

RESOLUTION NO. 778

**A RESOLUTION AMENDING AND RESTATING THE RETIREMENT PLAN FOR EMPLOYEES OF CITY OF STAYTON, OREGON.**

WHEREAS, the City of Stayton established The Retirement Plan for Employees of City of Stayton, Oregon (the "Plan") effective July 1, 1973 and has amended the Plan from time to time;

WHEREAS, the Plan was last amended and restated (stated in a single document) in 2005;

WHEREAS, there have been several changes to the Internal Revenue Code in recent years and the Plan's assets were transferred from Group Retirement Policy G-9561 issued by Pacific Life Insurance Company to a Trust Agreement under which Union Bank of California, N.A. is Trustee;

WHEREAS, the 2006 Restatement of the Plan is intended to bring current a "qualified plan" for the City under the Internal Revenue Code.

NOW, THEREFORE,

BE IT RESOLVED that the City Council amends "The Retirement Plan for Employees of City of Stayton, Oregon" (the "Plan") to conform to the changes in the Internal Revenue Code;

BE IT FURTHER RESOLVED that the City Council has restated the Plan to reflect the transfer of Plan assets to a Trust Agreement under which Union Bank of California, N.A. is Trustee; and,

BE IT FURTHER RESOLVED that the City Council has restated the Plan for ease of reference; and,

BE IT FURTHER RESOLVED that City Council hereby adopts the 2006 Restatement of the Plan, effective July 1, 1982 (Exhibit A, attached hereto and made a part hereof).

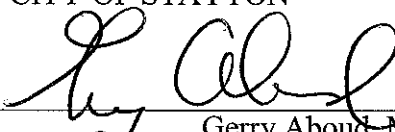
This Resolution shall become effective upon its adoption by the Stayton City Council.

ADOPTED BY THE STAYTON CITY COUNCIL this 3rd day of July, 2006.

CITY OF STAYTON

Signed: July 5, 2006

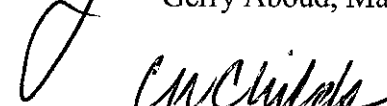
By:



Gerry Aboud, Mayor

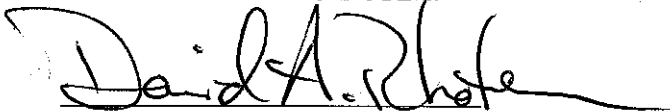
Signed: July 7, 2006

ATTEST:



Chris Childs, City Administrator

APPROVED AS TO FORM:



David A. Rhoten, City Attorney

Resolution No. 778

Amending and Restating The Retirement Plan for Employees of City of Stayton, Oregon

THE RETIREMENT PLAN FOR EMPLOYEES OF CITY OF STAYTON, OREGON

2006 Restatement

Effective July 1, 1982

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THE RETIREMENT PLAN FOR EMPLOYEES OF CITY OF STAYTON, OREGON

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## THE RETIREMENT PLAN FOR EMPLOYEES OF CITY OF STAYTON, OREGON

### PARTY:

CITY OF STAYTON, an Oregon municipality (Employer)

### SECTION 1. PURPOSE AND EFFECTIVE DATE

- 1.1. Purpose of this Plan. The purpose of this Plan is to create a pension plan to provide certain Employees of the Employer with funds upon their retirement.
- 1.2. Continuation and Restatement of Plan. This Plan as stated in this 2006 Restatement is intended to be a continuation and restatement of this Plan as adopted effective July 1, 1973, and as amended to date.
- 1.3. Purpose of this 2006 Restatement. This 2006 Restatement has been adopted to clarify certain provisions of this Plan and to reflect the transfer of this Plan's assets from Group Retirement Policy G-9561 issued by the Pacific Life Insurance Company to a Trust Agreement under which Union Bank of California, N.A. is Trustee.
- 1.4. Effective Date of this 2006 Restatement. Except as otherwise stated in this 2006 Restatement, this 2006 Restatement applies to individuals who are Employees on or after July 1, 1982.
  - a. Provisions in this 2006 Restatement implementing the Employee Retirement Income Security Act of 1974 are generally effective for Plan Years or limitation years beginning after December 31, 1975.
  - b. Provisions in this 2006 Restatement implementing the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) are generally effective for limitation years beginning after December 31, 1982, or taxable years beginning after December 31, 1983.
  - c. Provisions in this 2006 Restatement implementing the Deficit Reduction Act of 1984 are variously effective for (1) Plan Years beginning after December 31, 1986 (provisions implementing IRC Section 401(a)(9)); (2) limitation years beginning after December 31, 1982, or taxable years beginning after December 31, 1983 (provisions implementing technical corrections to TEFRA); (3) limitation years beginning after December 31, 1987 (provisions delaying cost-of-living adjustments under IRC Section 415(d)(2)); or (4) contributions paid or accrued after December 31, 1985, in tax years ending after December 31, 1985 (provisions treating certain contributions to a medical

account in a welfare benefit plan as contributions to a defined contribution plan for purposes of IRC Section 415).

- d. Provisions in this 2006 Restatement implementing the Retirement Equity Act of 1984 are generally effective January 1, 1985.
- e. Any provision for which this 2006 Restatement provides a specific effective date is subject to the specific effective date.

## SECTION 2. DEFINITIONS

Capitalized terms used in this Plan and defined in this Section 2. have the meanings stated in this Section 2.

- 2.1. Employer means CITY OF STAYTON, OREGON and its divisions, affiliates and subsidiaries as from time to time constituted, which are making contributions to the Fund.
- 2.2. Trustee means Union Bank of California, N.A. and/or any other person selected by the Employer as trustee of funds accumulated under this Plan.
- 2.3. Insurance Company means Pacific Life Insurance Company.
- 2.4. Policy means Group Retirement Policy G-9561 issued by the Insurance Company.
- 2.5. Fund means the aggregate of all assets held by the Funding Agency to provide the benefits of this Plan.
- 2.6. Funding Agency means the Insurance Company and/or Trustee, severally or jointly, as the case may be.
- 2.7. Plan means the pension plan embodied herein.
- 2.8. The Effective Date of this Plan is July 1, 1973, and with respect to a division, affiliate or subsidiary, the date it commenced participation in this Plan.
- 2.9. Plan Anniversary means July 1, 1974, and each July 1 thereafter.
- 2.10. Plan Year means each 12-month period commencing on the Effective Date of this Plan or on the Plan Anniversary.
- 2.11. Beneficiary or Contingent Annuitant means the person designated as such by the Employee in the Employee's last written and signed election to the Employer. If the Employee has made no election or if a Beneficiary is not living at the time of the Employee's death, payment will be made to the Employee's estate.
- 2.12. Actuarial Equivalent means:
  - a. For benefit starting dates before January 1, 2006, a benefit of equivalent value based upon the actuarial assumptions applicable to the annuity purchase rates currently in effect under the Policy.

- b. For benefit starting dates after December 31, 2005, a benefit of equivalent value based on the following interest rates and mortality table:

Interest rates: 4.41% annual interest, compounded annually; except that 6.5% annual interest, compounded annually, shall be used solely to determine the Actuarial Equivalent of a person's Accrued Voluntary Contributions Balance and the Actuarial Equivalent of any part of a payment or benefit that is attributable to such Balance. (The reason for the difference between the 4.41% and 6.5% interest rates is that the 4.41% interest rate includes an assumed 2% cost-of-living adjustment under Section 6. and the 6.5% interest rate does not.)

Mortality table: RP-2000 Combined Healthy Mortality Table, blend of 50% Male and 50% Female and projected with Scale AA to 2015.

- 2.13. "Periods" of time, employment, coverage, or accrual of credited employment refers only to such periods or the portion thereof which occur after the last date of employment commencement with the Employer of the person or persons with respect to whom such references are made, unless expressly indicated to the contrary.
- 2.14. Employee means any person employed by the Employer on a regular (not temporary or seasonal) and full-time (for at least 40 hours per week) basis, except as otherwise provided in this 2.14. The Employer shall determine the classification of each individual person from time to time, on a basis precluding individual selection and without discrimination among persons in like circumstances, and such determination shall be final and conclusive. "Employee" does not include a leased employee (within the meaning of IRC Section 414(n) or (o)) who is deemed to be an employee of the Employer under IRC Section 414(n) or (o), and no service with the Employee as such a leased employee shall be treated as employment with the Employer.
- 2.15. Severance of Employment means permanent termination of employment with the Employer for any cause.
- 2.16. Accrued Employee Pick-Up Contributions Balance is defined in 4.4.
- 2.17. Accrued Supplemental Employer Contributions Balance is defined in 4.6.
- 2.18. Accrued Required Contributions Balance is defined in 4.8.
- 2.19. Accrued Voluntary Contributions Balance is defined in 4.11.
- 2.20. Monthly Earnings for purposes of Section 4. (about contributions) is defined in 4.9.

- 2.21. Basic Monthly Earnings means the person's regular pay by the Employer for non-overtime hours worked, equivalents of regular pay by the Employer for hours not worked (which includes only vacation pay, sick pay, personal day off pay, and comp time pay by the Employer for periods of paid time off during employment), and retroactive pay by the Employer that increases regular pay for non-overtime hours worked or such equivalents of regular pay for hours not worked. Basic Monthly Earnings excludes all other types of pay, including without limitation overtime pay (which includes both regular pay and premium pay for overtime hours); payments at termination of employment for unused vacation, unused personal days off, or unused comp time; pager pay; field training officer pay; incentive pay for an associates of arts or bachelor degree; bilingual pay; and out-of-class incentive pay. For purposes of determining Basic Monthly Earnings, retroactive pay for a month shall be allocated to the month for which it is paid. For example a payment made during an October as a retroactive increase in an Employee's Basic Monthly Earnings for the prior July shall be included in the Employee's Basic Monthly Earnings for that July.
- 2.22. Benefit Qualification Date means the benefit qualification date referred to in this 2.22. as or by reason of which monthly payments begin to the Employee or person.
- a. Normal Benefit Qualification Date is defined in 7.2.
  - b. Early Benefit Qualification Date is defined in 8.2.
  - c. Late Benefit Qualification Date is defined in 9.2.
  - d. Disability Benefit Qualification Date is defined in 12.6. and 12.13.
- 2.23. IRC means the Internal Revenue Code of 1954 or 1986, as applicable, as amended.
- 2.24. ORS means the Oregon Revised Statutes.
- 2.25. Oregon Public Employees Retirement System means the retirement system under ORS chapter 238 and excludes the Oregon Public Service Retirement Plan.
- 2.26. Oregon Public Service Retirement Plan means the pension program under ORS chapter 238A and the individual account program under ORS chapter 238A or either.



## SECTION 3. COVERAGE PROVISIONS

### 3.1. Eligibility.

- a. The class of Employees eligible for coverage hereunder will consist of all Employees of the Employer except those employed by the Employer in a position eligible for membership in the Oregon Public Employees Retirement System or the Oregon Public Service Retirement Plan, determined without regard to the 600 hours requirement for membership and the six-month waiting period for membership in such Retirement System or Retirement Plan.
- b. Each Employee in the eligible class is eligible to be covered under this Plan from the later of (1) the Effective Date of this Plan, or (2) the date on which the Employee completes a period of six months of employment with the Employer as an Employee.

3.2. Commencement of Coverage. Effective on and after July 1, 1981, each Employee in the eligible class will become covered hereunder on the first day of the month coinciding with or next following the date the Employee becomes eligible to be covered under this Plan. No period of employment prior to July 1, 1981, during which an Employee was eligible for coverage will be counted for purposes of this Plan if the Employee failed to make the required contributions for that period.

