result from a "service-connected incident" if the primary cause of death was an incident which took place in the course of the Employee's performance of his or her customary duties for the Employer. The Administrator's determination of whether a Participant's death is considered to have resulted from a "service-connected incident" is binding and final.

(B) The Participant was an Employee with a payroll deduction order in effect for Employee Contributions as of the date of death, and

(C) The Participant and Spouse had been married for at least 1 year, and

(D) The Spouse is the sole primary Beneficiary of the Participant.

(2) The amount of the spousal benefit under this subsection is equal to 100% of the monthly life income benefit to which the Participant would have been entitled if he or she had (A) continued to earn Years of Credited Service until Normal Retirement Date, (B) had a Rate of Earnings that remained the same, (C) retired on Normal Retirement Date, and (D) received the benefit in the normal form.

Payments of this spousal benefit to the surviving Spouse will begin as of the first of the month following the determination by the Administrator that all of the requirements of (1) above were satisfied. These payments will continue on a monthly basis until the earlier of the date the Spouse remarries or the date the Spouse dies. However, if the Spouse dies prior to remarriage and at the time of the Spouse's death there continue to be one or more individuals who qualify as the Participant's Dependent Children, the amount of this spousal benefit will be divided equally among those individuals, and each such Dependent Child will continue to receive that portion of the monthly benefit until the earliest of: (A) the date the individual marries, (B) the date the individual attains age 19 (or age 23 as long as the individual is a full-time student), or (C) dies.

If the Participant had died after reaching Retirement Age, a Spouse who remarries will no longer be entitled to receive the preretirement service-connected death benefit described in this subsection (b), but will be eligible to receive the benefits described in subsection (a) above if the requirements of (a)(1) were satisfied, beginning as of the first of the month following remarriage.

(c) **Preretirement Death Benefit – Neither (a) nor (b) apply**. Upon the death of a Participant who has not yet begun receiving Retirement Benefits and who does not qualify for the preretirement death benefit described in (a) or (b) above, the Plan will pay to the Participant's Beneficiary an amount equal to 100% of the Employee Contribution Account. The payment will be made in a lump sum within 3 months after the date of death, or as soon thereafter as administratively feasible.

(d) **Minimum Preretirement Death Benefit**. In no event will the preretirement death benefit payable under this section be less than the value of the Employee Contribution Account. If the present value of the benefit described in (a)(2) or (b)(2) as of the payment commencement date is less than the value of the Employee Contribution Account as of that date, the excess shall be paid in a lump sum to the Beneficiary within 3 months after the date of death, or as soon thereafter as administratively feasible.

6.2 **Post-Retirement Death Benefit**. If Retirement Benefits have begun to be paid to the Participant and the Participant dies before his entire interest has been distributed to him, distribution shall continue to the Participant's Beneficiary in accordance with the terms of this

Plan, including the minimum distribution requirements of Article 10 and the provisions relating to determining the Participant's Beneficiary.

6.3 **Beneficiary of a Participant.**

(a) Designation by the Participant. A Participant may designate the Beneficiary or Beneficiaries to receive any preretirement or postretirement death benefit payable under the Plan. The Participant may make a designation and may make a new designation at any time, even after beginning to receive retirement benefits. The designation will only be effective if it is made in writing, delivered to the Administrator, and follows the rules established by the Administrator for beneficiary designations under this Plan. Upon the receipt by the Administrator of a designation which satisfies these requirements, any prior designations of a Beneficiary for the Participant shall be considered to have been revoked. However, the Participant's authority to designate a Beneficiary under this subsection is subject to any limitations established in a Qualified Domestic Relations Order with respect to the Participant.

(b) No Designated Beneficiary. If upon the death of the Participant there is no surviving designated Beneficiary, the Plan will treat the following person(s) as the Participant's Beneficiary, in the following priority, subject to any provisions to the contrary in a Qualified Domestic Relations Order with respect to the Participant:

(1) the Participant's surviving Spouse;

(2) the Participant's surviving children, including adopted children, in equal shares; or

(3) the Participant's estate.

Article 7

EMPLOYMENT TERMINATION BENEFITS

7.1 Termination of Employment. Any Participant who has a Termination of Employment prior to attaining Retirement Age other than due to his becoming Disabled shall be entitled to receive the Vested portion of his Accrued Benefit in accordance with the terms of this Article.

(a) A Participant shall be 100% Vested at all times in his Accrued Benefit derived from his Employee Contribution Account.

(b) A Participant shall be Vested in his Accrued Benefit derived from Employer Contributions in accordance with the following schedule, based on his Years of Participation as of his termination date:

Years of Participation	Vested Percentage
Less than 5	0%
5 or more	100%

7.2 **Forfeitures.**

(a) Forfeiture of any portion of a Participant's Accrued Benefit shall occur as of the date the Participant receives a lump sum distribution of his Vested Accrued Benefit following his Termination of Employment

(b) Forfeitures for any Plan Year shall be applied to reduce the Employer's contribution to the Trust for such Plan Year and succeeding Plan Years and shall not revert to the Employer except as otherwise permitted herein.

7.3 **Payment of Vested Benefit.** The Vested Accrued Benefit of a Participant who terminates employment prior to attaining Retirement Age shall be paid as follows.

(a) Unless the Participant elects otherwise, the Vested Accrued Benefit will be paid as a Normal Retirement Benefit as of the Participant's Normal Retirement Date.

(b) If the Participant satisfies the requirements of Section 5.2 for an Early Retirement Benefit, the Participant may elect to have his or her Vested Accrued Benefit paid as an Early Retirement Benefit as of a date beginning on or after the Participant reaches Retirement Age.

(c) A Participant who, at the time of his Termination of Employment, is not Vested in the Employer portion of his Accrued Benefit, shall receive a lump sum payment of the amount in his Employee Contribution Account.

(d) If the Participant terminates employment prior to reaching age 55 and has a Vested interest in the Employer portion of his or her Accrued Benefit, instead of waiting for the time

when payments will begin under the rules of (a) and (b) above, the Participant may elect to receive an immediate lump sum distribution of the amount of his Employee Contribution Account and to forfeit his or her Vested interest in the Employer portion of his or her Accrued Benefit.

Article 8

LIMITATION OF BENEFITS

8.1 Effective Date. The limitations of this Article shall apply in Limitation Years beginning on or after July 1, 2007, except as provided herein. The provisions of this Article are intended to implement the requirements of Code § 415 and the regulations thereunder, and in the event of any ambiguity in the provisions of this Article, its terms shall be interpreted in such a way as to comply with those requirements.

8.2 Maximum Permissible Benefit and Maximum Permissible Amount. Because this Plan provides for mandatory contributions by Employees, this Article provides for two separate limitations that must be observed by the Plan and that will override any other provisions in the Plan that provide for the amount of benefit credited to a Participant and/or the amount of the mandatory contribution to be made by a Participant.

One limitation is on the Annual Benefit. When this Article references the "Annual Benefit" it refers to the Employer-provided portion of the Accrued Benefit. The other limitation is on the Annual Addition to the Employee Contribution Account represented by the amount of the mandatory Employee contribution in any Limitation Year. For purposes of this Article, however, amounts that would otherwise be considered employee contributions but that are picked up by the City of Rutland as described in Code § 414(h)(2) will not be treated as employee contributions.

Except as otherwise provided in this Article, the Annual Benefit payable to a Participant (whether or not vested) shall not, at any time, exceed the Maximum Permissible Benefit, as defined in Section 8.6.

Except as otherwise provided in this Article, the Annual Additions to the Employee Contribution Account in any Limitation Year may not exceed the Maximum Annual Addition, as defined in Section 8.6.

8.3 Aggregation of Retirement Plans. For purposes of this Article, all defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a predecessor employer) under which the Participant has accrued a benefit shall be considered as a single defined benefit plan. Any defined benefit plan maintained by any affiliate shall be deemed to be maintained by the Employer. For purposes of this Article, all employee contributions to any retirement plans maintained by the Employer and any affiliate of the Employer and all employer contributions to any defined contribution plans maintained by the Employer and any affiliate of the Employer shall be aggregated in determining the Annual Additions as to any Participant in any Limitation Year. The rules for determining the retirement plans, the defined benefit plans, and the defined contribution plans to which the aggregation rules of this section apply shall be determined under the provisions of Code § 415 and the regulations thereunder.

