

PENSIONS AND RETIREMENT

Chapter 18½

PENSIONS AND RETIREMENT

Art. I. City of Kirkwood Employees' Pension Plan, §§ 18½-1—18½-19

Art. II City of Kirkwood Police Officers' and Fire Fighters' Pension Plan, §§ 18½-20—18½-39

ARTICLE I. CITY OF KIRKWOOD EMPLOYEES' PENSION PLAN

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**CITY OF KIRKWOOD EMPLOYEES'
PENSION PLAN**

Sec. 18½-1. Short title.

Article I shall hereafter be known and cited as Article I, Chapter 18½ of the Kirkwood Code of Ordinances, Ordinance No. 5407, General Ordinances of the City of Kirkwood, Missouri, "City of Kirkwood Employees' Pension Plan." (Ord. No. 7627, §1, 3-5-87)

Sec. 18½-2. Definitions.

Whenever used herein, unless the context clearly indicates otherwise:

(a) "Account" (whether or not the word is capitalized) shall mean all of the following, but if there are not all shall mean whichever exists:

- (1) The Current Account required to be established and maintained in accordance with the provisions of Section 18½-7(b)(1);
- (2) The Retirement Plan Account required to be established and maintained for a Participant in accordance with Section 18½-7(b)(2).

(b) "Beneficiary" shall mean any person or persons (including, but not limited to, an estate, an executor, administrator or fiduciary, corporate or otherwise) designated pursuant to Section 18½-9(i) to receive any undistributed Account balance distributable hereunder on account of the death of such Participant or Former Participant. When used with respect to maintenance of an Account for a Beneficiary and adjustments to be made therein, the term Beneficiary shall mean a Beneficiary who is currently entitled to payment of a benefit under the Plan.

(c) "Board" or "Board of Trustees" shall mean the Board of Trustees appointed pursuant to Section 18½-3 hereof.

(d) "City" shall mean the City of Kirkwood or the officer or officers of the City to whom the City Council may delegate any of its rights, duties or powers hereunder.

(e) "City Council" shall mean the City Council of the City.

(f) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(g) "Compensation," for purposes of the Plan and of the limitations imposed by Section 415 of the Code, shall mean the total of all remuneration (1) paid by the City to an Employee during the period he is a Participant in the Plan, and (2) received by a Participant as worker's compensation, other than a lump sum payment of worker's compensation. Compensation shall include salary, bonuses, wages overtime payments, or other regular remuneration, educational incentive pay, all amounts deferred under any plan of deferred compensation maintained by the City, and all amounts contributed by the City, pursuant to a salary reduction agreement, to a plan which satisfies the requirements of Section 125 or Section 132(f) of the Code, but excludes expenses paid or reimbursed, food allowances, clothing allowance, tuition reimbursement payments, the imputed value of life insurance, automobile usage, and all contributions made under this Plan and any other plan maintained by the City which satisfies the requirements of Section 401 of the Code or any other statute of similar import.

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In order to be taken into account for purposes of this section, compensation generally must be paid or treated as paid to the Employee before the severance from employment of the Employee. However, compensation paid by the later of two and one-half months after the severance from employment of an Employee or the end of the Limitation Year that includes the date of severance from employment of the Employee shall be treated as Compensation to the extent such amounts are compensation for services rendered that would have been paid absent a severance from employment, payments of accrued vacation or other leave the Employee would have been able to use if employment had continued, or payments of unfunded nonqualified compensation that would have been paid at the same time if the Employee had continued in employment.

The Compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000, as adjusted for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year. If a determination period consists of fewer than twelve months, the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If Compensation for any prior determination period is taken into account in determining a Participant's allocations for the current Plan Year, the Compensation for such prior determination period is subject to the applicable annual Compensation limit in effect for the prior period.

(h) *“Employee”* shall mean any person who is employed by the City, except (1) any elected or appointed official who is not an Employee of the City, (2) commissioned, salaried police officers and salaried Firefighters of the police and fire departments of the City, (3) seasonal Employees whose customary employment is for less than a consecutive five-month period in a Plan Year, (4) any person whose customary employment is for less than twenty (20) hours per week, and (5) library associates, ice rink guards, cashiers, and ice rink shift managers.

(i) *“Former Participant”* shall mean a person who shall have been a Participant but whose employment with the City shall have terminated, or is deemed to have terminated pursuant to the provisions hereof, and to whom or to whose Beneficiary there shall not have been distributed the aggregate amount of benefits to which such Participant or his Beneficiary is entitled under the Plan.

(j) *“Fund”* shall mean the res or corpus and all earnings, appreciation or additions thereon and thereto held by the Board of Trustees, including those funds accumulated under the Prior Plans, and shall be designated the “City of Kirkwood Employees’ Retirement Fund.”

(k) *“Fund Custodian”* or *“Custodian”* shall mean the person or persons appointed as custodian of the Fund pursuant to Section 18½-12 hereof.

(l) *“Hour of Service”*

(1) Hour of Service shall mean each hour for which (a) an Employee is paid, or entitled to payment, by the City for the performance of duties during the applicable computation period, and the Hour of Service shall be credited to the period in which the duties are performed, (b) an Employee is paid, or entitled to such payment, by the City on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military leave or leave of absence and the Hour of Service shall be credited to the period in which the period during which no duties are performed occurs, (c) back pay, irrespective of mitigation of damages, has been either

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awarded or agreed to by the City and the Hour of Service shall be credited to the period to which the award or agreement pertains, and (d) an Employee would have been paid or entitled to payment under (a) above assuming that (i) he had not been on an authorized leave of absence (in accordance with the provisions of Section 18½-5), and (ii) but for the authorized leave of absence would have been regularly engaged in the performance of his duties and the Hour of Service shall be credited to the period he would have been regularly engaged in the performance of his duties had he not been on authorized leave of absence; provided, however, that in no event shall an Hour of Service be credited to an Employee under more than one of the applicable subsections (a), (b), (c) or (d) above. The number of Hour of Service to be credited under (b) above shall be in accordance with the requirements of 29 CFR 2530.200b-2(b) as such regulations may be amended or superseded from time to time and such regulations are incorporated herein by reference.

- (2) The definition of Hour of Service as provided in this Section shall be construed so as to resolve any ambiguities in favor of crediting Employees with Hours of Service.

(m) “*Investment Manager*” shall mean a person, firm or corporation appointed by the Board to manage (including the power to acquire or dispose of) all or one or more portions of the Fund, which person, firm or corporation shall

- (1) be (a) registered as an investment adviser under the Investment Advisers Act of 1940; or (b) a bank as defined in the Investment Advisers Act of 1940; or (c) an insurance company qualified to manage (including the power to acquire or dispose of) all or one or more portions of the Fund under the laws of more than one state; and
- (2) acknowledge in writing to the City that he or it is a fiduciary with respect to the Plan.

(n) “*Late Retirement Date*” shall mean the first day of the calendar month following a Participant’s termination of employment after his Normal Retirement Date.

(o) “*Limitation Year,*” for purposes of the Plan and of the limitations imposed by Section 415 of the Code, shall mean the Plan Year.

(p) “*Military Service*” shall mean any service in the uniformed services as defined in Section 414(u)(5) of the Code.

(q) “*Normal Retirement Date*” shall mean the first day of the calendar month during which a Participant attains sixty-five (65) years of age.

(r) “*Participant*” shall mean a person who becomes and remains a Participant under Section 18½-4 hereof.

(s) “*Period of Eligibility Service*” shall mean a consecutive six-month period computed with reference to the date on which the Employee’s employment commenced with the City, or semi-annual anniversaries thereof, during which the Employee completed not less than five hundred (500) Hours of Service. If the status of an Employee within the meaning of Subsection 18½-21(h) changes to that of an Employee within the meaning of Subsection 18½-2(h) before such individual becomes eligible to participate in the City of Kirkwood Police Officers’ and Firefighters’ Pension Plan, such individual’s service as an Employee within the meaning of Subsection 18½-21(h) shall be treated as service as an Employee within the meaning of Subsection 18½-2(h) for purposes of this Subsection 18½-2(s).

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(t) “*Permanent Disability*” or “*Permanently Disabled*” shall mean such physical and mental disability as determined by the disability insurance carrier as provided for herein. Permanent Disability shall exclude any ailment or condition resulting from an Employee’s engagement in the commission of a felony, from an Employee’s habitual use of drugs, intoxicants or narcotics, from an Employee’s deliberately self-inflicted injury or self-induced illness, and from any injury received or disease contracted in Military Service or in the armed forces of any other country or of any private paramilitary organization, and any other exclusions and limitations provided for by such insurance.

(u) “*Person*” shall mean, wherever appropriate, either a natural or artificial person, or both, including, but not limited to, a corporation and fiduciary (corporate or otherwise) and a legal representative.

(v) “*Plan*” shall mean the pension Plan set forth in this document and any and all amendments thereto, which Plan shall be known as the “City of Kirkwood Employees’ Pension Plan.”

(w) “*Plan Administrator*” shall mean the City employee to whom the Board delegates its managerial duties and responsibilities under Section 18½-3(h).

(x) “*Plan Year*” shall mean a consecutive twelve-month period ending on the last day of March in each year.

(y) “*Prior Plans*” or “*Prior Plan*” shall mean either or both the Civilian Employees’ Retirement Plan (enacted on September 19, 1968, pursuant to Ordinance No. 5407), and the Civilian Employees’ Pension Plan (enacted on March 20, 1980, pursuant to Ordinance No. 6576).

(z) “*Retiree*” shall mean an employee who has retired from the City and who is receiving or has received benefits pursuant to Prior Plans.

(aa) “*Retirement Date*” shall mean Normal Retirement Date or Late Retirement Date.

(bb) “*Year of Vesting Service*” or “*Year of Vesting Service with the City*” shall mean a Plan Year during which the Employee has completed at least one thousand (1,000) Hour of Service with the City. In determining the number of years of vesting service for a Participant, years of vesting service need not be consecutive.

Words in this instrument used in the singular shall include the plural and words in the masculine shall include the feminine or neuter, or both wherever appropriate.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7667, §§1-3, 6-18-87; Ord. No. 7754, §1, 3-17-88; Ord. No. 7898, §1, 7-20-89; Ord. No. 7974, §1, 5-17-90; Ord. No. 8117, §1, 3-5-92; Ord. No. 9114, §1, 1-3-02; Ord. No. 9340, §1, 10-2-03; Ord. No. 9608, §1, 7-20-06; Ord. No. 9684, §1, 8-2-07; Ord. No. 9962, §1, 10-7-10)

Sec. 18½-3. Administration; Board of Trustees.

(a) *Establishment.* The City shall establish the Board of Trustees which shall consist of seven (7) persons.

(b) *Membership.* Five (5) Board members shall be appointed by the City Council and shall not be Employees of the City. Two (2) Board members shall be Employees of the City who are Participants in the Plan, who may not be from the same department or office of the City, and who are elected by the Employees. The five (5) appointed Board members shall serve for a term of three (3) years

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and until their successors are duly appointed. The two (2) elected Board members shall serve for a term of two (2) years and until their successors are duly elected.

(c) *Appointed Members; Terms.* The appointed Board members shall be divided into three (3) classes, with the first and second classes each consisting of two (2) members and the third class consisting of one member. At the meeting of the City Council held for the appointment of the first Board, the members of the first class shall be appointed for a term of three (3) years; the members of the second class for a term of two (2) years; and the member of the third class for a term of one year; and annually, the successors to the class of Board members whose terms shall expire that year shall be appointed by the City Council to hold office for the term of three (3) years, so that the term of office of one class of members shall expire in each year.

(d) *Elections; Terms.* The two (2) elected Board members shall be elected by a majority of the Employees voting by secret ballot at an election called for such purpose. The elected Board members shall be divided into two (2) classes, with the first class consisting of the Employee receiving the largest number of votes and the second class consisting of the Employee receiving the second largest number of votes. Following the election, the first class shall serve for a term of two (2) years and the second class shall serve for a term of one year. Successors of these Employees shall thereafter hold office for a term of two (2) years, so that the term of office of one class of members shall expire in each year. Such election shall be administered by the City Clerk and shall be held between December 1 and March 1 of such years in which there is to be an election, the elected member taking his position on the first day of the Plan Year following the election.

(e) *Removal of Member; Vacancies.* The City Council may remove any Board member, in which event his removal shall become effective upon adoption of a resolution to that effect by the City Council. Any Board member may resign by written notice to the City Council of the City. In the event of the death, removal or resignation of a Board member appointed by the City Council prior to expiration of his term, the City Council shall fill any vacancy in the membership of the Board thus created; or in the event of the death, removal or resignation of an elected Board member prior to the expiration of his term, the Employees shall, by special election, fill any vacancy in the membership of the Board thus created.

(f) *Investment Managers.* The Board shall appoint and remove, in its discretion, one or more investment managers to manage (including the power to acquire and dispose of all, or one or more portions, of the Fund.

(g) *Books, Records, Etc. of Prior Plans.* The Board of Trustees of this Plan shall have no obligation to examine the books, records, accounts or acts of the Boards of trustees of the Prior Plans and, in consideration of their acceptance of the appointment herein, shall be able to accept said books, records and accounts in good faith and shall have no liability whatsoever for the acts of the Boards of trustees of the prior Plans.

(h) *Powers and Duties of Board.* The Board of Trustees shall administer the Plan through its duly authorized officers in a uniform and nondiscriminatory manner. The Board, in its discretion, is specifically authorized to determine eligibility for benefits under this Plan and to construe the Plan's terms. The Board shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan (except such powers as are reserved by the Plan or by law to the City), whether or not such powers are specifically enumerated herein, but not inconsistent with any of the express terms and provisions of this Plan, including the power to make and publish such bylaws and regulations as it may deem necessary to carry out the provisions of this Plan. Notwithstanding the foregoing, the City shall have the absolute and sole right to determine and make appropriations for funding contributions to the Plan and the Board of Trustees' powers and rights under

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the Plan shall be limited to custodial and administrative functions. The Board of Trustees shall not be liable hereunder for any acts performed by them in good faith and shall be liable only for criminal acts.