3.3. Termination of Employment. Termination of employment will occur when the Employee ceases to be actively employed with the Employer, except if the Employee is granted a leave of absence not to exceed 24 months, the Employer may consider the Employee, solely for the purposes of this Plan, as still employed. With respect to leaves of absence for service with the Armed Forces of the United States before the effective date of 20.5. (about benefits for military service), the 24-month restriction shall not apply. Any leave of absence shall be granted without discrimination among persons in like circumstances and on a basis precluding individual selection.

3.4. Termination of Coverage. Termination of coverage will automatically occur if the Employee dies, or if the Employee receives any benefit under this Plan, or if the Employee's employment terminates (as defined in 3.3. above), except that coverage will continue while a person is receiving a disability benefit under this Plan.

- a. In 1985 all employees of the Employer's fire department were transferred to the Stayton Rural Fire Protection District. The Employer has not since maintained a fire department or employed firefighters. Effective July 1, 1985, Stayton Rural Fire Protection District began participating in the Oregon Public Employees Retirement System with respect to such transferred employees. In connection with such participation, assets of this Plan and the Fund were transferred to the Oregon Public Employees Retirement System and this Plan ceased to provide benefits for such transferred employees.

- b. Effective July 1, 1991, the Employer began participating in the Oregon Public Employees Retirement System with respect to all the Employer's police officers. In connection with such participation, assets of this Plan and the Fund were transferred to the Oregon Public Employees Retirement System and this Plan ceased to provide benefits for police officers employed by the Employer on or after July 1, 1991.
- 3.5. Rehired Employee. If a person whose employment has terminated for any reason, other than disability, is later rehired by the Employer, the person shall be treated as a new Employee for every purpose of this Plan, and shall meet all eligibility requirements after the person's date of rehire. There shall be no duplication of benefits for participants with more than one period of coverage under this Plan.
- 3.6. Transferred Employees. Despite any contrary provision of this Plan, this Plan shall be applied to transferred employees who are subject to ORS 236.605 to 236.640 as the Employer determines appropriate in the Employer's discretion to implement ORS 236.605 to 236.640.

## SECTION 4. CONTRIBUTIONS

- 4.1. Recipient of Contributions. All contributions described in this Section 4. shall be made to the Fund.
- 4.2. Employer Contributions.
- a. It is the Employer's intention to make contributions in amounts actuarially determined to be required to provide the benefit formula amount as set forth in this Plan. While it is the Employer's intention that this Plan be permanent, all such contributions by the Employer shall be voluntary and the Employer shall be under no legal obligation to make such contributions. However, such contributions having been made, the Employer shall have no further right, title, or interest therein except as provided in Section 19. (about termination of this Plan). The provisions of this 4.2.a. are not intended to avoid or modify any consequences which may arise under the IRC, Treasury regulations, or other legal authority because of the Employer's failure to make a contribution or contributions hereunder.
  - b. The amount required to provide the benefit formula amount of this Plan shall be determined in accordance with generally accepted actuarial methods which are reasonable and appropriate to the provisions of this Plan. The amount of Employer contributions for any actuarial report period shall be reduced as a result of forfeitures, dividends, and any other decrease in liability which may arise from experience in the next preceding period which is more favorable than the assumptions used in determining the costs hereof.
- 4.3. Employee Pick-Up Contributions. Each month after December 31, 1994, and prior to the Employee's Benefit Qualification Date, each Employee covered hereunder and actively employed with the Employer shall make a pick-up contribution in the amount of 6% of the Employee's Monthly Earnings. However, on behalf of each such Employee the Employer will pick-up the Employee's required 6% contribution. Employees' 6% contributions are deemed to be "picked up" for purposes of IRC Section 414(h)(2) ("pick-up contributions"). Such pick-up contributions shall not relieve Employees of the obligation to contribute 6% of their Monthly Earnings. Each such Employee's compensation shall be reduced to generate the funds needed to make the Employee's 6% contributions. Employees' reported compensation on Form W-2 will be reduced by the amount of such pick-up contributions.
- 4.4. Accrued Employee Pick-Up Contributions Balance. A record will be kept of the Employee pick-up contributions of each person. For the purposes of determining certain benefits, interest will be credited to each such contribution. References herein to Accrued Employee Pick-Up Contributions Balance shall at any time mean such accumulated contributions plus the interest thereon as of the first day of the month coinciding with or immediately preceding the date as of which such balance is being determined. Interest under this 4.4. shall be credited as provided in 4.12. below.

4.5. Supplemental Employer Contributions. Effective on and after July 1, 1981, and before January 1, 1995, the Employer shall make a supplemental contribution each month for each Employee prior to the Employee's Benefit Qualification Date during which the Employee is both covered hereunder and actively employed with the Employer. Such supplemental contribution will be calculated according to the appropriate percentage from the following table based on the person's Monthly Earnings (as defined in 4.9. below).

<u>Monthly Earnings</u>	<u>Contribution Rate</u>
less than \$ 500	4%
\$ 500 but less than \$1000	5%
\$1000 but less than \$1500	6%
\$1500 or more	7%

4.6. Accrued Supplemental Employer Contributions Balance. A record will be kept of the supplemental Employer contributions of each person. For the purposes of determining certain benefits, interest will be credited to each such contribution. References herein to Accrued Supplemental Employer Contributions Balance shall at any time mean such accumulated contributions plus the interest thereon as of the first day of the month coinciding with or immediately preceding the date as of which such balance is being determined. Interest under this 4.6. shall be credited as provided in 4.12. below.

4.7. Required Employee Contributions. Each Employee covered hereunder shall make a contribution for each month prior to July 1, 1981, during which the Employee is both covered hereunder and actively employed with the Employer. Such amount will be calculated according to the appropriate percentage from the following table based on the person's Monthly Earnings (as defined in 4.9. below).

<u>Monthly Earnings</u>	<u>Contribution Rate</u>
less than \$ 500	4%
\$ 500 but less than \$1000	5%
\$1000 but less than \$1500	6%
\$1500 or more	7%

Required Employee contributions shall commence on July 1, 1973, for persons covered under this Plan on such date. For persons whose coverage commences after July 1, 1973, required Employee contributions shall begin on the date coverage commences.

4.8. Accrued Required Contributions Balance. A record will be kept of the required contributions of each covered person. For the purposes of determining certain benefits, interest will be credited to each such contribution. References herein to Accrued Required Contributions Balance shall at any time mean such accumulated contributions plus the interest thereon as of the first day of the month coinciding with or immediately preceding the date as of which such balance is being determined. Interest under this 4.8. shall be credited as provided in 4.12. below.

- 4.9. Monthly Earnings. Monthly Earnings means the person's Basic Monthly Earnings in effect on the date the person becomes covered hereunder and on each Plan Anniversary thereafter or on such other date or dates, or for such month or months, during the Plan Year as the Employer shall establish from time to time.
- 4.10. Voluntary Employee Contributions. Each Employee covered hereunder may elect to make a voluntary contribution for each month prior to the Employee's Benefit Qualification Date during which the Employee is actively employed with the Employer, subject to the following provisions and limitations.
- a. No Employee shall have an obligation to make any contributions hereunder.
  - b. The maximum total monthly contribution which an Employee may make is 10% of the Employee's Monthly Earnings (as defined in 4.9. above). Such contribution shall not be less than \$10 per month and shall be stated in whole dollar amounts.
  - c. An Employee may elect to change the amount of the Employee's monthly contribution not more than once each Plan Year except if an Employee's Monthly Earnings should decrease to such an extent that the Employee's monthly contribution exceeds 10% of the Employee's Monthly Earnings, such Employee must, within 30 days after the effective date of such decrease, elect to change the amount of the Employee's monthly contribution to comply with the provisions of 4.10.b. above.
  - d. Contributions will be withheld from the Employee's monthly earnings each month.
  - e. Contributions may commence only on the date a person becomes covered under this Plan or on a Plan Anniversary. An Employee shall give the Employer written notice of the Employee's election to make contributions hereunder prior to the date on which contributions are to commence.
  - f. An Employee may elect to cease making contributions hereunder at any time, but may not resume making contributions until the second Plan Anniversary following cessation. An Employee may elect to resume making contributions subject to the provisions of 4.10.e. above.
  - g. An Employee may elect to withdraw all or a portion of the Employee's Accrued Voluntary Contributions Balance, except that not more than one withdrawal is permitted each Plan Year. If the accumulated total of partial withdrawals would exceed the total contributions made by the Employee, the Employee must elect to withdraw either the Employee's total contributions or the Employee's total Accrued Voluntary Contributions Balance. The withdrawal of a person's total Accrued Voluntary Contributions Balance will result in a cessation of contributions until the second Plan Anniversary following the date on which the total withdrawal is made. An Employee may not withdraw the Employee's Accrued Voluntary Contributions

Balance after the Employee has elected to receive such balance in any annuity form under this Plan.

Any election must be in writing and on the form, provided by the Employer, which specifically effects such election. No election shall be deemed valid nor shall any payment be due until such election has actually been made, and no election shall be effective retroactively.

4.11. Accrued Voluntary Contributions Balance. A record will be kept of the voluntary contributions of each covered person. For the purpose of determining certain benefits, interest will be credited to each such contribution, less any Employee withdrawals. References herein to Accrued Voluntary Contributions Balance shall at any time mean such accumulated contributions, less any Employee withdrawals, plus the interest thereon as of the first day of the month coinciding with or immediately preceding the date as of which such balance is being determined. Interest under this 4.11. shall be credited as provided in 4.12. below.

4.12. Crediting Interest. Interest to be credited as provided in this 4.12. shall be credited as follows:

a. Except as provided in 4.12.b. below, interest shall be credited as of the last day of each Plan Year by applying the rate provided in 4.12.c. below to sum of (1) the amount, as of the first day of the Plan Year, of the accumulated contributions less any Employee withdrawals plus interest plus (2) one-half of the amount of the additional contributions, and none of any annuity reserve credited under 12.5., during the Plan Year.

b. For the purpose of paying benefits hereunder:

(1) For each Plan year beginning during calendar years 1983 through 2005:

(a) Interest shall be credited as provided in 4.12.a. above for the Plan Year that includes the month of distribution, but by applying the interest rate that is 1/12 the rate provided in 4.12.c. below for the Plan Year multiplied by the number of complete months in the Plan Year before the month of distribution.

(b) However, if the rate provided in 4.12.c. below for the Plan Year that includes the month of distribution has not yet been determined by the Employer, interest shall be credited as provided in 4.12.a. above for the Plan Year that includes the month of distribution, but by applying the interest rate that is 1/12 the rate provided in 4.12.c. below for the prior Plan Year multiplied by the number of complete months in the Plan Year before the month of distribution.