8.4 Adjustments to Benefit Limitations.

(a) **Benefits Payable in a Form Other Than Life Annuity.** An Accrued Benefit payable in any form other than a straight life annuity shall be adjusted to an actuarially equivalent Annual Benefit prior to applying the limitations of Paragraph 8.2. For the purposes of the application of the rules of this section, this Plan shall be treated as if it were subject to the rules of Code § 417, even though it is, in fact, not subject to those rules. For purposes of this Article, the equivalent Annual Benefit shall be determined as follows:

(1) If the form of the Participant's benefit is not subject to Code §417(e)(3) (such as a non-decreasing life annuity payable for a period of not less than the life of the Participant (or, in the case of a survivor annuity, the life of the surviving spouse) or an annuity that decreases during the life of the participant merely because of (A) 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 (B) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11))), the equivalent Annual Benefit shall be 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 the following:

(A) For Limitation Years beginning before July 1, 2007, (a) the interest rate and mortality table specified in Paragraph 2.3(b), or (b) a 5% interest rate assumption and the Applicable Mortality Table, whichever produces the greater benefit.

(B) For Limitation Years beginning on or after July 1, 2007, 5% interest rate assumption and the Applicable Mortality Table, but not less than the Annual Benefit (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit.

(2) If the form of the Participant's benefit is subject to Code §417(e)(3), the equivalent Annual Benefit shall be 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 the following:

(A) For Plan Years beginning on or after January 1, 2004, but prior to January 1, 2006, either (a) the interest rate and mortality table specified in Paragraph (b) or (b) a 5.5% interest assumption and the Applicable Mortality Table, whichever produces the greater benefit.

(B) For Plan Years beginning on or after January 1, 2006, either (a) the interest rate and mortality table specified in Paragraph 2.3(b) or (b) a 5.5% interest assumption and the Applicable Mortality Table, whichever produces the greater benefit, but not less than the Annual Benefit (computed using the Applicable Interest Rate for the distribution and the Applicable Mortality Table for the distribution) divided by 1.05.

(b) **Retirement Prior to Age 62.** If a Participant's Annuity Starting Date is prior to the date the Participant attains age 62, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age shall be adjusted as follows:

(1) If the Participant's Annuity Starting Date occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation is the Annual Benefit commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Paragraph 2.3(b); or (ii) a 5% interest rate and the Applicable Mortality Table.

(2) If the Participant's Annuity Starting Date occurs in a Limitation Year beginning on or after July 1, 2007:

(A) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the Annual Benefit commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation with actuarial equivalence computed using a 5% interest rate assumption and the Applicable Mortality Table for the Annuity Starting Date and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date.

(B) If the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of (A) the amount determined under subparagraph 8.4(b)(2)(A) above and (B) the Defined Benefit Dollar Limitation multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Article.

(3) For purposes of this subparagraph 8.4(b), any decrease in the Defined Benefit Dollar Limitation shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(4) The adjustments required under this subparagraph 8.4(b) shall not apply to a Public Service Employee who has at least 15 Years of Service as a Public Service Employee.

(5) The adjustments required under this subparagraph (b) shall not apply to any retirement benefit payable to a Participant who terminates employment due to his becoming Disabled or his death.

(c) **Retirement After Age 65.** If the retirement benefit begins after the Participant attains age 65, the Defined Benefit Dollar Limitation applicable to the Participant at the later age shall be adjusted as follows:

(1) If the Participant's Annuity Starting Date occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the Annual Benefit commencing at the Participant's Annuity Starting Date that is actuarially equivalent to the Defined Benefit Dollar Limitation computed using either (A) the interest and mortality table (or other tabular factor) specified in Paragraph 2.3(b) or (B) a 5% interest rate assumption and the Applicable Mortality Table, whichever produces the smaller annual amount. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(2) If the Participant's Annuity Starting Date occurs in a Limitation Year beginning on or after July 1, 2007:

(A) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the Annual Benefit commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation, with actuarial equivalence computed using a 5% interest rate assumption and the Applicable Mortality Table for that Annuity Starting Date and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date.

(B) If the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of (A) the limitation determined under subparagraph 8.4(c)(2)(A) above or (B) the Defined Benefit Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustment even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical participant who is age 65 and has the same accrued benefit as the Participant.

(3) For purposes of this paragraph, mortality between age 65 and the age at which benefits commence shall be ignored.

(d) **No Anticipatory Adjustments.** For purposes of adjusting the Annual Benefit under this paragraph, no adjustments shall be taken into account before the year for which such adjustment first takes effect.

8.5 Exception for Minimum Benefit. Notwithstanding the preceding provisions of this Article, the Annual Benefit paid to a Participant shall be deemed not to exceed the Maximum Permissible Benefit for a Limitation Year if (a) the amount payable under this Plan and under all other Defined Benefit Plans sponsored by the Employer does not in the aggregate exceed $10,000 and (b) the Participant never participated in a Defined Contribution Plan maintained by

the Employer. For purposes of the limitation of this Paragraph , the Annual Benefit paid to a Participant for a Limitation Year shall include all amounts payable under the Plan for the Limitation Year and shall not be adjusted for form or commencement date. For any Participant who has less than 10 Years of Service, the $10,000 limit of this paragraph shall be multiplied by a fraction (not to exceed 1), the numerator of which is all of his Years of Service, and the denominator of which is 10.

8.6 Definitions. For purposes of this Article, the following terms shall have the following meanings:

(a) **"Applicable Interest Rate"** means the adjusted first, second and third segment rates applied under rules similar to the rules of Code §430(h)(2)(C) (but without regard to the 24-month averaging provided under Code §430(h)(2)(D)(i)) for the second full calendar month preceding the Plan Year for which a calculation is being made, which rate shall be constant during the entire Plan Year. For Plan Years beginning in 2008, 2009, 2010 and 2011, the Applicable Interest Rate is determined by multiplying the applicable segment rates by the applicable percentage, plus the Treasury Rate by 100 minus the applicable percentage. The "applicable percentage" is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

(b) "**Applicable Mortality Table**" means the mortality table prescribed by Internal Revenue Service for purposes of complying with the provisions of Code §417(e)(3).

(c) "**Annual Additions**" means the sum of the following amounts credited to a Participant's account for the Limitation Year: (1) Employee contributions, (2) Employer contributions to a covered defined contribution plan, (3) forfeitures, (4) 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. Also, any amounts paid or accrued which 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 benefit fund as defined in Code § 419(e) maintained by the Employer are treated as Annual Additions, as are any allocations under a simplified employee pension plan.

(d) **"Annual Benefit"** means the annual amount of a benefit that is payable in the form of a straight life annuity, with no ancillary benefits. The Participant's Annual Benefit shall not include amounts attributable to either Employee Contributions or rollover contributions. For purposes of this Article, the portion of the Accrued Benefit that is attributable to Employee Contributions and which, accordingly, is to be disregarded in determining the Annual Benefit shall be determined under the rules of Code § 411(c) and the regulations thereunder, regardless of the fact that this Plan is not otherwise subject to the rules of Code § 411.

(e) **"Compensation"** for purposes of the limitations contained in this Article shall be remuneration received by the Employee for services rendered, measured in relation to the Limitation Year, including all items listed in Treas. Reg. §1.415(c)-2(b) and excluding all items listed in Treas. Reg. §1.415(c)-2(c). Except as provided below, Compensation for a Limitation Year shall include amounts actually paid or made available during such Limitation Year prior to the Employee's severance from employment, including amounts withheld from the Participant's

pay which are not includible in the Participant's gross income under Code §§125,132(f)(4), 402(g)(3) and 457.

(1) Compensation for a Limitation Year shall include amounts paid by the later of (A) 2½ months after an Employee's severance from employment with the Employer, or (B) the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if:

(A) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and the payments would have been paid to the Employee prior to a severance from employment if the Employee had continued in employment with the Employer;

(B) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or

(C) the payment is received by the Employee pursuant to a non-qualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the Employer and only to the extent that the payment is includible in the Employee's gross income.

