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**THE CITY OF ROCHESTER HILLS  
GROUP PENSION PLAN**

**Adopted**

**~~December 15, 2014~~**

**[Insert New Date]**

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**THE CITY OF ROCHESTER HILLS  
GROUP PENSION PLAN**

THIS AGREEMENT, hereby made and entered into this 22 day of March, 2010 ~~[insert new date]~~, by and between City of Rochester Hills (herein referred to as the “Employer”) and ~~Keith Sawdon and Kurt Dawson (herein both generally referred to as the “Trustee”); The Trustees of the City of Rochester Hills Group Pension Plan and any successor Trustees.~~

**WITNESSETH:**

WHEREAS, the Employer heretofore established a Money Purchase Pension Plan and Trust effective November 1, 1974, (hereinafter called the “Effective Date”) and subsequently restated the Plan and Trust on December 14, 2005, March 22, 2010 and December 14, 2014;

WHEREAS, this Plan and Trust is known as The City of Rochester Hills Group Pension Plan (herein referred to as the “Plan”) in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees; and

WHEREAS, under the terms of the Plan, the Employer has the ability to amend the Plan, provided the Trustee joins in such amendment if the provisions of the Plan affecting the Trustee are amended;

NOW, THEREFORE, effective March 22, 2010 ~~[insert date]~~, except as otherwise provided, the Employer and the Trustee in accordance with the provisions of the Plan pertaining to amendments thereof, hereby amend the Plan in its entirety and restate the Plan to provide as follows. Unless otherwise provided herein, ~~U~~ this restatement will apply to individuals employed by the city on and after the effective date of the restatement:

**ARTICLE I  
DEFINITIONS**

1.1 “Administrator” means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.2 “Anniversary Date” means the last day of the Plan Year.

1.3 “Annuity Starting Date” means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.4 “Beneficiary” means the person (or entity) to whom the share of a deceased Participant’s total account is payable, subject to the restrictions of Sections 6.2 and 6.6.

1.5 “Code” means the Internal, Revenue Code of 1986, as amended or replaced from time to time.

1.6 “Compensation” with respect to any Participant means such Participant’s wages for the Calendar Year ending with or within the Plan Year within the meaning of Code Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

For purposes of this Section, the determination of Compensation shall be made by including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4) for Calendar Years beginning after December 31, 2000, 402(g)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

For a Participant’s initial year of participation, Compensation shall be recognized as of such Employee’s effective date of participation pursuant to Section 3.2.

For plan years beginning before July 1, 1996, the annual compensation of each participant taken into account for determining all benefits provided under the plan for any determination period shall not include any amounts in excess of the annual compensation limit provided for in IRC §401(a)(17) prior to the omnibus budget reconciliation act of 1993 (“OBRA `93”) and adjusted for inflation in the manner provided by IRC §401(a)(17). For plan years beginning on or after July 1, 1996, the annual compensation of each employee taken into account shall not exceed the annual compensation limit provided for in IRC §401(a)(17), as amended by OBRA `93. This limit may be adjusted as required by federal law for qualified government plans and shall be further adjusted for inflation in the manner provided by IRC §401(a)(17). Annual compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan.

Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Calendar Year beginning with such calendar year. For any short Calendar Year the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Calendar Year begins multiplied by the ratio obtained by dividing the number of full months in the short Calendar Year by twelve (12).

For Plan Years beginning after December 31, 1996, for purposes of determining Compensation, the family member aggregation rules of Code Section 401(a)(17) and Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

1.7 “Contract” or “Policy” means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.8 “Early Retirement Date” means the first day of the month (prior to the Normal Retirement Date) coinciding with or following the date on which a Participant or Former Participant attains age 55, and has completed at least 5 Years of Service with the Employer (Early

Retirement Age). A Participant shall become fully Vested upon satisfying this requirement if still employed at his or her Early Retirement Age.

A Former Participant who separates from service after satisfying the service requirement for Early Retirement and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan.

1.9 “Eligible Employee” means all members of the City Council, the Mayor, all fulltime employees who are employed for forty (40) hours or more per week on a regular basis, all paid-on-call firefighters hired on or before July 31, 2015, and all members of those collective bargaining units which elect to participate in this Plan including AFSCME #2491, AFSCME #1917 and IAFF Local 3472. Eligible Employee does not include part-time (i.e. hired to work fewer than 40 hours per week on a regular basis) firefighters hired on or after July 31, 2015.

**Commented [BCJ1]:** This change brings the Ordinance in compliance with the MAFF collective bargaining agreement.

Effective January 1, 2011 “Eligible Employee” shall also include all employees of the Older Persons’ Commission (hereinafter referred to as “OPC”) including the Executive Director, Department Heads or full-time hourly employees who are employed for forty (40) hours or more per week on a regular basis.

Employees classified by the Employer as independent contractors who are subsequently determined by the Internal Revenue Service to be Employees shall not be Eligible Employees.

1.10 “Employee” means any person who is employed by the Employer and excludes any person who is employed as an independent contractor.

1.11 “Employer” means City of Rochester Hills and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a tax-exempt governmental organization, with principal offices in the State of Michigan.

Effective January 1, 2011, “Employer” shall include the Older Persons’ Commission strictly for purposes of allowing participation in this Plan by the Eligible Employees of the OPC and for purposes of making contributions to the Plan on behalf of its Eligible Employees. The OPC is not to be considered a Named Fiduciary under section 9.12 and shall have no authority to amend this Plan or to appoint/remove a Trustee.