- (2) For any Plan Year beginning during or after the 2006 calendar year:
  - (a) Interest shall be credited as provided in 4.12.a. above for the Plan Year that includes the month of distribution, but by applying the interest rate that is 1/12 the rate provided in 4.12.c. below for the prior Plan Year multiplied by the number of complete months in the Plan Year before the month of distribution.
  - (b) However, if the rate provided in 4.12.c. below for the Plan Year prior to the Plan Year that includes the month of distribution has not yet been determined by the Employer, interest shall be credited as provided in 4.12.a. above for the Plan Year that includes the month of distribution, but by applying the interest rate that is 1/12 the rate provided in 4.12.c. below for the next prior Plan Year multiplied by the number of complete months in the Plan Year before the month of distribution.
- c.
  - (1) For each Plan Year beginning during calendar years 1983 through 2000 the rate provided in this 4.12.c. is 8%.
  - (2) For any Plan Year beginning during calendar years 2001 through 2004 the rate provided in this 4.12.c. is one percentage point less than the aggregate yield credited to the Policy by the Insurance Company for the calendar year in which the Plan Year begins. For example, for the 2001 calendar year the aggregate yield credited to the Policy by the Insurance Company was 6.99%, and so the rate provided in this 4.12.c. for the Plan Year ended June 30, 2002, is 5.99%.
  - (3) For the Plan Year beginning during the 2005 calendar year, the rate provided in this 4.12.c. is the aggregate yield credited to the Policy by the Insurance Company for the 2004 calendar year.
  - (4) For any Plan Year beginning during or after the 2006 calendar year, the rate provided in this 4.12.c. is one percentage point less than the annual rate of earnings of the Fund for the Plan Year, as determined by the Employer, after reducing earnings for investment related expenses and Trustee fees but before reducing earnings for other expenses of the Fund, but the rate provided in this 4.12.c. shall be not less than 0% and not more than 8%.

The Employer may, in the Employer's absolute discretion, amend this Plan to change the rate at which interest is to be credited, but any such amendment shall not apply to change the rate at which interest is to be credited for any Plan Year ended more than 11 months before the Employer adopts the amendment. No Employee, Beneficiary, or other person shall acquire a right, contractual or otherwise, to the rate at which interest is to be credited.

4.13. Effect of PERS or OPSRP Membership.

- a. Despite 4.3. and 4.5., an Employee shall not make a pick-up contribution under 4.3., and the Employer shall not make a supplemental contribution under 4.5., for any month on any day of which the Employee is employed by the Employer in a position eligible for membership in the Oregon Public Employees Retirement System or the Oregon Public Service Retirement Plan, determined without regard to the 600 hours requirement for membership and the six-month waiting period for membership.
- b. Despite 4.4., 4.6., and 4.8., a person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, and Accrued Required Contributions Balance shall be reduced by any amount thereof transferred to the Oregon Public Employees Retirement System.
- c. Despite 4.10. and 4.11., where required by an agreement with the Oregon Public Employees Retirement Board in connection with a transfer described in 4.13.b. above, a person's Accrued Voluntary Contributions Balance shall be paid to the person as required by such agreement (but subject to the terms of this Plan other than 4.10. and 4.11.) and shall be reduced by the amount so paid.



## SECTION 5. BENEFIT FORMULA

- 5.1. The monthly benefit formula amount applicable to any person on the date as of which a benefit is determined shall be the product of 5.1.a. times 5.1.b. times 5.1.c. below:
- a. The appropriate percentage according to 5.1.a.(1) or 5.1.a.(2):
    - (1) For police officers and firefighters, 1.35% for the period July 1, 1973, through June 30, 1979, and 1.48% for the period commencing July 1, 1979 and thereafter.
    - (2) For all other Employees:
      - (a) For Employees whose Severance of Employment occurs before July 1, 1992, 1.25% for the period July 1, 1973, through June 30, 1992; and
      - (b) For Employees whose Severance of Employment occurs after June 30, 1992, 1.43% for the period commencing July 1, 1973, and thereafter.
  - b. (1) Effective on and after July 1, 1994, the greater of:
    - (a) The average of Basic Monthly Earnings for each month in a 36 consecutive month period during the last 120 months of employment (excluding in both cases months that include a period described in 5.1.c.(2) or 5.1.c.(3) below) which produce the highest average rate of compensation; or
    - (b) The average of Basic Monthly Earnings in effect on July 1 of each of three consecutive years (excluding years for which July 1 of the year is included in a period described in 5.1.c.(2) or 5.1.c.(3) below) during the last 10 years of employment (excluding periods described in 5.1.c.(2) or 5.1.c.(3) below) prior to the date the benefit is being determined, which produce the highest average rate of compensation.
  - (2) Effective July 1, 1992, through June 30, 1994: The average of the person's Basic Monthly Earnings for each month in a 36 consecutive month period during the last 120 months of employment preceding the date the benefit is being determined, which produces the highest average of compensation.
  - (3) Effective July 1, 1973, through June 30, 1992: The average of the person's Basic Monthly Earnings in effect on July 1 of each of three consecutive years during the last 10 years of employment preceding the date the benefit is being determined, but not including any years of employment after the person's

Normal Benefit Qualification Date, which produce the highest average rate of compensation.

- c. The number of years in the person's period of employment with the Employer commencing on or after July 1, 1973, but prior to the person's Normal Benefit Qualification Date, but excluding:
- (1) Periods during which the person is not an Employee;
  - (2) Periods during which the person is employed by the Employer in a position eligible for membership in the Oregon Public Employees Retirement System or the Oregon Public Service Retirement Plan, determined without regard to the 600 hours requirement for membership and the six-month waiting period for membership in such Retirement System or Retirement Plan; and
  - (3) Periods for which the person has been provided, for service with the Employer, (a) creditable service, prior service credit, or contributions to the person's member account, under the Oregon Public Employees Retirement System or (b) retirement credit, or contributions to the person's employee account, under the Oregon Public Service Retirement Plan, including periods for which such creditable service, prior service credit, contributions, or retirement credit are not provided because of the 600 hours requirement for membership or the six-month waiting period for membership.

In calculating a person's benefit formula amount, each completed month of employment shall be counted as one-twelfth of a year.

5.2. Minimum Benefit for Police Officers and Firefighters. The minimum benefit formula amount for any police officer or firefighter who becomes entitled to a retirement benefit hereunder after completing 15 years of coverage under this Plan shall be:

- a. \$100 per month if retirement occurs on or after the person's Normal Benefit Qualification Date, or
- b. The Actuarial Equivalent of a life annuity, as described in 7.3.a. (about the normal form of the amount developed by the benefit formula), of \$100 per month commencing as of the person's Normal Benefit Qualification Date, if retirement occurs prior to the person's Normal Benefit Qualification Date.

## SECTION 6. COST-OF-LIVING ADJUSTMENT

Each person's Base Benefit Amount as defined in 7.4., 8.5., 9.4., 12.4., 14.4., or 15.4. will be adjusted annually in accordance with the provisions below, and the resultant benefit amount will be referred to herein as the Adjusted Benefit Amount.

- 6.1. a. As of the first adjustment, the person's Adjusted Benefit Amount shall be equal to (1) the Base Benefit Amount, plus (2) such amount multiplied by the cost-of-living change factor.
- b. As of each subsequent adjustment, the person's Adjusted Benefit Amount shall be equal to (1) the Adjusted Benefit Amount as calculated on the previous July 1, plus (2) such amount multiplied by the cost-of-living change factor.
- 6.2. The cost-of-living change factor shall be equal to the percentage difference between the two Consumer Price Index averages for the two calendar years preceding the date the Adjusted Benefit Amount is being calculated, subject to a maximum annual increase of 2%, with carryover allowed to subsequent years of any increase in excess of 2% or any decrease. Both positive and negative changes will be included in the carryover factor, but no decrease in a person's benefit amount will ever occur.
- 6.3. The Consumer Price Index refers to the following index published by the Bureau of Labor Statistics of the United States Department of Labor: All Items, 1982-84 Base Period, All Urban Consumers, Annual Average for Portland-Salem, Oregon; and for periods preceding the availability of such index, the Regional Consumer Price Index for the Portland, Oregon area. Should the Consumer Price Index be revised by the Bureau of Labor Statistics, the cost-of-living change factor shall be adjusted so as to give effect to such revisions in an equitable manner.
- 6.4. a. The first cost-of-living adjustment will be included in the July 1, 1975, benefit payments, if applicable, and will reflect the increase, if any, in the Consumer Price Index between calendar year 1973 and calendar year 1974. The initial adjustment will apply to persons whose commencement of benefit payments began during the period July 1, 1973, through July 1, 1974.
- b. Thereafter, adjustments will be made on each July 1 for all benefit payments which had commenced not later than the July 1 prior to the July 1 on which the adjustment is being made.

## SECTION 7. NORMAL RETIREMENT BENEFIT

- 7.1. Each person who is covered under this Plan on the person's Normal Benefit Qualification Date and has incurred a Severance of Employment will be entitled to elect to receive a benefit on such date subject to the conditions contained herein.
- 7.2. The Normal Benefit Qualification Date will be the first day of the month coinciding with or next following the later of (1) the Effective Date of this Plan, or (2) (a) for police officers and firefighters, the date the person attains age 60, or (b) for all other Employees, the date the person attains age 65.
- 7.3. Such benefit will be a monthly benefit. The normal benefit form will be comprised of two forms of payments as described in 7.3.a. and 7.3.b. below and may be referred to as a Combination Cash Refund and Life Benefit.
  - a.
    - (1) Equal monthly payments on the first day of each month commencing effective as of the first day of the month coinciding with or next following the date validly elected and terminating with the last monthly payment prior to the person's death.
    - (2) The amount of the monthly payment which will be provided in this form will be the amount developed by the benefit formula on such person's Benefit Qualification Date.
  - b.
    - (1) Equal monthly payments on the first day of each month commencing effective as of the first day of the month coinciding with or next following the date validly elected and terminating with the last monthly payment prior to the person's death. If at the person's death the aggregate of the monthly payments made under this form does not equal or exceed the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, and Accrued Voluntary Contributions Balance as of the date such payments commenced, the difference will be returned to the person's Beneficiary in one sum.
    - (2) The amount of the monthly payment which will be provided in this form will be the Actuarial Equivalent of the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, and Accrued Voluntary Contributions Balance as of the date the benefit is being determined.
- 7.4. The total amount of the benefit provided by 7.3.a. and the portion of 7.3.b. representing the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, and Accrued Required Contributions Balance is the person's Base

Benefit Amount. Each person's monthly benefit amount will be recalculated annually in accordance with the provisions of Section 6. (about cost-of-living adjustment).

SECTION 8. EARLY RETIREMENT BENEFIT

- 8.1. Each person who is covered hereunder on or after the person's Early Benefit Qualification Date and has incurred a Severance of Employment is entitled to elect to receive an early benefit, subject to the conditions contained herein.
- 8.2. The Early Benefit Qualification Date will be the first day of the month coinciding with or next following (1) the date a police officer or firefighter has attained age 50, or (2) the date any other Employee has attained age 55. However, for purposes of Section 4. (about contributions), a person's Early Benefit Qualification Date shall not occur before the person's Severance of Employment.
- 8.3. Such benefit will be in the normal benefit form described in Section 7. (about normal retirement benefit) except that payments will commence effective as of the first day of any month on or after the Early Benefit Qualification Date as elected by the person in a valid election of the early retirement benefit.
- 8.4. Initially, each early benefit payment will be equal to 8.4.a. plus 8.4.b. below:
  - a. The amount developed by the benefit formula on the effective date in Section 8.3. multiplied by the appropriate percentage from the following table. Such percentage is based upon the person's age on the effective date in Section 8.3. If the person's age is not an exact number of years, a linear interpolation will be made.

<u>Police Officer or Firefighter</u>		<u>Other Employees</u>	
<u>Age</u>	<u>Percentage</u>	<u>Age</u>	<u>Percentage</u>
55	100.0%	60	100.0%
54	92.8%	59	100.0%
53	85.6%	58	100.0%
52	78.4%	57	78.4%
51	71.2%	56	71.2%
50	64.0%	55	64.0%

However, there will be no reduction in benefits for a police officer or firefighter who retires after attaining age 50 and completing 25 years of employment. In addition, there will be no reduction in benefits for any other Employee who retires after attaining age 55 and completing 30 years of covered service.