(2) Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by the Employer to compensate an Employee for lost wages ("back pay") shall be included Compensation for purposes of this Article for the Limitation Year to which the back pay related, but only to the extent such payments represent amounts that would otherwise be included in Compensation under this paragraph.

(3) For purposes of this Article, the annual Compensation considered for each Employee shall not exceed $200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code §401(a)(17)(B). The cost of living adjustment in effect for a calendar year applies to any period not exceeding 12 months over which compensation is determined ("Determination Period") beginning in such calendar year. If a Determination Period consists of fewer than 12 months, the compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Determination Period, and the denominator of which is 12.

(4) For purposes of this Article, differential wage payments made to a Participant while on a Qualified Leave, as defined in Article 17 , shall be included in Compensation.

(f) **"Limitation Year"** means the Plan Year for this Plan.

(g) "**Maximum Annual Additions**" means the maximum amount of Annual Additions that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year. This maximum amount is the lesser of:

(1) $40,000, as adjusted for increases in the cost-of-living under Code § 415(d), or

(2) 100 percent of the Participant's Compensation for the Limitation Year.

(h) **"Maximum Permissible Benefit"** shall mean $160,000, as automatically adjusted under Code § 415(d), and further multiplied by a fraction (not to exceed 1), the numerator of which is the Participant's Years of Participation, and the denominator of which is 10 (the "Defined Benefit Dollar Limitation"). The fractional reduction of the maximum amount shall not be applied to a Participant's benefit that becomes payable due to death or the Participant becoming Disabled.

(i) **"Year of Participation"** means, with respect to a Participant, each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the Participant is credited with at least the number of Hours of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a "Year of Participation" credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code § 415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period.

In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

Article 9

PAYMENT OF BENEFITS

9.1 **Form and Payment of Benefit.** The Retirement Benefit payable to a Participant hereunder (including an Article 7 termination benefit payable as a Retirement Benefit) shall be paid in accordance with the following. However, in all cases the rules of Article 10 shall be controlling in the event of any conflict with the rules of this Article.

(a) The normal form of benefit is a life annuity. Upon the Participant's death, there will be paid to his Beneficiary an amount equal to any excess of the Participant's Employee Contribution Account over the sum of all benefit payments made to the Participant prior to his death.

(b) The time when the payment of retirement benefits will commence will be determined under the applicable rules of Section 5.1, 5.2, 5.3 and/or 7.4, as applicable, but in no event will it be after the later of:

(1) The Participant's Normal Retirement Date, or

(2) The date on which the Participant has a Termination of Employment.

(c) Notwithstanding the terms of subparagraph (a), except where the Plan specifies a particular form in which the benefit payment will be made, a Participant may elect at any time during the 90-day period ending on his Annuity Starting Date to receive an optional form of benefit under Paragraph 9.2.

9.2 **Optional Forms of Benefit.**

(a) Participant's Waiver and Election of Optional Form. A Participant may elect, under the procedure described in Paragraph 9.3, to waive his normal form of benefit and select an Actuarial Equivalent form under one of the following options:

(1) A joint life and last survivor annuity, with monthly payments ending on the death of the survivor of the Participant and the contingent annuitant. Payments under this option shall be made for the lifetime of the Participant. Upon the death of the Participant, payments to the contingent annuitant shall continue and shall be equal to 50%, 66-2/3% or 100% of the monthly amount paid to the Participant.

(2) A life annuity payable monthly, with 10 years (120 months) of payments guaranteed. Payment under this option shall be made for the lifetime of the Participant. If the Participant dies before the Trustees have made the guaranteed number of payments, the Trustees shall continue to pay the balance of the guaranteed payments to the Participant's Beneficiary.

(3) A life annuity with adjustments for Social Security. Payment under this option shall be for the Participant's lifetime adjusted for the Social Security Amount with increased

monthly payments prior to his Social Security Commencement Date and reduced monthly payments thereafter, such that the Participant's total benefit under this Plan and the Social Security Act will remain level. For purposes of this option, the following shall apply:

(A) Social Security Amount means the yearly Primary Insurance Amount, or portion thereof, which the Participant is expected to receive based on his Social Security Retirement Age as determined under the Social Security Act as in effect on his Retirement Date, or the date of his Termination of Employment, if earlier.

(B) Social Security Retirement Age means the age at which unreduced benefits are payable under the Social Security Act to a Participant.

(C) Social Security Commencement date means the first day of the month following the date the Participant's Social Security Amount is expected to commence, or the first day of the month following the date the Participant attains his Social Security Retirement Age, whichever is earlier.

(D) A Participant may elect this option only if his Retirement Date precedes his Social Security Commencement Date.

(b) Automatic Distribution. Notwithstanding the normal or optional form of benefit selected by the Participant, if the single sum Actuarial Equivalent of his Vested Accrued Benefit is immediately distributable and does not exceed $1,000, the Administrator shall direct the Trustees to pay the Actuarial Equivalent of the Participant's Vested Accrued Benefit in a lump sum.

(c) Alternate Form to Comply With Minimum Distribution Rules. No alternate form of benefit described in subparagraph (a) shall result in an annual payment to a Participant or his Beneficiary which fails to comply with the minimum distribution rules under Code §401(a)(9), as generally described in Article 10. The Administrator shall, after consultation with the Participant (or his Beneficiary, as the case may be), modify such non-complying form to the extent necessary to conform the selected mode of payment to such rules.

(d) Validity of Waiver. A Participant's waiver of the normal form of retirement benefit or pre-retirement death benefit and election of an optional form under this paragraph shall be valid only if executed in accordance with Paragraph 9.3.

9.3 **Election Procedure—Qualified Waivers.**

(a) Election Period. A Participant's waiver of a straight life annuity may be elected only during the 90-day period ending on the Annuity Starting Date.

(b) Form of Election. The Participant's election shall be made in writing on a form prescribed by the Administrator.

(c) Revocation of Election; Subsequent Election(s). A Participant may revoke his election at any time during the applicable election period, and he or she may make one or more subsequent elections at any time during the applicable election period.

9.4 **Qualified Domestic Relations Orders.** For purposes of this Article and Article 15, to the extent provided in a Qualified Domestic Relations Order (as defined in Article 15), a Participant's Spouse or former Spouse who is entitled to any portion of the Participant's Accrued Benefit shall be treated as the Participant's Spouse or surviving Spouse, as the case may be, with respect to the portion of the Accrued Benefit to which he or she may be entitled under such Qualified Domestic Relations Order. With respect to the remaining portion (if any) of the Participant's Accrued Benefit, the Participant's former Spouse shall be treated as not married to the Participant.

9.5 **Post-Distribution Credits.** If after payment has commenced there shall be additional benefits accrued by a Participant, the Administrator shall direct adjustment of the remaining payments so as to include all such credited sums, as nearly evenly as possible, in the remaining payments.

9.6 **Incompetency of Recipient.** In the event of the incompetency of a Participant or Beneficiary at any time while he or she is entitled to receive benefits under the Plan, the Trustees, in their sole discretion, may pay such benefits to the legal representative of such incompetent or to such other person as the Trustees shall deem appropriate.

9.7 **Annuity Contracts.** Any annuity form of distribution may be distributed to the annuitant in the form of an annuity contract, provided that such contract is by its terms nontransferable (except for surrender to the obligor under such contract). The terms of any such contract shall comply with the requirements of this Plan and, in the event of any conflict, the terms of this Plan shall control.

9.8 **Loans to Participants.** Loans to Participants or Beneficiaries shall not be allowed from this Plan.

9.9 **Direct Rollover.**

(a) Rollover to Eligible Plan. Notwithstanding any contrary provision in this Plan, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions. For purposes of this paragraph:

(1) "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the

Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of 10 years or more;

(B) any distribution to the extent such distribution is required under Code §401(a)(9); or

(C) any amount that is distributed on account of hardship of the Employee.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (i) a traditional individual retirement account or annuity described in Code § 408(a) or (b), or a Roth individual retirement account or annuity described in Code § 408A; or (ii) to a qualified retirement plan described in Code § 401(a) or 403(a) or to an annuity contract described in Code § 403(b), if such plan or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) "Eligible Retirement Plan" means

(A) an individual retirement account described in Code §408(a);

(B) an individual retirement annuity described in Code §408(b);

(C) a Roth IRA described in Code §408A;

(D) an annuity plan described in Code §403(a);

(E) a qualified trust described in Code §401(a), that accepts the Distributee's Eligible Rollover Distribution;

(F) an annuity contract described in Code §403(b); or

(G) 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 and which agrees to separately account for amounts transferred into such plan from this plan.