Without limiting the generality of the foregoing, the Board shall have the general administration of the Plan and subject to the powers specifically reserved herein and inherent to the City, the sole, final and absolute right to reconcile any inconsistency in the Plan, to interpret and construe the provisions of the Plan in all particulars, in such manner and to such extent as it deems proper, and to take all action and make all decisions and determinations necessary under the Plan and/or in connection with its administration, interpretation and application. Any interpretation or construction placed upon any term or provision of the Plan by the Board, any decision of the Board with regard to the eligibility of an Employee to become a Participant, the rights of a Participant, a Former Participant, or the beneficiaries of either of them, or any other person, any reconciliation of an inconsistency in the Plan made by the Board and any other action, determination or decision whatsoever taken by the Board, shall be final, conclusive and binding upon all persons or parties interested in or concerned with the Plan, including, but not by way of limitation, the Employees, Participants, Former Participants and beneficiaries, subject, however, to review in the Circuit Court of St. Louis County pursuant to administrative procedures established by state law. No Board member shall act or vote in any case in which his individual right or claim to any benefit is particularly involved. The Board is hereby empowered to enter into such agreements with the City or other pension funds of the City for the co-investment of funds or the management of funds.

(i) *Officers.* The Board shall elect a chairman and treasurer from among its members. The Board may elect other officers from its members as it deems necessary to fulfill the obligations of the Board. Any and all documents shall be signed or executed by the chairman of the Board, or, if so authorized by the majority of the Board, any other officer of the Board. The Board may employ a secretary, who may be an Employee of the City. The City Comptroller shall serve as an ex officio member of the Board and together with the treasurer of the Board shall be custodian of all cash, securities and other assets of the Fund, subject to the control and direction of the Board. The City's Chief Administrative Officer or an Employee of the City so designated by the City's Chief Administrative Officer shall serve as Plan Administrator under the direction of the Board. No compensation shall be paid to the Plan Administrator from the Fund.

(j) *Quorum; Meetings.* Four (4) members of the Board at any time in office shall constitute a quorum for the transaction of business. All resolutions and other action taken by the Board at any meeting shall be by vote of the majority of those present at any such meeting unless otherwise provided herein. The Board shall hold meetings upon such notice, at such place or places, and at such time or times as it may from time to time determine, provided that meetings shall be held at least once in each calendar quarter. The Board shall publish a schedule of such meetings, which shall be open to the public unless the subject matter of such meeting permits such meeting to be closed pursuant to state law. Four (4) members of the Board may call for a special meeting upon five (5) days' written notice.

(k) *Compensation; Expenses.* The Board members shall serve without compensation for their Board services. Unless the same shall have been paid by the City, all reasonable and necessary expenses of the Board, including, but not limited to legal, accounting and other professional fees and expenses, and any cost or expense incurred by litigation, shall be paid out of the Fund on direction of the Board, provided that such expenses shall not have been incurred as a result of the willful misconduct or gross negligence of the Board or any member or members of it. Unless the same shall have been paid by the City, all costs and expenses incurred by any Board member in connection with any litigation to which he may be a party or in connection with any claim made against him when such litigation or claim arises out of his action or failure to act as a Board member and when such litigation or claim is not the result of the Board member's willful misconduct or gross negligence shall be paid out of the Fund at the direction of the Board. Unless the same shall have been paid by the City, the fees set forth in the written agreement

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with an Investment Manager shall be paid out of the Fund on direction of the Board. The Board of Trustees shall not be liable hereunder for any actions performed by them in good faith and shall be liable only for criminal acts, or as the law so designates.

(l) *Record of Proceedings.* The Board shall cause to be kept a record of all of its proceedings and such records and other data as may be necessary for the administration of the Plan.

(m) *Custodian of Fund.* The Board shall direct the Custodian, if any, with respect to the distribution of and disbursement from, the Fund.

(n) *Discrimination.* The Board shall not exercise any powers herein conferred upon it in such a way as to result in discrimination in favor of highly compensated Employees or officers of the City.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7667, §§4-7, 6-18-87; Ord. No. 7754, §2, 3-17-88; Ord. No. 7974, §2, 5-17-90; Ord. No. 8110, §1, 2-20-92)

Sec. 18½-4. Eligibility and Participation.

(a) *Continued Participation.* Each Employee who was a Participant on March 31, 2008, shall continue to be a Participant on April 1, 2008.

(b) *Commencement of Participation.* Each Employee shall become a Participant on the first day of the month coincident with or next following the later of the date he completes a Period of Eligibility Service or attains age 21. An Employee, who had (i) been employed by the City, (ii) been a Participant in the Plan, and (iii) ceased being an Employee, shall become a Participant as of the date he is reemployed by the City as an Employee.

(c) *Termination of Participation.* A Participant shall cease being a Participant on the day he is no longer an Employee and shall cease to be a Former Participant on the date his benefits are completely distributed from the Plan.

(d) *Participation on Reemployment.* An Employee who is not a Participant in the Plan on the date his employment with the City terminates or is deemed to terminate, shall be deemed to be a new Employee as of the date of his reemployment with the City as an Employee.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 9608, §2, 7-20-06)

Sec. 18½-5. Layoff, Leave of Absence; Military Service.

(a) *Authorized Leave of Absence.* An Employee shall be deemed to be on an authorized leave of absence throughout any period during which he shall be:

- (1) absent with the prior consent of the City for a period not exceeding twelve (12) months;
- (2) engaged in Military Service;
- (3) absent because of illness or disability, which is established to the satisfaction of the City, beyond allowed or accumulated sick leave; or
- (4) laid off by the City.

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(b) *Termination of Leave of Absence.* A Participant who is on an authorized leave of absence shall remain a Participant in the Plan. If an Employee shall fail to return to active employment with the City on or before the last day of the period of such leave of absence, he shall be deemed to have terminated his employment on such last day. An Employee's period of authorized leave of absence begins with the first day of his authorized leave of absence and ends on the first to occur of the following applicable dates:

- (1) in case of absence with prior consent of the City, the fifteenth day following the termination of such absence.
- (2) in case of a layoff, (i) the fifteenth day following such Employee's recall to active employment, or (ii) the date on which occurs the expiration of six (6) months from the commencement of such layoff, whichever first occurs.
- (3) in the case of an absence due to illness or disability, (i) the fifteenth day following the end of such Employee's illness or disability, or (ii) the date which occurs upon the expiration of six (6) months from the commencement of such Employee's absence due to illness or disability, whichever first occurs.
- (4) in the case of Military Service, the last day on which he retains reemployment rights under federal law or such extended date as the Board may allow because of factors causing a delay in return to active employment.

(c) *Nondiscriminatory Treatment.* Specifically with regard to the application of the provisions of this Article, Employees shall be treated alike when in similar circumstances.

(Ord. No. 7627, §1, 3-5-87)

Sec. 18½-6. City Contributions.

(a) *Amount of Contributions.* For each Plan Year within which or coincidental with which the fiscal year of the City ends, the City shall, subject to the provisions of Section 18½-7(d), contribute to the Fund to be held and administered by the Board according to the Plan, on behalf of each Participant, an amount equal to six and one-half percent (6.5%) of each Participant's compensation for such year.

(b) *Source and Payment of Contributions.* City contributions required to be made under Section 18½-6(a) shall be derived from such revenue sources as the City Council shall determine, from income and capital appreciation derived therefrom and from any property given or donated to it from any source. The Board may accept, on behalf of the Fund, gifts, grants, devises or bequests of personal or real property, conditioned or unconditioned, provided that no conditioned gifts may be accepted where such a condition is contrary to the Plan or applicable state law. The City shall pay or transfer to the Board of Trustees its contribution for each Plan Year at the time prescribed by the City Council or its designate.

(c) *Board Duty With Respect to Contributions.* The Board of Trustees shall have no right or duty to inquire into the amount of the City's annual contribution or the methods used in determining the amount of such contribution, but shall be accountable only for funds actually received by the Fund.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7667, §8, 6-18-87; Ord. No. 9028, §1, 5-17-01; Ord. No. 9919, §1, 5-20-10)

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Sec. 18½-7. Accounts for Each Participant; Allocation of Contributions; Fund Gains and Losses.

(a) *Contributions Part of Fund.* All contributions made by the City to this Plan shall, when paid to the Board of Trustees, become part of the Fund.

(b) *Establishment of Accounts.*

(1) The Board shall establish and maintain or shall cause to be established and maintained a Current Account in the name of each Participant, Former Participant and Beneficiary. Each Participant's pro rata share of the City contributions shall be credited to his Current Account. Such records are primarily for accounting purposes and do not require a segregation of Fund assets to each such Account.

(2) The Board shall establish and maintain or shall cause to be established and maintained a Retirement Plan Account in the name of each Participant in the Plan. The Retirement Plan Account shall consist of the following:

a. The actuarial equivalent of the Participant's earned benefit (as defined in the applicable Prior Plan) under the applicable Prior Plan, unless the Participant elected to have an annuity purchased with the actuarial equivalent of his earned benefit under the Prior Plan; plus

b. The Participant's mandatory contributions to the applicable Prior Plan and earnings thereon on the Participants mandatory contributions to the Plan from July 1, 1973, through December 31, 1985, at the rate of two (2) per cent per annum, compounded annually.

A Retirement Plan Account shall also be established for each Former Participant of a Prior Plan who, at the time of his termination of employment with the City, was entitled to a vested deferred benefit under the applicable Prior Plan and whose benefit has not commenced under the applicable Prior Plan, which such Retirement Plan Account shall consist only of an annuity purchased with the actuarial equivalent of his earned benefit under such Prior Plan. For purposes of this Section 18½-7, "actuarial equivalent" means a benefit or benefits which are of equal value at the date of determination to the benefits for which they are being substituted. Equivalency of value is determined by an actuary selected by the Board and is based on the following actuarial assumptions:

Mortality: The 1984 PBGC Unisex Pension Mortality Table

Interest rate: 8.2 per cent per annum.

Each Participant shall be one hundred (100) per cent vested at all times in the amount credited to and any annuity held in his Retirement Plan Account.

(c) *Allocation to Current Account.* As of the day the City shall make a contribution, the Board shall credit the amount of such contribution made on behalf of each Participant pursuant to Section 18½-6(a), to the Current Account of each such Participant.

(d) *Limitation on Annual Additions.* Anything contained herein to the contrary notwithstanding, in no event shall the annual additions allocated to a Participant's Account for a Plan

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Year under this Plan and under all other defined contribution Plans satisfying the requirements of Section 401 of the Code and any other statute of similar import, which the City maintains and under which such Participant is also a Participant under such other Plans, except as otherwise provided in Section 414(n) of the Code, exceed the lesser of forty thousand dollars (\$40,000.00) (as adjusted by the Secretary of the Treasury for cost-of-living under Section 415(d) of the Code) or 100 percent of such Participant's compensation (as defined in Section 415(c)(3) of the Code) for such Plan Year, or such other limitations as the Secretary of the Treasury may prescribe. If, for any Plan Year beginning before April 1, 2008, an amount is not allocated to a Participant's Current Account because the above limitations, or such other limitations as may be prescribed by the Secretary of the Treasury, have been exceeded, such amounts not allocated shall be credited to a suspense account and the City contribution for the Plan Year immediately following the Plan Year for which such amounts were not allocated shall be reduced by the amount credited to the suspense account and said account shall be treated as part of the City contribution for such Plan Year.

For Plan Years beginning on or after April 1, 2008, corrections of excess annual additions shall be made in accordance with the principles set out in the Employee Plans Compliance Resolution System.

For purposes of this Section 18½-7(d), the term "annual additions" means, when used with respect to any defined contribution plan for any Plan Year, the sum of (a) City contributions for such Plan Year, plus (b) the amount of the Participant's contributions for such Plan Year, plus (c) forfeitures for such Plan Year, plus (d) amounts allocated after March 31, 1984, to an individual medical account (as defined in Section 415(i)(1) of the Code), which is part of a defined benefit plan maintained by the City, plus (e) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key Employee (as defined in Section 419A(d)(3) of the Code) under a welfare benefit fund (as defined in Section 419(e) of the Code) maintained by the City; provided, however, that the compensation limit under this subsection shall not apply to any contribution for medical benefits after a Participant's separation from service from the City (within the meaning of Section 401(h) or 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

(e) *Adjustment to Accounts.* With respect to each investment Fund established under Section 18½-12(d), on a daily basis the then net credit balance in the Current Accounts of each Participant, Former Participant and Beneficiary, shall be adjusted upward or downward, as the case may be, in the same proportion that the total amount of the then net credit balance in each such Current Accounts invested in the investment Fund bears to the total amount of the then net credit balances in the Current Accounts of all Participants, Former Participants and Beneficiaries invested in the investment Fund, so that the total of the then net credit balances in the Current Accounts of all Participants, Former Participants and Beneficiaries invested in the investment Fund, as so adjusted, will equal the value of the investment Fund as of such date less, however, the City contribution for such Plan Year and the amount of any suspense account established in accordance with Section 18½-7(d). In determining credit balances in Current Accounts of Participants, Former Participants and Beneficiaries, the determination shall be made prior to the allocations of the City contribution provided for in Section 18½-7(c).

(Ord. No. 8658, §1, 10-2-97; Ord. No. 9114, §2, 1-3-02; Ord. No. 9340, §2, 10-2-03)

Sec. 18½-8. Valuation of the Fund.