- b. The benefit described in 7.3.b.
- 8.5. The total amount of the benefit provided by 8.4.a. and the portion of 8.4.b. representing the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, and Accrued Required Contributions Balance is the person's Base

Benefit Amount. Each person's monthly benefit amount will be recalculated annually in accordance with the provisions of Section 6. (about cost-of-living adjustment).

SECTION 9. LATE RETIREMENT BENEFIT

- 9.1. Each person who is covered hereunder after the person's Normal Benefit Qualification Date and has incurred a Severance of Employment will receive a benefit on the person's Late Benefit Qualification Date, provided the person is living on that date.
- 9.2. The Late Benefit Qualification Date will be the person's last date of coverage hereunder following the person's Normal Benefit Qualification Date.
- 9.3. Initially, each late benefit payment will be equal to 9.3.a. plus 9.3.b. below:
  - a. The benefit described in 7.3.a. determined as of the person's Normal Benefit Qualification Date multiplied by the appropriate percentage from the following table. Such percentage is based upon the number of years by which the person's Late Benefit Qualification Date is subsequent to the person's Normal Benefit Qualification Date. If such is not an exact number of years, a linear interpolation will be made.

<u>Number of Years</u>	<u>Percentage</u>
0	100.0%
1	107.2%
2	114.4%
3	121.6%
4	128.8%
5	136.0%

For each additional year after five by which the person's Late Benefit Qualification Date is subsequent to the person's Normal Benefit Qualification Date, the percentage applied to determine the person's benefit will be increased 3.6%.

However, for Plan Years beginning after June 30, 1988, the amount determined under this 9.3.a. for a participant with an hour of service with the Employer after June 30, 1988, shall, if greater than the amount determined under the above provisions of this 9.3.a., be the benefit described in 7.3.a. determined as of the person's Late Benefit Qualification Date but by excluding for purposes of 5.1.c. the person's periods of employment, if any, with the Employer after the person's Normal Benefit Qualification Date and before July 1, 1988.

- b. The benefit described in 7.3.b.
- 9.4. The total amount of the benefit provided by 9.3.a. and the portion of 9.3.b. representing the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, and Accrued Required Contributions Balance is the person's Base Benefit Amount. Each person's monthly benefit amount will be recalculated annually in accordance with the provisions of Section 6. (about cost-of-living adjustment).



## SECTION 10. ADDITIONAL RETIREMENT BENEFIT

- 10.1. For each Eligible Employee (which is defined as an Employee who is retired or disabled on or after July 1, 1992, who is receiving a retirement or disability benefit from the Plan, had earned seven years of membership in this Plan at the time of retirement or disability, and has attained age 65), the Employer shall provide the following:
- a. Effective before July 1, 1994, for each Eligible Employee who is retired or disabled on or after July 1, 1992, and before July 1, 1994: Of the monthly cost of coverage for the Employee under a health care insurance contract entered into with the Employer that provides coverage after retirement, an amount equal to the total monthly cost of that coverage or \$100, whichever is less, shall be paid from the Retirement Health Insurance Account (RHIA). Payment shall begin the first of the month coinciding with or next following the later of the Eligible Employee's 65th birthday or date of retirement. Payments shall terminate at the earliest of the date of the Eligible Employee's death, election by the Eligible Employee to terminate coverage, or cessation of premium required payments by the Eligible Employee.
  - b. Effective on and after July 1, 1994, for each Eligible Employee who is retired or disabled on or after July 1, 1994: Of the monthly cost of coverage for the Employee under a health care insurance policy that provides coverage after retirement, an amount equal to the total monthly cost of that coverage or \$100, whichever is less, shall be paid from the RHIA. Payment shall begin the first of the month coinciding with or next following the later of the Eligible Employee's 65th birthday or date of retirement. Payments shall terminate at the earliest of the date of the Eligible Employee's death, election by the Eligible Employee to terminate coverage, or cessation of premium required payments by the Eligible Employee.
  - c. For purposes of this Section 10., the cost of coverage is the amount of the Eligible Employee's premium for the coverage.
  - d. All payments from the RHIA shall be made (1) directly to the insurer, (2) directly to the Employer as this Plan's agent for prompt transmission to the insurer, or (3) to the Eligible Employee upon proof that the contract, policy, or Medicare coverage is in force and that the Eligible Employee has paid the premium for the coverage for which the payment is made.
- 10.2. The benefits provided by this Section 10. ("Benefits") shall be paid from the RHIA, which is hereby established as a separate account in this Plan.
- a. The RHIA shall be funded with contributions by the Employer that are reasonable and ascertainable in amount. The Employer shall make such contributions in the amount and by the time required to pay Benefits plus any expenses of administering the RHIA. At the time of making any contribution to the Plan the Employer shall designate the

portion thereof made to the RHIA. However, such contributions shall be made only to the extent that the amount of such contributions, when added to the amount of contributions to this Plan to provide any life insurance protection under this Plan, would not exceed 25% of the total contributions to this Plan (other than any contributions to fund any past service credits), determined on an aggregate basis since July 1, 1992. In the event an individual's interest in the RHIA is forfeited prior to termination of this Plan, an amount equal to the amount of the forfeiture must be applied as soon as possible to reduce the Employer's contributions to the RHIA. Benefits shall be paid only to the extent they can be funded from the RHIA within such limitation. Neither this Plan nor the Employer assumes any obligation to pay Benefits to the extent they cannot be so funded.

- b. The RHIA's allocable share of the earnings and losses of the assets of this Plan from the prior valuation date shall be determined by the Employer in a reasonable manner and be allocated to the RHIA as of each valuation date, which shall be each June 30 and such additional dates as are determined by the Employer.
- c. Despite any other provision of this Plan:
  - (1) Prior to the satisfaction of all liabilities for providing Benefits, no amount in the RHIA shall be used or diverted for any purpose other than providing Benefits and paying the expenses of administering the RHIA; and no amendment to this Plan may provide otherwise.
  - (2) Any amount remaining in the RHIA upon satisfaction of all liabilities for providing Benefits and paying the expenses of administering the RHIA shall be returned to the Employer.

10.3. This Section 10. is effective on and after July 1, 1992.

## SECTION 11. RETIREMENT OPTIONS

- 11.1. Persons entitled to a normal, early, or late retirement benefit hereunder may elect to receive such benefit in any one of the following optional annuity forms, in lieu of the normal benefit form:
- a. For benefit starting dates before January 1, 2006, any annuity form then available under the Policy.
  - b. For benefit starting dates after December 31, 2005, any of the following annuity forms:
    - (1) **Life Benefit:** Equal monthly payments on the first day of each month commencing effective as of the first day of the month coinciding with or next following the date validly elected and terminating with the last monthly payment prior to the person's death.
    - (2) **Life Benefit with Years Certain:** Equal monthly payments on the first day of each month commencing effective as of the first day of the month coinciding with or next following the date validly elected and terminating with the last monthly payment prior to the person's death and, if the person dies before the end of the certain period, equal monthly payments in the same amount to the Beneficiary for the remaining balance of the certain period. The certain period may be 5, 10, 15, or 20 years as the person elects when electing this form.
    - (3) **Full Cash Refund and Life Benefit:** Equal monthly payments on the first day of each month commencing effective as of the first day of the month coinciding with or next following the date validly elected and terminating with the last monthly payment prior to the person's death and, upon the person's death, a single sum payment to the Beneficiary of any excess of the Actuarial Equivalent single sum value of this form at the date as of which this form commences over the sum of the monthly annuity payments made to the person.
    - (4) **Joint and Survivor Life Benefit:** Equal monthly payments on the first day of each month commencing effective as of the first day of the month coinciding with or next following the date validly elected and terminating with the last monthly payment prior to the person's death and, after the person dies, equal monthly payments, in the amount of 50%, 66-2/3%, 75%, or 100% of the monthly payment during the person's life, as the person elects when electing this form, to the person's spouse (if living) and terminating with the last monthly payment prior to the spouse's death.

- (5) Joint and Survivor Life Benefit with Pop-up: Same as the Joint and Survivor Life Benefit, but if the person's spouse dies while the person is living, the amount of the monthly payment increases, starting on the first day of the month next following the date the spouse dies, to the amount of the monthly payment the person would have received under the normal benefit form had the normal benefit form commenced to the person as of the date as of which the Joint and Survivor Life Benefit with Pop-up commenced.

For purposes of the Joint and Survivor Life Benefit and the Joint and Survivor Life Benefit with Pop-up, the person's spouse is the person, if any, of the opposite sex to whom the person is married (i.e. participating in a legal union between one man and one woman as husband and wife) on the first day of the month coinciding with or next following the date for which valid election is made (i.e. on the date as of which the Joint and Survivor Life Benefit or the Joint and Survivor Life Benefit with Pop-up commences).

- 11.2. Payments under any such optional annuity form will be the Actuarial Equivalent of the benefit such person would have received had such person not elected the optional annuity form.

## SECTION 12. TOTAL AND PERMANENT DISABILITY BENEFIT

- 12.1. If a person becomes totally and permanently disabled on or after the person's Disability Benefit Qualification Date and before the person's Normal Benefit Qualification Date, and (1) while covered hereunder, (2) while an Employee, and (3) while not employed by the Employer in a position eligible for membership in the Oregon Public Employees Retirement System or the Oregon Public Service Retirement Plan, determined without regard to the 600 hours requirement for membership and the six-month waiting period for membership, such person will be entitled to elect to receive, in lieu of any other benefit under this Plan, a disability benefit on the date determination of total and permanent disability is made, provided such person is not entitled to elect any other benefit which is more than an Actuarial Equivalent of the benefit which would be provided under this Section 12. and subject to the other conditions contained herein.
- 12.2. Totally and permanently disabled means, as to an Employee, that the Employee is disabled as a result of sickness or injury to the extent that the Employee is completely prevented from performing any occupation for which the Employee is qualified.
- 12.3. The Employer will determine the existence, extent, cause, and continuance of disability, from time to time on a basis precluding individual selection and without discrimination among persons in like circumstance and any such determination shall be final and conclusive.
- 12.4. The amount of each disability payment will be determined in accordance with the appropriate provisions below in this Section 12. That part of the monthly payment representing the amount developed by the benefit formula, any additional contributions made by the Employer with respect to the minimum disability benefit or the special disability benefit for police officers and firefighters, and a person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, and Accrued Required Contributions Balance is the person's Base Benefit Amount. Each person's monthly benefit amount will be recalculated annually in accordance with the provisions of Section 6. (about cost-of-living adjustment).
- 12.5. If a person receiving monthly disability payments under any of the provisions in this Section 12. should return to work:
  - a. The annuity reserve representing the benefit provided by the person's Accrued Employee Pick-Up Contributions Balance will be credited to the Fund and comprise the person's Accrued Employee Pick-Up Contributions Balance as of the date the person returns to work;
  - b. The annuity reserve representing the benefit provided by the person's Accrued Supplemental Employer Contributions Balance will be credited to the Fund and comprise the person's Accrued Supplemental Employer Contributions Balance as of the date the person returns to work;

- c. The annuity reserve representing the benefit provided by the person's Accrued Required Contributions Balance will be credited to the Fund and comprise the person's Accrued Required Contributions Balance as of the date the person returns to work; and
- d. The annuity reserve representing the benefit provided by the person's Accrued Voluntary Contributions Balance will be credited to the Fund and comprise the person's Accrued Voluntary Contributions Balance as of the date the person returns to work.