1.12 RESERVED

1.13 “Fiduciary” means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.14 “Fiscal Year” means the Employer’s accounting year of 12 months commencing on January 1 of each year and ending the following December 31.

1.15 “Forfeiture” means that portion of a Participant’s Account that is not Vested and occurs on a 1-Year Break in Service.

In addition, the term Forfeiture shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.16 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.17 “415 Compensation” with respect to any Participant means such Participant’s wages for the Calendar Year ending with or within the Plan Year within the meaning of Code Section 3401 (a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

For “limitation years” beginning after December 31, 1997, for purposes of this Section, the determination of “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 the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4) for “limitation years” beginning after December 31, 2000 or 457.

1.18 RESERVED

1.19 RESERVED

1.20 RESERVED.

1.21 “Hour of Service” means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence, including maternity or paternity leaves of absence) during the applicable computation period; (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker’s compensation, or unemployment compensation or disability insurance laws; and (ii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

1.22 “Income” means the income or losses allocable to Excess Deferred Compensation, Excess Contributions or Excess Aggregate Contributions which amount shall be allocated in the same manner as income or losses are allocated pursuant to Section 4.3(e).

1.23 “Investment Manager” means an entity that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

1.24 “Late Retirement Date” means the first day of the month coinciding with or next following a Participant’s actual Retirement Date after having reached his or her Normal Retirement Date.

1.25 RESERVED

1.26 ~~“Month of Service” means a calendar month during any part of which an Employee completed an Hour of Service.~~

1.27 RESERVED.

1.28 “Normal Retirement Age” means the Participant’s 65 birthday, or the Participant’s 5<sup>th</sup> anniversary of joining the Plan, if later, but in no event later than the Participant’s 65 birthday, or the Participant’s 5 anniversary of joining the Plan, if later. A Participant shall become fully Vested in the Participant’s Account upon attaining Normal Retirement Age.

1.29 “Normal Retirement Date” means the first day of the month coinciding with or next following the Participant’s Normal Retirement Age.

1.30 “1-Year Break in Service” means twelve (12) consecutive months during which no hours of service are credited.

1.31 “Participant” means any Eligible Employee who participates in the Plan and has not for any reason become ineligible to participate further in the Plan.

1.32 “Participant Direction Procedures” means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.7 and observed by the Administrator and applied to Participants who have Participant Directed Accounts.

1.33 “Participant’s Account” means the accounts established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan and Trust resulting from the Employer contributions and mandatory Participant contributions.

**Commented [BCJ2]:** This section was deleted pursuant to Transamerica’s request to clarify that the Retirement System uses the Elapsed Time Method for purposes of an employee’s entitlement under the Plan to participate, receive an allocation of employer contributions, and/or vesting, that is not based on the employee’s completion of a specified number of Hours of Service during a 12 consecutive month period, but rather with reference to the total period of time that elapses during which the employee is employed by the employer.

1.34 “Participant’s Directed Account” means that portion of a Participant’s interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedure.

1.35 “Plan” means this instrument, including all amendments thereto.

1.36 “Plan Year” means the Plan’s accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.

1.37 RESERVED.

1.38 “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.39 “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.40 “Retirement Date” means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant’s Normal Retirement Date, Early or Late Retirement Date.

1.41 “Spouse” or “Surviving Spouse” means the spouse or surviving spouse of the participant, who has met all requirements of a valid marriage contract in the state of marriage of such parties. A former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under an eligible domestic relations order.

1.42 “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated other than by death, Total and Permanent Disability or retirement.

1.43 “Total and Permanent Disability” means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders such Participant incapable of continuing any gainful occupation and which condition constitutes total disability under the federal Social Security Acts.

1.44 “Trustee” means the ~~two (2) individuals~~ person holding the office of Chief Financial Officer and Treasurer for the City of Rochester Hills ~~or entity named as trustee herein or in any separate trust forming a part of this Plan, and any~~ their successors.

Commented [BCJ3]: This section was revised to reflect that the trustees positions are ex-officio rather than naming specific individuals

1.45 “Trust Fund” means the assets of the Plan and Trust as the same shall exist from time to time.

1.46 “Valuation Date” means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants’ accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, are open for business.

1.47 “Vested” means the non-forfeitable portion of any account maintained on behalf of a Participant.

1.48 “Voluntary Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to the Participant’s total interest in the Plan resulting from the Participant’s after-tax voluntary Employee contributions made pursuant to Section 4.6.

1.49 “Year of Service” means ~~the 12-month period ending on the first anniversary of the Eligible Employee’s date of hire and each anniversary thereafter credit with the Employer, determined to the nearest month, from his/her date of hire to his/her date of retirement, death, disability, or other termination of employment. For purposes of eligibility to participate, service shall be measured as Months of Service.~~ For vesting, eligibility to participate and all other purposes of the Plan, service shall be measured as ~~M~~months or Years of Service as specified in the relevant part of the Plan. ~~Service shall not be based on the Eligible Employee’s completion of a specified number of Hours of Service during a twelve (12) consecutive month period but rather with reference to the total period of time that elapses during which the Eligible Employee is employed by the Employer. For purposes hereof, 12 Months of Service shall be equal to one year.~~

**Commented [BCJ4]:** This section was revised pursuant to Transamerica’s request to clarify that the Retirement System uses the Elapsed Time Method for purposes of an employee’s entitlement under the Plan to participate, receive an allocation of employer contributions, and/or vesting, that is not based on the employee’s completion of a specified number of Hours of Service during a 12 consecutive month period, but rather with reference to the total period of time that elapses during which the employee is employed by the employer

## ARTICLE II ADMINISTRATION

### 2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it 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 and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) The Employer shall establish a “funding policy and method,” i.e., it 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. The Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The communication of such a “funding policy and method” shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds.