Valuation. The value of the Fund, other than the amount of any suspense account established in accordance with Section 18½-7(d), shall be determined on a daily basis. The Board of Trustees shall report such value to the City Council and Participants in writing on a quarterly basis. In making such determination, the Board of Trustees shall value the assets of the Fund, other than the amount of any

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suspense account established in accordance with Section 18½-7D, at their current fair market value as of such valuation date, with all accrued income, and shall deduct all accrued expenses and other amounts properly chargeable to the Fund. Such valuation shall include any contribution made by the City as of such valuation date, as well as any losses sustained in the administration of the Fund since the preceding valuation date. The Board's determination of the value of the Fund shall be final and conclusive for all purposes of this Plan and shall be binding upon the City, Participants, Former Participants, their respective Beneficiaries and all other Persons interested in or concerned with the Fund. (Ord. No. 8658, §2, 10-2-97)

Sec. 18½-9. Benefits.

(a) *Retirement Date.* If a Participant continues his employment beyond his Normal Retirement Date, he shall continue to be treated in all respects as a Participant until his actual retirement ("Late Retirement Date"), except that no benefit on account of his retirement shall be distributable to such Participant until his actual retirement. A Participant's right to the amount credited to his Account shall be one hundred (100) per cent vested and nonforfeitable upon attaining his Retirement Date.

(b) *Retirement.* Upon retirement at his Retirement Date, a Participant shall be entitled to receive and there shall be distributed to him as provided in Section 18½-9(f) a benefit in an amount equal to the total of the net credit balance in his Account as of the date of his retirement, which balance shall be computed after all adjustments and allocations required as of such date, if any, shall have been made.

(c) *Permanent Disability.*

(1) *Amount.* Upon the termination of a Participant's active employment with the City because of Permanent Disability or upon the Board's determination that a Participant, during his authorized leave of absence (in accordance with the provisions of Section 18½-5) and while he remained a Participant, incurred Permanent Disability (herein in this Section 18½-9(c) referred to as "the date of Permanent Disability"), such Participant shall be entitled to receive a benefit in an amount equal to the total of the vested portion of the net credit balance in his account as of the date of his termination of employment, which balance shall be computed after all adjustments and allocations, if any are required as of such date, if any, shall have been made.

(2) *Date of Termination of Employment.* For purposes of this Section 18½-9(c) only, "date of his termination of employment" means the earlier of (i) the date a Participant who is Permanently Disabled attains age 65, (ii) the date a Participant ceases to be entitled to benefits under the City's long-term disability program, (iii) the date of the Participant's death, or (iv) the date of the written election of the Participant to receive all or a portion of his benefit. A disabled Participant who is not entitled to receive benefits under the City's long-term disability program shall receive his vested benefit, if any, in accordance with Section 18½-9(e).

(3) *Contributions During Disability.* In the case of a Participant who is receiving benefits under the City's long-term disability program, the City shall continue to make contributions to the Plan, as required by Section 18½-6(a), on behalf of such Participant based on the Compensation the Participant would have received for the Plan Year if the Participant, was paid at the rate of Compensation on the date of Permanent Disability, which contributions shall continue until the earlier of (i) the date the Permanently Disabled Participant attains age sixty-five (65), (ii) the date the Participant ceases to be entitled to benefits under the City's long-term disability program, (iii) the date of the

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Participant's death or (iv) the date of the written election of the Participant to receive all or a portion of his benefit.

- (4) *Vesting Service.* No additional Years of Vesting Service will be earned by a Permanently Disabled Participant until such time as he returns to active employment with the City, except that a Permanently Disabled Participant will be 100% vested in his Account upon the earlier of the attainment of age 60 or the date of his death, regardless of his Years of Vesting Service.
- (5) *Form of Benefit.* The Participant's benefit under this Section 18½-9(c) shall be payable in the form provided in Section 18½-9(f); provided, however, that a Participant may elect in writing to have all or a portion of his benefit payable while still Permanently Disabled. If a Participant so elects, no further contributions shall be made by the City pursuant to paragraph 3 of this Section 18½-9(c) for any period after the date of such written election and such Participant shall cease to be a Participant in the Plan as of such date.

(d) *Death.* Upon the death of a Participant while in active employment with the City or upon the death of a Participant during his period of authorized leave of absence (in accordance with the provisions of Section 18½-5), and upon the Board being furnished with evidence satisfactory to it of such Participant's death, the Participant's designated Beneficiary shall be entitled to receive, and there shall be distributed to him, as provided in Sections 18½-9(f) and (g), a benefit in an amount equal to the total of the net credit balance in his Account, as of the date of his death, which balance shall be computed after all adjustments and allocations required as of such date, if any, shall have been made.

Upon the death of a Former Participant prior to receipt of some or all of his benefits hereunder, an amount equal to the aggregate amount of such undistributed benefits shall be paid to the Beneficiary of such deceased Former Participant as provided in Sections 18½-9(f) and (g).

(e) *Termination for Other Reasons.* A Participant, whose active employment terminates prior to retirement (for reasons other than death or Permanent Disability) and who shall not be in the employment of the City as of the last day of the Plan Year in which such termination occurs, shall be entitled to receive and there shall be distributed to him, as provided in Section 18½-9(f), a benefit in an amount equal to the sum of (a) the net credit balance in his Retirement Plan Account, (b) the net credit balance in his mandatory contributions account, if any, transferred to this Plan from the City's Police Officers' and Firefighters' Pension Plan, (c) the net credit balance in his Rollover Account, and (d) the net credit balance in his Current Account as of the date of his termination of employment; less, however, in either case, the applicable percentage of the net credit balance of his Current Account set forth in the following schedule based upon the number of his Years of Vesting Service with the City as of the date of his termination of active employment with the City:

<i>Number of Years of Vesting Service</i>	<i>Percentage of Amounts Not Vested</i>
Less than 5	100
5 or more	0

Notwithstanding the foregoing, a Participant shall be one hundred (100) per cent vested when he attains sixty (60) years of age. The net credit balance in the Current Account of a Participant referred to in this Section 18½-9(e) shall be determined after all adjustments and allocations required as of the date of the determination of the net credit balance in his Current Account shall have been made.

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The amount, if any, of the net credit balance in his Current Account to which a terminated Participant referred to in this Section 18½-9(c) is not entitled in accordance with the above schedule shall be forfeited at the time his benefit commences. For purposes of this Section 18½-9(e), a Participant who is 0% vested in his benefit is deemed to have received a distribution of his vested benefit and the nonvested portion of his benefit is forfeited. The City contribution for such Plan Year shall be reduced by the amount of such forfeiture and said amount shall be treated as part of the City contribution for such Plan Year in which such forfeiture occurs. The preceding sentence notwithstanding, in the event such Participant again becomes an Employee of the City, but before he has five (5) consecutive breaks in service, the amount he forfeited shall be restored and credited to his Current Account. such restoration shall first be derived from forfeitures of other Participants occurring in the Plan Year in which such restoration is made and to the extent such amount is not derived from said forfeitures, it shall be restored from City contributions. The term "break in service" means a continuous period of twelve consecutive months during which the Employee is not employed by the City, commencing on the date the Employee terminates under this Section 18½-9(e). In the case of an Employee who is absent from work pursuant to a leave or absence which City is required to extend to the Participant under the provisions of the Family and Medical Leave Act of 1993, the twelve consecutive month period begins on the first anniversary of the first date of such absence. Absence on account of Military Service shall be treated as employment with the city for purposes of determining whether a break in service occurs.

(f) *Forms of Benefit.* Subject to the provisions of Sections 18½-9(k), 18½-9(m) and 18½-9(n) and paragraph 2 of this Section 18½-9(f), as promptly as practicable after the date as of which a Participant becomes entitled to a distribution from the Fund in accordance with Sections 18½-9(b), 18½-9(c) and 18½-9(o) and in all events no later than sixty (60) days after the close of the Plan Year during which the Participant becomes entitled to such distribution, the Board shall distribute or instruct the Custodian to distribute the benefit to which such Participant is entitled in one of the following methods of payment, as selected by the Participant, subject to the provisions of (b) of each of Sections 18½-9(b) and 18½-9(c) and 18½-9(e) and 18½-9(o):

1. one lump sum; or
2. an annuity in the form selected by the Participant, which annuity shall be purchased by the Board. The payments under such annuity will be for the life of such Participant or Beneficiary or over the lives of such Participant and his designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant or the life expectancy of such Participant and a designated Beneficiary).
3. a series of substantially equal installments over a period which does not extend beyond the life expectancy of such Participant or Beneficiary or the joint life expectancy of such Participant and a designated Beneficiary.

Anything to the contrary herein contained notwithstanding, a Participant entitled to a distribution from the Fund may elect to defer payment of his entire benefit and elect to receive a portion of his benefit as a distribution from any of the separate investment Funds (established pursuant to Section 18½-12(d)) in which he has invested the net credit balance in his Accounts or portions thereof as of his date of termination or retirement. For purposes of this paragraph, each Participant shall designate in writing, at the time he becomes entitled to a distribution hereunder or at any time thereafter, from which separate investment Fund or Funds he wishes the net credit balance in his Accounts or portions thereof to be distributed to him and the form of payment of such distribution as otherwise permitted under the Plan. Under such election, the entire amount of the separate investment Fund or Funds of the Participant shall be distributed to him. The Participant may not defer commencement of his benefit under this paragraph beyond his Required Beginning Date as defined in Section 18½-9.5(g).

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(g) *Time of Payment of Death Benefit.* The amount distributable pursuant to Section 18½-9(d) shall be paid or commence to be paid as soon as practicable after the date of the Participant's or Former Participant's death and will be payable to his Beneficiary in accordance with Section 18½-9.5(g).

(h) *Benefits Paid After Fund Valuation.* Anything to the contrary herein contained notwithstanding, no benefit shall be payable hereunder until the Board of Trustees determines the value of the Fund as of the appropriate date, if such value needs to be determined in order to determine the benefit to which the Participant is entitled.

(i) *Designation of Beneficiary.* Each Participant and Former Participant shall have the right, from time to time, to designate or change the designation of a primary and a contingent Beneficiary, or either thereof, to receive on his death the benefit provided herein, or, as the case may be, any undistributed balance of any benefit distributable to him pursuant to the provisions hereof. A Beneficiary designation by a Participant must (i) be in writing in a form or forms as the Board may require, and (ii) be an original document signed by the Participant. To the extent that (i) a Participant or Former Participant has not named a Beneficiary at the time of his death; (ii) the original copy of the Beneficiary designation of the Participant or Former Participant cannot be located; or (iii) the designated Beneficiary and contingent designated Beneficiary or Beneficiaries is or are deceased or cannot be located, the Participant's or Former Participant's Beneficiary shall be his surviving spouse at the time of the Participant's or Former Participant's death. If such Participant or Former Participant does not have a surviving spouse at his death, the Participant's or Former Participant's children (natural and adopted) surviving at his death shall be the Beneficiary or Beneficiaries, and shall be entitled to payment of the Participant's or Former Participant's undistributed Account balance in equal shares without the application of any anti-lapse statute. If the Participant or Former Participant does not have surviving children at his death, the Participant's or Former Participant's estate shall be his Beneficiary.

Upon the death of a Beneficiary entitled to the distribution of an amount pursuant to the provisions of this Section 18½-9 prior to receipt of all amounts distributable to such Beneficiary hereunder, an amount equal to the unpaid balance shall be paid to the estate of such deceased Beneficiary in a single lump sum.

(j) *Solvency of Fund.* When any amount becomes payable under the provisions of this Section 18½-9, the same shall be paid to the extent that there are assets in the Fund available for the payment thereof, after deduction of accrued expenses and other amounts properly chargeable to the Fund. In the event the assets of the Fund available for payment, after the aforesaid deductions, are not sufficient to pay all such amounts required to be paid on a payment date, then the assets of the Fund shall be used to pay such amounts on the basis of direct proportion to the extent such assets are available for payment.

(k) *Address for Benefit Payments.* All benefits and installments thereof are distributable from the address hereinafter provided for in Section 18½-13(c) as the address to which notices shall be mailed to the City, or such other address as the Board may designate.

(l) *Latest Date for Commencement of Benefits.* The benefit to which a Participant is entitled shall begin to be distributed to him not later than his Required Beginning Date as defined in Section 18½-9.5(g).

(m) *Lump Sum Distribution.* If a Participant's, Former Participant's or Beneficiary's total benefit due under the Plan is equal to or less than five thousand dollars (\$5,000.00), such benefit will be paid in one (1) lump sum only. In the event of a distribution greater than \$1,000 in accordance with the provisions of this Section, if the Participant, former Participant or Beneficiary does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant, Former Participant or

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Beneficiary in a direct rollover in accordance with Section 18½-13(p), or to receive the distribution directly in accordance with this Section, then the benefit will be paid in a direct rollover to an individual retirement plan designated by the Board. For purposes of determining a Participant's total benefit under the Plan, the Participant's Account balances attributable to Rollover Amounts to the Plan shall be disregarded.

(n) *Lost Participant.* In the event the Board is unable to locate a Former Participant or Beneficiary who is entitled to a benefit from the Plan, the benefit to which such Former Participant or Beneficiary is entitled shall be forfeited as of the last day of the Plan Year in which the Board determines the Former Participant or Beneficiary cannot be located, and such benefit shall be treated as part of the City contribution for such Plan Year in which such forfeiture occurs. If the Former Participant or Beneficiary whose benefit was forfeited is subsequently located or claims such benefit, such benefit shall be restored and paid to the Former Participant or Beneficiary in accordance with Section 18½-9(f). Such restoration shall first be derived from forfeitures to be treated as part of the City contribution in accordance with Section 18½-9(e) and, to the extent such amount is not derived from said forfeitures, it shall be restored from a separate City contribution for such purpose. This Section 18½-9(n) shall only apply if a Former Participant or Beneficiary cannot be located.