For the purpose of applying this 12.5. to disability payments under 12.13., the annuity reserve is the amount that would be returned to the person's Beneficiary under 7.3.b. (about the normal form of payment of Balances) with respect to the benefit provided by the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, or Accrued Voluntary Contributions Balance, as the case may be, had the person instead died on the date the person returns to work.

For Police Officers and Firefighters

- 12.6. The Disability Benefit Qualification Date for a police officer or firefighter shall be (1) the date on which the person's disability is determined to be total and permanent if the disability is service-connected, or (2) the date on which the person has completed a period of 10 years of employment if the disability is not service-connected. The amount of each disability payment will be equal to 12.6.a. plus 12.6.b. plus 12.6.c. plus 12.6.d. below:
- a.
    - (1) 64% of the amount the person would have received as an early retirement benefit at age 55 as developed by the benefit formula assuming the person had continued to accrue service credit at the same rate of monthly earnings until such date, or
    - (2) The amount the person would have received as an early retirement benefit on the date the benefit is being determined, as developed by the benefit formula, if the person becomes disabled after age 55.
  - b. The amount payable in the normal benefit form described in 7.3.b. (about the normal form of payment of Balances) that is the Actuarial Equivalent of the person's Accrued Supplemental Employer Contributions Balance as of the date the benefit is being determined.
  - c. The amount payable in the normal benefit form described in 7.3.b. that is the Actuarial Equivalent of the person's Accrued Required Contributions Balance as of the date the benefit is being determined.

- d. The amount payable in the normal benefit form described in 7.3.b. that is the Actuarial Equivalent of the person's Accrued Voluntary Contributions Balance as of the date the benefit is being determined.
- 12.7. If the sum of 12.6.a. plus 12.6.b. plus 12.6.c. above is less than \$100, the monthly disability payment will be equal to \$100, deemed to be made first from funds representing 12.6.c. above, then from funds representing 12.6.b. above, then from funds representing 12.6.a. above, and then from funds representing additional contributions made by the Employer. The benefit provided by 12.6.d. above is in addition to this amount.
- 12.8. In lieu of either benefit described in 12.6. or 12.7. above, a police officer or firefighter whose total and permanent disability is service-connected may elect to receive a monthly disability benefit equal to 40% of police officer's or firefighter's monthly earnings as of the date the benefit is determined, reduced by any benefits the person is receiving under the Oregon Workers' Compensation Act, ORS chapter 656. The monthly payment will be deemed to be made first from funds representing 12.6.c. above, then from funds representing 12.6.b. above, then from funds representing 12.6.a. above, and then from funds representing additional contributions made by the Employer. The benefit provided by 12.6.d. above is in addition to this amount.
- 12.9. The portion of the benefit described in 12.6.a. above will be in the normal benefit form described in 7.3.a. (about the normal form of the amount developed by the benefit formula); the portion of the \$100 minimum benefit representing 12.6.a. above and any additional contributions made by the Employer will be in the normal benefit form described in 7.3.a.; the portion of the benefit described in 12.8. above (about special benefit for police officers and firefighters) representing additional contributions made by the Employer will be in the normal benefit form described in 7.3.a.; except that monthly payments will commence effective as of the first day of the month coinciding with or next following the date as of which total disability is determined to be permanent and continuing thereafter through the first day of the month preceding the earliest of the following dates:
- a. The person's Normal Benefit Qualification Date;
  - b. The date of the person's death;
  - c. The date the Employer determines the person is no longer totally and permanently disabled;
  - d. The date as of which the Fund is exhausted.
- 12.10. If monthly payments cease because of 12.9.a. above, the Employee shall be eligible for a retirement benefit in the normal form of the same amount as the Employee was receiving as a disability payment. Prior to such cessation, cash payments will be made from the Fund.

- 12.11. The portion of the benefit described in 12.6.b., 12.6.c., and 12.6.d. above will be in the normal benefit form described in 7.3.b. (about the normal form of payment of Balances).
- 12.12. If a police officer or firefighter becomes totally and permanently disabled (as defined in 12.2.) from a non-service connected disability prior to completing a period of 10 years of employment, while covered hereunder and before the person's Normal Benefit Qualification Date, such person will be entitled to elect to receive the benefit described in 12.13. through 12.16. below (about disability benefits for all other Employees).

For All Other Employees

- 12.13. The Disability Benefit Qualification Date for benefits determined under this 12.13. through 12.16. shall be the date on which the person's disability is determined to be total and permanent. The amount of each disability payment will be equal to 12.13.a. plus 12.13.b. plus 12.13.c. plus 12.13.d. plus 12.13.e. below:
- a. The Actuarial Equivalent of the amount developed by the benefit formula as of the date the benefit is being determined.
  - b. The amount payable in the normal benefit form described in 7.3.b. (about the normal form of payment of Balances) that is the Actuarial Equivalent of the person's Accrued Employee Pick-Up Contributions Balance as of the date the benefit is being determined.
  - c. The amount payable in the normal benefit form described in 7.3.b. (about the normal form of payment of Balances) that is the Actuarial Equivalent of the person's Accrued Supplemental Employer Contributions Balance as of the date the benefit is being determined.
  - d. The amount payable in the normal benefit form described in 7.3.b. that is the Actuarial Equivalent of the person's Accrued Required Contributions Balance as of the date the benefit is being determined.
  - e. The amount payable in the normal benefit form described in 7.3.b. that is the Actuarial Equivalent of the person's Accrued Voluntary Contributions Balance as of the date the benefit is being determined.
- 12.14. The portion of the benefit described in 12.13.a. above will be in the normal benefit form described in 7.3.a. (about the normal form of the amount developed by the benefit formula), except that monthly payments will commence effective as of the first day of the month coinciding with or next following the date as of which total disability is determined to be permanent and continuing thereafter through the first day of the month preceding the earliest of the following dates:
- a. The person's Normal Benefit Qualification Date;



- b. The date of the person's death;
  - c. The date the Employer determines the person is no longer totally and permanently disabled;
  - d. The date as of which the Fund is exhausted.
- 12.15. If monthly payments cease because of 12.14.a. above, the Employee shall be eligible for a retirement benefit in the normal form of the same amount as the Employee was receiving as a disability payment. Prior to such cessation, cash payments will be made from the Fund.
- 12.16. The portion of the benefit described in 12.13.b., 12.13.c., 12.13.d. and 12.13.e. above will be in the normal benefit form described in 7.3.b. (about the normal form of payment of Balances).

## SECTION 13. DEATH BENEFIT BEFORE RETIREMENT

- 13.1. If a person who is not receiving disability payments hereunder dies while covered under this Plan, or if a person dies while in the deferred period prior to the commencement of monthly payments under the severance benefit, the person's Beneficiary may elect to receive in one lump sum payment an amount equal to the sum of the following as soon as administratively practicable after the person's death or at such later date as the Beneficiary elects consistent with 20.1. (about Required Starting Date):
- a. The person's Accrued Employee Pick-Up Contributions Balance.
  - b. An amount equal to the person's Accrued Employee Pick-Up Contributions Balance provided by the Employer.
  - c. The person's Accrued Supplemental Employer Contributions Balance.
  - d. An amount equal to the person's Accrued Supplemental Employer Contributions Balance provided by the Employer.
  - e. The person's Accrued Required Contributions Balance.
  - f. An amount equal to the person's Accrued Required Contributions Balance provided by the Employer.
  - g. The person's Accrued Voluntary Contributions Balance.
- 13.2. If a person described in 15.7. dies before receiving the benefit provided in 15.7., the person's Beneficiary may elect to receive in one lump sum payment an amount equal to the benefit provided in 15.7. as soon as administratively practicable after the person's death or at such later date as the Beneficiary elects consistent with 20.1. (about Required Starting Date).

## SECTION 14. DEATH BENEFIT WHILE RETIRED OR DISABLED

- 14.1. If a police officer or firefighter dies while receiving any monthly benefit under this Plan, including disability or early, normal, or late retirement or severance benefits hereunder, and there is a surviving spouse or a surviving child or children younger than age 18, the survivor may elect to receive a death benefit as described in this Section 14. The benefit is a monthly benefit and is payable in the following order of preference: first to the surviving spouse; second to any child or children surviving the spouse in equal shares, ceasing for each child upon the child attaining age 18. The amount being paid to a child who attains age 18 will subsequently be paid in equal shares to the remaining children.
- 14.2. The amount of the monthly payment will be equal to 25% of the sum of (1) the amount the person was receiving pursuant to the benefit formula, plus (2) the amount the person was receiving which was attributable to the person's Accrued Supplemental Employer Contributions Balance and Accrued Required Contributions Balance, including any cost-of-living adjustments, after converting the monthly payments to the Actuarial Equivalent amount that could be paid as a life annuity.
- 14.3. The death benefit described in this Section 14. is in addition to any death benefit to which the Beneficiary may be entitled because of the form of annuity elected by the person for the payment of the person's benefit formula amount or the person's Accrued Supplemental Employer Contributions Balance and Accrued Required Contributions Balance, and is in addition to any death benefit provided by the form of annuity for the payment of the person's Accrued Voluntary Contributions Balance.
- 14.4. The monthly benefit amount will be recalculated annually in accordance with the provisions of Section 6. (about cost-of-living adjustment), by treating the monthly amount as the Base Benefit Amount and treating the July 1 prior to the date the first of such monthly benefit amounts is due as the date the benefit commences.

## SECTION 15. SEVERANCE BENEFIT

- 15.1. If a person's employment terminates (as described in Section 3., about coverage provisions) for reasons other than death and while the person is covered under this Plan prior to the person's Early Benefit Qualification Date and after completing a period of five years of coverage, such person will be entitled to a severance benefit on the date of such termination subject to the conditions contained herein. Effective February 1, 2000, "five years of coverage" in the preceding sentence is replaced with "60 complete calendar months as an Employee".
- 15.2. Such benefit will be in the normal benefit form described in Section 7. (about normal retirement benefit) except that payments will be deferred until the first day of the month coinciding with or next following the person's Normal Benefit Qualification Date. However, if such person's death occurs prior to the annuity commencement date, the person's Beneficiary will be entitled to the benefit described in Section 13. (about death benefit before retirement).
- 15.3. Initially, the amount of the monthly payment under the severance benefit will be equal to the sum of 15.3.a. plus 15.3.b. below:
  - a. The amount developed by the benefit formula as of such person's termination of employment.
  - b. The amount that is the Actuarial Equivalent of the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, and Accrued Voluntary Contributions Balance as of the date the benefit is being determined.
- 15.4. The total amount of the benefit provided by 15.3.a. and the portion of 15.3.b. representing the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, and Accrued Required Contributions Balance is the person's Base Benefit Amount. Annually after the commencement of monthly payments, each person's monthly benefit amount will be recalculated in accordance with Section 6. (about cost-of-living adjustment).
- 15.5. In lieu of receiving monthly payments commencing effective as of the first day of the month coinciding with or next following a person's Normal Benefit Qualification Date, the person may elect to commence receiving reduced payments under Section 8. effective as of the first day of a month following such election, but payments may not commence prior to the person's Early Benefit Qualification Date. Once made, the election is irrevocable.
- 15.6. In lieu of any other benefit under this Plan, a person may elect to receive the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, and Accrued Voluntary Contributions

Balance as of termination in one lump sum payment. All other benefits under this Plan will thereby be forfeited.