However, in the case of an Eligible Rollover Distribution to a Beneficiary who is other than a surviving spouse or former spouse who is the alternate payee under a qualified domestic relation order, an Eligible Retirement Plan is limited to an individual retirement account or individual retirement annuity, or Roth IRA.

(3) "Distributee" means

(A) an Employee or former Employee,

(B) an Employee or former Employee's surviving Spouse, or an Employee or former Employee's Spouse or former Spouse who is the Alternate Payee under a Qualified Domestic Relations Order (as defined in Paragraph 15.5) with regard to the interest of the Spouse or former Spouse, or

(C) a nonspouse beneficiary, including a qualified trust, who is a "designated beneficiary" within the meaning of IRC §401(a)(9)(E), provided that the distributed amount satisfies all the requirements to be an Eligible Rollover Distribution (within the meaning of IRC §402(c)(4) other than the requirement that the distribution be made to the participant or the participant's spouse, and that the amount distributed must be directly transferred to an individual retirement account described in IRC §§408(a) or (b) ("IRA") or a Roth IRA described in Code § 408A established in behalf of the nonspouse beneficiary that will be treated as an inherited IRA pursuant to the provisions of IRC §402(c)(11).

(4) "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

Article 10

MINIMUM DISTRIBUTION REQUIREMENTS

10.1 General Rules.

(a) **Effective Date.** The provisions of this paragraph will apply for purposes of determining required minimum distributions for calendar years beginning with the 2006 calendar year.

(b) **Precedence.** The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

(c) **Requirements of Internal Revenue Code and Final Treasury Regulations Incorporated.** All distributions required under this Article will be determined and made in accordance with the requirements of Code §401(a)(9), the incidental death benefit requirements of Code §401(a)(9)(G), and final Treasury regulations 1.401(a)(9)-2 through -9.

10.2 Time and Manner of Distribution.

(a) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(b) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's Spouse is the Participant's sole designated beneficiary, then, except as provided in Paragraph 10.2(b)(3), distributions to the Spouse will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's Spouse is not the Participant's sole designated beneficiary, then, except as provided in Paragraph 10.2(b)(3), distributions to the designated beneficiary will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died.

(3) At the election of the Participant or, if no election is made by the Participant, then at the election of the Participant's designated beneficiary, if the Participant dies before distributions begin and there is a designated beneficiary, then the Participant's entire interest will be distributed to the designated beneficiary by December 31st of the calendar year containing the 5th 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, then this Paragraph (b)(3) will apply as if the surviving Spouse were the Participant. This election will apply to all distributions.

Participants or Beneficiaries may elect on an individual basis whether the 5-year rule of this Paragraph 10.2(b)(3) or the life expectancy rule in Paragraphs 10.2(b)(1) or 10.2(b)(2) and 10.5 applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30th of the calendar year in which distribution would be required to begin under Paragraph 10.2(b), or by September 30th of the calendar year which contains the 5th anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with Paragraphs 10.2(b)(1) or 10.2(b)(2) and 10.5.

(4) If there is no designated beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31st of the calendar year containing the 5th anniversary of the Participant's death.

(5) If the Participant's Spouse is the Participant's sole designated beneficiary and the Spouse dies after the Participant but before distributions to the Spouse begin, this subparagraph (b), other than (b)(1) above, will apply as if the Spouse were the Participant.

For purposes of this subparagraph (b) and Paragraph 10.5, distributions are considered to begin on the Participant's required beginning date (or, if Paragraph 10.2(b)(5) applies, the date distributions are required to begin to the Spouse under Paragraph 10.2(b)(1)). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's Spouse before the date distributions are required to begin to the Spouse under Paragraph 10.2(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) **Form of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Paragraphs 10.3, 10.4 and 10.5. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Treasury regulations thereunder. Any part of the Participant's interest which is in the form of an individual account described in Code §414(k) will be distributed in a manner satisfying the requirements of Code §401(a)(9) and the Treasury regulations that apply to individual accounts.

10.3 Determination of Amount to be Distributed Each Year.

(a) **General Annuity Requirements.** A Participant who is required to begin payments as a result of attaining his required beginning date, whose interest has not been distributed in the form of an annuity purchased from an insurance company or in a single sum before such date, may receive such payments from the Plan as a life annuity (with or without a term certain), a joint and survivor annuity (with or without a term certain), a cash refund annuity or a term certain annuity. Payments under the annuity must satisfy the following requirements:

(1) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Paragraphs 10.4 or 10.5 ;

(3) once payments have begun, the annuity period will not be changed unless the conditions set forth in this Paragraph 10.3(a)(3) are satisfied or in association with an annuity payment increase described in Paragraph 10.3(a)(4).

If, in a stream of annuity payments that otherwise satisfies Code §401(a)(9), the annuity payment period is changed and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy Code §401(a)(9) provided the conditions set forth in paragraphs (D)-(G) of this Paragraph 10.3(a)(3) are satisfied, and either:

(A) The modification occurs at the time that the employee retires or in connection with a plan termination;

(B) The annuity payments prior to modification are annuity payments paid over a period certain without life contingencies; or

(C) The annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the employee and a designated beneficiary, the employee's spouse is the sole designated beneficiary, and the modification occurs in connection with the employee becoming married to such spouse.

In order to modify a stream of annuity payments in accordance with this Paragraph 10.3, the following conditions must be satisfied:

(D) The future payments under the modified stream satisfy Code §401(a)(9) and this Paragraph 10.3 (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

(E) For purposes of Code §§415 and 417, the modification is treated as a new annuity starting date;

(F) After taking into account the modification, the annuity stream satisfies Code §415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(G) The end point of the period certain, if any, for any modified payment period is not later than the end point available under Code §401(a)(9) to the employee at the original annuity starting date.

(4) payments will either be non-increasing or increase only as follows:

(A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or the prior year;

(B) by a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase. In cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(C) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Paragraph 10.4 dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code §414(p);

(D) to allow a beneficiary to convert the survivor portion of a joint an survivor annuity into a single sum distribution upon the employee's death;

(E) to pay increased benefits that result from a plan amendment;

(F) By a constant percentage, applied not less frequently than annually, at a rate that is less than 5% per year;

(G) To provide a final payment upon the death of the employee that does not exceed the excess of the actuarial present value of the employee's accrued benefit (within the meaning of Code §411(a)(7)) calculated as of the annuity starting date using the applicable interest rate and the applicable mortality table under Code §417(e) (or, if greater, the total amount of employee contributions) over the total of payments before the death of the employee; or

(H) In connection with a modification otherwise allowable under Paragraph 10.3(a)(3).

(b) **Amount Required to be Distributed by Required Beginning Date.**

(1) In the case of a Participant whose interest in the Plan is being distributed as an annuity pursuant to Paragraph 10.3(a), the amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Paragraph 10.2(b)(1) or (2)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first

distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

(2) In the case of a single sum distribution of a Participant's entire accrued benefit during a distribution calendar year, the amount that is the required minimum distribution for the distribution calendar year (and thus not eligible for rollover under Code §402(c)) is determined under this Paragraph 10.3(b)(2). The portion of the single sum distribution that is a required minimum distribution is determined by treating the single sum distribution as a distribution from an individual account plan and treating the amount of the single sum distribution as the employee's account balance as of the end of the relevant valuation calendar year. If the single sum distribution is being made in the calendar year containing the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been distributed, the portion of the single sum distribution that represents the required minimum distribution for the employee's first and second distribution calendar years is not eligible for rollover.

(c) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues. Notwithstanding the preceding, the Plan will not fail to satisfy the requirements of this Paragraph 10.3(c) and Code §401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under this Paragraph 10.3(c).