(o) *In-Service Distributions.* A Participant who has attained age 62 and is 100% vested in the net credit balance of his Current Account may elect in accordance with procedures established by the Board to commence distribution under the Plan while remaining in the employment of the City (an "In-Service Distribution"). Such Participant shall be entitled to elect as an In-Service Distribution, in a form determined under Section 18½-9(f), a benefit in an amount equal to the total of the net credit balance in his Account, determined as of the date his election to receive an In-Service Distribution is received by the Board, which balance shall be computed after all adjustments and allocations required as of such date, if any, shall have been made.

A Participant who makes an election pursuant to this Section 18½-9(o) will continue to be eligible for allocation of additional City contributions under the Plan and will be entitled, upon his termination of employment, to receive a distribution under Section 18½-9(b), (c) or (e) of a benefit in an amount equal to the total of the net credit balance in his Account, reduced by the amount of any payments previously made to him pursuant to an election under this Section 18½-9(o).

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7667, §§15-18, 6-18-87; Ord. No. 7754, §6, 3-17-88; Ord. No. 7809, §§1-3, 9-15-88; Ord. No. 8071, §1, 6-20-91; Ord. No. 8117, §§2, 3, 3-5-92; Ord. No. 8469, §1, 11-16-95; Ord. No. 8658, §3, 10-2-97; Ord. No. 9114, §§3-4, 1-3-02; Ord. 9561, §1, 01-19-06; Ord. No. 9608, §3, 7-20-06; Ord. No. 9962, §§2-3, 10-7-10)

Sec. 18½-9.1. Increase in Benefits to Certain Employees.

For each person receiving benefits hereunder as of January 1, 1987, the amount of current monthly benefit of such person shall be increased by two (2) per cent times the number of years (or portion thereof) which such person has been retired, effective April 1, 1988. (Ord. No. 7788, §1, 7-21-88)

Sec. 18½-9.2. Increase in Benefits to Retirees Under Prior Plan.

Each monthly benefit payment made after January 1, 1992, to a retiree who was receiving benefits on or about April 1, 1987, shall be increased by an amount equal to seven percent (7%) of the amount of the monthly benefit being paid to such retiree as of January 1, 1992. (Ord. No. 8160, §1, 10-1-92)

Sec. 18½-9.3. Increase in Benefits to Retirees Under Prior Plan.

Each monthly benefit payment made after January 1, 1996, to a retiree who was receiving benefits on or about April 1, 1987, shall be increased by an amount equal to six percent (6%) of the amount of the monthly benefit being paid to such retiree as of July 1, 1995 and there shall be a lump-sum retroactive payment equivalent to such monthly increase for the period from July 1, 1995 to December 31, 1995. (Ord. No. 8474, §1, 12-21-95)

Sec. 18½-9.4. Increase in Benefits to Retirees Under Prior Plan.

Each monthly benefit payment made after October 31, 1997, to a retiree who was receiving benefits on or about April 1, 1987, shall be increased by an amount equal to 5.5 percent (5.5%) of the amount of the monthly benefit being paid to such retiree as of July 1, 1997 and there shall be a lump-sum retroactive payment equivalent to such monthly increase for the period from July 1, 1997 to October 31, 1997. (Ord. No. 8655, §1, 10-16-97)

Sec. 18½-9.5. Minimum Distribution Requirements.

(a) *General Rule.* The following provisions of this Section will apply for purposes of determining required minimum distributions under Section 401(a)(9) of the Code. The requirements of this Section will take precedence over any inconsistent provisions of the Plan. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

(b) *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.

(c) *Commencement of Benefits Upon 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 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, 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 Section 18½-9.5(c) other than Section 18½-9.5(c)(i) will apply as if the surviving spouse were the Participant.

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For purposes of Section 18½-9.5(c), 18½-9.5(e) and Section 18½-9.5(f), unless Section 18½-9.5(c)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 18½-9.5(c)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 18½-9.5(c)(i). If distributions under an annuity purchased from an insurance company 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 Section 18½-9.5(c)(i), the date distributions are considered to begin is the date distributions actually commence.

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 Sections 18½-9.5(d), 18½-9.5(e) and 18½-9.5(f). 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 Code and the Treasury regulations.

(d) *Required Minimum Distributions During Participant's Lifetime.* During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (ii) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Section 18½-9.5(d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(e) *Required Minimum Distributions Upon Participant's Death on or After Date Distributions Begin.*

- (i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
 - (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

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- (2) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (3) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(f) *Required Minimum Distribution Upon Participant's Death Before Date Distributions Begin.*

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in paragraph (e) of this Section 18½-9.5.

(ii) 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.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (c)(1) of this Section 18½-9.5, paragraph (f)(iii) of this Section 18½-9.5 will apply as if the surviving spouse were the Participant

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(g) *Definitions.*

- (i) 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, Q&A-4, of the Treasury regulations.
- (ii) 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 under Section 18½-9.5(c). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (iii) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (iv) Participant's Account Balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (v) Required Beginning Date. April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains 70 1/2 years of age; and (b) if the Participant is not a five percent (5%) owner, as defined in Section 416(i) of the Code, the calendar year in which the Participant terminates employment.

(Ord. No. 9375, §1, 2-19-04)

Sec. 18½-10. Claims Procedure.

(a) *Filing Claims.* Claims for benefits under the Plan shall be filed with the Board, on forms supplied by the Board. Notice of the Board's determination shall be furnished the claimant within ninety (90) days of the receipt of the claim, unless special circumstances require an extension of time. In such case, the Board may extend the period for not in excess of an additional ninety (90) days, provided that the claimant is given written notice of the extension within the original ninety-day period. Such notice shall indicate the special circumstances requiring the extension of time and the date by which the Board expects to render a final decision. The claimant shall be given written notice of the Board's determination. If the claim is denied, in whole or in part, the notice of the denial shall set forth in a manner calculated to be understood by the claimant, the following:

- (1) The specific reason or reasons for such denial;

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- (2) Specific reference to pertinent Plan provisions on which such denial is based;
- (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (4) Appropriate information as to the steps to be taken if the claimant desires to request a review of the determination by the Board.

If the determination of the Board is not furnished to the claimant within the time permitted herein, the claim shall be deemed denied.

(b) *Review of Denied Claims.* A claimant whose claim is denied, in whole or in part, may submit a written request to the Board for a review of its determination within sixty (60) days after receipt by the claimant of written notification of the denial of the claim. Such claimant, or his or her duly authorized representative, shall be given the opportunity to review pertinent documents and submit issues and comments in writing. A decision on review shall be made within sixty (60) days after the receipt of the request for review unless special circumstances require an extension of time. In such case, the Board may extend the period for not in excess of an additional sixty (60) days, provided that the claimant is given written notice of the extension of time within the original sixty-day period. The claimant shall be given written notice of the decision on review. The decision on review shall be written in a manner calculated to be understood by the claimant and shall include:

- (1) Specific reason or reasons for the decision, and
- (2) Specific references to the pertinent Plan provisions on which the decision is based.

If the decision on review is not furnished to the claimant in writing within the time permitted herein, the claim shall be deemed denied on review. The Board shall maintain minutes of any meeting denying a claim for benefits and of any review thereof and copies thereof shall be made available to the claimant upon written request.

(c) *Notices.* Any notice, claim for benefit or request as provided hereunder shall be sent in accordance with the provisions of Section 18½-13(c). Any notice, claim for benefit or request as provided hereunder shall be deemed to be given when mailed in accordance with the provisions of this Section 18½-10(c).

(Ord. No. 7627, §1, 3-5-87)

Sec. 18½-11. Amendment and Termination of Plan.

- (a) *Amendments by City.*
 - (1) The City, by action of the City Council, shall have the right at any time, and from time to time, to amend the Plan in such manner and to such extent as it may deem necessary or advisable. Any such amendment shall be set out in an ordinance approved by the City Council and shall be deemed to have been amended in the manner and to the extent set forth in said ordinance and all Participants and all persons claiming any interest under the Plan shall be bound thereby.

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- (2) No amendment to the Plan:
 - a. Shall cause or permit the Fund or any part thereof to be used for or diverted to purposes other than for the exclusive benefit of the present or future Participants, Former Participants and their respective Beneficiaries or other persons entitled to benefits under this Plan,
 - b. Shall increase the duties or obligations of the Board of Trustees without its written consent; or
 - c. Shall decrease the accrued benefit of a Participant.
- (3) No amendment to the Plan required as a condition of exemption or continuation of exemption of the Plan as a qualified Plan under the provisions of Section 401(a) of the Code, or any statute of similar import, shall be deemed contrary to the limitations upon amendments provided in subparagraph (2) above.

(b) *Discontinuation of City Contributions.* To the extent permitted by Federal and/or state law, the City shall have the right at any time to discontinue its contributions hereunder or to terminate the Plan by delivering to the Board of Trustees written notice of such discontinuance or termination accompanied by a certified resolution of the City Council authorizing such discontinuance or termination.

(c) *Termination of Plan; Dates.* To the extent permitted by Federal and/or state law, the Plan shall terminate on whichever of the following dates shall first occur:

- (1) The date specified for the termination of the Plan in a notice of termination as provided for in Section 18½-11(b) above;
- (2) Upon the happening of any event, the enactment of any law, the issuance of any rule, regulation, direction, command, demand or order of any court, administrative, regulative or other agency, or of any group or organization, or of any individual on behalf of the same, which in any way or manner or to any extent whatsoever, impairs or prevents the free exercise of the uncontrolled discretion of the City Council in connection with terminating the Plan hereby created, in any of which such events, the Plan shall thereupon, ipso facto, be terminated;
- (3) The date on which the City shall be adjudicated bankrupt, or the date on which the City shall make a general assignment to or for the benefit of creditors, or the date on which the dissolution of the City shall occur.

(d) *Distribution of Benefits to Former Participants or Their Beneficiaries.* Upon complete discontinuance of the City's contributions hereunder or the termination of the Plan, the amount of undistributed installments of the benefits to which each Former Participant, or the Beneficiary of a Former Participant, as the case may be, is entitled on the date of such discontinuance or termination of the Plan shall be distributed to such Former Participant or such Beneficiary, as the case may be, in one lump sum as soon as reasonably practicable after such discontinuance or termination of the Plan. Pending such distribution, no installments or benefit shall be distributed to any such Former Participant or Beneficiary. In the event a Former Participant shall die prior to distribution to him of the lump sum amount herein provided for after such discontinuance or termination of the Plan, the said amount shall be distributed to the Beneficiary of such Former Participant.

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(e) *Distribution of Benefits to Participants.*

- (1) Upon complete discontinuance of the City's contributions or the termination of the Plan, the rights of each Participant to the benefits accrued to the date of such discontinuance or termination are nonforfeitable. After payment of all expenses of the Plan and after making the distributions provided for in Section 18½-11(d) above, each then Participant shall be entitled to receive, and there shall be distributed to him as hereinafter provided in this Section 18½-11(e), an amount equal to the proportion of the remaining assets of the Fund that the total amount credited to the accounts of such Participant, as the case may be, bears to the total amount credited to such accounts of all Participants as of the date of such discontinuance or termination.
- (2) Upon the partial termination of the Plan, the rights of each Participant with respect to whom the Plan is partially terminated to the benefits accrued to the date of such partial termination shall be nonforfeitable. The Board of Trustees, at the direction of the City Council, shall thereupon proceed, as promptly as shall then be reasonable under the circumstances, to distribute to the Participants with respect to whom the Plan is partially terminated the net credit balance in the Account of each such Participant as of the date the Plan is partially terminated, which distribution may be made in any manner or method of payment permitted by Section 18½-9(f) hereof.
- (3) Upon the termination of the Plan, assets remaining in Trust II shall be used to purchase paid-up disability and life insurance benefits for Employees who are Participants at the time of such termination. To the extent funds remain in Trust II immediately following such purchase, these assets shall be used to purchase paid-up disability and life insurance benefits and/or benefits under Section 18½-18(b) for any other Employees. Any remaining funds in Trust II shall be distributed in accordance with applicable state law.

(f) *Board to Complete Distribution of Assets.* The Board in office at the time of any termination of the Plan shall continue to act with its full powers hereunder until the completion of the distribution of the assets of the Fund. A majority of the members of the Board then in office shall have the power to fill any vacancy occurring in the Board after such termination by resignation, death or otherwise. In the event that the City, within a reasonable time after such termination, shall not have given the Board of Trustees the directions provided for in Sections 18½-11(d) and (e) above, whichever may be applicable, the assets then remaining in the Fund shall be distributed in such manner as may be directed by a judgment or decree of a court of competent jurisdiction.

(g) *Conditions for Merger Consolidation of Plan and Fund.* The Plan and fund shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to, any other Plan unless the benefits payable to each Participant, if the Plan were terminated immediately after such action, would be equal to, or greater than the benefits to which such Participant would have been entitled if this Plan had been terminated immediately before such action.

(Ord. No. 7627, §1, 3-5-87)

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Sec. 18½-12. Fund.

(a) *Fund Part of Plan; Assets of Trusts I and II.* The City of Kirkwood Employees' Retirement Fund shall consist of all assets of the Prior Plans which have been transferred to the Fund and such contributions with respect to the Plan as shall from time to time be made by the City to the Board, and all income and profits thereon and accruals thereto, which assets, payments and accruals are herein referred to as the "fund." The fund shall be deemed to form part of the Plan and any and all rights or benefits which may accrue to any person under this Plan shall be subject to all the terms and provisions of the Fund as hereafter provided or as may be amended from time to time. The fund shall be divided into two (2) Sections which shall be denominated Trust I and Trust II. The assets of Trust I shall consist of Accounts of Participants, the Retirement Plan Accounts established in this Plan for certain Participants in the Prior Plans, and all contributions made by the City pursuant to Section 18½-6(a), and all income and profits thereon and accruals thereto. The assets of Trust II shall consist of the assets of the Prior Plans not allocated to Trust I, plus all contributions made by the City to Trust II, and all income and profits thereon and accruals thereto, all of which are hereby dedicated for the purpose of providing the benefits described in Sections 18½-15, 18½-16, 18½-17 and 18½-18.

