

**OVERLAND PARK, KANSAS, MUNICIPAL EMPLOYEES  
PENSION PLAN AND TRUST AGREEMENT**

**Restated as of January 1, 2011**

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**OVERLAND PARK, KANSAS, MUNICIPAL EMPLOYEES  
PENSION PLAN AND TRUST AGREEMENT**

THIS AMENDMENT AND RESTATEMENT OF THE OVERLAND PARK, KANSAS, MUNICIPAL EMPLOYEES PENSION PLAN AND TRUST AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010, effective for all purposes as of January 1, 2011, by the City of Overland Park, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas (hereinafter referred to as "Employer"), and for the purpose of Article XII, by and between the Employer and Wilmington Trust Retirement and Institutional Services Company, a trust company organized under the laws of the state of Delaware (hereinafter referred to as "Trustee").

WITNESSETH:

WHEREAS, the Employer did enter into an agreement with the original board of trustees, dated February 16, 1970, for establishment of the Overland Park, Kansas, Municipal Employees Pension Plan and Trust Agreement ("Plan") for the benefit of the Employer's Employees; and

WHEREAS, the Plan was restated on April 24, 1985, to incorporate all amendments up to that time into one document;

WHEREAS, the Plan was again restated on August 7, 1989, to incorporate all amendments to the 1985 restatement into one document;

WHEREAS, the Plan was again restated on April 1, 1996, to incorporate all amendments to the 1989 restatement into one document;

WHEREAS, the Plan was again restated effective January 1, 2008 to incorporate into one document all of the changes made by eight amendments to the 1996 restatement, as well as to make certain additional modifications; and

WHEREAS, effective January 1, 2011, the Employer desires to amend and restate the Plan as hereinafter set forth for the principal purposes of (1) appointing a corporate trustee to serve in lieu of the former trustees who were individuals appointed by the City Manager, (2) appointing an Investment Committee to assist the City Manager as Plan Administrator in the selection of investment options to be selected by Participants for the investment of their plan assets, and (3) creating a new tier of benefits for employees hired on or after January 1, 2011.

NOW, THEREFORE, in accordance with the authority granted in Article X of the Plan, the Plan is hereby further amended and restated to read as follows:

**ARTICLE I.  
DEFINITIONS**

The following definitions are listed. Wherever used herein:

**Section 1.01. "Active Participant"** means an Employee who has completed the requirements specified in Article II.

**Section 1.02. "Annual Additions"** has the meaning specified in Article XIV.

**Section 1.03. "Beneficiaries"** mean those persons as designated in writing to the Plan Administrator to receive any benefits payable upon the death of a Participant, and includes any contingent Beneficiaries.

**Section 1.04. "Code"** means the Internal Revenue Code of 1986, as amended from time to time.

**Section 1.05. "Committee"** means the Investment Committee described in Section 9.09 of the Plan.

**Section 1.06. "Compensation"** means the actual compensation (excluding bonuses, overtime, reimbursement for expenses, fees, and all other forms of unusual or nonrecurring compensation, but including any annual performance compensation, bilingual incentive pay, and, in the case of administrative employees of the Fire Department, educational and longevity pay) received by an Employee from the Employer for services rendered, plus any reductions in regular compensation pursuant to Code Section 132(f)(4), under the City of Overland Park, Kansas Flexible Compensation Plan, and/or under the City of Overland Park, Kansas Deferred Compensation Plan(s).

For any Plan Year beginning in 1989 or thereafter, Compensation for purposes of this Plan shall be limited in accordance with Code Section 401(a)(17), as adjusted by the Secretary of the Treasury pursuant to applicable cost-of-living changes. Notwithstanding the preceding sentence, the limit on Compensation for an Employee who first became a Participant in the Plan before January 1, 1994, shall not be less than \$200,000 (the limit in effect under the Plan on July 1, 1993).

**Section 1.07. "Contract"** means any contract purchased from an Insurer for the benefit of all Participants or any Participant.

**Section 1.08. "Effective Date"** means the Effective Date of this amendment and restatement which is January 1, 2011.

**Section 1.09. "Eligible Spouse"** means the spouse to whom a Participant was married on the date benefit payments under the Plan commenced; or if benefit payments have not commenced, the spouse to whom the Participant was married on the Participant's date of death.

**Section 1.10. "Employee"** means any individual employed by the City of Overland Park, Kansas, in the employment classification of regular full-time employee or regular part-time employee (Class A), excluding, however,

a. any commissioned police officer hired prior to January 1, 2011, who is eligible to participate in the retirement plan maintained by the City for commissioned police officers and

b. any certified fire fighter or emergency medical technician hired prior to January 1, 2011, who is eligible to participate in the retirement plan maintained by the City for such individuals.

**Section 1.11. "Employer"** means City of Overland Park, Kansas, and its predecessor organization, Mission Urban Township, Kansas.

**Section 1.12. "Fund" or "Trust Fund"** means the property held by the Trustee pursuant to this Plan.

**Section 1.13. "Governing Body"** means the Governing Body of the Employer.

**Section 1.14. "Inactive Participant"** means a former Active Participant who is no longer employed by the Employer, but whose accounts under the Plan have not yet been fully distributed or used to purchase a Contract.

**Section 1.15. "Insurer"** means any insurance company licensed to do business in the State of Kansas.

**Section 1.16. "Leave of Absence"** means:

a. A leave of absence for any reason, provided the leave is approved by the Employer in accordance with its leave of absence policies;

b. A leave of absence under the Family and Medical Leave Act of 1993; or

c. A military leave of absence, provided the Employee's reemployment rights are guaranteed by federal law and the Employee is reemployed after the expiration of his or her active duty within the time required by such federal law.

**Section 1.17. "Limited Participant"** means an individual described in Section 2.03.

**Section 1.18. "Normal Retirement Age"** means age 65.

**Section 1.19. "Normal Retirement Date"** means the first day of the month next following a Participant's 65th birthday.

**Section 1.20. "Participant"** means an individual who is either an Active Participant, an Inactive Participant, or a Limited Participant.

**Section 1.21. "Plan Administrator"** means the City Manager.



**Section 1.22. "Plan" or "Agreement"** means the provisions set forth in this document, as amended from time to time.

**Section 1.23. "Retirement Date"** means a Participant's Normal Retirement Date or such earlier or later date selected by the Participant to commence receiving benefits under this Plan.

**Section 1.24. "Trust"** means the agreement set forth herein in Article XII entered into between the Employer and the Trustee to hold and administer the Trust fund.

**Section 1.25. "Trustee"** means the trustee duly appointed by the Plan Administrator, and its successors.

**Section 1.26. "Year" or "Plan Year"** means the 12-month accounting period on which the records of the Plan are maintained, which period shall commence as of January 1 and end on December 31. Prior to January 1, 1994, the Year commenced on October 1 and ended on September 30, with a short Year running from October 1, 1993, to December 31, 1993.

**Section 1.27. "Years of Eligibility Service"** means an Employee's period of continuous and uninterrupted employment from his or her last date of hire in a Plan-eligible employment classification to the date of determination of eligibility. This term is used to determine eligibility to participate in this Plan. For this purpose, employment shall be considered continuous and uninterrupted during a Leave of Absence.

**Section 1.28. "Years of Vesting Service"** means an Employee's period of continuous and uninterrupted employment from his or her last date of hire in a Plan-eligible employment classification. This term is used to determine the Participant's vested interest in his or her Employer contribution account. Employment shall be considered continuous and uninterrupted during a Leave of Absence or if an employee ceases to be employed in a Plan-eligible employment classification while continuing to be employed by the Employer, regardless of whether the employee has yet become a Participant in the Plan. However, the period of employment that the employee is not employed in a Plan-eligible classification shall not count toward Years of Vesting Service.

## **ARTICLE II. ELIGIBILITY FOR PARTICIPATION**

**Section 2.01. "In General.** An Employee shall become an Active Participant on the first day of the month immediately following three (3) Years of Eligibility Service.

**Section 2.02. "Rehired Employees.** Each Employee whose employment has been terminated and who is subsequently rehired by the Employer will be considered, for all purposes of the Plan, a new Employee and will be eligible for participation

hereunder on the first day of the month coincident with or next following the date he or she meets the requirements of Section 2.01; provided, however, that if any such Employee has completed ten (10) Years of Vesting Service prior to termination and completes an additional three (3) Years of Eligibility Service after rehire, he or she shall be considered to have met the requirements set forth in Section 2.01, and shall be considered to be 100% vested upon reentry into the Plan.

**Section 2.03. Limited Participation.** If an Active Participant ceases to be an Employee, while remaining an employee of the Employer (because he or she ceases to be employed by the Employer in an eligible position), the Participant shall cease to be an Active Participant and shall become a Limited Participant. As a Limited Participant, he or she shall not be entitled to the allocation of any Employer contribution for any period of employment as an ineligible employee, nor entitled to make a Participant contribution for any such period of employment. The Limited Participant shall also not be entitled to have his or her period of employment as an ineligible employee count as Years of Vesting Service, but such period shall be considered as continuous uninterrupted employment. During any such period as a Limited Participant, his or her Plan account shall remain in the Plan and shall be invested in accordance with the terms of the Plan, and his or her Plan account shall be credited with investment earnings or losses in accordance with the relevant provisions of the Plan. Upon the Limited Participant's retirement or other termination of employment, his or her Plan account shall be distributed in accordance with the provisions of Article VI or VII, whichever is applicable. If the Limited Participant again becomes an eligible Employee before he or she retires or otherwise terminates employment, he or she shall again become an Active Participant on the day he or she again becomes an eligible Employee (and shall resume having vesting service recognized and be entitled to the allocation of Employer contributions to his or her Plan account).

**Section 2.04. Participation After Ineligible Employment.** If an Employee who is not a Participant in this Plan ceases to be an Employee, while remaining an employee of the Employer (because he or she ceases to be employed by the Employer in an eligible position), the employee shall not be entitled to become a Participant in this Plan until he or she again becomes an Employee and completes three (3) Years of Eligibility Service, counted from the date he or she again becomes an Employee.

### **ARTICLE III. PARTICIPATION PROCEDURE**

**Section 3.01. Participation Procedure.** Each Employee will automatically become an Active Participant in accordance with Article II. No action by the Employee is required.

### **ARTICLE IV. CONTRIBUTIONS AND ALLOCATIONS**

**Section 4.01. Employer Nonelective Contributions.** For each pay period, the Employer shall contribute to the Plan an amount equal to the following:

- a. For Participants Hired Prior to January 1, 2011:

- i. 10% of each Active Participant's Compensation for the pay period, less
  - ii. Any forfeitures applied to reduce Employer nonelective contributions, as determined under Section 7.02.
- b. For Participants Hired On or After January 1, 2011:
- i. 4% of each Active Participant's Compensation for the pay period, less
  - ii. Any forfeitures applied to reduce Employer nonelective contributions, as determined in Section 7.02.