(c) The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal

periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

## **2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY**

The Employer shall be the Administrator. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

## **2.3 POWERS AND DUTIES OF THE ADMINISTRATOR**

The primary responsibility of the 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 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 to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The 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 shall continue to be deemed a qualified plan under the terms of Code Section 401(a) and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan.

The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) 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;
- (c) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;

(f) 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;

(g) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;

(h) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion in a manner designed to accomplish specific objectives;

(i) to determine the validity of, and take appropriate action with respect to, any domestic relations order received by it; and

(j) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

#### **2.4 RECORDS AND REPORTS**

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, 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, Participants, Beneficiaries and others as required by law.

#### **2.5 APPOINTMENT OF ADVISERS**

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator or the Trustee 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 provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

#### **2.6 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 Administrator, or any person or persons retained or appointed by any Named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including non-fiduciary agents) appointed for the purpose of assisting the Administrator or the Trustee in carrying out the instructions of Participants as to the directed investment of their accounts and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

## **2.7 CLAIMS PROCEDURE**

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days after the application is filed, or such period as is required by applicable law. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

## **2.8 CLAIMS REVIEW PROCEDURE**

Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.7 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 2.7. The Administrator shall then conduct a hearing within the next sixty (60) days, at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon five (5) business days written notice to the Administrator) the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Administrator which are pertinent to the claim at issue and its disallowance. Either the claimant or the Administrator may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days of receipt of the appeal (unless there has been an extension of sixty (60) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

**ARTICLE III  
ELIGIBILITY**

**3.1 CONDITIONS OF ELIGIBILITY**

Except as may be otherwise provided, any Eligible Employee who has completed six (6) ~~4~~ months of ~~S~~ service shall be eligible to participate hereunder as of the date such Employee has satisfied such requirements. However, any Employee who was a Participant in the Plan prior to the effective date of this amendment and restatement shall continue to participate in the Plan. Paid-on-call firefighters hired on or before July 31, 2015, shall be eligible to participate hereunder as of their date of hire. The Employer shall give each prospective Eligible Employee written notice of his or her eligibility to participate in the Plan prior to the close of the Plan year in which he or she first becomes an Eligible Employee.

**Commented [BCJ5]:** This change brings the Ordinance in compliance with the MAFF collective bargaining agreement.

**3.2 EFFECTIVE DATE OF PARTICIPATION**

An Eligible Employee shall become a Participant effective as of the date on which the Employee satisfies the eligibility requirements of Section 3.1.

In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the service requirements and would have otherwise previously become a Participant.

**3.3 DETERMINATION OF ELIGIBILITY**

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan. Such determination shall be subject to review pursuant to Section 2.8.

**3.4 TERMINATION OF ELIGIBILITY**

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such individual shall no longer be eligible to participate in the plan and shall become a Former Participant. Additionally, the Former Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund until such time as the participant's account is forfeited or distributed pursuant to the terms of the plan.

### 3.5 OMISSION OF ELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, then the Employer shall make a subsequent contribution, if necessary after the application of Section 4.3(c), so that the omitted Employee receives a total amount which the Employee would have received (including both Employer contributions and earnings thereon) had the Employee not been omitted. Such contribution shall be made regardless of whether it is deductible in whole or in part in any taxable year under applicable provisions of the Code.

### 3.6 INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is erroneously included and discovery of such inclusion is not made until after a contribution for the year has been made and allocated, the Employer shall be entitled to recover the contribution made with respect to the ineligible person provided the error is discovered within twelve (12) months of the date on which it was made. Otherwise, the amount contributed with respect to the ineligible person shall constitute a Forfeiture for the Plan Year in which the discovery is made.

### 3.7 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) Except as otherwise provided in subsection (c), vested former participants, who become re-employed as eEligible eEmployees, may resume participation in the plan upon their date of re-employment.

Commented [BCJ6]: This change was to identify the term as a defined term.

(b) Except as otherwise provided in subsection (c), non-vested former participants, who become re-employed as eligible employees may participate in the plan upon satisfaction of the eligibility requirements provided by section 3.1. Upon becoming participants, employees shall have prior service credit reinstated for vesting purposes and shall be credited with service from date of re-employment.

(c) Former city council or paid-on-call fire-fighter participants, who become re-employed as eEligible eEmployees, may participate in the plan upon satisfaction of the eligibility requirements provided by section 3.1. ~~Prior paid-on-call fire fighter service will not be recognized for vesting purposes, unless the eligible employee is re-employed as a probationary member of the Rochester Hills professional fire fighters international association of fire fighters, local 3472 ("IAFF"). Prior city council service will not be recognized for vesting purposes, unless the eligible employee is re-employed as the mayor.~~

Commented [BCJ7]: This section was revised pursuant to Transamerica's request that all prior years of service be recognized for vesting purposes. They have indicated that they do not have the ability to differentiate and not count the prior service for a specific group.

### 3.8 ELECTION NOT TO PARTICIPATE

An Employee, for Plan Years beginning on or after the later of the adoption date or effective date of this amendment and restatement, may, subject to the approval of the Employer, elect voluntarily not to participate in the Plan. The election not to participate must be communicated to the Employer, in writing, within thirty (30) days before the beginning of the first Plan Year.