(b) *Power and Authority of Board Relative to Fund.* Except as otherwise herein specifically provided or under the law of the State of Missouri, the Board shall, in general, have the power and authority to do and perform, in the same manner and to the same extent as an individual might or could do with his own property, any and all acts and things in relation to the Fund which in its judgment are necessary or appropriate for the management, investment and distribution of the Fund.

(c) *Duties of Custodian.* The Board may appoint a Custodian to hold any cash, securities and other assets of the Fund, subject to the control and direction of the Board, and to apply the income and principal thereof in accordance with the directions of the Board for the purpose of paying, in accordance with the Plan, retirement and other benefits to Participants in the Plan and their Beneficiaries entitled thereto, and the administrative expenses of the Plan, as hereinafter provided. Any Custodian shall have custody of the Fund to the extent of the cash securities and assets of the Fund transferred to it and collect all interest due and other income thereon. As prescribed by said Board, any Custodian shall keep separate books and complete accounts of the Fund, and its books and accounts shall always be subject to public inspection. Such person shall be bonded, as required by the Board. Upon its resignation or removal by the Board, the Custodian shall deliver to its successor all unexpended cash, securities, books, records and other assets which may have come into its possession as Custodian of the Fund. Any Custodian shall make disbursements from the Fund to such Person or Persons, at such times and in such amounts as the Board shall direct in writing. Any Custodian shall be fully protected in making such disbursements from the Fund from time to time upon such written directions of the Board and shall be charged with no responsibility whatever respecting the application of such disbursements.

(d) *Separate Investment Funds.*

- (1) The Board may from time to time establish separate investment Funds within the Fund; provided, however, at no time shall there be less than four (4) such Funds in existence.
- (2) If separate investment Funds are established, the following shall apply:

Each Participant, Former Participant and Beneficiary may, in accordance with procedures established by the Plan Administrator, designate into which of the investment Funds he wishes the net credit balance in his Account, or portions thereof, to be invested as of said date. Should any Participant, Former Participant or Beneficiary fail to make a designation, he shall be deemed

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to have designated that the net credit balance in his Account be invested entirely in the separate Investment Fund designated by the Board for such purpose. Each Participant, Former Participant or Beneficiary may, in accordance with procedures established by the Plan Administrator, change his investment option as to future contributions and/or his existing Account balance.

- (3) If separate investment Funds are established, the Board shall cause a segregation of assets into separate investment Funds within the Fund in such proportion as indicated in designations received from Participants, Former Participants and Beneficiaries, and in accordance with the terms hereof. The segregated separate investment Funds shall be denominated and shall be managed in accordance with the provisions hereof. After the establishment of the separate investment Funds, the net credit balance in all Accounts shall be invested in such investment Funds. The Board shall determine the portion of each contribution to be invested in each investment Fund and the Board shall cause transfers to be made from one investment Fund to others based upon the designations of Participants, Former Participants and Beneficiaries as provided herein.

(e) *Investment Manager.*

- (1) In the event the Board, in its discretion, appoints one or more Investment Managers to manage (including the power to acquire or dispose of) all, or one or more portions, of the Fund, all or, as the case may be, any portion of the Fund under the management of an Investment Manager shall be hereafter referred to as "directed fund."
- (2) A Custodian shall have no responsibility with respect to the terms and conditions of appointment, authority and retention of an Investment Manager. Upon appointment of an Investment Manager, the Board shall give notice to the Custodian, if any, certifying (a) the name and address of the Investment Manager; (b) that said Investment Manager is an "investment manager" as such term is defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, as now or hereafter amended from time to time, and has acknowledged in writing that he is a fiduciary with respect to the Plan; and (c) the assets of the Fund to be allocated to the directed fund over which such Investment Manager shall have responsibility. Upon the termination of the appointment of an Investment Manager (whether by expiration of the term of his appointment, removal or resignation or otherwise), the Board shall give notice to any Custodian of such termination. Unless a Custodian shall receive notice that another Investment Manager has been appointed to replace the Investment Manager whose appointment was terminated, the directed fund over which the Investment Manager whose appointment was terminated had responsibility shall cease being a directed fund. A Custodian shall not be liable for any losses to the Fund from assets acquired, held or transferred by an Investment Manager.
- (3) Each Investment Manager shall have exclusive authority to manage (including the power to acquire or dispose of) assets of the directed fund which is his responsibility except that the Board or a Custodian may invest and reinvest cash of a directed fund for the short term. For this purpose, the Board or a Custodian may, in its sole discretion, invest such cash in savings accounts and certificates of deposit with any financial institution and purchase, hold and sell United States Treasury bills, commercial paper, bankers' acceptances and similar investments

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including individual interest or participations therein and in commingled or collective funds composed of such investments.

- (4) Each Investment Manager shall furnish the Board or any Custodian from time to time with the names and signatures of those persons authorized to direct the Board or Custodian on its behalf. The Board and any Custodian may request that all directions of an Investment Manager be in writing and, if the Board or Custodian shall so request, the Board or Custodian shall assume no liability hereunder for failure to act pursuant to directions from the Investment Manager unless and until the Board or Custodian shall receive directions in writing.
- (5) The Board or a Custodian shall settle purchases and sales of assets of a directed fund upon the direction of the Investment Manager responsible for such directed fund. An Investment Manager may issue orders for the purchases or sales of securities directly to a broker or dealer. Written notification of the execution of each such order shall be given promptly to the Board or Custodian by the Investment Manager and the execution of each such order shall be confirmed by the broker to the Investment Manager and to the Board or Custodian. Such notification shall be authority to the Board or Custodian to receive securities purchased against payment therefor and to deliver securities sold against receipt of the proceeds therefrom, as the case may be.
- (6) The Board or a Custodian shall have no responsibility for supervision of an Investment Manager. The Board or Custodian shall be under no duty or obligation to review or to question any direction of an Investment Manager or to review the securities or other property held in any directed fund with respect to prudence, proper diversification of trust funds, or compliance with any limitation on an Investment Manager's authority whatsoever.
- (7) Neither the Board nor a Custodian shall be liable for the acts or omissions of any Investment Manager unless the Board or Custodian knowingly participates in or knowingly undertakes to conceal an act or omission of such Investment Manager knowing such act or omission constitutes a breach of fiduciary responsibility of the Investment Manager. The performance by the Board or Custodian of trades, custody, reporting, recording and bookkeeping with respect to a directed fund shall not be deemed to give rise to any participation or knowledge on the part of the Board or Custodian. If the Board or Custodian has other knowledge of a breach committed by the Investment Manager, it shall notify the Board and City Council which shall assume responsibility to remedy such breach.

(f) *Charges upon fund.* The expenses incurred by the Plan administrator, Board or a Custodian in the performance of its duties hereunder including, but not limited to, reasonable fees for legal, accounting or actuarial services rendered to the Board or Custodian and expenses incident thereto, the compensation of Investment Managers, and all other proper charges, including all real and personal property taxes, income taxes, transfer taxes and other taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Fund hereby created, or any money, property or securities forming a part thereof, not paid by the City, shall be paid by the Board or Custodian out of the Fund and the same shall constitute a charge upon the Fund.

(g) *Indemnification, Defense, Etc. of Board Members.* Except as otherwise provided below, the City shall indemnify, defend and otherwise hold harmless the members of the Board, and the Plan

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Administrator, to the extent allowed by law, for any loss, claim, liability, penalty, surcharge or related expense arising out of or in connection with any act or omission of the City or other fiduciary with respect to the Fund and Plan, including without limitation any direction to the Board members by any other fiduciary with respect to the Plan which the Board is required to follow under the terms of the Plan. A Board member shall not be entitled to indemnity, however, in any case in which the Board member is guilty of willful or criminal misconduct; provided, however, that such member shall not be deemed to be guilty of willful or criminal misconduct for which, with respect to any matter, it has no responsibility, duty or obligation under Section 18½-12(e). A Custodian shall not be entitled to any indemnification for any loss or damage it incurs which is attributable to the actions of its employees and agents. The Plan Administrator shall not be indemnified for criminal misconduct. The City shall have no obligation to indemnify under this Section 18½-12(g) to the extent such loss, claim, liability, penalty, surcharge or related expense is covered by insurance and/or an indemnity provision of a third party.

This provision shall not be construed to relieve any Board member or a Custodian from the performance of any duty he may have under the Plan and to the Participants and their Beneficiaries entitled to benefits hereunder.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7667, §19, 6-18-87; Ord. No. 8538, §1, 9-5-96; Ord. No. 8658, §§4-6, 10-2-97)

Sec. 18½-13. Miscellaneous Provisions of Plan.

(a) *Participation in Plan Not a Contract.* Neither the adoption and continuance of the Plan, nor any modification of it, nor the creation of any Fund or Account, nor the payment of any benefits shall be construed as giving to any Participant, Former Participant, or other person a legal or equitable right against the City or any officer or Employee thereof or the Board, except as herein provided. Under no circumstances shall participation in the Plan and Fund by an Employee constitute a contract of continuing employment or in any manner obligate the City to continue or discontinue the services of an Employee.

(b) *Benefits Provided From Fund.* All benefits distributable under the Plan shall be distributed or provided for solely from the Fund and the City assumes no liability or responsibility therefor. The obligation of the City is limited solely to making contributions as provided in the Plan.

(c) *Requirements of Due Notice.* Any notice, request, direction or approval required or permitted to be given hereunder shall be deemed to have been duly given or made only:

- (1) If to a person, upon personal delivery thereof to such person or upon the mailing of the same by United States first class mail, postage fully prepaid, and duly addressed to such person at the last address of such person appearing upon the records of the City.
- (2) If to the City, upon personal delivery thereof to the City Administrator of the City, or upon mailing the same by United States first class mail, postage fully prepaid, and duly addressed to the City at its principal place of business (or such other address as the City Council may hereafter designate by notice to the Board).
- (3) If to the Custodian, upon personal delivery thereof to the Custodian, or upon mailing a copy of the same by United States first class mail, postage fully prepaid, and duly addressed to the Custodian of the address of the City (or such

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other address as the City Council may hereafter designate by notice to the Board).

- (4) If to the Board, upon personal delivery thereof to the chairman of the Board, or upon mailing the same by United States first class mail, postage fully prepaid, and duly addressed to such person at the address shown on the records of the City (or at such other address as the City may from time to time designate in accordance with the terms hereof).

(d) *Identification of Distributee.* If at any time any doubt exists as to the identity of any person entitled to distribution hereunder of any benefit or installment thereof, or as to the amount or time of any such distribution, upon certification of such fact to the Board, the Board shall be entitled to, or to direct any Custodian, to hold such sum in a savings account or other savings instrument until further orders of the Board or until final order of a court of competent jurisdiction, or to pay such sum into a court of competent jurisdiction in accordance with any lawful procedure in such case made and provided.

(e) *Legal Action by Board or City Council.* The Board or the City Council may, at any time, and from time to time, take such legal action as it may deem advisable to have determined judicially any matter arising hereunder, including any matter as to which the Board is empowered to act hereunder and as to which the Board fails, refuses or does not desire to act.

(f) *City Council and Board Reliance.* The City Council and the Board may (but shall not be required to) rely upon any certificate, statement or other representation made to it or them by an Employee, a Participant, Former Participant or Beneficiary in respect of any fact required to be determined under any of the provisions of the Plan, and shall not be liable on account of the payment or distribution of any moneys or the doing of any act or any failure to act in reliance upon any such certificate, statement or other representation made by such Employee, Participant, Former Participant or Beneficiary. Any such certificate, statement or other representation made by such Employee, Participant, Former Participant or Beneficiary shall be conclusively binding upon such party, his personal representative and heirs (but not upon the City or the Board) and any such Employee, Participant, Former Participant or Beneficiary, his personal representative and heirs (but not the City or the Board) shall thereafter be estopped from disputing the truth and correctness of any such certificate, statement or other representation.

- (g) 1. *Non-Alienation of Benefits.* Except for subparagraph 2 and 3 of this Section 18½-13(g), no benefit which shall be payable under this Plan to any Person 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, attachment or legal process for or against such Person, and the same shall not be recognized by the Board except to such extent as may be required by law.
2. *Qualified Domestic Relations Order.* The provisions of subparagraph (1) of this Section 18½-13(g) shall not apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a qualified domestic relations order as defined in Section 414(p) of the Code, to the extent such Section 414(p) of the Code is applicable to governmental Plans. In the event that a domestic relations order which is determined to be a qualified domestic relations order is received by the Plan, benefits shall be paid to the

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alternate payee as soon as practicable after the determination that such domestic relations order is a qualified domestic relations order.

3. *Judgment Against Participant.* Notwithstanding any provision of the Plan to the contrary, the Plan Administrator may offset against the amount in a Participant's Account under the Plan any amount which the Participant is ordered or required to pay as a result of a judgment or settlement described in Code Section 401(a)(13)(C) of the Code provided that the requirements set forth in Sections 401(a)(13)(C) and 401(a)(13)(D) of the Code are satisfied.

(h) *Fund for Exclusive Benefit of Participants.* It shall be impossible by operation of the Plan or of the Fund, by termination of either, by power or 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 fund maintained pursuant to this 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 respective Beneficiaries.