10.4 Requirements For Annuity Distributions That Commence During Participant's Lifetime.

(a) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the employee's required beginning date will satisfy the conditions of this Paragraph 10.4(a). The periodic annuity payment payable to the survivor must not at any time on and after the employee's required beginning date exceed the applicable percentage of the annuity payment payable to the employee using the table set forth in Q&A-2(c)(2) of Section 1.401(a)(9)-6 of the Treasury regulations. The applicable percentage is based on the adjusted employee/beneficiary age difference. The adjusted employee/beneficiary age difference is determined by first calculating the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in a calendar year. If the employee is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the employee is younger than age 70 on the employee's birthday in the calendar year that contains the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of

this Paragraph 10.4(a) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

(b) **Period Certain Annuities**. Unless the Participant's Spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treas. Reg. §1.401(a)(9)-9 for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in set forth in Treas. Reg. §1.401(a)(9)-9 plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Paragraph 10.4(b), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Treas. Reg. §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 calendar year that contains the annuity starting date.

(c) **Joint Life Annuities Where the Beneficiary Is the Participant's Spouse**. If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the employee and his spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the periodic annuity payment payable to the survivor must not at any time on and after the employee's required beginning date exceed the annuity payable to the employee. In the case of an annuity that provides for increasing payments, the requirement of this Paragraph 10.4(c) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a spouse and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

10.5 Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

(a) **Participant Survived by Designated Beneficiary**. Except as provided in Paragraph 10.5(b), if the Participant dies before the date distribution of his interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in section Paragraph 10.2(b)(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:

(1) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(2) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(b) **Participant Survived by Designated Beneficiary and 5-Year Rule.** At the election of the Participant or, if no election is made by the Participant, then at the election of the Participant's designated beneficiary, if the Participant dies before distributions begin and there is a designated beneficiary, then the Participant's entire interest will be distributed to the designated beneficiary by December 31st of the calendar year containing the 5th anniversary of the Participant's death. This election will apply to all distributions.

(c) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30th of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31st of the calendar year containing the 5th anniversary of the Participant's death.

(d) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the Participant dies before the date distribution of his interest begins, the Participant's Spouse is the Participant's sole designated beneficiary, and the Spouse dies before distributions to the Spouse begin, this Paragraph 10.5 will apply as if the Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Paragraph 10.2(b)(1).

10.6 Definitions.

(a) **"Designated Beneficiary"** means the person or entity named by the Participant pursuant to Paragraph 6.4 to receive benefits following the Participant's death, who (or which) qualifies as a designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1.

(b) **"Distribution Calendar Year"** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subparagraph 10.2(b).

(c) **"Life Expectancy"** means life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(d) **"Required Beginning Date."**

(1) For a Participant who is a 5% owner (as determined under Code §401(a)(9)), the April 1st following the calendar year in which he attains age 70½; and

(2) For all other Participants, the April 1st following the later of (i) the calendar year in which he attains age 70½, or (ii) the calendar year in which he retires.

(3) If the Participant becomes a 5% owner after attaining age 70½, his Required Beginning Date shall be the April 1st immediately following the calendar year with or within which ends the Plan Year in which the Participant became a 5% owner.

(e) **"Eligible Cost-of-Living Index"**. An eligible cost-of-living index means an index described in this Paragraph 10.6(e).

(1) A consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (such as urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (such as a given metropolitan area or state), or

(2) A percentage adjustment based on a cost-of-living index described in Paragraph 10.6(e)(1), or a fixed percentage, if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an eligible cost-of-living index, provided it does not exceed the sum of:

(A) the cost-of-living index for that year, and

(B) the accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this Paragraph10.6 (e)(2)(B)).

Article 11

CONTRIBUTIONS

11.1 **Fund.** The funding of the Plan and payment of the benefits hereunder will be provided through, and only through, the medium of a Trust to which contributions shall be made by the Employer as provided herein, and which shall be held by the Trustee under the provisions of the Trust.

11.2 **Employer Contributions.** The Employer is expected to make regular contributions to the Trust as determined necessary or appropriate by the Plan Administrator, based upon the advice of the Plan's actuary, to fund the Plan and its liabilities. Administration expenses of the Plan, unless paid by the Employer, will be paid out of the assets of the Trust.

11.3 **Employee Contributions.**

(a) A separate accounting shall be made for the amount in each Participant's Employee Contribution Account. The amount in that account shall be calculated as the sum of:

(1) the Participant's Employee Contribution Account determined as of December 31, 2015, in accordance with the terms of the City of Rutland Police and Fire Retirement Income Plan in effect on such date;

(2) the Participant's Employee Contributions made on or after December 31, 2015; and

(3) interest on the amounts described in subparagraphs (1) and (2), computed at the rate set forth in Subsection 11.3(e).

(b) A Participant's total Employee Contribution Account shall be used in determining the benefits payable with respect to the Participant under the plans in the City of Rutland Retirement System, including this Plan.

(c) No Participant shall be allowed to make contributions to the Trust other than those required under this Paragraph.

(d) Each Employee who becomes eligible to participate in the Plan shall agree to make an Employee Contribution to the Plan in a percentage of his Compensation for the Plan Year as specified below.

(1) The Employer shall treat the Employee Contributions made by Police Employees pursuant to this subparagraph as being subject to federal and state income tax, FICA, FUTA and any other employment taxes required.

(2) The Employer shall treat the Employee Contributions for Fire Employees as "Pick-up Contributions" as described in Code § 414(h)(2) and as a result, will treat the Employee Contributions pursuant to this subparagraph as not being subject to federal and state income tax, but as being subject to FICA, FUTA, and any other employment taxes required.

(e) A Participant may revoke his payroll deduction order at any time and cease making Employee Contributions to the Plan. In such event, the Participant may not elect to resume making Employee Contributions to the Plan prior to the second anniversary of the date his revocation of his payroll deduction order became effective.

(f) Employee Contributions shall be determined as the following percentage of the Participant's Rate of Earnings:

(1) Police Employees – 6.32%

(2) Fire Employees -

Fiscal Year	2013:	5.00%
	2014:	7.230%
	2015:	7.605%
	2016:	7.980%
	2017	8.355%

(g) Employee Contributions shall be credited to the Participant's Employee Contribution Account as follows:

(1) Interest shall be credited on the first day of each Plan Year calculated at the rate of 3% compounded annually.

(2) Interest shall be credited on contributions beginning with the first day of the Plan Year following the date on which the contribution was made to the Plan.

(3) In the event of a distribution of an Employee Contribution Account, interest shall be credited from the first day of the Plan Year up to the actual date of distribution.

(4) Any change in the rate of interest shall be applied on a prospective basis only.

(h) Withdrawals from a Participant's Employee Contribution Account shall not be allowed unless the Participant is entitled to begin receiving benefits under the terms of this Plan.

11.4 **Rollover Contribution.** Rollover Contributions will not be accepted by the Plan.

Article 12

EMPLOYER ADMINISTRATIVE PROVISIONS

12.1 Information to Administrator. The Employer shall supply current information to the Administrator as to the name, date of birth, date of employment, annual compensation, leaves of absences, Service and date of termination of employment of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Administrator considers necessary. The Employer's records as to the current information the Employer furnishes to the Administrator shall be conclusive as to all persons.

12.2 No Liability. Except as specifically provided herein, the Employer assumes no obligation or responsibility to any of its Employees, Participants or Beneficiaries for any act or failure to act on the part of the Trustees or the Administrator.

12.3 Indemnity of Administrator. To the maximum extent not prohibited by law, the Employer shall indemnify and hold harmless the Administrator from and against any and all loss, liability or expense incurred by the Administrator by reason of any act or conduct (except that amounting to the Administrator's willful misconduct or gross negligence) in the administration of the Trust or Plan or both, including all expenses reasonably incurred in the Administrator's defense in case the Employer fails to provide such defense.

12.4 **Accrued Benefits Earned With More Than One Employee Group.**

(a) In general. It is the intent of this Plan that where an Employee earns Accrued Benefits for service with more than one employee group, the payment of those benefits will be made as though all of the plans in the City of Rutland Retirement System were one plan.