## ARTICLE IV CONTRIBUTION AND ALLOCATION

### 4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION

(a) The Employer shall make contributions over such period of years as the Employer may determine on the following basis. Except as otherwise provided herein, on behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer and Employee (if applicable) shall contribute a percentage such Participant's annual Compensation as follows:

- IAFF Local 3472 – Effective May 12, 2008, the Employer shall contribute 14% and the Employee shall contribute 3%.
- AFSCME Local 1917 – Effective December 24, 2007, the Employer shall contribute 13% and the Employee shall contribute 1%.
- AFSCME Local 2491 – Effective December 25, 2006, the Employer shall contribute 14% and the Employee shall contribute 3%.
- Nonunion – Effective December 25, 2006, the Employer shall contribute 14% and the Employee shall contribute 3%.
- Paid on Call Firefighters [who are eligible to participate pursuant to section 1.9](#) † Effective January 1, 2000, the Employer shall contribute 12%.
- City Council – Effective January 1, 2000, the Employer shall contribute 12%.
- All full time employees of the Older Persons Commission will receive 6% of their gross wage if they contribute 3% of their gross wage.

(b) Should the Employer, for any reason, fail to make a contribution for any year or should the Employer fail to make a contribution as provided for herein, then such deficiency shall be made up in subsequent years pursuant to Section 9.15.

(c) The Employer shall not contribute on behalf of any Participant who is not entitled to share in the allocation of the Employer contribution as provided in Section 4.3(d).

Commented [BCJ8]: This change brings the Ordinance in compliance with the MAFF collective bargaining agreement.

Mandatory Participant contributions shall be made on a pre-tax basis and shall be deducted from a Participant's Compensation, picked-up by the Employer and paid to Participant's Account for mandatory Participant contributions.

Employer Pick-Up Contributions. Effective December 25, 2006, there is hereby created an employer "pick-up" program whereby a percentage of non-union employee contributions to the Plan shall be paid by the Employer in lieu of contributions by the employees. The terms and conditions of such contributions shall be in accordance with the Provisions of the Internal Revenue Code Section 414(h)(2) and related Treasury Regulations and applicable law.

Non-Union Employee Participant Contributions. Upon implementation, the Employer shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, a percentage of non-union employee Participant contributions required by the Plan for all compensation earned by the Participant after implementation. The provisions of this section are mandatory, and the Participant shall have no option concerning the pick up or to receive the contributed amount directly instead of having them paid by the Employer to the Plan. In no event may implementation occur other than at the beginning of a pay period.

Tax Treatment. Participant contributions picked up under the provisions of this section shall be treated as Employer contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked up Participant contributions shall be included in the determination of the Participant's gross annual salary for all other purposes under federal and state laws. Participants' contributions picked up under this section shall continue to be designated as Participant contributions for all purposes of the Plan and shall be considered part of the Participant's compensation for purposes of determining the amount of the Participant's contribution.

The balance in each Participant's Account for mandatory Participant contributions shall be fully vested at all times and shall not be subject to forfeiture.

Determination and distribution of a Participant's Account for mandatory Participant contributions shall be in accordance with Article VI.

#### **4.2 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION**

The Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines provided it is within the time prescribed by law. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Trustee the Plan Year for which the Employer is making its contribution.

### 4.3 ACCOUNTING AND ALLOCATIONS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution to each Participant's Account in accordance with Section 4.1.

(c) On or before each Anniversary Date any amounts which became Forfeitures since the last Anniversary Date may be used to satisfy any contribution that may be required pursuant to Section 3.5 and/or 6.9, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be used to reduce the contribution of the Employer hereunder for the Plan Year in which such Forfeitures occur.

(d) Participants shall be eligible to share in the allocation of contributions for a Plan Year in accordance with the following:

(1) Any Participant actively employed during the Plan Year shall be eligible to share in the allocation of contributions for that Plan Year.

(2) Notwithstanding the foregoing, Participants who are not actively employed on the last day of the Plan Year due to Retirement (Early, Normal or Late), Total and Permanent Disability or death shall be eligible to share in the allocation of contributions for their months of service during that Plan Year.

(e) As of each Valuation Date, after allocation of Employer contributions, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's and Former Participant's nonsegregated accounts bear to the total of all Participants' and Former Participants' nonsegregated accounts as of such date. Earnings or losses with respect to a Participant's Directed Account shall be allocated in accordance with Section 4.7.

Participants' after-tax voluntary Employee contributions deposited in the general Trust Fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

Mandatory Participant contributions deposited in the general trust fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(f) Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date

specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and the correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

#### **4.4 MAXIMUM ANNUAL ADDITIONS**

(a) Notwithstanding any provision in the Plan to the contrary, the maximum “annual additions” credited to a Participant’s accounts for any “limitation year” shall not exceed the limitations in Code Section 415, which is hereby incorporated by reference. If the Employer contribution that would otherwise be contributed or allocated to the Participant’s accounts would cause the “annual additions” for the “limitation year” to exceed the maximum “annual additions,” the amount contributed or allocated will be reduced so that the “annual additions” for the “limitation year” will equal the maximum “annual additions,” and any amount in excess of the maximum “annual additions,” which would have been allocated to such Participant may be allocated to other Participants. For any short “limitation year,” the dollar limitation in (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short “limitation year” and the denominator of which is twelve (12).

(b) For purposes of applying the limitations of Code Section 415, “annual additions” means the sum credited to a Participant’s accounts for any “limitation year” of (1) Employer contributions, (2) Employee contributions, and (3) forfeitures.