(i) *Performance of Parties.* All parties to, or claiming any interest under, this Plan agree to perform any and all acts and to execute any and all documents and papers which are necessary or desirable for carrying out this Plan and Fund.

(j) *Validity of Plan.* This Plan has been executed in the State of Missouri and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that state, to the extent such laws are not inconsistent with applicable Federal law. Any dispute under the Plan shall be subject to the exclusive jurisdiction of the Circuit Court in St. Louis County, and/or the United States Federal District Court in St. Louis, Missouri.

(k) *Invalid Provisions.* In case any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts, but this Plan shall be construed and enforced as if the illegal or invalid provisions had never been inserted.

(l) *Discharge of Liability and Receipt.* The payment and acceptance of any money or property in settlement of any participation under this Plan shall constitute a complete acquittance and discharge of all liability of the City, Board and a Custodian with respect to such participation. On final payment or distribution to any Participant, Former Participant, or his legal representative or Beneficiary in accordance with the provisions hereof the Board shall be entitled to demand a receipt or acquittance in full satisfaction of all claim against the Fund, the City, the Board and any Custodian.

(m) *Incapacity of Distributee.* In the event any person entitled to receive any distribution hereunder of a benefit or an installment thereof, who in the opinion of the Board shall be legally incapable of giving a valid receipt and discharge for distribution of such benefit and another person or institution is then maintaining or has custody of such person and no guardian or representative of the estate of such person shall have been duly appointed, then such benefit or installment thereof, at the option of the Board, may be distributed to such person or institution. Distribution to such other person or institution shall be in complete discharge of liability under the Plan for the distribution of such benefit or installment thereof and there shall be no responsibility whatsoever on the City, the Board or anyone else to see to the application of such benefit or installment thereof so distributed.

(n) *Return of City Contributions.* Contributions made to the Plan by the City shall be returned to the City only under the following circumstances:

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- (1) All contributions made to the Plan are conditioned upon legality of the contributions in full under the law of the State of Missouri or any statute of similar import. If all or any portion of the contributions is not legal, the amount so determined to be illegal shall be returned to the City, if the City so directs the Board, within one (1) year of the determination of the illegality of the contribution.
 - (2) A contribution made by mistake of fact shall be returned to the City within one (1) year after the payment of the contribution if the City so directs the Board.
- (o) *Rollovers to the Plan.*
- (1) Any Employee may file a written request on such form or forms required by the Board to transfer to the Plan all or any portion of a Rollover Amount received by him; provided, however, that either (i) all or any portion of the Rollover Amount is transferred to the Plan on or before sixty (60) days after the day on which the Employee receives such Rollover Amount, or (ii) all or any portion of the Rollover Amount is transferred directly to Trust I by the trustee or custodian of the Plan from which the Rollover Amount is distributed. Such written request shall set forth the amount of the Rollover Amount, the nature of the property contained in the Rollover Amount, and a statement satisfactory to the Board that such amount constitutes a Rollover Amount. The Board, in its sole discretion, shall determine whether or not an Employee shall be permitted to transfer a Rollover Amount to the Plan.
 - (2) Rollover Amounts transferred to the Plan shall be credited to a Rollover Account established and maintained for each Employee who elects to transfer to the Plan any funds received pursuant to the rollover provisions of the Code and as specified in this Section 18½-13. Each Employee's Rollover Account shall be increased or decreased based upon the value of the Rollover Account.
 - (3) The net credit balance in an Employee's Rollover Account shall be 100% vested at all times.
 - (4) In the event of retirement, death, Permanent Disability or other termination of employment of the Employee, the amount credited to the Employee's Rollover Account shall be added to the benefit to which he is entitled under the Plan and shall be distributed to him in accordance with the provisions of Section 18½-9(f).
 - (5) "Rollover Amount" as used in this Section 18½-13 means an eligible rollover distribution within the meaning of Section 402(c), 403(b)(8), 408(d)(3) or 457(d) of the Code; provided, however, that no part of such Rollover Amount shall be attributable to a trust forming part of a Plan under which the person was an Employee within the meaning of Section 401(c)(1) of the Code at the time contributions were made to his benefit under the plan, and provided further, that such Rollover Amount shall not include amounts considered to be contributed by the person (determined by applying Section 72(t) of the Code), which contributions shall be reduced by any amounts theretofore distributed to him which were not includable in his gross income.

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(p) *Direct Rollovers from the Plan.*

- (1) Effective for distributions on or after January 1, 1993, notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 18½-13(p), a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee from an eligible retirement plan, except that an eligible rollover distribution does not include: (i) 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; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) any hardship distributions described in Section 401(k)(2)(B)(i)(IV) of the Code.
- (3) An eligible retirement plan is any arrangement described in Section 402(c)(8) of the Code.
- (4) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after November 1, 2008, a distributee also includes an Employee's Beneficiary who is not the Employee's surviving spouse; provided that in the case of such a distributee, an eligible retirement plan includes only those arrangements described in Section 402(c)(11)(A) of the Code.
- (5) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(q) *Veterans' Rights.* Effective December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to Military Service will be provided in accordance with Section 414(u) of the Code.

(r) *Service as a Police Officer or Firefighter.* A Participant in the City's Police Officers' and Firefighters' Pension Plan, who either (i) terminates employment with the City and returns to the active employment of the City in the capacity as an Employee or (ii) remains an active employee of the City but whose status as an active employee changes to an Employee, shall become a Participant in the Plan upon becoming an Employee and shall receive credit under the Plan for all Years of Vesting Credit he earned under the City's Police Officers' and Firefighters' Pension Plan. In the event such a Participant remains an Employee for one full year following his becoming an Employee, (i) his Accounts under the City's Police Officers' and Firefighters' Pension Plan shall be transferred to this Plan, (ii) the assets funding such Accounts shall be directly transferred to the Fund from the Fund under the City's Police

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Officers' and Firefighters' Pension Plan, and (iii) such Accounts shall be paid in accordance with the terms of this Plan.

(s) *Transfers to City Police Officers' and Firefighters' Pension Plan and Fund.* When Accounts and assets funding Accounts under this Plan becomes transferable to the City's Police Officers' and Firefighters' Pension Plan and Fund pursuant to Subsection 18 ½-33(r), the Board shall cause such Accounts and assets to be transferred as soon as practicable as provided in Subsection 18 ½-33(r) to the City Police Officers' and Firefighters' Pension Plan and Fund.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7754, §§7, 8, 3-17-88; Ord. No. 8617, §1, 5-15-97; Ord. No. 9114, §§5-7, 1-3-02; Ord. No. 9608, §§4 & 5, 7-20-06)

Sec. 18½-14. Adoption by Housing Authority and Library of City.

(a) The housing authority and/or the library of the City ("authority") may adopt this Plan effective April 1, 1987, by resolution of its applicable board. Such resolutions to adopt the Plan shall specify the effective date of the adoption of the Plan and that the authority agrees to be bound by all provisions of this Plan. Upon acceptance by the City of such adoption, all then Employees of the authority shall become Participants in this Plan. Upon the effective date of the adoption of this Plan by the authority, the definition in this Plan of "City" shall include the authority only in determining eligibility to participate in the Plan, counting service under and making contributions to the Plan, binding effect of the Plan and return of contributions. Further, in making contributions to the Plan, Section 18½-6 shall be interpreted so that the City makes contributions only with respect to the Participants employed by it and the authority makes contributions only with respect to the Participants employed by it.

(b) In order that Employees of the authority may be transferred to employment with the City and vice-versa, without prejudice to such Employees, all service of each transferring Employee shall be calculated as if no transfer has taken place and all accounts maintained and operated pursuant to the Plan on behalf of any transferring Employee shall be operated and maintained as if no transfer has taken place.

(Ord. No. 7754, §9, 3-17-88)

Sec. 18½-15. Certain Retirees.

A Retiree under a Prior Plan who retired from employment with the City on or after January 1, 1987, and prior to April 1, 1987, shall in addition to his earned benefit payable under the Prior Plan, be entitled to receive from this Plan an amount equal to all of such Retiree's mandatory contributions to the Prior Plan with interest on the Retiree's mandatory contributions to the Plan from July 1, 1973, through December 31, 1985, at the rate of two (2) per cent per annum, compounded annually, which amount shall be payable to such Retiree in one (1) lump sum as soon as practicable after April 1, 1987. (Ord. No. 7627, §1, 3-5-87)

Sec. 18½-16. Disability Benefits.

(a) Participation in Long-Term Disability Program. Each Participant who is a full-time Employee shall participate in the City's long-term disability program subject to the provisions thereunder, and shall be eligible to receive benefits in accordance with the provisions of the program. Benefits payable under this program shall commence after one hundred eighty (180) days after the Participant is determined to be disabled under the program and will continue until the Participant attains age sixty-five (65), as otherwise prescribed therein. For purposes of this Section 18½-16, the term "full-time

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Employee” shall mean an individual whose customary employment is for thirty-nine (39) hours or more per week.

(b) Purchase of Disability Insurance Policy. The City shall approve the purchase of a policy of insurance to provide disability benefits under the program. The cost of the insurance policy shall be charged to Trust II and shall be purchased on the basis of competitive bidding. The Board shall administer the program in accordance with the provisions of the insurance policy. All provisions of this Section 18½-16 shall be subject to the insurance carrier’s exclusions and limitations and any coverage and benefit determinations shall be as set forth in the insurance policy. The City shall have the right to amend or terminate the insurance policy and to purchase other insurance to provide disability benefits. Notice of any amendment or termination of the program shall be given in writing to each Participant who is eligible for coverage.

Sec. 18½-17. Group Life Insurance Benefits.

(a) Participant in Group Life Insurance Program. Each Participant who is a full-time Employee shall participate in the City’s group life insurance program and death benefits shall be paid to the Participant’s beneficiary under the group life insurance program as designated by the Participant.. For purposes of this Section 18½-17, the term “full-time Employee” shall mean an individual whose customary employment is for thirty-nine (39) hours or more per week.

(b) Purchase of Group Life Insurance Policy. The City shall approve the purchase of a group life insurance policy to provide death benefits under the group life insurance program. The cost of said insurance shall be charged to the Fund under Trust II and shall be purchased on the basis of competitive bidding. All provisions of the program shall be subject to the insurance carrier’s exclusions and limitations. Any coverage and benefit determinations shall be as set forth in the group life insurance policy. The City shall have the right to amend or terminate the insurance policy and to purchase other insurance to provide death benefits. Notice of any amendment or termination of the program shall be given to each Participant who is eligible for coverage.

Sec. 18½-18. Benefits Under the Prior Plans.

(a) Continuation and Increase of Benefits under Prior Plans. Benefits under the Prior Plans for Retirees terminated vested Participants, Participants receiving disability benefits who were determined to be disabled and spouses of such Participants shall receive benefits as follows:

- (1) After April 1, 1987, Retirees except as provided in Section 18½-15, under the Prior Plans shall continue to receive no less than the monthly benefit they are receiving under the applicable Prior Plan.
- (2) After April 1, 1987, terminated vested Participants and spouses, if applicable, under the applicable Prior Plan shall be paid retirement benefits in accordance with the provisions of the applicable Prior Plan.
- (3) After April 1, 1987, Participants receiving disability benefits under the applicable Prior Plans and spouses, if applicable, shall be paid benefits in accordance with the applicable Prior Plan.

(b) Approval of Benefit Increases. The Board may from time to time recommend to the City Council to increase proportionately the benefits under the foregoing Section 18½-18(a). Any such

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recommendation of the Board shall require at least four (4) affirmative votes of the members of the Board.

(c) Allocation/Distribution of Excess Funds.

At the request of at least five members of the Board of Trustees, the City Council, in its discretion, may from time to time approve an allocation of a specific dollar amount from Trust II of the Fund, and the City Council shall have final authority regarding such allocation; provided, however, that the approval of a request for allocation shall not be unreasonably withheld by the City Council, and provided further that the following conditions shall be met with respect to the requested allocation:

- (1) The Board shall recommend to the City Council allocation of a specific dollar amount, which recommendation shall be supported by an evaluation which reflects the solvency of Trust II of the Fund to accommodate such recommendation. Such evaluation shall be prepared and attested to by a certified actuary.
- (2) Except as provided herein, allocation of the amount approved by the City Council under this Section 18½-18(c) shall be made to (i) current Participants who are active Participants at the time the City Council approves such amount, (ii) Former Participants who were Participants in the Plan on April 1, 1987, and (iii) those individuals who were Participants in the Plan on April 1, 1987 and who have received distribution of their entire vested interest in the Plan in the form of a lump sum or an annuity (all persons listed in (i), (ii) and (iii) of this subparagraph 2 are hereafter referred to in this Section 18½-18(c) jointly as "Individuals" and singly as "Individual"). Notwithstanding anything in this Section 18½-18(c) to the contrary, no allocation shall be made hereunder after June 30, 2010 with respect to an Individual listed in (ii) and (iii) of this subparagraph (2) if such Individual dies before the City Council approves an amount under this Section 18½-18(c).
- (3) Allocation of the approved dollar amount shall be made in accordance with the following formula:

$$\frac{A + B}{C + D} \times E = \text{pro rata share of allocation}$$

For purposes of the formula, A equals the value of the Individual's Account as of April 1, 1987; B equals the value of all contributions made to the Individual's Account on and after April 1, 1987; C equals the value of all Individuals' Accounts as of April 1, 1987; D equals the value of all contributions made to the Individuals' Accounts on and after April 1, 1987; and E equals the specific dollar amount approved by the City Council to be distributed. Only Accounts and post March 31, 1987 contributions for those Individuals who are entitled to allocations under this Section 18½-18(c) shall be considered for purposes of this calculation.