**Section 4.02. Employer Matching Contributions For Participants Hired On or After January 1, 2011.** As of the last day of the Plan Year, the Employer shall contribute to the Plan for each Participant hired after January 1, 2011, who is employed on the last day of such Plan Year, a matching contribution in an amount equal to fifty percent (50%) of the first four percent (4%) of the Participant's Compensation for the Plan Year contributed by such Participant to either or both of the Deferred Compensation Plan(s) maintained by the Employer (State of Kansas Deferred Compensation Plan – ING and Deferred Compensation Plan Administered by the International City Management Association Retirement Corporation); provided, however, the Employer's matching contribution will not exceed two percent (2%) of the Participant's Compensation for the Plan Year.

**Section 4.03. Allocation of Employer Contributions.** The Employer's contribution shall be allocated among Active Participants' accounts in accordance with the contribution formula as provided in Section 4.01 and 4.02. The Employer's contribution under Section 4.01 shall be allocated as of the pay day of each pay period, or as soon as administratively feasible thereafter. The Employer's contribution under Section 4.02 shall be allocated as of the last day of the Plan Year.

**Section 4.04. Participant Contributions.** Each Active Participant may elect to make voluntary contributions to the Plan in an amount not to exceed ten percent (10%) of his or her Compensation. Such contributions shall be made by payroll deductions and shall be remitted to the Trustee by the Employer.

**Section 4.05. Rollover Contributions.** Any Employee, after filing with the Plan Administrator the form prescribed by the Plan Administrator, may contribute cash to the Trust other than as a voluntary contribution if the contribution is a "rollover contribution." The words "rollover contribution" shall mean an amount that the Code permits an Employee to transfer, either directly or indirectly, from any of the following types of plans, but only if the assets that have not yet been subjected to taxation under the Code:

- a. A qualified retirement plan described in Code Section 401(a) or 403(a);
- b. A tax-sheltered annuity plan described in Code Section 403(b);

c. An eligible deferred compensation plan described in Code Section 457(b), but only if such plan is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state; or

d. An individual retirement account or annuity described in Code Section 408(a) or 408(b).

The Plan Administrator shall require an Employee to furnish satisfactory evidence, either before or after the transfer, that any such transfer is in fact a rollover contribution which the Code permits. A rollover contribution shall not be treated as an Annual Addition under Article XIV.

The Trustee will invest and adjust for investment earnings and losses the rollover contribution in accordance with Article V.

An Employee, prior to satisfying the Plan's eligibility conditions, may make a rollover contribution to the Trust to the same extent and in the same manner as a Participant. If an Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Trustee shall treat the Employee as a Participant for all purposes of the Plan, except that the Employee shall not be a Participant for Employer contributions and/or voluntary contributions under the Plan until he or she actually becomes a Participant in the Plan. If the Employee terminates employment prior to becoming a Participant, the Trustee will distribute his or her rollover contribution account as if it were a fully vested Employer contribution account.

## **ARTICLE V. PARTICIPANTS' ACCOUNTS**

**Section 5.01. Participant Accounts.** On behalf of each Participant, the Trustee shall maintain or cause to be maintained the following accounts:

a. An Employer nonelective contribution account, to which shall be credited the share to which such Participant shall be entitled of each contribution of the Employer and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund;

b. An Employer matching contribution account to which shall be credited such Participant's Employer matching contributions and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund;

c. Where applicable, a Participant's contribution account, to which shall be credited such Participant's voluntary contributions and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund. A Participant's contribution account shall be subdivided into:

- i. Pre-1987 voluntary contributions, and
- ii. Post-1986 voluntary contributions and investment earnings; and

d. Where applicable, a rollover contribution account, to which shall be credited any rollover contributions made by such Participant and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund.

Such accounts and the allocation of credits thereto shall not create or give any Participant any interest or right at any time except at the time and upon the terms and conditions expressly stated and set out in the Plan.

**Section 5.02. Valuation Procedures.** Prior to February 1, 2011, the Fund shall be valued and the individual accounts adjusted as of the last day of each Year, as of the last day of any month during which a Participant becomes entitled to benefits, and, if deemed necessary or advisable by the Trustee, as of the last day of any other month. Effective February 1, 2011, the Fund shall be valued and the individual accounts adjusted daily. In determining the value of the Fund, the Trustee shall evaluate the assets of the Fund at their fair market value as of such valuation date and shall deduct all expenses payable or accruing which may constitute proper charges against the Fund; provided, however, that in the event that the Plan Administrator, in his or her discretion, invests the whole or any part of the Fund in insurance company group annuity contracts, the Trustee shall evaluate the assets of that portion of the Fund so invested at their book value as of such valuation date and shall deduct all expenses payable or accruing which may constitute proper charges against the Fund.

**Section 5.03. Investment Accounts.** There shall be established within the Trust Fund separate investment accounts in which Trust assets shall be invested as directed by the Participants pursuant to Section 5.04 in the investment accounts selected by the Plan Administrator, or the Committee if one is appointed pursuant to Section 9.03.d., and described in Appendix A hereof.

**Section 5.04. Participant Direction of Investments.** All Participant accounts shall be invested as hereinafter provided:

a. **Direction by Participants.** When an Employee becomes a Participant in this Plan, he or she shall direct the investment of his or her voluntary contributions and his or her Employer contributions in one percent (1%) increments among the investment accounts then provided by the Plan.

In the absence of direction, the Trustee shall invest such contributions in the Fixed Income Account.

b. **Change of Investment for Future Contributions.** Prior to January 1, 2011, a Participant may change the investment of both his or her future voluntary contributions and his or her future Employer contributions in writing, on a form furnished by the Employer, effective as of the first day of any month (hereinafter referred to as a Change Date), in one percent (1%) increments among the investment accounts then provided by the Plan. The Trustee may, as it deems appropriate under the circumstances, allow more frequent Change Dates, provided that all Change Dates are equally available to all Participants.

Effective January 1, 2011, a Participant may change the investment of both his or her future voluntary contributions and his or her future Employer contributions on a daily basis, in one percent (1%) increments among the investment accounts then provided by the Plan.

c. Change of Investment for Current Accounts. Prior to January 1, 2011, a Participant may submit in writing, before any Change Date and on a form furnished by the Employer, an election to change or reallocate the investment of his or her accounts. Such election shall be in one percent (1%) increments among the investment accounts then provided by the Plan, and shall be submitted to the Trustee or Employer within the time guidelines established for this purpose and communicated to Participants.

Effective January 1, 2011, a Participant may submit an election to change or reallocate the investment of his or her accounts daily. Any such change may be subject to redemption fees and/or frequent trading restrictions imposed on the separate investment accounts.

The Trustee shall take all actions within its power to process elections that are timely submitted so as to take effect as soon as is administratively feasible. The Trustee shall not be liable for any delays in processing caused by the Insurer or any entity administering or managing the accounts.

## **ARTICLE VI. RETIREMENT PAYMENTS**

**Section 6.01. Distribution Options – Single Participants.** Upon a Participant's retirement, if the Participant does not have an Eligible Spouse, the entire amount of his or her account will be distributed to the Participant under any one of the following options, as he or she may elect:

- a. Lump sum payment in cash and/or securities;
- b. Direct rollover to an individual retirement account, annuity or trust or to another qualified retirement plan pursuant to the provisions of Section 6.09; provided the distribution qualifies as an eligible rollover distribution, as defined therein;
- c. A monthly payment for a fixed number of months, not to exceed one hundred twenty (120) months; or
- d. An individual annuity for whatever amount of income can be provided by the Employee's account. However, the annuity must be a form that will pay benefits over the life expectancy of the Participant or the joint life expectancy of the Participant and his or her designated contingent annuitant. Moreover, no less than fifty percent (50%) of the value of the annuity must be expected to be paid to the Participant. Any such annuity purchased by the Plan shall be based on a unisex mortality assumption.

A Participant may revoke an election made under this Section 6.01 until, and only until, beginning to receive a distribution of his or her account.

**Section 6.02. Distribution Options – Married Participants.** If a Participant has an Eligible Spouse at retirement, the entire amount of his or her account will be used to purchase an immediate joint and fifty percent (50%) contingent annuity, where the Eligible Spouse is named as the contingent annuitant; unless the Participant and Eligible Spouse elect payment in one of the forms described in Section 6.01. The Participant and Eligible Spouse may make such an election on forms provided by the Plan Administrator any time prior to payment of any benefits. The Participant shall be supplied with written information concerning the financial effect of an election in lieu of the joint and fifty percent (50%) contingent annuity. If the Participant and Eligible Spouse elect an optional form of payment, in order for the election form to be effective it shall carry the Eligible Spouse's consent in writing to such an election and the Eligible Spouse's signed acknowledgement of the effect of such election. The Eligible Spouse's signature on such an election form must be witnessed by a notary public.

**Section 6.03. Valuation Dates.** For distributions prior to January 1, 2011, each distribution of marketable securities shall be valued as of the last day of the month in which occurs the later of the following dates:

- a. The last day of the last pay period during which a Participant was on the Employer's active payroll; or
- b. The day the application for distribution is received by the Trustee;

except that, if written application is received less than fifteen (15) days prior to the last day of the month, the valuation may, at the option of the Trustee, be delayed until the last day of the month following receipt of such application.

Effective for distributions after January 1, 2011, each distribution of marketable securities shall be valued as of the first day preceding the date of the distribution on which Plan assets are valued on an established market and the Trustee is conducting business.

Each distribution from an insurance company guaranteed investment contract shall be based on the value of the account as of the date of distribution or the insurance company's next valuation date, if the valuation cannot be made on the distribution date. The actual distribution of funds will be made as soon as administratively feasible after receipt of a request for distribution from a Participant or Beneficiary.

**Section 6.04. Installment Payments.** If a Participant is to receive benefits in accordance with the option described in subsection 6.01.c., his or her account shall be valued and deposited in a segregated fund to be paid out in approximately equal installments with the net income therefrom, if any. The Trustee shall administer such accounts with all of the powers and discretion conferred upon the Trustee by the Trust. Any balance remaining in such account at the time of the Participant's death shall be paid in a lump sum to the Participant's designated Beneficiary.

**Section 6.05. Minimum Installment or Annuity Payment.** No Participant shall be permitted to elect either of the options described in subsections 6.01.c. or 6.01.d. unless each payment would equal at least ten dollars (\$10), or any higher amount required by any insurance company from which an annuity is purchased or any investment manager which may hold the Participant's segregated fund pursuant to Section 6.04.