- 15.7. In lieu of any other benefit under this Plan, any person who has not completed five years of coverage may elect to receive the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, and Accrued Voluntary Contributions Balance in one lump sum payment as soon as administratively practicable after Severance of Employment or at such later date as the person elects consistent with 20.1. (about Required Starting Date); except that effective after December 31, 2005, such a person will receive such lump sum payment no later than as soon as administratively practicable on or after the later of the person's 62d birthday or the person's Normal Benefit Qualification Date. Effective February 1, 2000, "five years of coverage" in the preceding sentence is replaced with "60 complete calendar months as an Employee".

SECTION 16. TAX REMEDY BENEFIT

- 16.1. This Section 16. implements the requirement that the Employer provide increases in benefits for certain police officers and firefighters that are equal to or the actuarial equivalent of certain increases in benefits under the Oregon Public Employees Retirement System granted in 1991 and 1995 to certain police officers and firefighters. That requirement and those increases are provided in ORS 237.635 and 237.637 and in 1991 Oregon Laws chapter 796 and 1995 Oregon Laws chapter 569.
- 16.2. As soon as administratively practicable after April 21, 1999, this Plan shall pay the following lump sums to the following persons:

<u>Lump Sum Amount</u>	<u>Payee</u>
\$ 776.54	Dennis Kunkel
210.64	Eldon Banegas
4,888.55	Alvin Allen

- 16.3. Effective May 1, 1999, the monthly benefit payable to Alvin Allen shall be increased from \$412.21 to \$452.98.
- a. For purpose of calculating Alvin Allen's Adjusted Benefit Amount under Section 6. as of July 1, 1999, his Adjusted Benefit Amount as calculated on the previous July 1 shall be \$452.98.
- b. Alvin Allen shall have no right, contractual or otherwise, to continue receiving the increase provided in this 16.3. or any adjustment under Section 6. by reason of this 16.3. The Employer may in the Employer's absolute discretion amend this Plan to eliminate such increase and any adjustment under Section 6. by reason of this 16.3., but any such amendment shall not apply to amounts payable before the Employer adopts the amendment.

## SECTION 17. PAYMENT OF BENEFITS

- 17.1. Before any payment shall be made to a person covered hereunder, the person must make written election of the benefit under which such payment will be made on a form satisfactory to the Insurance Company (for benefit starting dates before January 1, 2006) or to the Employer (for benefit starting dates after December 31, 2005).
- 17.2. No election of a benefit shall be deemed valid nor shall any payment be due until such election has actually been made, and no election shall be effective retroactively except as allowed by the Employer. No change in the form of benefit to be paid to a person may be made after the person receives the first payment or, if earlier, after the purchase of an annuity contract to pay the benefit.
- 17.3. For benefit starting dates before January 1, 2006, if any benefit, portion of a benefit or combination of benefits to be provided a person under this Plan can be provided in one of the forms of annuity described in the Policy, or any combination thereof, such benefit will be so provided unless the Insurance Company consents to pay such benefits directly from the Fund, or unless a lump sum payment is specifically provided for by the terms of this Plan.

## SECTION 18. EXCLUSIONS AND LIMITATIONS

- 18.1. Prior to the termination of this Plan or the discontinuance of Employer contributions hereunder, any person convicted under penal law of any act of fraud or dishonesty or any other act involving moral turpitude which is related directly or indirectly to the person's employment with the person's employer shall forfeit any and all benefits provided or to be provided from contributions made by the Employer.
- 18.2. No payment or benefit shall be provided under this Plan unless and until the Fund is adequate to provide for it. If the Fund is insufficient, neither the Employer nor the Funding Agency shall be liable to provide such benefits.
- 18.3. No payment shall be made or benefit provided to any person hereunder while such person is employed by the Employer unless such payment or benefit is provided to such person as a Beneficiary or Contingent Annuitant.



## SECTION 19. TERMINATION OF PLAN

- 19.1. The Employer hopes and expects to continue this Plan indefinitely and every effort has been made to arrange this Plan so that it will meet future conditions. However, in order to protect the Employer and the Employees against unforeseen conditions, the right to change, amend, or terminate this Plan is necessarily reserved by the Employer. Any termination of this Plan by the Employer shall be by written action of the Employer's governing body. Any change or amendment of this Plan by the Employer shall be by written action of the Employer's governing body or City Administrator. However, the City Administrator may change or amend this plan only to:
- a. Clarify this Plan;
  - b. Facilitate the administration of this Plan; or
  - c. Make changes adapting this Plan to the requirements of law, changes in law, or the terms of a collective bargaining agreement,
- all as determined in the discretion of the City Administrator.
- 19.2. No change or amendment shall:
- a. Reduce any covered Employee's interest in the Fund which is then vested by the terms of this Plan; or
  - b. Divert any portion of the Fund to any purpose other than for the exclusive benefits of persons covered under this Plan or their Contingent Annuitants or Beneficiaries, and paying the expenses of administering this Plan and the Fund, at any time prior to the satisfaction of all fixed and contingent obligations under this Plan with respect to persons covered under this Plan.
- 19.3. No benefits shall accrue after the complete or partial termination of this Plan. A partial termination of this Plan shall apply only to those participants whose benefits are affected by such partial termination. The rights of all participants to benefits accrued to the date of complete or partial plan termination are nonforfeitable. If the Fund is insufficient to provide all such benefits, the Fund shall be allocated to provide benefits in the following manner and order of preference, and the amounts allocated shall be applied to pay or purchase annuities in the normal form for such persons. However, none of the optional forms of annuity otherwise permitted under this Plan shall be available.
- a. An amount equal to the person's Accrued Employee Pick-Up Contributions Balance, Accrued Supplemental Employer Contributions Balance, Accrued Required Contributions Balance, and Accrued Voluntary Contributions Balance under this Plan

shall be allocated to any person covered under this Plan who has made contributions or who has had contributions made on the person's behalf.

- b. Next an amount necessary to provide an annuity pursuant to the benefit formula shall be allocated to any person who had elected a benefit prior to termination of this Plan but who had not yet been issued an annuity under this Plan.
- c. Next an amount necessary to provide an annuity pursuant to the benefit formula shall be allocated to any person who was entitled to elect a benefit with an immediate annuity commencement date under this Plan on the date of its termination.
- d. Next an amount necessary to provide an annuity pursuant to the benefit formula shall be allocated to any other individual entitled to elect a benefit under this Plan, had the individual terminated the person's employment on the date of the termination of this Plan.
- e. Next the amount (if any) necessary to raise the benefit to which the person is entitled under the provisions of this Plan to the full amount applicable under the benefit formula on the person's last day of coverage hereunder shall be allocated to all persons.
- f. Next any balance remaining in the Fund after all the preceding allocations have been made and after provision has been made for any other fixed and contingent obligation existing hereunder as a result of a difference between actual and assumed actuarial experience, may be returned in cash to the Employer.

Any allocation indicated above in this 19.3. shall be reduced or eliminated with respect to a person to the extent to which provision for the benefit which such allocation would represent has previously been made.

- 19.4. If the Fund should prove inadequate to complete the allocation set forth in one of 19.3.a. through 19.3.f. above, such allocation shall be made by multiplying each individual allocation which would have been made pursuant to that one of 19.3.a. through 19.3.f. above had the Fund been adequate by a fraction with a numerator equal to the amount available for allocation and with a denominator equal to the amount which would have been required to complete the allocation had the Fund been adequate.
- 19.5. Notwithstanding anything contained herein to the contrary, if the Internal Revenue Service determines that this Plan does not qualify under IRC Section 401 or 403(a) by the earlier of one year from the initial submission of this Plan for review by the Internal Revenue Service and the period ending on the second December 31st following the Effective Date of this Plan, the Employer may terminate this Plan, in which event no person or beneficiary shall have any right or claim to any benefit under this Plan except to the extent that such benefit may have already been paid or provided and any balance remaining in the Fund may be returned to the Employer. In no event, however, shall any part of the Fund, except that part resulting from

erroneous actuarial computation or except as provided in 21.13. (about return of mistaken contributions), be returned to the Employer or be used for or diverted to any purposes other than the exclusive benefit of the participants or their beneficiaries, and paying the expenses of administering this Plan and the Fund, after the date the Internal Revenue Service has determined that this Plan constitutes a qualified retirement plan pursuant to IRC Section 401 or 403(a).

## SECTION 20. REQUIRED PROVISIONS

### 20.1. Required Starting Date.

- a. The entire interest of each participant in this Plan:
  - (1) Will be distributed to the participant no later than the Required Starting Date;  
or
  - (2) Will be distributed, starting not later than the Required Starting Date, in accordance with Treasury regulations, over the life of the participant or over the lives of the participant and a Designated Beneficiary (or over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a Designated Beneficiary).
- b. If the distribution of the participant's interest has begun in accordance with 20.1.a.(2) and the participant dies before the participant's entire interest has been distributed to the participant, the remaining portion of the participant's interest will be distributed at least as rapidly as under the method of distributions being made under 20.1.a.(2) as of the date of the participant's death.
- c. If a participant dies before the distribution of the participant's interest has begun in accordance with 20.1.a.(2), the entire interest of the participant will be distributed within five years after the death of the participant. However, the five-year rule does not apply to any portion of the participant's interest payable to (or for the benefit of) a Designated Beneficiary; and not later than one year after the date of the participant's death or such later date as may be prescribed by Treasury regulations distributions (in accordance with Treasury regulations) of such portion will start over the life of the Designated Beneficiary (or over a period not extending beyond the life expectancy of the Designated Beneficiary).
- d. With respect to a Designated Beneficiary who is the participant's surviving spouse:
  - (1) The date on which the distributions are required to start for purposes of the exception to the five-year rule in 20.1.c. will not be earlier than the date on which the participant would have attained age 70½; and
  - (2) If the surviving spouse dies before the distributions to the spouse start, 20.1.b. and 20.1.c. will be applied as if the spouse were the participant.

- e. For purposes of this 20.1.:
- (1) "Required Starting Date" means April 1 of the calendar year following the later of (a) the calendar year in which the participant attains age 70½ or (b) the calendar year in which the participant retires.
  - (2) "Designated Beneficiary" means any individual designated as a beneficiary by the participant.
  - (3) "Spouse" and "surviving spouse" include an alternate payee who is the participant's former spouse.
  - (4) In accordance with Treasury regulations, any amount paid to a child will be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under Treasury regulations).
  - (5) Any distribution required under the incidental death benefit requirements of IRC Section 401(a) will be treated as a distribution required under this 20.1.
- f. Despite any contrary provision of this Plan, this Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the following proposed, final, and temporary Treasury regulations:
- (1) With respect to distributions made for calendar years beginning before January 1, 2001, the regulations under IRC Section 401(a)(9) that were proposed in 1987, including Proposed Treasury Regulation Section 1.401(a)(9)-2.
  - (2) With respect to distributions made for the calendar year beginning on January 1, 2001, the regulations under IRC Section 401(a)(9) that were proposed on January 17, 2001.
  - (3) With respect to distributions made for calendar years beginning on or after January 1, 2002, Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9, and also Treasury Regulation Section 1.401(a)(9)-6T for the period it applies.
- g. This 20.1.:
- (1) Overrides any distribution options in this Plan inconsistent with IRC Section 401(a)(9).

- (2) Applies to Plan Years beginning after December 31, 1986, or such later date provided in Public Law No. 98-369, Section 521(d)(5) (about collective bargaining agreements).