(c) For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an “annual addition.” In addition, the following are not Employee contributions for the purposes of Section 4.4(b)(2): (1) rollover contributions (as defined in Code Sections 402(e)(6), 403(a)(4), 403(b)(8) and 408(d)(3)); (2) repayments of loans made to a Participant from the Plan; (3) repayments of distributions received by an Employee pursuant to Code Section 411(a)(7)(b) (cash-outs); (4) repayments of distributions received by an Employee pursuant to Code Section 411(a)(3)(d) (mandatory contributions); and (5) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

(d) For purposes of applying the limitations of Code Section 415, the “limitation year” shall be the Calendar Year.

(e) For the purpose of this Section, all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.

(f) Notwithstanding anything contained in this Section to the contrary, the limitations, adjustments and other requirements prescribed in this Section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder.

(g) For purposes of adjusting any benefit or limitation under Section 415 of the Code, the mortality table used shall be the table prescribed by the United States Secretary of the Treasury in accordance with Section 415(b)(2)(e)(v) of the Code.

#### **4.5 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS**

(a) If, as a result of a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant under the limits of Section 4.4 or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the "annual additions" under this Plan would cause the maximum "annual additions" to be exceeded for any Participant, the "excess amount" will be disposed of in one of the following manners, as uniformly determined by the Administrator for all Participants similarly situated.

(1) Any after-tax voluntary Employee contributions (plus attributable gains), to the extent they would reduce the "excess amount," will be distributed to the Participant;

(2) If, after the application of subparagraph (1) above, an "excess amount" still exists, and the Participant is covered by the Plan at the end of the "limitation year," the "excess amount" will be used to reduce the Employer contribution for such Participant in the next "limitation year," and each succeeding "limitation year" if necessary;

(3) If, after the application of subparagraphs (1) and (2) above, an "excess amount" still exists, and the Participant is not covered by the Plan at the end of the "limitation year," the "excess amount" will be held unallocated in a "Section 415 suspense account." The "Section 415 suspense account" will be applied to reduce future Employer contributions for all remaining Participants in the next "limitation year," and each succeeding "limitation year" if necessary;

(4) If a "Section 415 suspense account" is in existence at any time during the "limitation year" pursuant to this Section, it will not participate in the allocation of investment gains and losses of the Trust Fund. If a "Section 415 suspense account" is in existence at any time during a particular "limitation year," all amounts in the "Section 415 suspense account" must be allocated and reallocated to Participants' accounts before any Employer contributions or any Employee contributions may be made to the Plan for that "limitation year." Except as provided in (1) above, "excess amounts" may not be distributed to Participants or Former Participants.

(5) The procedures outlined above in Section 4.5(a) (1) – (4) are effective only for limitation years beginning before July 1, 2007. The Employee Plans Compliance Resolution System (EPCRS) is the only correction method for

correcting excess annual additions for limitation years beginning on or after July 1, 2007.

(b) For purposes of this Article, “excess amount” for any Participant for a “limitation year” shall mean the excess, if any, of (1) the “annual additions” which would be credited to the Participant’s account under the terms of the Plan without regard to the limitations of Code Section 415 over (2) the maximum “annual additions” determined pursuant to Section 4.4.

(c) For purposes of this Section, “Section 415 suspense account” shall mean an unallocated account equal to the sum of “excess amounts” for all Participants in the Plan during the “limitation year.”

#### **4.6 VOLUNTARY CONTRIBUTIONS**

(a) In order to allow Participants the opportunity to increase their retirement income, each Participant may, in accordance with nondiscriminatory procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to the Plan. Such contributions must generally be paid to the Trustee within a reasonable period of time after being received by the Employer. The balance in each Participant’s Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(b) A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant’s Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee’s withdrawal of after-tax voluntary Employee contributions.

In the event such a withdrawal is made then the Participant shall be barred from making any after-tax voluntary Employee contributions for a period of twelve (12) months after receipt of the withdrawal or distribution.

(c) At Normal Retirement Date, or such other date when the Participant or his Beneficiary shall be entitled to receive benefits, the fair market value of the Voluntary Contribution Account shall be used to provide additional benefits to the Participant or his Beneficiary.

(d) Any Terminated or Retired Participant who has separated from the City and maintains a participant account in the plan may effectuate a direct rollover of all or part of the amount eligible to rollover from their account in the City sponsored 457 Plan. Such direct rollover shall be considered a voluntary Employee contribution to the Plan and shall be separately account for by the Plan to the extent that the rollover includes after-tax contributions. The balance in each Participant’s Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

#### **4.7 DIRECTED INVESTMENT ACCOUNT**

(a) Participants may, subject to a procedure established by the Administrator (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest all of their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant so directing will thereupon be considered a Participant's Directed Account.

(b) As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent that the assets in a Participant's Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Directed Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent that the assets in the Participant's Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(c) Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Trustee. Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

#### **4.8 RESERVED**

#### **4.9 LIMITATIONS ON BENEFITS AND CONTRIBUTIONS**

Notwithstanding anything contained in this Plan to the contrary, effective July 1, 2007, the benefits payable under the Plan to any member shall not exceed the amount permitted under Code Section 415 with respect to a governmental plan as defined in Code Section 414(d). The limitations of Code Section 415, as from time to time amended and adjusted, are hereby incorporated by reference.

#### **4.10 QUALIFIED MILITARY SERVICE**

Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service will be provided in accordance with Code Section 414(u).

### **ARTICLE V VALUATIONS**

#### **5.1 VALUATION OF THE TRUST FUND**

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value (or their contractual value in the case of a Contract or Policy) as of the Valuation Date and shall deduct all expenses for which the Trustee has not yet obtained reimbursement from the Employer or the Trust Fund. The Trustee may update the value of any shares held in the Participant Directed Account by reference to the number of shares held by that Participant, priced at the market value as of the Valuation Date.