(b) Retirement Benefits. Except as any plan in the City of Rutland Retirement System expressly states otherwise, the total of the Accrued Benefits earned with all employee groups shall be paid starting at a single Annuity Starting Date and in one payment form.

(c) Disability Benefits. The pre-Normal Retirement Date disability benefits provided by this Plan shall be paid by this Plan. If those benefits continue after Normal Retirement Age, the portion of the benefit represented by Accrued Benefits earned with another employee group in the City of Rutland Retirement System shall be the responsibility of the plan covering that other employee group.

(d) Preretirement Death Benefits – Non-service Connected. Where a non-service connected preretirement death benefit becomes payable and the deceased Participant was credited with Accrued Benefits earned with more than one employee group in the City of Rutland Retirement System, each of the plans with respect to which the Accrued Benefit was credited shall be responsible for its portion of the preretirement death benefit.

(e) Preretirement Death Benefits – Service Connected. Where a service-connected preretirement death benefit becomes payable under this Plan, and the deceased Participant was credited with Accrued Benefits earned with more than one employee group in the City

of Rutland Retirement System, this Plan shall be responsible for the payment of that benefit, except that, to the extent another of plan in that System would have been responsible for a portion of the payment under (d) above if it were a non-service connected death, then that plan shall be responsible for that portion of the benefit payable under this subsection.

Article 13

PARTICIPANT ADMINISTRATIVE PROVISIONS

13.1 Personal Data to Plan Administrator. Each person entitled to benefits hereunder must furnish to the Administrator such evidence, data or information as the Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant furnish promptly full, true and complete evidence, data and information when requested by the Administrator.

13.2 Address for Notification. Each Participant and each Beneficiary of a deceased Participant shall file with the Administrator from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a Participant or Beneficiary at his last post office address filed with the Administrator, or as shown on the records of the Employer, shall bind the Participant, or Beneficiary, for all purposes of this Plan.

13.3 Assignment or Alienation. Except as permitted under the Code, neither a Participant nor a Beneficiary shall transfer, assign or alienate any benefit provided under the Plan, nor shall such benefit be subject to attachment, execution, garnishment or other legal or equitable process, and the Trustee shall not recognize any such transfer, assignment, alienation, attachment, execution or legal or equitable process.

13.4 Reimbursement from the Trust. If any legal action filed against the Trustee or the Administrator, or against any individual Administrator, by or on behalf of any Participant or Beneficiary, results adversely to the Participant or to the Beneficiary, the Trustee shall reimburse itself or the Administrator all costs and fees expended by it or him by surcharging, all costs and fees against the sums payable under the Plan to the Participant or to the Beneficiary.

13.5 Appeal Procedure for Denial of Benefits. The Administrator shall provide adequate notice in writing to any Participant or to any Beneficiary ("Claimant") whose claim for benefits under the Plan the Administrator has denied. The Administrator's notice to the Claimant shall set forth:

(a) the specific reason for the denial;

(b) specific references to pertinent Plan provisions on which the Administrator based its denial;

(c) a description of any additional material and information needed for the Claimant to perfect his claim and an explanation of why the material or information is needed; and

(d) that any appeal the Claimant wishes to make must be in writing to the Administrator within 75 days after receipt of the Administrator's notice of denial of benefits. The notice must further advise the Claimant that his failure to appeal the action to the Administrator in

writing within the 75-day period will render the Administrator's determination final, binding and conclusive.

If the Claimant appeals the Administrator's decision, the Claimant or his duly authorized representative may submit in writing whatever issues and comments he determines pertinent and may review pertinent Plan documents. The Administrator shall re-examine all facts related to the appeal and make a final determination as to whether the denial of benefits is justified under the circumstances. The Administrator shall advise the Claimant of its decision within 60 days of the Claimant's written request for review, unless special circumstances (such as a hearing) would make the rendering of a decision within the 60-day limit unfeasible, but in no event shall the Administrator render a decision respecting a denial of a claim for benefits later than 120 days after its receipt of a request for review.

The Administrator's denial of benefits shall identify the name of the Administrator and the name and address of the individual Administrator member to whom the Claimant may forward his appeal.

Any claim for benefits under this Plan must be brought within two years of the date when the benefits the Claimant asserts are payable would have begun to have been paid under the terms of the Plan, as then in effect.

13.6 Limitation of Actions. Any legal or equitable right of action by or on behalf of any Participant or beneficiary against, the Employer, the Plan Administrator, or the Trustee arising out of or in connection with this Plan, shall, irrespective of the place of residence or domicile of any such person, cease and be barred upon the earlier of (a) the shortest applicable statute of limitations provided by law, or (b) the expiration of two (2) years from the later of (i) the date of the alleged act or omission in respect of which such right of action arises, or (ii) the date upon which information as to the alleged act or omission in respect of which such right of action arises is communicated, or made available, to the Participant or Beneficiary.

Article 14

ADMINISTRATION

14.1 Appointment; Compensation.

(a) The Pension Board shall act as Administrator. In the absence of members of such Board, the Employer shall act as Administrator.

(b) Appointment to the Pension Board shall be made pursuant to the ordinances of the City of Rutland and as they may be amended from time to time.

(c) The members of the Administrator shall serve without compensation.

14.2 General Powers and Duties. The Administrator shall have the authority and responsibility to administer the Plan. The Administrator shall have all powers necessary or appropriate to administer the Plan, including, but not limited to the following powers:

(a) to select a secretary, who need not be an individual;

(b) to direct the distribution of the Trust Fund;

(c) to furnish the Employer with information required by the Employer for tax or other purposes;

(d) to engage the service of actuaries, agents, accountants, attorneys, physicians or such other personnel, whom it may deem advisable to assist it with the performance of its duties;

(e) to engage the services of an Investment Manager who shall have full power and authority to manage, acquire or dispose (or direct the Trustees with respect to acquisition or disposition) of any Plan asset under its control;

(f) to be the sole and exclusive arbiter of all questions arising with respect to issues under the Plan as to coverage and eligibility, both as to participation and as to benefits and the amount thereof, including, without limitation, the determination of those individuals who are deemed Employees;

(g) to adopt rules of procedure and regulations as the Administrator deems desirable for the conduct of the administration of the Plan;

(h) to interpret the terms of the Plan, to adopt rules and regulations, and to determine all questions arising in the administration, interpretation and application of the Plan;

(i) to render and review decisions respecting claims for benefits and rights under the Plan;

(j) to make factual determinations relating to the value of a Participant's Accrued Benefit and the right to receive such Accrued Benefit;

(k) to determine whether a domestic relations order constitutes a Qualified Domestic Relations Order and whether a putative Alternate Payee otherwise qualifies for benefits hereunder;

(l) to correct any defect, supply any omission or reconcile any inconsistency, including but not limited to mathematical or arithmetical errors, in such manner and to such an extent as it shall deem necessary to carry out the purposes of this Plan.

Any final decision by the Administrator shall be binding and conclusive on all parties concerned. The Administrator shall have absolute, exclusive, total and complete discretion in carrying out the Administrator's duties and responsibilities, and no decision by the Administrator shall be modified or overturned upon judicial review unless it was arbitrary or capricious.

14.3 Funding Policy. The Administrator shall establish a funding policy and method consistent with the objectives of the Plan. The Administrator shall review, not less often than annually, all pertinent Employee information and Plan data in order to review the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Administrator shall communicate annually to any Investment Manager the Plan's short-term and long-term financial needs so that investment policy can be coordinated with Plan financial requirements.

14.4 Manner of Action. The decision of a majority of persons acting as Administrator shall control.

14.5 Authorized Representative. The Administrator may authorize any one of its members to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The Administrator must evidence this authority by an instrument signed by all members and filed with the Trustees.

14.6 Interested Member. No Administrator may decide or determine any matter concerning the distribution, nature or method of settlement of his own benefits under the Plan, unless he is acting alone in the capacity of the Administrator.

14.7 Unclaimed Benefit Procedure.

(a) Neither the Trustees nor the Administrator shall be obliged to search for, or ascertain the whereabouts of, any Participant or Beneficiary. The Administrator, by certified or registered mail addressed to his last known address of record with the Administrator or the Employer, shall notify any Participant, or Beneficiary, that he is entitled to a distribution under this Plan, and the notice shall quote the provisions of this paragraph.