**Section 6.06. Employment After Normal Retirement Date.** A Participant may continue in the employ of the Employer and, beginning January 1, 1988, receive Employer contributions for future service after his or her Normal Retirement Date. The provisions of Sections 6.01 through 6.03 will be delayed until actual retirement occurs.

**Section 6.07. Retirement Prior to Normal Retirement Date.** A Participant may retire earlier than his or her Normal Retirement Date. Such a Participant will be entitled to retirement benefits as of his or her actual Retirement Date in accordance with the vesting provisions of Section 7.01.

**Section 6.08. Deferral of Benefits.** A Participant may, by filing a written election with the Plan Administrator, elect to defer the commencement of his or her benefits beyond his or her Retirement Date to a date selected by the Participant. However, any such election shall be subject to the requirements of Section 6.10.

**Section 6.09. Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under Article VI, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, but only if that eligible retirement plan agrees to accept such eligible rollover distribution. For this purpose, the following definitions shall apply:

a. **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: 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 ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); or any hardship distribution. Effective January 1, 2008, a rollover may be made to a Roth IRA, subject to limitations set forth in Code Section 408A.

b. **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified retirement plan described in either of Code Sections 401(a) or 403(a), a tax-sheltered annuity plan described in Code Section 403(b), or an eligible plan under Code Section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective January 1, 2008, a rollover may be made to a Roth IRA, subject to limitations set forth in Code Section 408A.



Effective January 1, 2009, a non-spouse beneficiary (including a trust) who is a "designated beneficiary" under Code Section 401(a)(9)(E) shall be considered a distributee and may elect an eligible rollover distribution to an individual retirement account that the beneficiary established for purposes of receiving the distribution.

c. Distributee: A distributee includes an Employee or former Employee. In addition, an Employee's or former Employee's surviving spouse and an Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

Effective January 1, 2009, a non-spouse beneficiary (including a trust) who is a "designated beneficiary" under Code Section 401(a)(9)(E) shall be considered a distributee and may elect an eligible rollover distribution to an individual retirement account that the beneficiary establishes for purposes of receiving the distribution.

d. Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

**Section 6.10. Minimum Distribution Requirements.** The provisions of this Section 6.10 shall be effective for purposes of determining required minimum distributions made on or after January 1, 2003. The requirements of this Section 6.10 shall take precedence over any inconsistent provisions of the Plan. All distributions required under this Section 6.10 shall be determined and made in accordance with the provisions of Code Section 401(a)(9) and the regulations promulgated thereunder:

a. Definitions.

i. Designated Beneficiary means the individual who is designated under Section 1.03 and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation 1.401(a)(9)-1, Q&A-4.

ii. Distribution Calendar Year means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required under Section 6.10.b.ii. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of the Distribution Calendar Year.

iii. Life Expectancy means the life expectancy as computed by use of the Single Life Table in Treasury Regulation 1.401(a)(9)-9.

iv. Participant's Account Balance means the account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (Valuation Calendar Year), increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of the dates in the Valuation Calendar Year after the Valuation Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. The Participant's Account Balance for the Valuation Calendar Year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

v. Required Beginning Date means the April 1 of the calendar year following the calendar year in which a Participant attains age 70 1/2 or retires, whichever occurs later.

b. Time and Manner of Distribution.

i. The Participant's entire vested interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

ii. If the Participant dies before distributions begin, the Participant's entire vested interest will be distributed, or begin to be distributed, no later than as follows:

A. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later; provided, however, the surviving spouse may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under this Section 6.10.b.ii.A, or by September 30 of the calendar year which contains the fifth anniversary of the Member's death.

B. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died; provided, however, the Designated Beneficiary may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the

fifth anniversary of the Member's death. Such election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under this Section 6.10.b.ii.B, or by September 30 of the calendar year which contains the fifth anniversary of the Member's death.

C. If there is no Designated Beneficiary as of the September 30 of the year following the year of the Participant's death, the Participant's entire vested interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

D. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.10.b.ii., other than Section 6.10.b.ii.A., shall apply as if the surviving spouse were the Participant.

For purposes of this Section 6.10.b.ii. and subsection 6.10.d., unless Section 6.10.b.ii.D. applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 6.10.b.ii.D. applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.10.b.ii.A.

iii. Unless the Participant's vested interest is distributed in the form of an annuity purchased from an insurance company or in a single lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions shall be made in accordance with Sections 6.10.c. and 6.10.d. If the Participant's vested interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the regulations promulgated thereunder.

c. Required Minimum Distributions During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

i. the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

ii. if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and

spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

iii. Required minimum distributions will be determined under this Section 6.10.c. beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

d. Required Minimum Distributions After Participant's Death.

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

A. The Participant's remaining Life Expectancy is calculated by using the age of the Participant in the year of death, reduced by one for each subsequent year.

B. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

C. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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

iii. If the Participant dies before the date distributions begin, and there is a Designated Beneficiary, the minimum amount that will be distributed for each

Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 6.10.d.i.

iv. If the Participant dies before the date distributions begin, and there is no Designated Beneficiary as of the September 30 of the year following the year of the Participant's death, distribution of the Participant's entire vested interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

v. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.10.b.ii.A, then Sections 6.10.d.iii and 6.10.d.iv shall apply as if the surviving spouse were the Participant.

e. Waiver in 2009. Effective January 1, 2009, a non-spouse beneficiary (including a trust) who is a designated beneficiary under Code Section 401(a)(9)(E) shall be considered a distributee and may elect an eligible rollover distribution to an individual retirement account that the beneficiary establishes for purposes of receiving the distribution.

**ARTICLE VII.  
SEVERANCE, DEATH, AND WITHDRAWAL BENEFITS**

**Section 7.01. Vesting Schedule.** Upon termination of a Participant's employment for reasons other than death or retirement, the Participant shall be entitled to a vested benefit of one hundred percent (100%) of his or her Participant's contribution account and rollover contribution account, if any, plus a percentage, determined from the vesting schedule below, of his or her Employer nonelective contribution account and matching contributions account, if any.

Vesting Schedule

<u>Years of Vesting Service</u>	<u>Vested Percentage</u>
Fewer than 4	0%
4	40%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

Except as provided in Section 2.02 (with respect to Employees completing ten or more Years of Vesting Service prior to terminating their employment), any Years of Vesting Service completed prior to a Participant's termination of employment shall be disregarded in applying the vesting schedule shown above to any Employer contributions made after that Participant's reemployment.

An Active or Limited Participant who dies or attains his or her Normal Retirement Age shall be fully vested, regardless of his or her Years of Vesting Service.

**Section 7.02. Forfeitures; Cash-Outs; Timing of Distributions.** Any portion of a Participant's Employer contribution accounts forfeited as a result of the application of the vesting schedule shown in Section 7.01 shall be applied by the Plan Administrator to reduce future Employer contributions due hereunder. The Participant's vested benefit shall remain in the Trust until the earliest of the following:

- a. The Required Beginning Date specified in Section 6.10.a.v.; or
- b. The date the Participant elects to receive such vested benefit, which shall be either at the time of termination of employment or subsequently upon giving the Plan Administrator written notice as to the intent to withdraw such benefit. Any election by an Inactive Participant to withdraw his or her vested benefit shall be for the full value of his or her vested Employer contribution account(s), Participant's contribution account, and rollover account. Partial withdrawals shall not be allowed; or
- c. The Participant's death.

Payment of benefits shall be made in accordance with Sections 6.01 through 6.03, as soon as administratively feasible after the applicable event listed above.

**Section 7.03. Death Benefits.**

a. **In General.** In the event of the death of a Participant before retirement, his or her death benefit (which shall be the aggregate of the amounts of his or her vested Employer contribution account and his or her Participant's contribution account, if any) shall be distributed, as described in Sections 6.01 through 6.03, to the Beneficiary designated by the Participant, subject to the limitations of Article VIII.

b. **Death Benefits under USERRA-Qualified Active Military Service.** In the event a Participant dies on or after January 1, 2007 while performing qualified military service as such term is defined in Code Section 414(u), the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the Plan had the Participant resumed employment with the Employer and then terminated employment on account of death.

**Section 7.04. Payments to Incompetents.** In the event any Participant, Beneficiary, or other person entitled to benefits under this Plan is a minor or otherwise

incompetent, the Trustee may, at its option, make payment directly to such person or to a third party for his or her benefit without the necessity of a guardian.

**Section 7.05. In-Service Withdrawals.** An Active or Limited Participant may from time to time withdraw all or a portion of the funds credited to his or her Participant's contribution account, provided, however, that no withdrawal shall exceed the then value of his or her Participant's contribution account, and provided further that he or she shall be precluded from making any further contributions to the Fund for a period of twelve (12) consecutive calendar months following the date of any withdrawal. Any withdrawal of less than the full value of the Participant's contribution account shall be made first from his or her pre-1987 voluntary contributions until exhausted, then proportionately from both his or her post-1986 voluntary contributions and his or her investment earnings. Any Plan expenses associated with such a withdrawal shall be charged to the Participant's contribution account prior to distribution of the funds.

## **ARTICLE VIII. BENEFICIARY DESIGNATION**

**Section 8.01. Designation of Beneficiary.** Each Participant shall execute and file with the Plan Administrator (on a form provided by the Plan Administrator) a designation of the person or persons to whom, in the event of his or her death, he or she desires the benefits provided hereunder to be paid and distributed. A Participant shall have the right to change such designation from time to time by executing and filing a subsequent designation with the Plan Administrator.

**Section 8.02. Spousal Consent Requirement.** Any Beneficiary designation that does not provide for the Participant's Eligible Spouse to receive at least fifty percent (50%) of the Participant's vested account balance in the form of a life annuity must be consented to by the Eligible Spouse in writing, with the signature of the Eligible Spouse witnessed by a notary public.

**Section 8.03. Absence of Designation.** If no valid Beneficiary designation is on file, or if such designation is not clear in its meaning, such benefits as may become payable as a result of a Participant's death shall be paid to the Participant's estate.

## **ARTICLE IX. PLAN ADMINISTRATION**

**Section 9.01. Administrative Authority.** The City Manager shall be responsible for and shall control and manage the operation and administration of the Plan. The City Manager shall be the "Plan Administrator."

**Section 9.02. Participant Direction of Investment.**

a. **Participant Directed Accounts.** A Participant Directed Account is an Account that the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant to invest one or more assets that are not pooled

assets held by the Trustee. As the Plan Administrator determines, a Participant Directed Account may provide for a limited number and type of investment options or funds.

b. Participants shall direct the investment of their Accounts, subject to the provisions of this Section 9.02. The Plan Administrator may impose reasonable and nondiscriminatory administrative conditions on the Participants' ability to direct their Account investments.

c. No plan fiduciary (including the Plan Administrator, Employer and Trustee) is liable for any loss or for any breach resulting from a Participant's direction of the investment of any part of his or her directed Account.

d. Each Participant Directed Account is credited and charged with the earnings such Account generates.