20.2. Annual Compensation Limit. Except for purposes of 20.6. (about limit on benefits), 20.7. (about limit on annual additions), and 20.8. (about combined limit on benefits and annual additions), the annual compensation taken into account for each participant in determining plan allocations and benefit accruals under this Plan for any Plan Year is limited to the annual compensation limit under IRC Section 401(a)(17)(A) (\$150,000 for Plan Years beginning before January 1, 2002, and \$200,000 for Plan Years beginning after December 31, 2001), as adjusted for increases in the cost of living in accordance with IRC Section 401(a)(17)(B). For Plan Years beginning before January 1, 1997, in determining the compensation of a participant the rules of IRC Section 414(q)(6) shall apply, except that in applying such rules the term "family" shall include only the spouse of the participant and any lineal descendants of the participant who have not attained age 19 before the close of the Plan Year. The requirements of IRC Section 401(a)(17) and the Treasury regulations thereunder are incorporated into this Plan by this reference. This 20.2. applies to Plan Years beginning after December 31, 1995.

20.3. Direct Rollovers. Despite any contrary provision of this Plan that would otherwise limit a distributee's election under this 20.3., a distributee may elect, at the time and in the manner prescribed by the Employer, to have any portion of an eligible rollover distribution made after December 31, 1992, paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The following definitions shall apply to this 20.3.:

- a. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, but not including:
  - (1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
  - (2) Any distribution to the extent such distribution is required under IRC Section 401(a)(9);
  - (3) For distributions made before January 1, 2002, the portion of any distribution that is not includable in gross income;
  - (4) For distributions made after December 31, 2001, any distribution that is made upon hardship of the Employee; and
  - (5) Unless the Employer affirmatively elects to the contrary, any minimum amount permitted by IRC Section 401(a)(31) and Treasury regulations issued

thereunder that is permitted to be excluded from the definition of eligible rollover distribution.

- b. Eligible retirement plan: An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:
- (1) An individual retirement account described in IRC Section 408(a) or an individual retirement annuity described in IRC Section 408(b);
  - (2) A qualified plan described in IRC Section 401(a) or 403(a);
  - (3) For distributions made after December 31, 2001, an annuity contract described in IRC Section 403(b); or
  - (4) For distributions made after December 31, 2001, an eligible deferred compensation plan described in IRC Section 457(b) maintained by an eligible employer described in IRC Section 457(e)(1)(A) and that agrees to separately account for amounts transferred into such plan from this Plan.

However:

- (5) In the case of an eligible rollover distribution to the surviving spouse in a distribution made before January 1, 2002, an eligible retirement plan is only an individual retirement account described in IRC Section 408(a) or individual retirement annuity described in IRC Section 408(b).
  - (6) In the case of a direct rollover of an amount that is not includable in gross income in a distribution made after December 31, 2001, an eligible retirement plan is only (a) a qualified defined contribution plan described in IRC Section 401(a) or 403(a) that agrees to separately account for amounts transferred in the direct rollover, including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable, (b) an individual retirement account described in IRC Section 408(a), or (c) an individual retirement annuity described in IRC Section 408(b).
- c. Distributee: A distributee includes a participant. In addition, the participant's surviving spouse and the participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
- d. Direct rollover: A direct rollover is a payment by this Plan to the eligible retirement plan specified by the distributee.

Such distribution may begin less than 30 days after the required special tax notice is given to the distributee if (1) the Employer clearly informs the distributee that the distributee has a right to a period of at least 30 days after receiving the notice to consider the decision whether to elect a particular distribution option and (2) the distributee, after receiving the notice, affirmatively elects a distribution.

20.4. Automatic Rollovers. Despite any contrary provision of this Plan, the Employer will pay any eligible rollover distribution described in this 20.4. in a direct rollover to an individual retirement plan designated by the Employer and will notify the participant in writing (either separately or as part of the notice under IRC Section 402(f)) that the distribution may be transferred to another individual retirement plan. An eligible rollover distribution is described in this 20.4. if:

- a. The distribution (1) is made after December 31, 2005, (2) is more than \$1,000, (3) is made with respect to a participant before the later of the participant's 62d birthday or the participant's Normal Benefit Qualification Date, and (4) may be made without the participant's consent.
- b. The participant does not elect to have the distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly.

The definitions in 20.3. shall apply to this 20.4. An individual retirement plan is an individual retirement account described in IRC Section 408(a) or an individual retirement annuity described in IRC Section 408(b).

20.5. Benefits for Military Service. Effective for reemployments initiated on or after December 12, 1994, and despite any contrary provision of this Plan, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with IRC Section 414(u).

20.6. Limit on Benefits. For limitation years beginning after December 31, 1975, and despite any contrary provision of this Plan a participant's annual benefit under this Plan during any limitation year may not exceed the limitations of IRC Section 415 as provided in this 20.6.

- a. A participant's annual benefit under this Plan during any limitation year may not exceed the dollar limitation under IRC Section 415(b)(1)(A) for the limitation year and, for limitation years beginning before January 1, 1995, also may not exceed 100% of the participant's average compensation (as defined in 20.9. (about compensation for purposes of limits)) for the participant's high three years.
- b. The dollar limitation and the compensation limitation in 20.6.a. and in IRC Section 415(b)(1)(A) and (B) will be annually adjusted for increases in the cost of living in



accordance with Treasury regulations, including for participants who have separated from service. Without limiting the foregoing:

- (1) As of January 1 of each calendar year the dollar limitation will be automatically adjusted to the new dollar limitation determined by the Commissioner of Internal Revenue for that calendar year. The new dollar limitation will apply to limitation years ending within the calendar year of the date of the adjustment.
  - (2) In the case of a participant who has separated from service, the participant's average compensation for the participant's high three years will be automatically adjusted by multiplying such average compensation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under IRC Section 415(d) in such manner as the Secretary shall prescribe. Such adjusted average compensation will apply to limitation years ending within the calendar year of the date of adjustment.
- c. A participant's high three years will be determined based on calendar years.
- d. If a participant's annual benefit during a limitation year (payable in the normal form or in any optional form subject to adjustment under IRC Section 415(b)(2)(B)) would exceed the amount provided in 20.6.a., the participant's annual benefit during such limitation year will be reduced to the amount provided in 20.6.a.
- e. Except as provided in IRC Section 415(f)(3) (about multiemployer plans), which is effective for limitation years beginning after December 31, 2001, in the case of any participant in another defined benefit plan of the employer (within the meaning of IRC Section 414(b), (c), (m), and (o), after applying IRC Section 415(h)), (1) all such plans will be treated as one plan and (2) the annual benefit that may be provided to the participant under this Plan as provided in 20.6.a. will be reduced by the amount of the aggregate of the annual benefits provided to the participant under such other plans.
- f. The limitations in this 20.6. will be applied according to the adjustments described in and the provisions of IRC Section 415 (including the effective dates of such adjustments and provisions), as interpreted in Treasury regulations and guidance by the Internal Revenue Service, which adjustments and provisions are incorporated into this Plan by this reference, including without limitation the adjustments described in and the provisions of IRC Sections 415(b)(2)(B) (about benefits payable in other than the normal form), 415(b)(2)(C) and (D) (about benefits commencing before or after a stated age or stated ages), 415(b)(2)(F) (about plans maintained by governments), 415(b)(2)(G) and (H) (about police and firefighters), 415(b)(2)(I) (about disability and survivor benefits under governmental plans), 415(b)(4) (about total annual benefits not exceeding \$10,000), 415(b)(5) (about employees with less than 10 years of participation or service), and 415(n) (about purchase of permissive service credit).

g. The adjustments described in IRC Section 415(b)(2)(B), (C), and (D) will be made by ignoring mortality decrement to the extent a forfeiture does not occur upon death and, effective for limitation years beginning after December 31, 1982, as follows:

- (1) The adjustment described in IRC Section 415(b)(2)(B) will be made using (a) the applicable interest rate and mortality table under 2.12. (defining *Actuarial Equivalent*) or (b) 5% interest and the mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v), whichever produces the greater annual benefit.
- (2) The adjustments described in IRC Section 415(b)(2)(C) and (D) will be made using (a) the applicable interest rate and mortality table under 2.12. or (b) 5% interest and the mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v), whichever produces the lesser annual benefit.

For limitation years beginning before January 1, 2000, the above provisions of this 20.6.g. shall be applied by substituting "the applicable mortality table specified in 2.12." for "the mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v)" wherever such latter phrase appears. The mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v) is, for distributions with annuity starting dates before December 31, 2002, the table prescribed in Revenue Ruling 95-6 and, for distributions with annuity starting dates on or after December 31, 2002, the table prescribed in Revenue Ruling 2001-62.

h. For purposes of the adjustment in IRC Section 415(b)(5):

- (1) A year of participation is a Plan Year for which the participant is a participant;
- (2) A year of service is a Plan Year for which the participant is employed by the Employer; and
- (3) A participant who is permanently and totally disabled (as defined in IRC Section 22(e)(3)) for a Plan Year will be credited with a year of participation and a year of service for that year.

#### 20.7. Limit on Annual Additions.

a. For limitation years beginning after December 31, 1975, and despite any contrary provision of this Plan, the annual additions to any participant's accounts under this Plan may not exceed the lesser of the dollar limitation in IRC Section 415(c)(1)(A) or 25% (100% for limitation years beginning after December 31, 2001) of the participant's compensation (as defined in 20.9. (about compensation for purposes of limits)). The dollar limit in this 20.7.a. will be adjusted as follows:

- (1) For increases in the cost of living in accordance with IRC Section 415(d).

- (2) For limitation years beginning after December 31, 1986, and before January 1, 1995, the dollar limit will be adjusted to, if greater, one-quarter of the dollar limitation in effect under IRC Section 415(b)(1)(A).
- b. In the case of any participant in another defined contribution plan of the employer (within the meaning of IRC Section 414(b), (c), (m), and (o), after applying IRC Section 415(h)), all such plans will be treated as one plan, and the maximum annual addition to the participant's accounts as provided above will be reduced by the aggregate of the amount of the annual additions to the participant's accounts under such other plans. For this purpose a defined contribution plan includes a welfare benefit fund (within the meaning of IRC Section 419(e)), an individual medical benefit account (within the meaning of IRC Section 415(l)(2)), and a simplified employee pension (within the meaning of IRC Section 408(k)).
- c. If as a result of a reasonable error in estimating a participant's compensation or such other reason as is permitted under Treasury Regulation Section 1.415-6(b)(6) a participant's annual addition would exceed the limitations in this 20.7., determined after applying 20.8. (about combined limit on benefits and annual additions), the participant's contributions to the participant's accounts together with any allocable earnings will be distributed to the participant as soon as administratively feasible to the extent required to eliminate such excess.
- d. The limitations in this 20.7. will be applied according to adjustments described in and the provisions of IRC Sections 415 and 419A(d) (including the effective dates of such adjustments and provisions), as interpreted in Treasury regulations and guidance by the Internal Revenue Service, which adjustments and provisions are incorporated into this Plan by this reference, including without limitation the adjustments described in and the provisions of IRC Sections 415(c)(2) (defining "annual addition"), 415(d) (about COLAs), 415(l) (about individual medical benefit accounts), and 419A(d)(2) (about medical benefit accounts for key employees in a welfare benefit fund).

20.8. Combined Limit on Benefits and Annual Additions. For limitation years beginning after December 31, 1975, and before January 1, 2000, and despite any contrary provision of this Plan:

- a. The sum of a participant's defined benefit plan fraction (within the meaning of IRC Section 415(e)) for this Plan and the participant's defined contribution plan fraction (within the meaning of IRC Section 415(e)) for this Plan for any year may not exceed 1.0. If such sum would otherwise exceed 1.0, the participant's projected annual benefit under this Plan will be reduced to the extent necessary for such sum not to exceed 1.0. For limitation years beginning before January 1, 1983, the preceding provisions of this 20.8.a. shall be applied by substituting "1.4" for "1.0" each place "1.0" appears.