(b) If the Participant or Beneficiary fails to claim his benefit or make his whereabouts known in writing to the Administrator within 6 months from the date of mailing of the notice or before this Plan is terminated or discontinued, whichever should first occur, the Administrator shall request a third party of the Administrator's choice to locate such Participant or Beneficiary. If after a 2-year period commencing from the date the Administrator notifies the Trustees

that a Participant's Accrued Benefit is to be distributed, a Participant or his Beneficiary fails to claim his benefit, the Administrator may either treat as a Forfeiture, or permanently segregate such benefit for the Participant or Beneficiary.

(c) The forfeiture of a Participant's unclaimed benefit shall be subject to the right of the Participant (or, following the Participant's death, the Participant's Beneficiary) at any time to make a claim for such benefit. In the event a Participant or the Participant's Beneficiary claims such forfeited amount, the Employer shall contribute such additional amount to the Plan as is required to make complete distribution to the claimant, but if the Trust is not in existence, the Employer shall pay such amount directly to the claimant.

Article 15

QUALIFIED DOMESTIC RELATIONS ORDERS

15.1 Payment of Benefits to Alternate Payee. Notwithstanding the prohibitions contained in Paragraph 13.3, all or a portion of a Participant's Accrued Benefit shall be paid to one or more Alternate Payees in accordance with the terms of a Qualified Domestic Relations Order entered into on or after January 1, 1985.

15.2 Determination of Qualified Status.

(a) **Initial Notice.** Within 30 days following receipt of any domestic relations order, or within such other time period as may be prescribed by Treasury regulations, the Administrator shall notify the Participant and each Alternate Payee in writing of its receipt and shall set forth the Administrator's procedures as outlined below for determining if such order qualifies as a Qualified Domestic Relations Order.

(b) **Notice of Determination.** Within 90 days following the Administrator's initial notice described in subparagraph (a) above, the Administrator shall notify the Participant and each Alternate Payee in writing of its determination whether the proposed order is qualified. If the order is denied qualified status, the Administrator shall list the specific reasons therefor. Whether or not the order is determined to be qualified, the Administrator shall notify the Participant and each Alternate Payee of their right to appeal such determination within 60 days after receipt of the determination, and that failure to appeal such determination in writing within the 60-day period will render such determination final, binding and conclusive. The Administrator's notice shall identify the name of the Administrator and the address to which appeal is to be forwarded.

(c) **Appeal.** If a Participant or Alternate Payee should appeal the Administrator's decision, he may submit in writing all pertinent issues and comments and may review pertinent Plan documents. The Administrator shall re-examine all facts related to the appeal and make a final determination as to whether the initial determination is justified under the circumstances. The Administrator shall notify the appellant of the Administrator's decision within such time period as provided in rules adopted by the Administrator.

15.3 Authorized Representative. An Alternate Payee may designate an authorized representative to receive copies of all notices with respect to the payment of benefits or claim for such payment under a domestic relations order. The Alternate Payee shall notify the Administrator of such designation in writing, which shall be effective upon its receipt by the Administrator.

15.4 Transition Rule. In the case of a domestic relations order entered into before January 1, 1985, the Administrator shall treat such order as a Qualified Domestic Relations Order if benefits pursuant to such order are in pay status on January 1, 1985. In addition, the Administrator, in its sole discretion, may treat any other order entered into before January 1, 1985 as a Qualified Domestic Relations Order notwithstanding its failure to meet all the requirements for qualification under Code §414(p).

15.5 Definitions.

(a) "Qualified Domestic Relations Order" means a domestic relations order that meets the requirements of Code §414(p).

(b) "Domestic relations order" means any judgment, decree or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights of a Spouse, former Spouse, child or other dependent of a Participant, and which is made pursuant to a state domestic relations law (including community property law).

(c) "Alternate Payee" means a Spouse, former Spouse, child or other dependent of a Participant who is recognized by a domestic relations order as entitled to receive all or a portion of the benefits payable under a qualified plan with respect to the Participant.

15.6 Method and Timing of Distribution.

(a) Distribution of benefits to an Alternate Payee specified in a Qualified Domestic Relations Order shall be in any optional form of distribution allowable under this Plan.

(b) A domestic relations order which requires payment to an Alternate Payee prior to the Participant's "earliest retirement age" as defined in Code §414(p)(4)(B) shall be allowable under this Plan.

Article 16

EXCLUSIVE BENEFIT, AMENDMENT, TERMINATION

16.1 Exclusive Benefit.

(a) Except as specifically set forth in this Plan, the Employer shall have no beneficial interest in any asset of the Trust and no part of any asset in the Trust shall ever revert to or be repaid to the Employer, either directly or indirectly; nor shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be at any time used for, or diverted to, purposes other than for the exclusive benefit of the Participants or their Beneficiaries.

(b) Any contribution made by the Employer because of a mistake of fact may be returned to the Employer within one year after the contribution was made.

(c) All Employer contributions are conditioned upon the Plan's initial qualification under the Code. If the Employer receives a final determination that the Plan does not initially qualify, the Plan shall terminate and all Employer contributions shall be returned to the Employer within one year after the date such initial qualification is denied, but only if the application for qualification is made by the time prescribed by law for filing the Employer's tax return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

16.2 Amendment.

(a) The Pension Board shall have the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of this Plan.

(b) Notwithstanding subparagraph (a), no amendment to the Plan:

(1) shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries;

(2) shall cause any reduction in the dollar amount of a Participant's Vested Accrued Benefit (which restriction shall be limited to its terms; this Plan is not subject to Code § 411 and it is not intended to incorporate any of the rules of Code § 411(d) into this restriction) or cause or permit any portion of the Trust Fund to revert to or become the property of the Employer, except as specifically permitted herein;

(3) shall affect the rights, duties or responsibilities of the Trustees or Administrator without the Trustees' or Administrator's written consent.

(c) Any amendment shall become effective upon delivery of a duly executed instrument to the Trustees.

16.3 Amendment to Vesting Schedule. No amendment shall directly or indirectly reduce a Participant's Vested interest in his Accrued Benefit to the date of the amendment, as computed under the terms of the Plan in effect immediately prior to the date of the amendment.

16.4 Termination. Unless otherwise provided in express provisions of any applicable collective bargaining agreement that covers Employees hereunder, the Employer shall have the right at any time to terminate the Plan by delivering to the Trustees and Administrator written notice of such termination. Upon full or partial termination of this Plan, the Accrued Benefit of each affected Participant, to the extent funded as of the date of such termination, shall become fully Vested. Upon complete termination of the Plan, the Employer, by written notice to the Trustee, and subject to the ensuing Paragraphs of this Article, shall distribute the assets in the Trust Fund in the form of deferred annuities payable at Normal Retirement Date. The Trustee may also distribute benefits in the form of a lump sum, in cash or in kind, as soon as practicable following termination.

16.5 Allocation of Assets. Upon complete termination of the Plan, the Administrator shall allocate the assets of the Plan among Participants and Beneficiaries in the following order of priority:

(a) First, to that portion of each Participant's Accrued Benefit which is derived from Employee Contributions.

(b) Equally among individuals in the following two categories:

(1) Benefits to retired Participants and their Beneficiaries to whom payment commenced at least 3 years prior to the termination date, based on Plan provisions in effect during the 5-year period ending on such date. The lowest benefit in any pay status during the most recent 3-year period shall be considered the benefit in pay status for such period.

(2) Benefits as respects a Participant wherein payment would have commenced at least 3 years prior to the termination date if the Participant had actually retired, based on the lowest benefit determined under the Plan provisions in effect during the 5-year period ending on such date.

(c) All other benefits under the Plan.

Any funds remaining after satisfaction of the foregoing shall be returned to the Employer.

16.6 Transfer to Qualified Plan. The Administrator may direct the Trustee to transfer all or any part of a Participant's Accrued Benefit to the trustee of any other plan that purportedly meets the qualification requirements of Code §401(a), provided, however, that such transfer would not disqualify this Plan under Code §401(a). The Trustee may require a certification from the trustee of such other plan as to the qualified status of such plan under Code §401(a) prior to making such transfer.