**Section 9.03. Powers, Duties and Responsibilities of the Plan Administrator.** The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Plan Administrator shall be conclusive and binding upon all persons. The Plan Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code Section 401(a), and all regulations issued pursuant thereto.

a. The Plan Administrator shall have all powers necessary or appropriate to accomplish his or her duties under this Plan but not limited to, the following:

i. the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;

ii. to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

iii. to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust Fund;

iv. to maintain all necessary records for the administration of the Plan;



v. to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;

vi. to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;

vii. to compute and certify to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;

viii. to consult with the Trustee regarding the short and long-term liquidity needs of the Plan;

ix. to prepare and implement a procedure for notifying Participants and Beneficiaries of their rights to elect Joint and Survivor Annuities and Pre-Retirement Survivor Annuities if required by the Plan, Code and Regulations thereunder;

x. to assist Participants regarding their rights, benefits, or elections available under the Plan;

xi. to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it.

b. In addition to the general powers and responsibilities otherwise provided for in this Plan, the Plan Administrator shall be empowered to remove the Trustee from time to time as he or she deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan, the Code, and applicable law.

c. The Plan Administrator shall establish a “funding policy and method,” i.e., he or she shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so.

d. The Plan Administrator may, in his or her discretion, appoint a Committee of one or more persons to provide direction in the number and type of investment options or funds which will be made available to Participants in directing investment of their Accounts. Such appointment shall be given by the Plan Administrator in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Committee shall have the authority to select the investment options or funds. In the event the Plan Administrator does appoint a Committee, the Committee shall conduct its activities in accordance with the provisions of Section 9.09 below.

e. The Plan Administrator shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by him or her

under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Plan Administrator or by a qualified person specifically designated by the Plan Administrator, through day-to-day conduct and evaluation, or through other appropriate ways.

**Section 9.04. Records and Reports.** The Plan Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

**Section 9.05. Appointment of Advisers and Delegation.** The Plan Administrator may appoint investment managers, counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Plan Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to delegate such duties as the Plan Administrator may, in his or her discretion, deem appropriate.

**Section 9.06. Information from the Plan Administrator.** The Plan Administrator shall advise the Trustee in a full and timely fashion of all facts as may be pertinent to the Trustee's duties under the Plan.

**Section 9.07. Payment of Expenses.** All expenses of administration may be paid out of the Trust Fund unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, investment managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Plan Administrator or Trustee and other specialists and their agents, the costs of any bonds, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

**Section 9.08. Claims Procedure.** Claims for benefits under the Plan shall be made in writing to the Plan Administrator. If the Plan Administrator wholly or partially denies a claim for benefits, the Plan Administrator shall, within a reasonable period of time, but no later than 90 days after receiving the claim, notify the claimant in writing of the denial of the claim. If the Plan Administrator fails to notify the claimant in writing of the denial of the claim within 90 days after the Plan Administrator receives it, the claim shall be deemed denied. A notice of denial shall be written in a manner calculated to be understood by the claimant, and shall contain:

- a. the specific reason or reasons for denial of the claim;
- b. a specific reference to the pertinent Plan provisions upon which the denial is based;
- c. a description of any additional material or information necessary for the claimant to perfect the claim, together with an explanation of why such material or information is necessary; and

- d. an explanation of the Plan's review procedure.

Within 60 days of the receipt by the claimant of the written notice of denial of the claim, or within 60 days after the claim is deemed denied as set forth above, if applicable, the claimant may file a written request with the Plan Administrator that he or she conduct a full and fair review of the denial of the claimant's claim for benefits, including the conducting of a hearing, if the Plan Administrator deems one necessary. In connection with the claimant's appeal of the denial of his benefit, the claimant may review pertinent documents and may submit issues and comments in writing. The Plan Administrator shall render a decision on the claim appeal promptly, but not later than 60 days after receiving the claimant's request for review, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case the 60-day period may be extended to 120 days. The Plan Administrator shall notify the claimant in writing of any such extension. The decision upon review shall (i) include specific reasons for the decision, (ii) be written in a manner calculated to be understood by the claimant, and (iii) contain specific references to the pertinent Plan provisions upon which the decision is based.

#### **Section 9.09. Investment Committee.**

- a. The members of the Committee shall serve at the pleasure of the Plan Administrator; they may be employees or any other individuals; provided, that the City Manager shall appoint at least one Participant of the Plan to serve on the Committee. The Plan Administrator shall designate the Committee chair. The Committee shall designate by a majority vote of the Committee, a secretary, who need not be a member of the Committee. Any member may resign by delivering his written resignation to the Plan Administrator and to the Committee. Vacancies in the Committee shall be filled by the Plan Administrator. The Plan Administrator shall advise the Trustee in writing of the names of the members of the Committee and of changes in membership from time to time.

- b. The Committee shall have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset, including the authority to engage the services of an investment manager or managers, each of whom will have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under such investment manager's control. The principal responsibilities of the Committee are as follows:

- i. oversee the objectives and the financial, investment and actuarial policies of the Plan;
- ii. establish and carrying out a funding policy for the Plan;
- iii. establish asset mix to achieve objectives and to ensure adequate liquidity and asset diversification;
- iv. select investment options;

v. with the approval of the Plan Administrator, adopt an investment policy statement; and

vi. review at least annually the investment performance of the Plan.

c. The Committee shall act by majority vote of its members at the time in office, and such action may be taken either by a vote at a meeting or in writing without a meeting. The signatures of a majority of the members will be sufficient to authorize Committee action. A Committee member shall not participate in discussions of or vote upon matters pertaining to his own participation in the Plan.

d. The Committee may authorize any of its members or any other persons to execute any document or documents on behalf of the Committee, in which event the Committee shall notify the Trustee in writing of such action and the name or names of such members or persons. The Trustee thereafter shall accept and rely upon any document executed by such members or persons as representing action by the Committee, until the Committee shall file with the Trustee a written revocation of such designation.

e. The Committee may adopt such bylaws and regulations as it deems desirable for the conduct of its affairs and, with the consent of the Plan Administrator, may appoint such accountants, counsel, specialists, and other persons as it deems necessary or desirable in connection with its duties under the Plan. The Committee shall be entitled to rely conclusively upon any opinions or reports that shall be furnished to it by any such accountant, counsel, specialist or other person.

f. The Committee shall meet at least once each quarter. Additional meetings may occur as the Committee or its chair deems advisable. The Committee will cause to be kept adequate minutes of its proceedings, and periodically will report its actions to the Plan Administrator. Committee members, as well as the Plan Administrator, will be furnished with copies of the minutes of each meeting.

g. The Committee shall keep a record of all its proceedings and acts and shall keep all such books of account, records, and other information as may be necessary for the proper investment of Plan assets. The Committee shall notify the Trustee and the Plan Administrator of any action taken by the Committee and, when required, shall notify any other interested person or persons.

h. With the exception of the regular compensation paid to them as an employee of the Employer, the members of the Committee shall serve without additional compensation for services as such, but all reasonable expenses incurred by the Committee incident to the investment of Plan assets shall be borne by, and paid out of the Plan assets, except to the extent the Employer elects to have such expenses paid directly by the Employer.

**ARTICLE X.  
AMENDMENT OF PLAN**

**Section 10.01. Amendment of Plan.** The Employer reserves the right, at any time and from time to time, to modify, amend or change any of the terms and provisions of the Plan and Trust; provided that no such modification or amendment may permit any part of the Trust to be used for or diverted to purposes other than for the exclusive benefit of the Employees, Participants and Beneficiaries at any time prior to the satisfaction of all liabilities under the Plan; and provided further that no such modification or amendments shall have any retroactive effect so as to deprive any Employee, Participant or Beneficiary of any vested interest already accrued, it being expressly stipulated that any modification or amendment made to conform with mandatory provisions of the Code, any federal or state law relevant to employee trusts, or any official regulations or rulings issued pursuant thereto shall not be considered prejudicial to the rights of any Employee, Participant, or Beneficiary, and further provided that no such modification or amendment shall affect the Trustee's rights, duties, liabilities, protections, and responsibilities without its written consent.

**ARTICLE XI.  
TERMINATION OF PLAN**

**Section 11.01. Right to Terminate.** The Employer reserves the right to terminate the Plan at any time and for any reason.

**Section 11.02. Termination Events.** The Plan shall terminate:

- a. Upon termination by the Employer as provided in Section 11.01; or
- b. Upon the merger or consolidation of the Employer or the transfer of its assets to another employer by any means and the failure of the transferee to adopt and continue the Plan.

**Section 11.03. Vesting on Termination.** In case the Plan shall terminate, or in the case of complete discontinuance of contributions under the Plan, the Employer contribution accounts and the Participant's contribution account of each Participant shall become fully and one hundred percent (100%) vested and nonforfeitable. Effective as of the date of termination or discontinuance of contributions, each Participant's account shall be distributed to the Participant, under Section 6.01 (other than subsection c. thereof), or to his or her Beneficiary, if the Participant be not then living, in accordance with Section 7.03.

**ARTICLE XII.  
THE TRUST FUND AND THE TRUSTEE**

**Section 12.01. Basic Responsibility of Trustee.**

- a. The Trustee is accountable to the Employer and the Plan Administrator for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee

is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan.

b. The Trustee will credit and distribute the Trust Fund as directed by the Plan Administrator, other persons designated in writing by the Employer or Plan Administrator, including a recordkeeper for the Plan, who are authorized to act on behalf of the appointing party ("Authorized Person") or as otherwise provided for in the Plan. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator, an Authorized Person, or as otherwise provided for in the Plan. The Trustee does not have any discretion as to the investment or the re-investment of the Trust Fund and is acting as a non-discretionary fiduciary as to the assets comprising the Trust Fund. The Trustee does not have any duty to review or to make recommendations regarding investments made pursuant to a Proper Direction.

i. A "Proper Direction" means the direction of the Committee or of a Participant with authority over the Trust asset which is the subject of the direction or of such other person or entity as permitted to give direction to the Trustee pursuant to the terms of this Trust Agreement and which is consistent with the Plan terms and applicable law and conveyed to the Trustee by the Committee, the Plan Administrator, the Employer or an Authorized Person.

ii. The Trustee shall retain any investment obtained upon a Proper Direction until the receipt of another Proper Direction to dispose of such investment.

iii. The Trustee is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any Proper Direction.