- b. If a participant is a participant in another defined contribution or defined benefit plan of the employer (within the meaning of IRC Section 414(b), (c), (m), and (o), after applying IRC Section 415(h)), all defined benefit plans of the employer will be treated as one plan, and all defined contribution plans of the employer will be treated as one plan, and the sum of the participant's defined benefit plan fraction (within the meaning of IRC Section 415(e)) for such aggregate defined benefit plans and the participant's defined contribution plan fraction (within the meaning of IRC Section 415(e)) for such aggregate defined contribution plans for any year may not exceed 1.0. If such sum would otherwise exceed 1.0, the participant's projected annual benefit under this Plan will be reduced to the extent necessary for such sum not to exceed 1.0. For this purpose a defined contribution plan includes a welfare benefit fund (within the meaning of IRC Section 419(e)), an individual medical benefit account (within the meaning of IRC Section 415(l)(2)), and a simplified employee pension (within the meaning of IRC Section 408(k)). For limitation years beginning before January 1, 1983, the preceding provisions of this 20.8.b. shall be applied by substituting "1.4" for "1.0" each place "1.0" appears.
  - c. The limitations in this 20.8. will be applied according to adjustments described in and the provisions of IRC Section 415 (including the effective dates of such adjustments and provisions), as interpreted in Treasury regulations and guidance by the Internal Revenue Service, which adjustments and provisions are incorporated into this Plan by this reference, including without limitation the adjustments described in and the provisions of IRC Sections 415(e) (about limitation in the case of a defined benefit plan and a defined contribution plan for the same employee).
- 20.9. Compensation for Purposes of Limits. For purposes of 20.6. (about limit on benefits), 20.7. (about limit on annual additions), and 20.8. (about combined limit on benefits and annual additions), "compensation" means wages within the meaning of IRC Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC Section 3401(a)(2)).
- a. For limitation years beginning after December 31, 1997, "compensation" includes any elective deferral (as defined in IRC Section 402(g)(3)) contributed by the employer and any amount contributed or deferred by the employer at the election of the participant and not includable in the gross income of the participant by reason of IRC Section 125 or 457.
  - b. For limitation years beginning after December 31, 2000, "compensation" includes any amount contributed or deferred by the employer at the election of the participant and not includable in the gross income of the participant by reason of IRC Section 132(f)(4).

- c. Effective January 1, 2002, "compensation" includes any additional elective deferral under IRC Section 414(v) contributed by the employer.
  - d. For purposes of 20.6., 20.7., and 20.8., the amounts included in a participant's compensation under this 20.9. will be based on such amounts from the employer (within the meaning of IRC Section 414(b), (c), (m) (applicable to Plan Years beginning after November 30, 1980), and (o) (effective July 18, 1984), after applying IRC Section 415(h)).
- 20.10. Annuity Contracts. Benefits may be paid by distributing an annuity contract purchased by for the participant, alternate payee, or beneficiary (the payee).
- a. Delivery of any such contract will be in full satisfaction of the rights under this Plan of the payee and the payee's joint annuitant, beneficiary, and estate, and upon the delivery thereof such persons will have no further interest under this Plan or in the Fund with respect to the benefits to be paid under the contract and must look solely to the insurer issuing the contract for the payment of such benefits.
  - b. Any refund or credit under any such contract (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) in excess of the benefits under this Plan to be paid under the contract, and any proceeds from demutualization of the issuer of the contract or the issuer's successor, will be paid to the Fund.
  - c. Any such contract must be nontransferable.
  - d. The terms of this Plan control in the event of any conflict between the terms of this Plan and the terms of any such contract.
- 20.11. Use of Forfeitures. Forfeitures arising from Severance of Employment or for any other reason will not be applied to increase the benefits any Employee would otherwise receive under this Plan. The amounts forfeited will be used as soon as possible to pay expenses of administering this Plan and the Fund and to reduce the Employer's contributions under this Plan.

## SECTION 21. GENERAL PROVISIONS

- 21.1. Transfers. No assets may be transferred or rolled over to this Plan from any eligible retirement plan described in 20.3.b. Assets of this Plan and the Fund may be transferred to the Oregon Public Employees Retirement System to provide benefits for persons covered by this Plan in lieu of benefits they have earned under this Plan.
- 21.2. Status of Employer. The Employer shall be entitled to rely upon all tables, annual valuations, certificates, and reports furnished by the Funding Agency or any actuary selected or approved by the Employer, upon all certificates and reports made by an accountant selected or approved by the Employer, and upon all opinions and decisions of legal counsel selected or approved by the Employer. No liability shall be imposed upon the Employer for any action taken, permitted or omitted by the Employer in reliance upon such actuary, accountant, or counsel, and any action so taken, permitted, or omitted shall be binding upon all Employees or former Employees, and upon their Beneficiaries and Contingent Annuitants or any other interested person.
- 21.3. Limitation of the Rights of Participants. Nothing contained in this Plan shall give an Employee the right to be retained in the employment of the Employer or to interfere with the right of the Employer to discharge or retire any Employee at any time. Coverage or credited employment under this Plan shall not give any Employee the right to claim retirement benefits except to the extent such right or claim is specifically fixed under the terms of this Plan. Such benefits shall be payable pursuant to this Plan only.
- 21.4. Not Employment Contract. This Plan is not and is hereby declared not to be a contract between the Employer and any Employee, or to be a consideration for, or inducement to or a condition of employment of any Employee.
- 21.5. Rules and Regulations. The Employer may from time to time establish such reasonable rules and regulations for the administration of this Plan as it may deem desirable and such rules and regulations shall be binding on all Employees, former Employees, and their Beneficiaries and Contingent Annuitants.
- 21.6. Discretionary Power of Administration. The Employer shall have the sole discretionary power to reconcile, determine, interpret, and construe any question or dispute arising in connection with definitions of terms, rights, status, or classification of persons, or any other dispute arising under this Plan. Any such reconciliation, determination, interpretation, or construction will be reasonable and consistent with this Plan and shall be made without discrimination among persons in like circumstance and on a basis precluding individual selection. Such reconciliation, determination, interpretation, or construction will be final and conclusive.

21.7. Claims Procedure. Any person who believes that a benefit is due to the person under this Plan, including one greater than that initially determined by the Employer, may file a claim for the benefit in writing with the Employer.

- a. The Employer will promptly either allow or deny the claim in writing. A denial of a claim will be written in a manner calculated to be understood by the claimant.
- b. A claimant whose claim is denied (or the claimant's duly authorized representative) may, within 60 days after receiving denial of the claim, submit a written request for review of the denial to the Employer.
- c. The Employer will notify the claimant of the Employer's decision on review. The decision on review will be written in a manner calculated to be understood by the claimant and will include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.
- d. Employees, Beneficiaries, Contingent Annuitants, surviving spouses, surviving children, and any other persons claiming any benefit under this Plan may not challenge the Employer's determinations in judicial or administrative proceedings without first complying with the procedures in this 21.7.

21.8. Interpretation. This Plan will be construed according to the laws of the State of Oregon and will be interpreted and administered consistent with the requirements of the IRC for this Plan to be qualified under IRC Section 401(a) or 403(a).

- a. Any provision of this Plan that is based on a provision of the IRC, including one not necessary for this Plan to be qualified, will be interpreted and administered consistent with such provision of the IRC and the interpretive authorities thereunder.
- b. This Plan includes provisions adopted in good faith to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001. Such provisions shall be interpreted and administered consistent with Treasury regulations and Internal Revenue Service guidance regarding such Act, even where such regulations and guidance are inconsistent with the literal interpretation of such provisions.

21.9. Facility of Payment. If any person entitled to benefits under this Plan is, in the opinion of the Employer, legally, physically, or mentally incapable of personally receiving and receipting for any payment pursuant to this Plan, the Employer may direct payment thereof to such other person, persons, or institution who, in the opinion of the Employer, is then maintaining or has custody of such person entitled to benefits (or to a custodian for the person, selected by the Employer or the Funding Agency without liability for the selection made, under the Oregon Uniform Transfers to Minors Act or under any other comparable state law) unless or until claim is made by a duly appointed guardian or other legal representative of such person entitled to benefits. Such payments shall constitute a full discharge of the liability of the Employer and the Funding Agency with respect to the amount so paid.

- 21.10. Status of Insurance Company. The Insurance Company shall not be required to take or permit any action contrary to the provisions of the Policy nor shall the Insurance Company be bound to allow any benefit or privilege to any person interested in the Policy or any other policy it has issued unless such benefit or privilege is provided in the Policy or such other policy as the case may be. The Insurance Company shall not be a party to this Plan for any purposes; nor shall it be required to question any act of the Employer; nor shall it be required to see that any action of the Employer is authorized by this Plan. With respect to any amount paid in accordance with the directions of the Employer, the Insurance Company shall be fully discharged from any and all liability to the Employer, an Employee or former Employee and their Beneficiaries or Contingent Annuitants or any other interested person with respect to such payment.
- 21.11. Non-Transferability. To the extent permitted by law, the benefits, or any part thereof payable hereunder, or any annuity contract distributed, shall not be subject to alienation, anticipation, assignment, commutation, or encumbrance by any person entitled thereto, and shall not be subject to any debts, contracts, or engagements of any person, or to any judicial process to levy upon or to attach the same, except that any annuity contract may be transferred back to the issuer.
- 21.12. Domestic Relations Orders. Despite any contrary provision of this Plan except 20.1. (about Required Starting Date), to the extent required by and subject to the restrictions of ORS 237.600, a participant's benefit will be paid, in whole or in part, to an alternate payee (and not to the participant or other beneficiary) if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Payment to the alternate payee may be made before the participant's severance of employment with the Employer if consistent with the decree, order, or agreement or if the decree, order, or agreement provides for such payment if allowed by this Plan.
- a. This Plan will apply ORS 237.600 to decrees, orders, or agreements whenever entered or modified, including those entered or last modified before January 1, 1994.
  - b. No benefit under this Plan will be paid to an alternate payee under the terms of a court decree or order or court-approved property settlement agreement ("Order") until after the date the Employer receives a copy of the Order and such additional information and documentation as satisfy the Employer:
    - (1) That the copy is a true copy of the Order.
    - (2) That the Order is, within the meaning of ORS 237.600, a court decree of annulment or dissolution of marriage or of separation, or a court order or court-approved property settlement agreement incident to such a decree.



- (3) Of the extent to which the terms of the Order expressly provide for payment of a benefit under this Plan to an alternate payee.
- (4) Of any other fact or matter required for the Employer to:
  - (a) Determine the application of ORS 237.600 to the Order or the extent to which the Order applies to this Plan.
  - (b) Comply with the Order or with ORS 237.600.
  - (c) Administer this Plan under the terms of the Order.
- c. Neither Employer nor this Plan will charge or collect out of the benefits payable to the participant or the alternate payee any administrative expenses or related costs incurred by Employer or this Plan in obtaining data or making calculations necessary by reason of ORS 237.600.

21.13. Return of Mistaken Contributions. Any contribution made by Employer because of a mistake of fact must be returned to Employer within one year of the contribution, but only if Employer makes timely written demand therefor. Such returned contributions will not include attributable earnings but will be reduced by attributable losses.

DATED this June 29, 2006.

CITY OF STAYTON

By: \_\_\_\_\_  
Chris Childs, City Administrator