Article 17

VETERANS' REEMPLOYMENT RIGHTS

17.1 Veterans' Reemployment Rights. Notwithstanding any other provision of this Plan and in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), this Article shall apply to Participants reemployed on or after December 12, 1994, after a Qualified Leave. The provisions of this Article are intended to comply with the requirements of USERRA and the regulations thereunder, and the provisions of this Article shall be interpreted in such a way as to cause the Plan to be in compliance with those requirements.

17.2 Service Credit.

(a) A Participant's Qualified Leave shall not be considered as a Break in Service, but shall be deemed to constitute continuous Service with the Employer for purposes of determining such Participant's Accrued Benefit under this Plan and his Vested interest therein.

(b) A Participant shall be credited with up to 5 Years of Creditable Service while on a Qualified Leave, or if greater, the number of Years of Creditable Service required under the USERRA rules.

(c) All rights to additional Service credit under this Article shall accrue only upon a Participant's timely reemployment in accordance with this Article; however, a Participant's Vested interest in his Accrued Benefit earned prior to entering a Uniformed Service shall not be reduced regardless of the date such Participant actually returns to Service with the Employer.

17.3 Compensation. For purposes of determining the benefits to which a Participant may be entitled under this Article, a Participant shall be deemed to have received Compensation from the Employer during his Qualified Leave, of an amount based on the rate of pay such Participant would have received from the Employer but for the Qualified Leave. If such Participant's pre-Qualified Leave Compensation was not based on a fixed rate, the calculation will be based on such Participant's average rate of pay during the 12-month period immediately preceding the Qualified Leave or, if shorter, the Participant's period of employment immediately preceding the Qualified Leave.

17.4 Qualified Leave. A Participant's absence from employment with the Employer shall be a "Qualified Leave" for the purposes of this Article if all of the following conditions are met:

(a) **Notice.** The Participant (or an appropriate officer of the Uniformed Service in which services are to be performed) gives written or verbal notice to the Employer of such Participant's service in one of the Uniformed Services in advance of the Participant's departure for such service.

(b) **Cumulative Length of Absence.** The cumulative length of the Participant's absence from employment with the Employer by reason of such Participant's service in one of the

Uniformed Services, when combined with all previous absences from service with the Employer by reason of service in the Uniformed Services, does not exceed 5 years.

(c) **Uniformed Service.** The Participant's absence from employment with the Employer is due to the Participant's service in one of the following "Uniformed Services" of the United States: the Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Naval Reserve, Marines Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, commissioned corps of the Public Health Service, or any other category designated as a uniformed service by the President of the United States during a time of war or national emergency.

(d) **Reemployment.** The Participant, upon completion of a period of service in one of the Uniformed Services, notifies the Employer of the Participant's intention to return to employment with the Employer by reporting to or submitting an application for reemployment to the Employer within the following time periods:

(1) if the period of service in the Uniformed Services is less than 31 days, or a period of any length for the purposes of an examination to determine the Participant's fitness to perform service in the Uniformed Services, the Participant reports to the Employer not later than the beginning of the first full regularly scheduled work period in the first full calendar day following the completion of the period of service and the expiration of 8 hours after a period allowing for the safe transportation of the Participant from the place of that service to the Participant's residence; or if reporting within the period referred to above is impossible or unreasonable through no fault of the Participant, as soon as possible after the expiration of the 8-hour period referred to above;

(2) if the period of service in the Uniformed Services is more than 30 days but less than 181 days the Participant submits an application for reemployment not later than 14 days after the completion of the period of such service, or if submitting such application within such time period is impossible or unreasonable through no fault of the Participant, the next first full calendar day when submission of such application becomes possible;

(3) if the period of service in the Uniformed Services is more than 180 days the Participant submits an application for reemployment not later than 90 days after the completion of the period of such service;

(4) a Participant who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the Uniformed Services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to (in the case of a Participant described in subparagraph (1) above) or submit an application for reemployment (in the case of a Participant described in subparagraph (2) or (3) above) with the Employer. Such period of recovery may not exceed 2 years, although such period shall be extended by the minimum time required to accommodate the circumstances beyond such Participant's control which make reporting within the period specified in subparagraph (1) impossible or unreasonable.

(e) **Less Than Honorable Discharge.** Notwithstanding the above, a Participant shall not be entitled to the benefits of this Article if such Participant's service in the Uniformed Services terminates upon any of the following events:

(1) a separation of the Participant from such Uniformed Service with a dishonorable or bad conduct discharge;

(2) a separation of such Participant from such Uniformed Service under other than honorable conditions; or

(3) a dismissal or dropping from the rolls of any Uniformed Service of such Participant, in accordance with 10 U.S.C. 1161(a) or (b).

17.5 Veterans' Death Benefits. Notwithstanding any other provision of this Plan, if a Participant dies while on Qualified Leave, his Beneficiary shall be entitled to any additional benefits (other than benefit accruals relating to the period of Uniformed Service) that the Participant would have been entitled to under the Plan had the Participant resumed employment with the Employer and then severed employment on account of death.

Article 18

MISCELLANEOUS

18.1 Evidence. Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance thereof may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator and the Trustees shall be fully protected in acting and relying upon any evidence described under this paragraph.

18.2 Named Fiduciaries and Allocation of Responsibility. The "named fiduciaries" of this Plan are the Employer, the Administrator, the Trustees and any Investment Manager appointed hereunder. The named fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under this Plan. Each named fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of this Plan, authorizing or providing for such direction, information or action. Further, each named fiduciary may rely upon such direction, information or action of another named fiduciary as being proper under this Plan, and is not required under this Plan to inquire into the propriety of any such direction, information or action. It is intended that each named fiduciary shall be responsible only for the proper exercise of its own powers, duties, responsibilities and obligations under this Plan. Any person or group may serve in more than one fiduciary capacity.

18.3 Limited Responsibilities. The Trustees and the Administrator shall not have any obligation nor responsibility with respect to any action required by the Plan to be taken by the Employer, any Participant or eligible Employee, nor for the failure of the Employer to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this Plan, nor shall the Trustee or the Plan Administrator be required to collect any contribution required under the Plan, or determine the correctness of the amount of any Employer contribution. The Trustees and the Administrator shall not have any obligation to inquire into or be responsible for any action or failure to act on the part of the others.

18.4 Fiduciaries Not Insurers. The Trustees, the Administrator and the Employer do not guarantee the Trust Fund from loss or depreciation. The Employer guarantees the payment of any money which may become due to any person from the Plan to the extent required under any agreements governing benefits under this Plan. The liability of the Administrator and the Trustees to make any payment from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

18.5 Waiver of Notice. Any person entitled to notice under the Plan may waive the notice.

18.6 Successors. The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon the Employer, its successors and assigns, and upon the Trustees, the Administrator and their successors.

18.7 Word Usage. Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural.

18.8 Status of Employment Relations. The adoption and maintenance of the Plan and Trust shall not be deemed to constitute a contract between the Employer and its Employees or to be consideration for, or an inducement or condition of, the employment of any person. Nothing herein contained shall be deemed (a) to give to any Employee the right to be retained in the employ of the Employer; (b) to affect the right of the Employer to discipline or discharge any Employee at any time; (c) to give the Employer the right to require any Employee to remain in its employ; or (d) to affect any Employee's right to terminate his employment at any time.

18.9 Interpretation of the Plan and Trust. It is the intention of the Employer that this Plan and Trust shall comply with the provisions of Code §§401 and 501 and the corresponding provisions of any subsequent laws. The provisions of this Plan and Trust shall be construed to effectuate such intention.

18.10 Governing Law. All questions arising with respect to the provisions of this Agreement shall be determined by application of the laws of the State of Vermont except to the extent superseded by federal law.

IN WITNESS WHEREOF, the Employer and the Trustee named herein have executed this Plan and Trust Agreement this 21st day of January, 2016.

On behalf of the Employer:

Pension Board of the City of Rutland

By: _____ CITY TREASURER

The Trustee:

By: _____ CITY TREASURER