**Section 12.02. Investment Powers and Duties of the Nondiscretionary Trustee.**

a. The Trustee shall have no discretionary authority to invest, manage, or control Plan assets, but must act solely as a non-discretionary Trustee of those Plan assets. As a non-discretionary Trustee of the Plan, the Trustee is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein each of which the Trustee shall exercise solely as a non-discretionary Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets and conveyed to the Trustee by the Committee, the Plan Administrator or an Authorized Person. If no directions are provided to the Trustee, the Plan Administrator will provide necessary direction. To the full extent permitted by applicable law, the Trustee shall have (a) no duty to inquire whether a Proper Direction

by the Employer, Committee, Plan Administrator or Authorized Person conforms to the Plan or applicable law, and (b) no liability or responsibility for following any Proper Direction, or for failing to act in the absence of any such instruction. If, as provided in the Plan, participants may direct investments in individual accounts, the Employer, Committee or Plan Administrator shall be responsible for investment selections available in such program and for ensuring that such program complies with the terms of the Plan and applicable law. Except as otherwise agreed in writing, the Trustee shall not be responsible for the allocation of contributions among participants. For purposes of providing direction to the Trustee pursuant to this Article XII, instructions and directions from the City Manager of the City of Overland Park are deemed to be instructions and directions from the "Employer."

b. Subject to Section 12.02.a. the Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Plan, shall have the following powers and authorities:

i. To invest the assets, without distinction between principal and income, in securities or personal property, wherever situated, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein (In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the directing party shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust.);

ii. To purchase, or subscribe for, any securities or other property and to retain the same;

iii. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contractor at public auction;

iv. At the direction of the Committee, the Plan Administrator or an Authorized Person, to vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;

v. To cause any securities or other property to be registered in the Trustee's own name, in the name of one or more of the Trustee's nominees, in a clearing corporation, in a depository, or in book entry form or in bearer form, but

the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

vi. To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee hereunder pursuant to Revenue Ruling 81-100, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts and the trust agreement of any such trust fund shall be deemed adopted as part of this Trust to the extent that any portion of the Trust is invested therein;

vii. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

viii. To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in, all suits and legal and administrative proceedings;

ix. To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);

x. To invest in Treasury Bills and other forms of United States government obligations;

xi. To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

xii. To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee);

xiii. To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and



xiv. To engage a custodian (“Appointed Custodian”) to perform certain custodial duties and responsibilities for the Trust as instructed by the Plan Administrator or Authorized Person. The Trustee shall have no responsibility or liability with respect to the selection or monitoring of the Appointed Custodian, for the actions delegated to the Appointed Custodian upon such instruction, or for the actions or omissions of any Appointed Custodian.

c. The administration of the Trust shall be subject to all of the terms and conditions of the Operational Guidelines attached hereto as Appendix A, which are hereby incorporated by reference. Notwithstanding anything to the contrary set forth herein, the Trustee may amend the Operational Guidelines at any time upon reasonable prior (to the extent practicable, and if not practicable as soon as reasonably practicable) written notice to the Employer. The Employer, Committee, Plan Administrator, or Authorized Person may instruct the Trustee to invest assets of the Trust in any security or other property listed in the Operational Guidelines. A decision by the Trustee that an investment is or is not administratively acceptable shall not constitute a determination by the Trustee of the prudence or advisability of the investment nor shall it constitute investment advice on the part of the Trustee. The Trustee shall have no duty or obligation to review any investment to be acquired, held or disposed of pursuant to Proper Directions, to determine the diversification policy of the Plan assets, or to make any recommendation with respect to the suitability, acquisition, disposition or continued retention of any investment. Notwithstanding the appointment, if any, of an investment manager, it shall be the responsibility of the Plan Administrator to determine the diversification policy with respect to the investment of Plan assets, for monitoring adherence to such policy, and for instructing the Trustee with respect to its compliance with any investment limitations on employer or other securities or property contained in the Plan or imposed on the Plan by applicable law. The Trustee shall rely upon the determination of the Plan Administrator that all assets received by it are properly contributed or transferred to the Trust in accordance with the provisions of the Plan. Such assets may be cash or in-kind, subject to the requirements of the Operational Guidelines and provided that in-kind contributions will be permitted only in defined contribution plans as long as such contributions have been determined by the Plan Administrator to be discretionary and unencumbered. The Plan Administrator shall place any assets which are unacceptable to the Trustee with another trustee under a separate trust agreement or shall retain such assets in any other “appropriate account” as defined in Section 401(f) of the Code. The Trustee shall have no responsibility for such assets.

d. If the Plan permits Contracts (including, without limitation, life insurance policies, group annuities, guaranteed investment contracts, bank investment contracts or similar vehicles) as Plan assets, the following provisions shall apply with respect to any such Contracts that become part of the Trust.

i. The Trustee shall have no obligation to take any action with respect to any Contract, including to pay any premium on any Contract, except upon instructions from the Plan Administrator or Authorized Person; provided, however, that the Trustee may (although shall not be obligated to) make such

payment in order to avoid the lapse of such Contract and the Trustee shall not be liable for the application of any part of the Trust made solely for this purpose in the absence of specific instructions. Contract premiums, assessments, dues, charges and interest shall be paid only from cash available in the Trust. The Trustee shall not be liable for losses arising out of the lapse in such Contract unless such lapse is due to the Trustee's negligence or willful misconduct.

ii. The Trustee shall have no responsibility or liability with respect to the selection or monitoring of the issuers of such Contracts. The Trustee is not responsible for (i) the form, genuineness, validity, sufficiency or effect of any Contract, (ii) the failure of any issuing company to make payments provided by any Contract (iii) the action of any person that may delay payment or render a Contract null and void or unenforceable in whole or in part, or (iv) the fact that for any reason whatsoever any Contract shall lapse or otherwise be uncollectible.

e. The Trustee shall have the following administrative powers with respect to the Trust, which it may exercise in its sole discretion:

i. To keep any portion of the Trust, including, but not limited to, amounts with respect to which the Trustee has not received Proper Directions from the Employer, Plan Administrator, Committee, or Authorized Person, or for which instructions furnished are, in the opinion of the Trustee, incomplete or ambiguous, in cash, it being understood that the Trustee shall not be required to pay any interest on any such balances, unless otherwise agreed by the parties.

ii. To register any investment held by the Trustee as part of the Trust in its own name or in the name of a nominee, including the Appointed Custodian or Sub-Custodian (as defined in below), to hold any investment in bearer form or to hold any investment unregistered or in such form that title will pass by delivery; provided, however, that the books and records of the Trustee, the Appointed Custodian and Sub-Custodian shall at all times show that all such investments are part of the Trust.

iii. To hold such investments for safekeeping or to deposit such securities, or cause them to be deposited, in a clearing system established to settle transfers of securities and cause them to be held in the nominee name of such clearing system.

iv. Only in the event that the Trustee shall provide prior (to the extent practicable and if not as soon as reasonably practicable) written notice to the Employer before engaging any of the following advisors, to engage attorneys (who may also serve as counsel for the Employer or the Trustee), accountants and other professional advisors who may also be an advisor for the Employer, and, anything contained herein to the contrary notwithstanding, to engage in legal or administrative proceedings as the Trustee deems reasonably required in connection with the administration of the Trust, and to compensate any persons so engaged at such wages, fees, remuneration, consideration or otherwise, and upon

such terms and conditions as the Trustee deems reasonable under the circumstances. Unless otherwise noted in this Plan and Trust Agreement, such compensation shall be a charge upon the Trust and may be paid from the Trust and shall in no event be deducted from any compensation payable to the Trustee. The parties acknowledge that the Trustee intends to rely upon the advice or opinion of such professional advisors referred to herein.

v. To engage a custodian, which may be an affiliate of the Trustee, to perform certain custodial duties and responsibilities for the Trust, including maintaining physical control of Trust assets, providing record maintenance and producing statements on such assets (the "Sub-Custodian").

vi. To do all such acts, and exercise all such rights and privileges, although not specifically mentioned, unless specifically prohibited by the Employer or Plan Administrator, which shall be reasonably required in the performance of the Trustee's duties hereunder, including without limitation making withdrawals from the Trust in amounts sufficient to pay any proper charge against the Trust, provided that the Trustee shall provide prior (to the extent practicable and if not, as soon as reasonably practicable) written notice to the Employer before making such withdrawal except to the extent such withdrawal is pursuant to a Proper Direction, and further provided that the Employer shall be responsible for payment of any deficiency and further provided that the Employer may reimburse the Trust for any charges paid from the Trust to the extent permitted by applicable law.

#### **Section 12.03. Trustee's Compensation and Expenses and Taxes.**

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule then in effect at the time services are rendered (if the Trustee has such a schedule) or as agreed upon in writing by the Plan Administrator and the Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. In the event that the Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation in accordance with the schedule of compensation in effect at the time such services are rendered. Such compensation shall constitute a charge against the Trust. The Employer expressly acknowledges and agrees that the Trustee may retain as additional compensation for its services any earnings (which are determined daily and which the Trustee expects will be generated at the prevailing federal funds rate) with respect to: (a) amounts credited to non-interest bearing cash accounts; (b) moneys during the period between the time the moneys are received by the Trustee and actually forwarded to implement investment instructions; and (c) distributions between the time a disbursement is issued and presented for payment. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund. Unless otherwise agreed in writing by the Employer and the Trustee, the Trustee shall be responsible for the reporting and withholding of federal and state taxes that may be required to be withheld with respect to payments to participants or their beneficiaries, and for remitting amounts withheld to the appropriate taxing authorities. The Plan Administrator or Authorized Person shall calculate all taxes and withholding and shall provide the Trustee all

information necessary for the Trustee to report on, withhold and remit such taxes. Except as provided herein, the Trustee is not responsible for preparation of any tax-related return or report (except Form 1099) including, but not limited to, the Form 5500 Annual Return/Report of Employee Benefit Plan or any return or report required as a result of liability incurred by the Plan for tax on unrelated business taxable income, windfall profits tax or any return or report necessary to preserve the availability of any credit or deduction with respect thereto.

**Section 12.04. Annual Report of the Trustee.**

a. Within a reasonable period of time after the later of the last day of each Plan Year or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Plan Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- i. the net income, or loss, of the Trust Fund;
- ii. the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- iii. the increase, or decrease, in the value of the Trust Fund, and values shall be reported in accordance with the Trustee's established reporting procedures, as may be amended from time to time;
- iv. all payments and distributions made from the Trust Fund; and
- v. such further information as the Trustee and/or Plan Administrator deems appropriate.

b. The Plan Administrator, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee of its approval or disapproval thereof. Failure by the Plan Administrator to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Plan Administrator of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires, and the cost, including attorneys' fees, of any such action shall be a charge against the Trust and may be paid from the Trust as provided in this Plan and Trust Agreement, provided that the Trustee shall provide the Employer with prior written notice (to the extent practicable, and to the extent not practicable as soon as reasonably practicable) before instituting such an action or consulting attorneys with respect to the same.