#### **5.2 METHOD OF VALUATION**

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Trustee shall value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

**ARTICLE VI  
DETERMINATION AND DISTRIBUTION OF BENEFITS**

**6.1 DETERMINATION OF BENEFITS UPON RETIREMENT**

Every Participant may terminate employment with the Employer and retire for the purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Late Retirement Date. Upon a Participant's Retirement Date or attainment of Normal Retirement Date without termination of employment with the Employer, or as soon thereafter as is practicable, the Trustee shall distribute, at the election of the Participant, all amounts credited to such Participant's Account.

**6.2 DETERMINATION OF BENEFITS UPON DEATH**

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested. The Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute the value of the deceased Participant's accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute any remaining Vested amounts credited to the accounts of a deceased Former Participant to such Former Participant's Beneficiary.

(c) Effective January 1, 2007, the beneficiary of a Member on a leave of absence to perform military service with reemployment rights described in Code Section 414 (u) where the Member cannot return to employment on account of his or her death, 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 Member died as an active employee, in accordance with Code Section 401(a) 37.

(d) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(e) Unless otherwise elected, the Beneficiary of the death benefit shall be the Participant's surviving spouse except, however, the Participant may designate a Beneficiary other than the spouse.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the Internal Revenue Service) notice of such revocation or change with the Administrator.

(f) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority to:

- (1) the Participant's surviving spouse;
- (2) the Participant's children, including adopted children, per stirpes;
- (3) the Participant's surviving parents, in equal shares; or
- (4) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's estate.

(g) Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or an eligible domestic relations order provides otherwise.

### **6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY**

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested. In the event of a Participant's Total and Permanent Disability, the Administrator, in accordance with the provisions of Sections 6.5 and 6.7, shall direct the distribution to such Participant of all Vested amounts credited to such Participant's Account.

### **6.4 DETERMINATION OF BENEFITS UPON TERMINATION**

(a) If a Participant's employment with the Employer is terminated for any reason other than death, Total and Permanent Disability or retirement, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 6.4.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct the Trustee that the entire Vested portion of the Terminated Participant's Account to be payable to such Terminated Participant. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5

(b) A Participant shall become Vested in his or her Participant's Account upon satisfying the following service requirements:

(1) All regular, full-time employees, the Mayor and City Council Members hired, appointed, or elected prior to April 1, 1992, who have completed 20 ~~M~~months of ~~S~~service;

(2) All regular, full-time employees hired after April 1, 1992 who have completed 60 ~~M~~months of ~~S~~service;

(3) For Plan Years commencing on January 1, 1999, the Mayor and City Council Members who have completed 45 ~~M~~months of ~~S~~service;

~~(4) For Plan Years commencing on January 1, 2017, the Mayor and City Council Members who have completed 36 months of service;~~

~~(5) Paid-on-Call firefighters hired prior to July 1, 1991, who have completed 60 ~~M~~months of ~~S~~service; and~~

~~(6) Paid-on-Call firefighters hired ~~after~~between July 1, 1991 ~~and July 31, 2015~~, shall be immediately Vested.~~

~~(7) Full-time hourly employees employed by the OPC on January 1, 2011 shall be vested after completing 60 ~~M~~months of ~~S~~service with the OPC, including service with the OPC immediately prior to January 1, 2011.~~

(c) Notwithstanding the vesting schedule above, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement.

(d) Notwithstanding the vesting schedule above, upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Plan. In the event that the Plan is amended to change or modify any vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, then each Participant with at least three (3) Years of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment and shall end sixty (60) days after the latest of:

- (1) the adoption date of the amendment,

Commented [BCJ9]: This term is no longer defined.

Commented [BCJ10]: This section was revised pursuant to Transamerica's request that the months of service be changed from 45 months to a number that was a multiple of 12.

Commented [BCJ11]: This change brings the Ordinance in compliance with the MAFF collective bargaining agreement.

(2) the effective date of the amendment, or

(3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

## 6.5 DISTRIBUTION OF BENEFITS

(a) The Administrator, pursuant to the election of the Participant, or Beneficiary in the event of Participant's death, shall direct the Trustee to distribute to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods:

(1) One lump-sum payment in cash.

(2) Installment Option. Payments would be made over a period certain in monthly, quarterly, semiannual, or annual cash installments made over a specified period of time or made in a specified dollar amount, whichever method is selected by the Participant, until the Participant's account balance is liquidated. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy or the life expectancy of the Participant and his designated beneficiary. ~~The Participant must have an account balance of at least \$5,000 to be eligible for this form of benefit.~~

**Commented [BCJ12]:** This change allows a participant to elect an installment payment option without requiring a minimum account balance of \$5,000.

(3) Partial Distribution Options. Periodic partial distributions may be made from a Participant's account, in amounts and specific intervals selected by the Participant or Beneficiary. Periodic distributions may not exceed the total balance in the Participant's account and shall be in compliance with section 401(a)(9) of the Internal Revenue Code relating to the minimum distribution requirements. Partial distributions may be subject to administrative fees at the discretion of the Plan Administrator.

(4) Direct Payment of Health Insurance Premiums. A retired police or fire Participant may direct the Plan Administrator to transfer all or a portion of his benefit, up to \$3,000 annually, or such other amount as may be subsequently authorized by law, to pay for qualified health insurance premiums for retiree health care. (Note, this option is not available to a beneficiary.) Qualified health insurance premiums include premiums for accident and health insurance or qualified long-term care insurance for the Participant and/or his or her spouse and dependents.