- (4) Each Individual's pro rata share of the allocation shall be credited to his Current Account and shall be held in such Current Account until such Individual becomes entitled to a distribution of his vested interest in the Plan. Where no Current Account is maintained for an Individual, the Board shall forward, by certified mail, return receipt requested, to such Individual's last known address notice of

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his entitlement to an additional benefit from the Plan. The Board shall distribute to such Individual his pro rata share of the allocation in one lump sum upon verification of such Individual's identity and address.

- (5) If an Individual is deceased at such time as an allocated amount is to be distributed, such distribution shall be made to the Individual's Beneficiary, upon verification of such Individual's death, and the identity and address of his Beneficiary. A distribution shall only be made to a Beneficiary of an Individual if such Individual is an active Participant and living at the time the City Council approves the allocation under this Section 18½-18(c).
- (6) No distribution authorized herein may be used for any purpose other than the provision of benefits for Individuals and their Beneficiaries as provided herein.

All allocations of Participants approved pursuant to this Subsection 18½-18(c) shall be allocated to Current Accounts or distributed as a single sum payment to Former Participants or Beneficiaries who do not have Current Accounts under the Plan.

(Ord. No. 7627, §1, 3-5-87; Ord. No. 7667, §21, 6-18-87; Ord. No. 9962, §4, 10-7-10)

Sec. 18½-19. Violations Penalty.

Any person who shall knowingly or willfully make any false statement in applying for or securing a benefit under this Plan for such person or any other person, or shall knowingly falsify any record or knowingly permit any record to be falsified, for the purpose of applying for or securing a benefit for such person or any other person under this Plan, shall be guilty of a misdemeanor, and upon conviction thereof be assessed a fine not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (Ord. No. 7627, §1, 3-5-87)

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Sec. 18½-20 Short Title.

Article II shall hereafter be known and cited as Article II, Chapter 18½ of the Kirkwood Code of Ordinances, "City of Kirkwood Police Officer's and Firefighters' Pension Plan." (Ord. No. 7667, §23, 6-18-87)

Sec. 18½-21 Definitions.

Whenever used herein, unless the context clearly indicates otherwise:

(a) *Account* shall mean all of the following, but if there are not all shall mean whichever exists:

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- (1) The Current Account required to be established and maintained in accordance with the provisions of Section 18½-27(b)(1);
- (2) The Mandatory Contributions Account required to be established and maintained in accordance with the provisions of Section 18½-27(b)(1); and
- (3) The Retirement Plan Account required to be established and maintained in accordance with Section 18½-27(b)(2).

(b) *Beneficiary* shall mean any person or persons (including, but not limited to, an estate, an executor, administrator or fiduciary, corporate or otherwise) designated pursuant to Section 18½-29(j) to receive any undistributed Account balance distributable hereunder on account of the death of such Participant or Former Participant. When used with respect to maintenance of an Account for a Beneficiary and adjustments to be made therein, the term Beneficiary shall mean a Beneficiary who is currently entitled to payment of a benefit under the Plan.

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(c) *Board or Board of Trustees* shall mean the Board of Trustees appointed pursuant to Section 18½-22 hereof.

Comment [TL3]: Please do not type any text in this area.

(d) *City* shall mean the City of Kirkwood or the officer or officers of the City to whom the City Council may delegate any of its rights, duties or powers hereunder.

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(e) *City Council* shall mean the City Council of the City.

Comment [TL5]: Please do not type any text in this area.

(f) *Code* shall mean the Internal Revenue Code of 1986, as amended.

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(g) *Compensation*, for purposes of the Plan and of the limitations imposed by Section 415 of the Code, shall mean the total of all remuneration (1) paid by the City to an Employee during the period he is a Participant in the Plan, and (2) received by a Participant as worker's compensation, other than a lump sum payment of worker's compensation. Compensation shall include salary, bonuses, wages, overtime payments, or other regular remuneration, educational incentive pay, all amounts deferred under any plan of deferred compensation maintained by the City, and all amounts contributed by the City, pursuant to a salary reduction agreement, to plan which satisfies the requirements of Section 125 or 132(f) of the Code but excludes expenses paid or reimbursed, food allowances, clothing allowance, tuition reimbursement payments, the imputed value of life insurance, automobile usage, and all contributions made under this Plan and any other plan maintained by the City which satisfies the requirements of Section 401(a) of the Code, or any other statute of similar import. In order to be taken into account for purposes of this section, Compensation generally must be paid or treated as paid to the Employee before the severance from

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employment of the Employee. However, Compensation paid by the later of two and one-half months after the severance from employment of an Employee or the end of the Limitation year that includes the date of severance from employment of the Employee shall be treated as Compensation to the extent such amounts are compensation for services rendered that would have been paid absent a severance from employment, payments of accrued vacation or other leave the Employee would have been able to use if employment had continued, or all amounts deferred under any plan of unfunded nonqualified compensation that would have been paid at the same time if the Employee had continued in employment. The Compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000, as adjusted for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year. If a determination period consists of fewer than twelve months, the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If Compensation for any prior determination period is taken into account in determining a Participant's allocations for the current Plan Year, the Compensation for such prior determination period is subject to the applicable annual Compensation limit in effect for the prior period.

(h) *Employee* shall mean any person (excluding any elected or appointed official who is not an Employee of the City) who is employed by the City as a commissioned, salaried police officer or fire fighter.

Comment [TL8]: Please do not type any text in this area.

(i) *Former Participant* shall mean a person who shall have been a Participant, but whose employment with the City shall have terminated, or is deemed to have terminated pursuant to the provisions hereof, and to whom or to whose Beneficiary there shall not have been distributed the aggregate amount of benefits to which such Participant or his Beneficiary is entitled under the Plan.

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(j) *Fund* shall mean the res or corpus and all earnings, appreciation or additions thereon and thereto held by the Board of Trustees, including those funds accumulated under the Prior Plans, and shall be designated the "City of Kirkwood Police Officers' and Fire Fighters' Retirement Fund".

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(k) *Fund Custodian or Custodian* shall mean the person or persons appointed as custodian of the fund pursuant to Section 18½-32(c) hereof.

Comment [TL11]: Please do not type any text in this area.

(l) *Hour of Service*

Comment [TL12]: Please do not type any text in this area.

- (1) Hour of Service shall mean each hour for which (a) an Employee is paid, or entitled to payment, by the City for the performance of duties during the applicable computation period, and the Hour of Service shall be credited to the period in which the duties are performed, (b) an Employee is paid, or is entitled to such payment, by the City on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military leave or leave of absence and the Hour of Service shall be credited to the period in which the period during which no duties are performed occurs, (c) back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the City and the Hour of Service shall be credited to the period to which the award or agreement pertains, and (d) an Employee would have been paid or entitled to payment under (a) above assuming that (i) he had not been on an authorized leave of absence (in accordance with the provisions of Section 18½-24), and (ii) but for the authorized leave of absence

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would have been regularly engaged in the performance of his duties and the Hour of Service shall be credited to the period he would have been regularly engaged in the performance of his duties had he not been on authorized leave of absence; provided, however, that in no event shall an Hour of Service be credited to an Employee under more than one of the applicable (a), (b), (c) or (d) above. The number of Hours of Service to be credited under (b) above shall be in accordance with the requirements of 29 CFR 2530.200b-2(b) as such regulations may be amended or superseded from time to time and such regulations are incorporated herein by reference.

- (2) The definition of Hour of Service as provided in this section shall be construed so as to resolve any ambiguities in favor of crediting Employees with Hours of Service.

(m) *Investment Manager* means a person, firm or corporation appointed by the Board to manage (including the power to acquire or dispose of all or one or more portions of the Fund), which person, firm or corporation shall:

Comment [TL13]: Please do not type any text in this area.

- (1) Be (a) registered as an investment adviser under the Investment Advisers Act of 1940; or (b) a bank as defined in the Investment Advisers Act of 1940; or (c) an insurance company qualified to manage (including the power to acquire or dispose of) all or one or more portions of the Fund under the laws of more than one state; and
- (2) Acknowledge in writing to the City that he or it is a fiduciary with respect to the Plan.

(n) *Late Retirement Date* means the date a Participant retires from the employment of the City after his Normal Retirement Date.

Comment [TL14]: Please do not type any text in this area.

(o) *Limitation Year*, for purposes of the Plan and of the limitations imposed by Section 415 of the Code, shall mean the Plan Year.

Comment [TL15]: Please do not type any text in this area.

(p) *Military Service* shall mean any service in the uniformed services, as defined in Section 414(u)(5) of the Code.

Comment [TL16]: Please do not type any text in this area.

(q) *Normal Retirement Date* shall mean the first day of the calendar month during which a Participant attains sixty-five (65) years of age.

Comment [TL17]: Please do not type any text in this area.

(r) *Participant* shall mean a person who becomes and remains a Participant under Section 18½-23 hereof.

Comment [TL18]: Please do not type any text in this area.

(s) *Period of Eligibility Service* shall mean a consecutive six-month period computed with reference to the date on which the Employee's employment commenced with the City, or semi-annual anniversaries hereof, during which the Employee completed not less than five hundred (500) Hours of Service. If the status of an Employee within the meaning of Subsection 18½-2(h) changes to that of an Employee within the meaning of Subsection 18½-21(h) before such individual becomes eligible to participate in the City of Kirkwood Employees' Pension Plan, such Employee's service as an Employee within the meaning of Subsection 18½-21(h) shall be treated as service as an Employee within the meaning of Subsection 18½-21(h) for purposes of this Subsection 18½-21(s).

Comment [TL19]: Please do not type any text in this area.

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(t) *Permanent Disability or Permanently Disabled* shall mean such physical or mental disability as determined by the disability insurance carrier as provided for herein. Permanent Disability shall exclude any ailment or condition resulting from an Employee’s engagement in the commission of a felony, from an Employee’s habitual use of drugs, intoxicants or narcotics, from an Employee’s deliberately self-inflicted injury or self-induced illness, and from any injury received or disease contracted in Military Service or in the armed forces of any other country or of any private paramilitary organization, and any other exclusions and limitations provided for by such insurance.

Comment [TL20]: Please do not type any text in this area.

(u) *Person* shall mean, wherever appropriate, either a natural or artificial person, or both, including, but not limited to, a corporation and fiduciary (corporate or otherwise) and a legal representative.

Comment [TL21]: Please do not type any text in this area.

(v) *Plan* shall mean the pension Plan set forth in this document and any and all amendments thereto, which Plan shall be known as the “City of Kirkwood Police Officers and Firefighters’ Pension Plan.”

Comment [TL22]: Please do not type any text in this area.

(w) *Plan Administrator* shall mean the City employee to whom the Board delegates its managerial duties as responsibilities under Subsection 18½-22(h).

Comment [TL23]: Please do not type any text in this area.

(x) *Plan Year* shall mean a consecutive twelve month period ending on the last day of March in each year.

Comment [TL24]: Please do not type any text in this area.

(y) *Prior Plans or Prior Plan* shall mean either or both the City of Kirkwood Policemen’s and Firemen’s Retirement Plan (enacted on September 21, 1946, pursuant to Ordinance No. 3418, as amended and restated on November 3, 1977, pursuant to Ordinance No. 6199) in effect prior to April 1, 1987, and (ii) the City of Kirkwood Employees’ Pension Plan (enacted on March 19, 1987, pursuant to Ordinance No. 7627) as in effect from April 1, 1987 through June 28, 1987.

Comment [TL25]: Please do not type any text in this area.

(z) *Retired* shall mean an Employee who has retired from the City and who is receiving or has received benefits pursuant to Prior Plans or the Plan.

Comment [TL26]: Please do not type any text in this area.

(aa) *Retirement Date* shall mean a Participant’s Normal Retirement Date or Late Retirement Date.

Comment [TL27]: Please do not type any text in this area.

(bb) *Year of Vesting Service or Year of Vesting Service with the City* shall mean a Plan Year during which the Employee has completed at least one thousand (1,000) Hours of Service with the City. In determining the number of Years of Vesting Service for a Participant, Years of Vesting Service need not be consecutive.

Comment [TL28]: Please do not type any text in this area.

Words in this instrument used in the singular shall include the plural and words in the masculine shall include the feminine or neuter or both wherever appropriate.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 7898, §2, 7-20-89; Ord. No. 7981, §1, 6-21-90; Ord. No. 8117, §4, 3-5-92; Ord. No. 9114, §8, 1-3-02; Ord. No. 9340, §3, 10-2-03; Ord. No. 9608, §§4-5, 07-20-06; Ord. No. 9962, §5, 10-7-10)

Sec. 18½-22 Administration; Board of Trustees.

(a) *Establishment*. The City shall establish the Board of Trustees which shall consist of seven (7) persons.

Comment [TL29]: Please do not type any text in this area.

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(b) *Membership*. The administrative and custodial functions of the Plan shall be in the control of a Board of Trustees consisting of seven (7) members. The membership of the Board shall be the Mayor, or the Mayor's designee as approved by the City Council, the Police Chief, the Fire Chief, two (2) Firefighters, and two (2) Police Officers. The Police Chief and Fire Chief shall serve as Trustees for the period of time they hold the positions of Fire Chief and Police Chief for the City of Kirkwood. The Mayor, or if the Mayor shall choose not to sit on the Board of Trustees and designate a replacement (who shall be approved by the City Council), shall serve for as long as he shall be Mayor of the City and the designee, if so designated, shall likewise serve a term simultaneous to that of the Mayor who appointed said designee.

Comment [TL30]: Please do not type any text in this area.