**Section 12.05. Resignation, Removal and Succession of Trustee.**

a. A Trustee may resign at any time by delivering to the Plan Administrator, at least sixty (60) days before its effective date, or another period of time mutually agreed to by the parties hereto, a written notice of resignation.

b. The Plan Administrator may remove a Trustee at any time by delivering to the Trustee, at least sixty (60) days before its effective date, or another period of time mutually agreed to by the parties hereto, a written notice of such Trustee's removal.

c. Upon the resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Plan Administrator; and such successor, upon accepting such appointment in writing and delivering same to the Plan Administrator, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein.

d. The Plan Administrator may designate one or more successors prior to the resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Plan Administrator and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the resignation, incapacity, or removal of the predecessor.

e. Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Plan Administrator a written statement of account with respect to the portion of the Plan Year during which it served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 12.04 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Plan Administrator no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 12.04 for the approval by the Plan Administrator of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Plan Administrator of any such special statement in the manner provided in Section 12.04 shall have the same effect upon the statement as the Plan Administrator's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required hereunder. The Trustee may reserve such sums as it deems necessary to defray its expenses in settling its accounts, to pay any of its compensation due and unpaid, and to discharge any liabilities constituting a charge on or against the assets of the Trust or on or against the Trustee, provided that the Trustee shall provide the Employer with prior written notice (to the extent practicable and if not, as soon as reasonably practicable) before charging the Trust for such expenses. If the reserve is not sufficient for all amounts otherwise payable hereunder, the resigning or removed Trustee shall be entitled to reimbursement for any deficiency from the successor trustee and the Employer, each of which shall be jointly and severally liable therefor, provided that a successor trustee shall be liable not in its individual capacity but solely in its capacity as trustee. When the assets comprising the Trust have been transferred and delivered to the successor trustee, and the accounts of the Trustee have been settled

pursuant to Section 12.04, the Trustee shall be released and discharged from all further accountability or liability for the Trust and shall not be responsible in any way for the further disposition of the Trust or any part thereof.

**Section 12.06. Limitation on Duties and Liabilities.** The Trustee shall have no right or duty to examine the records of the Employer to determine whether the amount of any contribution to the Plan has been correctly computed or to compel the performance of any duty imposed upon the Employer, Plan Administrator, or the Committee by this Trust Agreement. To the full extent permitted by applicable law, each fiduciary of the Plan shall be solely responsible for its own acts or omissions and the Trustee shall have no duty to question any other fiduciary's performance of its duties. In the event that "knowledge" of the Trustee shall be a prerequisite to imposing a duty upon, or determining liability of, the Trustee, then it is expressly understood and agreed that the Trustee's performance of ministerial duties (such as processing of investment orders, or custodial, reporting, recording or bookkeeping functions) shall not be deemed to constitute "knowledge" by the Trustee of the substance of matters contained therein. For the purpose of this section, the Trustee shall include its directors, officers, employees, agents and affiliates. The Trustee shall be fully protected in and shall not be held liable for relying and acting upon any notice, instruction, certification or other document in writing that was made or purports to have been made in accordance with this Trust Agreement, is believed by the Trustee to be genuine, and has been signed and delivered by the proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to the truth and accuracy of the statements contained therein. Notice of authorization or removal of the Plan Administrator or Committee shall be accompanied by evidence of proper action of the Employer approving such instruction. Instructions given by an Authorized Person in accordance with this Plan and Trust Agreement shall be treated for all purposes hereof as instructions from the party appointing the Authorized Person. The Trustee shall be deemed to have received proper instructions upon receipt of written instruction given to the Trustee in a form and manner required by or acceptable to the Trustee. In the event of any ambiguous or conflicting instructions to, or adverse claims or demands upon, the Trustee, the Trustee shall be entitled, at its option, to refuse to comply with any such instruction, claim or demand as long as such ambiguity or conflict shall continue, and in so refusing the Trustee may elect not to make any payment or other disposition of assets held pursuant to this Plan and Trust Agreement, provided that the Trustee shall provide prior (to the extent practicable and, if not, as soon as reasonably practicable) written notice to the Employer before making any payment or disposition of assets. The Trustee shall not be or become liable in any way for its failure or refusal to comply with any such ambiguous or conflicting instructions or adverse claims or demands, and it shall be entitled to continue to so refrain from acting until such ambiguous, conflicting or adverse demands (a) have been resolved and it has been notified in writing thereof or (b) have finally been determined in a court of competent jurisdiction. To the full extent permitted by applicable law, the Trustee shall not be liable for assets that are not included in the Trust or for losses of any kind that may result (a) by reason of any action taken by it in accordance with the Proper Directions of the Employer, the Plan Administrator, the Committee, or Authorized Person, (b) by reason of any failure to act as a result of the absence of, or ambiguity of, Proper Directions, or (c) by reason of any actions taken by any prior trustee, additional trustee, successor trustee or Appointed Custodian. The Trustee has no duty to perform any actions other than those specified in this Trust or pursuant to Proper Directions. If the Plan is discontinued in

whole or in part, or this Agreement is terminated, the Trustee, after reserving such sums as the Trustee deems reasonably necessary as provided in this Trust, shall apply or distribute the Trust in accordance with the Proper Directions of the Plan Administrator; provided that if the reserve is not sufficient for all amounts otherwise payable hereunder, the Trustee shall be entitled to reimbursement for any deficiency from the Employer. When the Trust has been so applied or distributed, and the accounts of the Trustee have been settled pursuant to Section 12.04, the Trustee shall not be responsible in any way for the further disposition of the Trust (or that part of the Trust so applied or distributed, if the Plan is terminated only in part) or any part thereof so applied or distributed. If the Plan is subject to the jurisdiction of the Pension Benefit Guaranty Corporation (“PBGC”), the Trustee shall have the right to withhold distribution or application of any part of the Trust unless and until written approval of the termination has been granted by the Internal Revenue Service and the PBGC.

**Section 12.07. Rights of Successor Trustee.** If a successor Trustee is appointed, such successor Trustee will succeed as of the effective date of its appointment to all the rights, title and estate of the succeeded Trustee, and no order of any Court shall be necessary in connection therewith. Notwithstanding the foregoing, however, the succeeded Trustee shall deliver to the successor Trustee such instruments of transfer, conveyance, assignment and further assurance as it may reasonably require. No successor Trustee shall be personally liable for any act or omissions that occurred prior to the time it became a Trustee.

**Section 12.08. Incapacity of Committee and Employer.** If at any time the Employer, Committee and Plan Administrator shall be incapable of giving the Trustee directions, instructions or authorizations as herein provided, the Trustee may act as it, in its sole discretion, deems appropriate and advisable in the circumstances for the carrying out of the provisions of the Plan and Trust Fund. The Trustee shall have no duty, in the event of the Employer’s bankruptcy or insolvency, to take any action until directed to do so by the bankruptcy trustee or a court that has jurisdiction over Plan assets. A party shall not have any liability for any losses arising out of delays in performing the services rendered under this Agreement when such delays result from events beyond such person’s control, including without limitation, interruption of the business due to acts of God, acts of governmental authority, acts of war, terrorism, riots, civil commotions, insurrections or labor difficulties (including, but not limited to, strikes and other work slippages due to slow-downs).

## **ARTICLE XIII. MISCELLANEOUS**

**Section 13.01. Employer Merger.** In the event that the City of Overland Park, Kansas, shall merge or consolidate with one or more other municipalities, then such successor may continue this Trust upon executing a proper amendment to the Plan.

**Section 13.02. Performance of Contracts.** Neither the Employer nor the Trustee shall be responsible for the validity of any Contracts, nor for the failure on the part of an Insurer to make payments provided by the Contract(s), nor for the action of any person or persons which may render such Contract(s) null and void or unenforceable, either in whole or in part. In case it becomes impossible for the Employer or the Trustee to perform any act due to

any restrictions imposed by any provision of any Contract, an Insurer or any other person, then that act shall be performed which, in the discretion of the Plan Administrator, most nearly carries out the intent and purpose of this Trust.

**Section 13.03. Written Notice.** In any case in which the Plan Administrator, Employer, Trustee, or an Insurer shall be directed to take any action upon the occurrence of any event, it shall be under no obligation to take such action unless and until proper satisfactory written notice of such occurrence shall have been received by it. Except as the parties may otherwise agree in writing, all notices, reports, accounts and other communications made in electronic form from any party shall be in writing and deemed to have been duly given as of the first date on which the party transmits or otherwise makes the communication available. Except as the parties may otherwise agree in writing, all other instructions, notices, objections and other communications to the party shall be in writing and shall be deemed to have been given when received by the party at its office below:

Wilmington Trust Retirement and Institutional Services Company  
P.O. Box 52129  
Phoenix, AZ 85072-2129  
Attn: Vice President – Client Services

Or, if by overnight mail:

Wilmington Trust Retirement and Institutional Services Company  
2800 North Central Avenue, Suite 900  
Phoenix, AZ 85004  
Attn: Vice President – Client Services

City of Overland Park  
Attn: Manager Retirement Plans  
8500 Santa Fe Drive  
Overland Park, Kansas 66212-2866

**Section 13.04. Trustee Reliance on Employer Certification.** A certificate in writing from any officer of the Employer to the Trustee as to the happening of any event shall constitute conclusive evidence thereof, and the Trustee shall be fully protected and discharged from all liability in accepting and relying upon such certificate.

**Section 13.05. Presumption of Genuineness.** Neither the Plan Administrator, Employer or the Trustee shall incur any liability to any person or party in acting upon the notice, request, consent, letter, telegram or other paper or document believed by it to be genuine and to have been signed or sent by the proper person.