(b) If, for Plan Years beginning January 1, ~~2017+998~~, the value of the Participant's benefit derived from Employer and Employee contributions does not exceed ~~\$1,0005,000 (\$3,500 for Plan Years beginning prior to January 1, 1998)~~, then the Administrator shall direct the Trustee to immediately distribute such benefit in a lump sum without the Participant's written consent. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant consents in writing (or in such form as permitted by the Internal Revenue Service) to such distribution.

~~In the event of a distribution greater than \$1,000 under this Section, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover, or to receive the distribution as a direct payment, then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.~~

**Commented [BCJ13]:** Previously, the System allowed for mandatory distributions without the participant's consent provided the account value did not exceed \$5,000. IRS requires that mandatory distributions for amounts greater than \$1,000 be transferred to an IRA on the participant's behalf. This amendment still allows for mandatory distributions for accounts of \$1,000 or less.

(c) The following rules will apply to the consent requirements set forth in subsection (b):

(1) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan.

(2) The Participant must be informed of the right to defer receipt of the distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 6.11.

(3) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than one hundred eighty (180) days before the Annuity Starting Date.

Notwithstanding the above, the Annuity Starting Date may be a date prior to the date the explanation is provided to the Participant if the distribution does not commence until at least thirty (30) days after such explanation is provided.

(4) Written (or such other form as permitted by the Internal Revenue Service) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than one hundred eighty (180) days before the Annuity Starting Date.

(5) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

Any such distribution may commence less than thirty (30) days, after the notice is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively waives the 30 day notice period and elects a distribution, in writing.

## 6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) Unless otherwise elected, a Vested Participant who dies before the Annuity Starting Date and who has a surviving spouse shall have the benefit paid to the surviving spouse. The Participant's spouse may direct that payment of the benefit commence within a reasonable period

after the Participant's death. If the spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the spouse may elect a later commencement date. Any distribution to the Participant's spouse shall be subject to the rules specified in Section 6.6(c).

(b) The Benefit shall be paid to the Participant's Beneficiary by one of the methods provided for in Section 6.5, as elected by the Participant (or if no election has been made prior to the Participant's death, by the Participant's Beneficiary).

#### **6.7 TIME OF SEGREGATION OR DISTRIBUTION**

Except as limited by Sections 6.5 and 6.6, whenever the Trustee is to make a distribution or to commence a series of payments the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is "immediately distributable" (within the meaning of Section 6.5), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

#### **6.8 DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY**

In the event a distribution is to be made to a minor or incompetent Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian, or if none in the case of a minor Beneficiary, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

#### **6.9 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, effective January 1, 2001, or if later, the adoption date of this amendment and restatement, if the value of a Participant's Vested benefit derived from Employer and Employee contributions does not exceed

\$5,000 (\$3,500 for Plan Years beginning prior to January 1, 1998), then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. However, regardless of the preceding, a benefit which is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

#### **6.10 ELIGIBLE DOMESTIC RELATIONS ORDER DISTRIBUTION**

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under an "Eligible domestic relations order." Furthermore, a distribution to an "alternate payee" shall be permitted if such distribution is authorized by an "Eligible domestic relations order," even if the affected Participant has not separated from service and has not reached the "earliest retirement age" under the Plan. For the purposes of this Section, "alternate payee," "Eligible domestic relations order" and "earliest retirement age" shall have the meaning set forth under Michigan Law.

#### **6.11 IRC MINIMUM DISTRIBUTION REQUIREMENTS**

Distributions from the Plan shall comply with the requirements of IRC § 401(a)(9) and the regulations thereunder. A Participant's interest in the trust must begin to be distributed by the later of (I) April 1 of the calendar year following the calendar year that the Participant attains the age of 70½, or (II) April 1 of the calendar year the Participant Retires.

- (a) **Effective Date.** The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) **Precedence.** The requirements of this section will take Precedence over any inconsistent provisions of the Plan.
- (c) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section shall be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.
- (d) **TERFA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Section, other than paragraph (c), distributions may be made under a designation made on or before January 1, 1984 in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TERFA) and the provisions of the Plan that relate to Section 242(b)(2) of TERFA.

#### **TIME AND MANNER OF DISTRIBUTION**

- (e) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (f) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (I) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in the Plan, 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.
  - (II) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in the Plan, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (III) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (IV) 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 paragraph (f) will apply, other than paragraph (f)(I), as if the surviving spouse were the Participant.

For purposes of paragraph (f) and paragraphs (k), (l) and (m), distributions are considered to begin on the Participant's required beginning date (or, if paragraph (f)(IV) applies, the date distributions are required to begin to the surviving spouse under paragraph (f)(I)). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (f)(I)), the date distributions are considered to begin is the date distributions actually commence.

- (g) **Form of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with paragraphs (h) through (m) of this section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the IRC and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the IRC will be distributed in

a manner satisfying the requirements of Section 401(a)(9) of the IRC and the Treasury regulations that apply to individual accounts.

#### DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR.

- (h) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
  - (I) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - (II) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in paragraphs (k) through (m);
  - (III) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted.
- (i) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date or, if the Participant dies before distributions begin, the date distributions are required to begin under paragraphs (f)(I) or (II) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.
- (j) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

#### REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN

- (k) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in paragraphs (f)(I) or (II), over the life of the designated beneficiary or over a period certain not exceeding:
  - (I) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as

of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

- (II) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
- (l) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (m) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, and the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to paragraph (f)(I).