**Section 13.06. Insurer Not a Party.** An Insurer shall not be deemed a party to this Plan.



**Section 13.07. Ownership of Insurance Contracts.** Except for the provisions of a Contract whereby the income at retirement may be paid to the Participant, and whereby amounts payable at death are paid to a Beneficiary, the Trust shall be the legal owner of all Contracts; and the Trustee shall exercise, on behalf of the Trust, all rights, options and benefits thereunder, including the right during the life of the Participant and before the Normal Retirement Date to change the provisions to be then operative. No Insurer shall be required to make any inquiry regarding the authority of the Trustee to do any of the aforesaid, nor shall it be responsible to see to the distribution or application of any amount paid the Trustee or any amount paid in accordance with the discretion of the Trustee. Any company issuing a Contract may deal with the Trustee as owner of any Contract issued by such company and held in the Trust, without inquiry as to the authority of the Trustee to so act, and may accept and rely upon any written notice, instruction, direction, certificate or other communication signed by the Trustee, and shall incur no liability or responsibility by so doing. Any sums paid by an issuing company under any of the terms of a Contract issued by it, either to the Trustee, or, in accordance with the direction of the Trustee, to any other person or persons designated in such Contract as the person or persons to whom such payment shall be made, shall be a full and complete discharge of the liability to pay such sums, and the issuing company shall have no obligation to look into the terms of this Agreement.

**Section 13.08. No Contract of Employment.** Nothing contained in this Agreement shall be construed as a contract of employment between the Employer and any Employee, nor shall it afford to any Employee a right to continued employment with the Employer.

**Section 13.09. Governing Law.** This Agreement shall be construed according to the laws of the State of Kansas, where it is made, provided that the state law relating to the Trustee's qualifications, performance, authority, duties, rights and protections shall be the internal laws of the state of Delaware without reference to any conflicts of laws principles.

**Section 13.10. Heirs and Assigns.** This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of all parties, present and future.

**Section 13.11. Prohibition on Alienation.** No benefits under the Agreement shall be subject in any manner to be anticipated, alienated, sold, transferred, assigned, pledged, encumbered or charged; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefits as herein provided for him or her.

**Section 13.12. Qualified Domestic Relations Orders.** Notwithstanding the provisions of Section 13.11, the Trustee shall comply with a "Qualified Domestic Relations Order." A "Qualified Domestic Relations Order" is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Participant (Alternate Payee) and which:

- a. Creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan; and
- b. Specifies:
  - i. The name and last known mailing address (if any) of the Participant and each Alternate Payee covered by the order;
  - ii. The amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined; and
  - iii. The number of payments or the period to which the order applies and each Plan to which the order relates; and
- c. Does not require the Plan to:
  - i. Provide any type or form of benefit, or any option, not otherwise provided under the Plan;
  - ii. Provide increased benefits; or
  - iii. Pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior Qualified Domestic Relations Order.

This Plan will comply with a Qualified Domestic Relations Order only if it provides for a lump sum payment to one or more Alternate Payees, to be made as soon as administratively feasible following the determination of the Order's qualified status, irrespective of whether the Participant has attained the earliest retirement age, as defined in Code Section 414(p).

For purposes of this Plan, an Alternate Payee who had been married to the Participant for at least one (1) year may be treated as an Eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest, provided that the Qualified Domestic Relations Order provides for such treatment. However, under no circumstances may the spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an Eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order (including approval of a property settlement agreement) relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Plan Administrator shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order; shall notify the affected Participant and any Alternate Payee of the Plan Administrator's procedure for determining whether or not the judgment, decree or order is a Qualified Domestic Relations Order; and shall transfer to a separate account in the name of any Alternate Payee the maximum amount that may be payable to that Alternate Payee if the judgment, decree or order is ultimately determined to be a Qualified Domestic Relations Order.

The Plan Administrator shall establish a procedure to determine the status of a judgment, decree or order as a Qualified Domestic Relations Order and to administer Plan distributions in accordance with Qualified Domestic Relations Orders. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the preceding paragraph, shall permit an Alternate Payee to designate a representative for receipt of communications from the Plan Administrator, and shall include such other provisions as the Plan Administrator shall determine, including provisions required under regulations promulgated by the Secretary of the Treasury.

No portion of any separate account established in the name of an Alternate Payee shall be paid to any Participant unless (i) the judgment, decree or order is determined not to be a Qualified Domestic Relations Order, and (ii) the Plan Administrator receives no revised judgment, decree or order within the 18-month period following receipt of the original judgment, decree or order. If the original or revised judgment, decree or order is determined to be a Qualified Domestic Relations Order within the 18-month period following the receipt by the Plan Administrator of the original judgment, decree or order, then payment shall be paid to the appropriate Alternate Payee. If such a determination is not made within the 18-month period, payment shall be made at the time and in the manner provided under the Plan as if no order, judgment or decree had been received by the Plan Administrator.

If distributions are made from a Participant's Employer contribution account pursuant to the requirements of a Qualified Domestic Relations Order prior to his or her termination of employment and prior to the date the Participant is one hundred percent (100%) vested in his or her Employer contribution account, the Participant's vested interest in his or her Employer contribution account shall not become greater due to the prior distributions made pursuant to the Qualified Domestic Relations Order.

**Section 13.13. Exclusive Benefit of Participants and Beneficiaries.**

This Agreement has been entered into for the exclusive benefit of Participants and their Beneficiaries.

**Section 13.14. Qualified Military Service.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

**Section 13.15 Cash Basis Law.** The parties acknowledge that the City/Employer is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City/Employer's current budget year. In the event the City/Employer does not so budget and appropriate the funds, City/Employer shall send written notice to Trustee of the lack of budgeted funds for this Agreement and the parties shall be relieved from all further obligations, without penalty under this Agreement except that the City/Employer shall pay Trustee for all services rendered under this Agreement prior to the date the written notice is received by Trustee.

**Section 13.16 Insurance.** Trustee agrees to maintain insurance coverage of the type, with the amounts of deductibles and limits, and for the duration, of the term of this Agreement, as set forth on the attached Schedule of Insurance Coverage. Upon request, Trustee shall furnish to the City/Employer a Certificate of Insurance or other proof of insurance satisfactory to the City/Employer verifying coverage in compliance with this Agreement but not more frequently than once a year. Any deductible or self-insured retention amount or other similar obligation under the policies listed above will be the sole responsibility of Trustee. If coverage is on a "claims made" basis, equivalent coverage must be maintained in force for a minimum of three (3) years after the termination of the Agreement. The City/Employer will only accept coverage from an insurance carrier which offers proof that the carrier:

- a. Is licensed to do business in the State of Kansas if required with respect to the services to be provided by Trustee;
  - b. Carries a Best's Policyholder rating of A or better; and
  - c. Carries at least a Class VII financial rating;
- Or
- d. Is a company mutually agreed upon by the City/Employer and Trustee.

**Section 13.17 Compliance with Equal Opportunity Laws, Regulations and Rules.**

Trustee agrees that:

- a. Trustee shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, ancestry or age;
- b. In all solicitations or advertisements for employees, Trustee shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
- c. If Trustee fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, it shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City/Employer;
- d. If Trustee is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Trustee shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City/Employer; and
- e. Trustee shall include the provisions of paragraphs a. through d. above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

Trustee further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42

U.S.C. 12101 *et seq.*), as well as all other federal, state and local laws, ordinances and regulations applicable to this project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project, and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

The foregoing covenant shall apply to the Trustee only to the extent legally required.

**Section 13.18 City/Employer's Right to Access Information and Trustee's Cooperation.** The City/Employer may audit any of Trustee's services related to the performance of this Agreement. Trustee shall cooperate with all reasonable requests for information received from the City/Employer, its auditors, or its representatives in connection with all audits. The City/Employer shall bear the costs and expenses associated with all audits. Trustee shall provide requested documents and data on a timely basis to the City/Employer or Plan Participants.

#### **ARTICLE XIV. MAXIMUM ANNUAL ADDITIONS**

**Section 14.01. Annual Limit.** Notwithstanding anything contained herein to the contrary, the total Annual Additions made to all accounts of a Participant shall not exceed the lesser of \$49,000 or 100% of the Participant's 415 Compensation, except that such \$49,000 amount shall be increased as may be permitted by regulations issued pursuant to Code Section 415(d) to reflect changes in the cost of living.

**Section 14.02. Definitions.** For purposes of this Article XIV, the following terms shall be defined as follows:

a. 415 Compensation shall include those items listed in Section 1.415(c)-2(b) of the Treasury Regulations and shall exclude those items listed in Section 1.415(c)-2(c) of such Regulations, subject to the provisions set forth in Section 1.415(c)-2(a) of such Regulations; provided, however, that 415 Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed or deferred by the Employer at an Employee's election and which is not includible in the Employee's gross income pursuant to Code Sections 125, 132(f)(4), or 457.

b. Annual Additions shall mean the sum of the following amounts allocated on behalf of a Participant for a Year:

- i. All Employer contributions, including any Employee contributions treated as Employer contributions because they have been picked up by the Employer pursuant to Code Section 414(h);
- ii. All forfeitures; and
- iii. All nondeductible Employee contributions contributed for any Plan Year beginning on or after October 1, 1987.

Annual Additions also shall include excess amounts reapplied to reduce Employer contributions under this Article XIV.

**Section 14.03. Disposition of Excess Amounts.** If the Plan Administrator allocates an excess amount to a Participant's account for a year, the Plan Administrator shall dispose of the excess amount as follows:

a. The Plan Administrator shall direct the Trustee to return any nondeductible voluntary Employee contributions to the Participant, to the extent that the return would reduce the excess amount.

b. If, after the application of subsection 14.03.a., an excess amount still exists and the Plan covers the Participant at the end of the Year, then the Plan Administrator shall use the excess amount to reduce future Employer contributions (including any allocation of forfeitures) under the Plan for the next Year and for each succeeding Year, as is necessary, for the Participant.

c. If, after the application of subsection 14.03.a., an excess amount still exists and the Plan does not cover the Participant at the end of the Year, then the Plan Administrator shall hold the excess amount unallocated in a suspense account. The Plan Administrator shall apply the suspense account to reduce Employer contributions (including any allocation of forfeitures) for all remaining Participants in the next Year, and in each succeeding Year, if necessary.

d. Except as provided in Section 14.03.a., the Plan Administrator shall not distribute any excess amount to Participants or former Participants.

**Section 14.04. 415 Compensation Paid After Severance From Employment.** 415 Compensation shall be adjusted for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.

a. Regular pay. 415 Compensation shall include regular pay after severance of employment if:

i. The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

ii. The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

b. Leave Cashouts and Deferred Compensation. Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the Participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

c. Salary Continuation Payments for Military Service Participants. 415 Compensation does not include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

d. Salary Continuation Payments for Disabled Participants. 415 Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

**Section 14.05. Administrative Delay (the first few weeks) Rule.** 415 Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no compensation is included in more than one limitation year.

**Section 14.06. Inclusion of Certain Nonqualified Deferred Compensation Amounts.** Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant.