#### DEFINITIONS.

- (n) Designated Beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4, of the Treasury Regulations.
- (o) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year, which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (f).
- (p) Life Expectancy. Life expectancy as computed by use of the single life table in Section 1.401(a)(9)-9 of the Treasury Regulations.
- (q) Required Beginning Date. The date specified in this Section.
- (r) Notwithstanding the above, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant and the participant's beneficiary, or for a period of at least ten years, will receive those distributions

for 2009 unless a participant or beneficiary chooses not to receive such distributions. Such distributions may be treated as an Eligible Rollover Distribution if it otherwise satisfies the requirement of Article VII, Section 7.1.

## **ARTICLE VII DIRECT ROLLOVERS**

### **7.1 DIRECT ROLLOVER**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a “distributee’s” election under this Section, a “distributee” may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an “eligible rollover distribution” that is equal to at least \$500 paid directly to an “eligible retirement plan” specified by the “distributee” in a “direct rollover.”

(b) For purposes of this Section the following definitions shall apply:

(1) 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 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and any other distribution that is reasonably expected to total less than \$200 during a year. For purposes of the direct rollover provision, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in IRC §408(a) or (b), or to a qualified Plan described in IRC §§401(a) or 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) 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), an annuity plan described in Code Section 403(a), an annuity contract described in IRC §403(b), an eligible plan under IRC §457 which is maintained by a state, political subdivision of a state and which agrees to separately account for amounts transferred into such plan or a qualified trust described in IRC §401(a), that accepts the distributee’s eligible rollover distribution or a qualified trust described in Code Section 401(a), that accepts the “distributee’s” “eligible rollover distribution.” The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(3) A “distributee” includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse and the Employee’s or former

Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are "distributees" with regard to the interest of the spouse or former spouse. A "distributee" also includes an eligible designated non-spouse beneficiary.

(4) A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) Notwithstanding any other plan provision, in the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 6.5, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

(d) Effective for distributions that occur after December 31, 2009, non-spouse beneficiaries may elect a direct rollover of the deceased Participant's plan balance to an inherited IRA

## **ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS**

### **8.1 AMENDMENT**

(a) The Employer shall have the right at any time to amend this Plan, subject to the limitations of this Section. However, any amendment which affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

(b) No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(c) Except as permitted by Regulations (including Regulation 1.411(d)-4 or other IRS guidance, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" which results in a further restriction on such benefits unless such "Section 411(d)(6) protected benefits" are preserved with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. "Section 411(d)(6) protected benefits" are benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. A Plan amendment that eliminates or restricts the ability of a Participant to receive payment of the Participant's interest in the Plan under a particular

optional form of benefit will be permissible if the amendment satisfies the conditions in (1) and (2) below:

(1) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (1), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

(2) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an Annuity Starting Date earlier than the earlier of: (I) the ninetieth (90th) day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment or (II) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

## **8.2 TERMINATION**

(a) The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested as provided in Section 6.4 and shall not thereafter be subject to forfeiture, and all unallocated amounts, including Forfeitures, shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(b) Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Trust Fund to Participants in a manner which is consistent with and satisfies the provisions of Section 6.6. Distributions to a Participant shall be made in cash or through the purchase of irrevocable nontransferable deferred commitments from an insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of "Section 411(d)(6) protected benefits" in accordance with Section 8.1(c).

## **8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS**

This Plan and Trust may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan and trust only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation, and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411(d)(6) protected benefits" in accordance with Section 8.1(c).

# **ARTICLE IX MISCELLANEOUS**

## **9.1 PARTICIPANTS RIGHTS**

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

## **9.2 ALIENATION**

(a) Subject to the exceptions provided below, and as otherwise permitted by the Code, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

(b) Subsection (a) shall not apply to a "domestic relations order" adopted in accordance with Michigan Law. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under an "eligible domestic relations order," under Michigan Public Act 46 of 1991, as amended, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

## **9.3 CONSTRUCTION OF PLAN**

This Plan and Trust shall be construed and enforced according to the Code and Regulations that apply to governmental entities and the laws of the State of Michigan.

## **9.4 GENDER AND NUMBER**

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

## **9.5 LEGAL ACTION**

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

#### **9.6 PROHIBITION AGAINST DIVERSION OF FUNDS**

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their Beneficiaries.

(b) In the event the Employer shall make an excessive contribution under a mistake of fact, the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

#### **9.7 RESERVED**

#### **9.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE**

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

#### **9.9 INSURER'S PROTECTIVE CLAUSE**

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

#### **9.10 RECEIPT AND RELEASE FOR PAYMENTS**

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or Employer.

#### **9.11 ACTION BY THE EMPLOYER**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

#### **9.12 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY**

The "named Fiduciaries" of this Plan are (1) the Employer, (2) the Administrator, (3) the Trustee and (4) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1; and shall have the authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's "funding policy and method"; and to amend or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, including, but not limited to, the items specified in Article II of the Plan, as the same may be allocated or delegated thereunder. The Trustee shall have the sole responsibility of management of the assets held under the Trust, except to the extent directed pursuant to Article II or with respect to those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated herein. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

#### **9.13 HEADINGS**

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### **9.14 APPROVAL BY INTERNAL REVENUE SERVICE**

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new Plan, it shall be void ab initio and all amounts contributed to the Plan by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to an amended Plan, then the Plan shall operate as if it had not been amended.

**9.15 UNIFORMITY**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

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Trustee- ~~Joseph M. Snyder, Chief Financial Officer~~ ~~Keith Sawdon, Finance Director~~ Date

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Trustee Kurt Dawson, City Treasurer/Assessor Date