**Section 14.07. Definition of Annual Additions.** The Plan's definition of Annual Additions is modified as follows:

a. Restorative Payments. Annual Additions for purposes of Code Section 415 shall not include restorative payments. A restorative payment is a payment made to

restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered Annual Additions.

b. Other Amounts. Annual Additions for purposes of Code Section 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a Participant from the Plan; and (4) Repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Code Section 411(a)(7)(C)) and Code Section 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code Section 414(d)) as described in Code Section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

c. Date of Tax-Exempt Employer Contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

**Section 14.08. Change of Limitation Year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

**Section 14.09. Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the Annual Additions (within the meaning of Code Section 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in



Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 regulations.

**Section 14.10. Aggregation and Disaggregation of Plans.**

a. For purposes of applying the limitations of Code Section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a predecessor employer) under which the Participant receives annual additions are treated as one defined contribution plan. The Employer means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Sections 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code Section 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

i. A former Employer is a predecessor employer with respect to a Participant in a plan maintained by an Employer if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

ii. With respect to an Employer of a Participant, a former entity that antedates the Employer is a predecessor employer with respect to the Participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

b. Break-up of an Affiliate Employer or an Affiliated Service Group. For purposes of aggregating plans for Code Section 415, a formerly affiliated plan of an employer is taken into account for purposes of applying the Code Section 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the cessation of affiliation. For purposes of this paragraph, a formerly affiliated plan of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and

(2)). For purposes of this paragraph, a cessation of affiliation means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

c. Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code Section 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code Section 415 with respect to a Participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

**Section 14.11. Compensation Paid After Severance From Employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted in the same manner as 415 Compensation, except the term limitation year shall be replaced with the term plan year and the term 415 Compensation shall be replaced with the term Plan Compensation.

**Section 14.12. Operating Rules.** For purposes of this Article XIV, all defined contribution plans of the Employer, whether or not terminated, shall be treated as one defined contribution plan. The extent to which Annual Additions under the Plan shall be reduced, as compared with the extent to which the Annual Additions under any other defined contribution plan shall be reduced, in order to achieve compliance with the limitations of Code Section 415 shall be determined by the Trustee in such a manner so as to maximize the aggregate benefits payable to Participants. If such reduction is made under this Plan, the Trustee shall advise the affected Participants of the limitation on their Annual Additions required by this Section.

**Section 14.13. Resolution of Conflicts.** The above limitations are intended to comply with the provisions of Code Section 415, so that the maximum benefits provided by plans of the Employer shall be exactly equal to the maximum amounts allowed under Code Section 415 and the regulations thereunder. If there is any discrepancy between the provisions of this Article and the provisions of Code Section 415 and the regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Code Section 415.

#### SIGNATURES

IN WITNESS WHEREOF, the City of Overland Park, Kansas, has caused this amendment and restatement of the Plan and Trust to be executed on its behalf, and the Trustee has caused this agreement to be executed on its behalf, all on the day and year first above written, but to be effective January 1, 2011.

**CITY OF OVERLAND PARK, KANSAS**

ATTEST:

By:

\_\_\_\_\_  
\_\_\_\_\_, Mayor

By:

\_\_\_\_\_  
\_\_\_\_\_, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael R. Santos  
Deputy City Attorney

Stinson Morrison Hecker LLP

By: \_\_\_\_\_

Trustee:

By: \_\_\_\_\_

## **APPENDIX A OPERATIONAL GUIDELINES**

Capitalized terms used but not otherwise defined have the meanings given to such terms in the Trust Agreement.

### **INSTRUCTIONS**

The Trustee must receive instructions from the Plan Administrator, Committee, Employer or an Authorized Person, as applicable (each for purposes of this Appendix A, an “Instructing Party”) for each purchase, sale acquisition and disposition. The Trustee reserves the right not to effect any transaction unless given sufficient time and information to review and process the transaction. All purchases, sales, acquisitions and dispositions of assets must be made in accordance with terms of the Trust Agreement, the Plan and Applicable Law.

### **LIQUIDITY**

Sufficient liquidity must be maintained in accounts to meet foreseeable obligations of the Trust. The Trustee specifically reserves the right (a) not to follow any instruction that it reasonably believes would result in insufficient liquidity (b) not to make any disbursement unless the Instructing Party has provided instruction as to the assets to be converted to cash for the purposes of making such payment, and (c) to sell securities from the Trust to recover any funds advanced for any trades not settled immediately upon placement.

### **TRUST ASSETS**

#### **Acceptable Assets**

Assets are considered to be acceptable assets depending upon the Trustee's ability to support and administer the asset, the Trustee's proposed responsibilities with respect to such assets, the type of account, the availability of the asset to be acquired through the Trustee or an affiliate (approved for this purpose by the Trustee) and other factors. The Instructing Party should consult with the Trustee prior to the acquisition of any asset to determine acceptability of such asset. The following types of assets are generally acceptable:

Cash.

Publicly traded stock listed on a U.S. stock exchange or regularly quoted over-the-counter.

Publicly traded bonds listed on a U.S. bond exchange or regularly quoted over-the-counter.

Mutual funds that are NSCC and DCC&S eligible.

Registered limited partnership interests, REITs and similar investments listed on a U.S. stock exchange or regularly quoted over-the-counter.

Commercial paper, bankers' acceptances eligible for rediscounting at the Federal Reserve, repurchase and reverse repurchase agreements and other “money market” instruments for which

trading and custodial facilities are readily available.

U.S. Government and U.S. Government Agency issues.

Municipal securities whose bid and ask values are readily available.

Federally insured savings accounts, certificates of deposit and bank investment contracts. The Instructing Party is responsible for determining federal insurance coverage and limits and for diversifying account assets in accordance with those limits.

American Depository Receipts, Eurobonds, and similar instruments listed on a U.S. exchange or regularly quoted domestically over-the-counter for which trading and custodial facilities are readily available.

Life insurance, annuities, and guaranteed investment contracts issued by insurance companies licensed to do business in one or more states in the U.S. The Instructing Party is responsible for determining the safety of such investments and the economic viability of the underwriter and for diversifying account assets accordingly.

Collective funds, such as the ICMA Stable Value Fund.

In certain circumstances a particular asset which otherwise may be considered an acceptable asset may be determined by the Trustee to be unacceptable or conditionally acceptable.

### **Unacceptable Assets**

Trustee generally cannot acquire or hold the following assets:

- a. Tangible personal property (e.g., precious metals, gems, works of art, coins, furniture and other household items, motor vehicles, etc.).

Foreign currency and bank accounts.

Short sales.

Commodity futures and forward contracts.

Oil, gas and mineral interests.

Intangible personal property (e.g., patents and rights).

Unsecured loans.

### **Conditionally Acceptable Assets**

The Trustee may, but shall not be obligated, to acquire or continue to hold any of the assets listed below:

- a. General partnerships or interests in real property.

Unregistered limited partnerships.

Other unregistered securities, closely held stock and other securities for which there is no readily available market, except for qualifying Employer securities.

Loans secured by first deeds of trust.

Other secured loans.

The securities of the broker/dealer's corporate entity or its affiliates and subsidiaries. These securities may be subject to legal and regulatory prohibitions or restrictions. In any event, no Trust may acquire and hold securities of the broker/dealer's corporate entity unless specifically authorized by the underlying Trust agreement.

Foreign securities for which trading and custodial facilities are readily available.

Options.

Securities of the Employer.

Any other asset not listed under "Acceptable Assets" or "Unacceptable Assets" above.

The acquisition and continued retention of the foregoing assets is subject to providing the Trustee with the cost basis, if any, of any such assets and with a valuation of the assets on at least an annual basis. The Trustee, in its sole discretion, may impose other conditions to acquire or hold such assets, including imposing additional fees.

## **SECURITIES**

### **Calls, Conversions, Expirations, Tenders, etc.**

The Instructing Party must monitor and determine the existence of and initiate all actions necessary or appropriate in connection with calls, conversions, tenders, and similar events or transactions relating to Trust assets. The Trustee will pass on to the Instructing Party any information it receives regarding such actions.

### **Proxies**

The Instructing Party is responsible for voting proxies of securities under the Instructing Party's investment authority. The Instructing Party shall provide the Trustee with instructions as to where to deliver any proxies it receives and the Trustee will use commercially reasonable efforts to deliver proxies in a timely manner to such party. The Trustee is not responsible for ascertaining whether, or how, the proxies were subsequently voted or disposed of and shall bear no liability for the actions or inactions relating to voting of proxies by the Plan Administrator.

### **Charges**

Certain securities may impose charges and penalties on the sale and/or redemption of such security, including, without limitation, sales load, redemption, exchange, account, distribution, administrative and other charges. The Trustee is not responsible for notifying the Employer, any Instructing Party or any other party of the existence, potential or imposition of any such charges

or penalties or to negotiate or attempt to negotiate the reduction, waiver, rebate or reimbursement of any such charges or penalties; nor shall the Trustee have any liability or responsibility for any such charges or penalties of any kind or nature, whether current, deferred or contingent, that are charged or imposed pursuant to the terms of any securities purchased, held, sold or redeemed in the Trust, and all such charges and penalties shall be borne by the Trust unless otherwise provided for.

**SCHEDULE OF  
INSURANCE COVERAGES**

**WILMINGTON TRUST CORPORATION SCHEDULE OF INSURANCE 05-01-11**

<b>POLICY</b>	<b>PRIMARY INSURER</b>	<b>DEDUCTIBLE</b>	<b>LIMIT</b>	<b>EXPIRATION</b>
Financial Institution Bond Form 24 ( <i>a/k/a Fidelity Bond or Blanket Bond</i> )	Chartis	1MM	35MM	05/01/11
Computer Crime	Chartis	1MM	35MM	05/01/11
Bankers Professional Liability (E&O)	Ace	2MM	25MM	05/01/11
Business Automobile Policy	Zurich	Liability – None Property – \$250	1MM	05/01/11
Employment Practices Liability	Axis	350M [500M class action]	15MM	05/01/11
Fiduciary Liability – Benefit Plans	CAN	250M; 500M [SEC]	15MM	05/01/11
Lender's Property Reporting Form (Liability)	Great American	None	2MM	05/01/11
General Liability	Zurich	None	1MM	05/01/11
Umbrella Liability	National Union	None	30MM	05/01/11
Mortgage Protection/Impairment Policy	Travelers	20M	25MM	11/01/11
Property (incl. contents and boiler/machinery)	Great Northern Insurance Co. (Chubb)	100M	Various limits apply	05/01/11
STAMP Surety Bond	Hartford	None	20MM	01/01/13
Mail Insurance	Chubb	Various	25MM	05/01/11
Workers Compensation – Employer Liability	Zurich	None	Statutory	05/01/11
Workers Compensation – Nevada	Hartford	None	Statutory	12/31/10
Wilmington Brokerage Services Co. Bond (Form 14)	Chartis	25M	1MM	05/01/11