(c) *Election*. The two (2) members who are Police Officers shall be elected by a majority of Police Officers and the two (2) members who are Fire Fighters shall be elected by a majority of the Fire Fighters voting by secret ballot at elections called for such purposes. Such elections shall be administered by the City Clerk of the City and shall be held between December 1 and March 1 of each year. Each Police Officer and Fire Fighter so elected shall serve a term of two (2) years commencing on the first day of the Plan Year following said elections. Special elections shall be held to fill any vacancies created prior to the normal expiration of a term. Such persons so elected shall fulfill the remaining unexpired term. Alternate members shall also be elected from each of the Police Officers and Fire Fighter groups each time an election is held, being the persons receiving the second highest vote in each such election. Such alternates shall serve a term simultaneously with the member then elected. Such alternates shall have the power to participate and vote as a member of the Board at any time Board action is being taken and the regular member is not in attendance. The alternate shall have no power to participate as a member of the Board if the regular member is present at the times such action is being taken, even if the regular member was not present during the entire meeting in which such action is being taken.

Comment [TL31]: Please do not type any text in this area.

(d) *Advisory Trustee*. An Advisory Trustee shall also be selected by the Board of Trustees from the Retirees. Prior to selection of the Advisory Trustee, the Board shall cause the Retirees to be notified by regular mail and given thirty (30) days from the date the last notice is mailed to make suggestions as to the appointment. However, the Board shall select a Retiree as Advisory Trustee who shall fairly represent the Retirees. The Advisory Trustee shall attend all meetings and participate in all discussions as if a member of the Board, but shall not vote.

Comment [TL32]: Please do not type any text in this area.

(e) *Chairman of Board*. The Board of Trustees shall elect one of its members to serve as Chairman and such person shall preside at its meetings. In addition, the Board may elect such other officers from among its members as it deems necessary to fulfill the obligations of the Board. The Chairman of the Board of Trustees shall also select the election date between December 1 and March 1 of each year subject to the approval of the Board of Trustees. If date for an election cannot be so established by the Chairman or the Board, then the election date shall be March 1 of each year.

Comment [TL33]: Please do not type any text in this area.

(f) *Advisors and Staff*. The Board shall be empowered to employ whatever advisors, employees or consultants as may be reasonable and necessary to fulfill the obligations of the Board. However, the Board shall select a legal advisor, which legal advisor may not be employed by or have any attorney-client relationship with the City of Kirkwood, Missouri. Likewise, the Board, in its discretion at anytime, may appoint a professional actuary to prepare a report regarding the actuarial soundness of the Plan and Fund. Such actuary may make such other reports as may be requested from time to time by the Board, and shall likewise have no client relationship with the City of Kirkwood, Missouri.

Comment [TL34]: Please do not type any text in this area.

(g) *Investment Manager or Managers*. The Board shall appoint and remove, in its discretion, one or more Investment Managers to manage (including the power to acquire and dispose of all, or one or more portions of the Fund).

Comment [TL35]: Please do not type any text in this area.

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(h) *Powers and Duties of Board.* The Board of Trustees shall administer the Plan through its authorized officers in a uniform and nondiscriminatory manner.

Comment [TL36]: Please do not type any text in this area.

The Board, in its discretion, is authorized to determine eligibility for benefits under this Plan and construe the Plan's terms. The Board shall administer the Plan in accordance with its terms and it shall have all powers necessary to carry out the provisions of the Plan (except such powers as are reserved by the Plan or by law to the City), whether or not such powers are specifically enumerated herein, but not inconsistent with any of the express terms and conditions of the Plan including the power to make and publish such bylaws and regulations as it may deem necessary to carry out the provisions of the Plan. Notwithstanding the foregoing, the City shall have the absolute and sole right to determine and make appropriations for funding contributions to the Plan and the Board of Trustees' powers and rights under the Plan shall be limited to custodial and administrative functions.

Without limiting the generality of the foregoing, the Board shall have the general management of the Plan and, subject to the powers specifically reserved herein and inherent to the City, the sole, final and absolute right to reconcile any inconsistency in the Plan, to interpret and construe the provisions of the Plan in all particulars, in such manner and to such extent as it deems proper, and to take all action and make all decisions and determinations under the Plan and/or in connection with its administration, interpretation, and application. Any interpretation or construction placed upon any term or provision of the Plan by the Board, any decision of the Board with regard to the eligibility of an Employee to become a Participant, the right of a Participant, a Former Participant, or the Beneficiaries, or any other person, any reconciliation or inconsistency in the Plan made by the Board or any other action, determination or decision whatsoever taken by the Board shall be final, conclusive and binding upon all persons and parties interested in or concerned with the Plan, including, but not by way of limitation, the Employees, Participants, Former Participants and Beneficiaries, subject, however, to review in the Circuit Court of the County pursuant to administrative procedures established by State law. No Board member shall act or vote in any case in which his individual right or claim to any benefit is particularly involved.

The Board of Trustees is hereby empowered to enter into such agreements with the City or other pension funds of the City for the co-investment of funds or the management of funds.

The Board may, in its discretion, delegate some or all of its managerial responsibilities and duties under this Subsection 18½-22(h) to an employee of the City who is specifically designated to serve as Plan Administrator.

(i) *Quorum and Meeting of Board.* Four (4) members of the Board at any time in office shall constitute a quorum for the transaction of business. All resolutions and other actions taken by the Board at any meeting shall be by a vote of the majority of those present at any such meeting. The Board shall hold meetings upon such notice, at such place(s), and such time(s) as it from time to time determines, provided such meetings shall be held at least once in each calendar quarter. The Board shall publish a schedule of such meetings which shall be open to the public unless the subject matter of such meetings permits such meetings to be closed pursuant to state law. Three (3) members of the Board may call for a special meeting upon five (5) days' written notice.

Comment [TL37]: Please do not type any text in this area.

(j) *No Compensation, No Obligation for Prior Boards.* The Board members shall serve without compensation for their Board services. Unless the same shall have been paid by the City, all reasonable and necessary expenses of the Board including, but not limited to, legal, accounting and other professional fees and expenses, and any cost or expense incurred by litigation, shall be paid out of the Fund on direction of the Board, provided that such expenses shall not have been incurred as a result of the willful misconduct or gross negligence of the Board or any member or members of it. Unless the same shall have been paid by the City, the fees set forth in the written agreement with an Investment Manager

Comment [TL38]: Please do not type any text in this area.

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shall be paid out of the Fund on direction of the Board. The Trustees who shall take office as a result of the charter amendment establishing the Plan shall have no obligation to examine the books, records, accounts or acts of the prior Boards of Trustees, and shall accept such books, records and accounts in good faith, and shall have no liability whatsoever for the acts of any prior Board of Trustees. The Board of Trustees shall not be liable hereunder for any actions performed by them in good faith and shall be liable only for criminal acts, or as the law so designates.

(k) *Record of Proceedings.* The Board shall cause to be kept a record of all of its proceedings and such records and other data as may be necessary for the administration of the Plan.

Comment [TL39]: Please do not type any text in this area.

(l) *Custodian of Fund.* The Board shall direct the Custodian, if any, with respect to the distribution and disbursement from the Fund.

Comment [TL40]: Please do not type any text in this area.

(m) *Discrimination.* The Board shall not exercise any powers herein conferred upon it in any way as to result in discrimination in favor of highly compensated Employees or officers of the City.

Comment [TL41]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 7809, §4, 9-15-88; Ord. No. 7981, §2, 6-21-90)

Sec. 18½-23 Eligibility and Participation.

(a) *Continued Participation.* Each Employee who was a Participant on March 31, 2008 shall continue to be a Participant on April 1, 2008.

Comment [TL42]: Please do not type any text in this area.

(b) *Commencement of Participation.* Each Employee shall become a Participant on the first day of the month coincident with or next following the later of his date of hire by the City and the date he attains age twenty-one; provided, however, that an Employee shall not be eligible to have City contributions under Section 18½-25(a)(i) made on his behalf until the first day of the month coincident with or next following the date he completes a Period of Eligibility Service and attains age twenty-one. An Employee who had (i) been employed by the City, (ii) been a Participant in the Plan, and (iii) ceased being an Employee, shall become a Participant as of the date he is reemployed by the City as an Employee.

Comment [TL43]: Please do not type any text in this area.

(c) *Termination of Participation.* A Participant shall cease being a Participant on the day he terminates employment with the City and shall cease being a Former Participant at the date all of his benefits have been paid pursuant to the Plan.

Comment [TL44]: Please do not type any text in this area.

(d) *Participation upon Reemployment.* An Employee who is not a Participant in the Plan on the date his employment with the City terminated or is deemed to have been terminated, shall be deemed to be a new Employee as of the date of his reemployment as an Employee, if he is reemployed.

Comment [TL45]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 9340, §5, 10-2-03; Ord. No. 9608, §7, 8-20-06)

Sec. 18½-24 Layoff; Leave of Absence; Military Service.

(a) *Authorized Leave of Absence.* An Employee shall be deemed to be on an authorized leave of absence throughout any period during which he shall be:

Comment [TL46]: Please do not type any text in this area.

- (1) Absent with the prior consent of the City for a period not exceeding twelve (12) months;
- (2) Engaged in Military Service;

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- (3) Absent because of illness or disability, which is established to the satisfaction of the City, beyond allowed or accumulated sick leave; or
- (4) Laid off by the City.

(b) *Termination of Leave of Absence.* A Participant who is on an authorized leave of absence shall remain a Participant in the Plan. If an Employee shall fail to return to active employment with the City on or before the last day of the period of such leave of absence, he shall be deemed to have terminated his employment on such last day. An Employee's period of authorized leave of absence begins with the first day of his authorized leave of absence and ends on the first to occur of the following applicable dates:

Comment [TL47]: Please do not type any text in this area.

- (1) In case of absence with prior consent of the City, the fifteenth day following the termination of such absence.
- (2) In case of a layoff, (i) the fifteenth day following such Employee's recall to active employment, or (ii) the date which occurs upon the expiration of six (6) months from the commencement of such layoff, whichever first occurs.
- (3) In the case of an absence due to illness or disability, (i) the fifteenth day following the end of such Employee's illness or disability, or (ii) the date which occurs upon the expiration of six (6) months from the commencement of such Employee's absence due to illness or disability, whichever first occurs.
- (4) In the case of Military Service, the last day on which he retains reemployment rights under federal law or such extended date as the Board may allow because of factors causing a delay in return to active employment.

(c) *Nondiscriminatory Treatment.* Specifically with regard to the application of the provisions of this Article, Employees shall be treated alike when in similar circumstances.

Comment [TL48]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87)

Sec. 18½-25 City Contributions.

(a) *Amount of Contributions.* For each Plan Year within which or coincidental with which the fiscal year of the City ends, the City shall, subject to the provisions of Section 18½-27(d), contribute to the Fund to be held and administered by the Board according to the Plan, on behalf of each Participant, (i) an amount equal to six and one-half percent (6.5%) of each Participant's Compensation for such Year plus (ii) an equivalent percentage of each Participant's Compensation as that which is being contributed as Federal Insurance Contributions Act and Medicare contributions for civilian employees of the City reduced by any amounts contributed by the City as Federal Insurance Contributions Act and Medicare contributions for a Police Officer or a Firefighter. The City shall not discriminate between Police Officers and Fire Fighters and civilian employees of the City with respect to the City's contribution to the Plan, which contribution shall include contributions made by the City under the Federal Insurance Contributions and Medicare Acts.

Comment [TL49]: Please do not type any text in this area.

(b) *Source and Payment of Contributions.* City contributions required to be made under Section 18½-25(a) shall be made with revenues derived from the tax imposed under Ordinance No. 6199, Section 7, dated November 3, 1977 [Section 18½-39 of this Article]. The Board may accept, on behalf of the fund, gifts, grants, devises or bequests of personal or real property, conditioned or unconditioned,

Comment [TL50]: Please do not type any text in this area.

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provided that no conditioned gifts may be accepted where such a condition is contrary to the Plan or applicable state law. The City shall pay or transfer to the Fund its contribution under Section 18½-25(a) at the time prescribed by the City Council, provided, however, that the City shall not discriminate between Participants of the Plan and participants of the City of Kirkwood Employees’ Pension Plan as to timing of contributions, including Federal Insurance Contribution Act Tax contributions made by the City with respect to participants of the City of Kirkwood Employees’ Pension Plan.

(c) *Make-Up Contributions.* The City shall contribute “make up City contributions” as provided in Section 18½-26(e).

Comment [TL51]: Please do not type any text in this area.

(d) *Accountability.* The Board of Trustees have no right or duty to inquire into the amount of the City’s contributions or the methods used in determining the amount o such contributions, but shall be accountable only for funds actually received by the Board of Trustees.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 9028, §2, 5-17-01; Ord. No. 9919, §1, 5-20-10)

Sec. 18½-26 Mandatory Contributions.

(a) *Participant Contributions.* Each Participant shall contribute to the Fund in each Plan Year during which he is a Participant an amount, called “Mandatory Contributions”, which is the equivalent percentage of his Compensation as that which is being contributed as Federal Insurance Contribution Act and Medicare contributions by a civilian employee of the City, reduced by any amount contributed as Federal Insurance Contribution Act and Medicare contributions by such Participant for such Plan Year. The City shall deduct such contributions provided for in this Section 18½-26 from the Compensation of each Participant for each pay period. During the calendar month following each pay period, the City shall pay the amount so deducted to the Fund to be held in the Participant’s Mandatory Contributions Account and administered according to the terms of the Plan and shall credit such contributions to the Participant’s Mandatory Contributions Account at such time.

Comment [TL52]: Please do not type any text in this area.

(b) *Vesting in Participant Contribution.* A Participant’s right to the amount in his Mandatory Contributions Account shall at all times be one hundred (100) percent vested and nonforfeitable.

Comment [TL53]: Please do not type any text in this area.

(c) *Mandatory Contribution Subject to Plan Terms.* The Mandatory Contributions Accounts shall be subject to all other provisions of this Plan, except as specifically set forth in this Section 18½-26 or otherwise in the Plan.

Comment [TL54]: Please do not type any text in this area.

(d) *Pickup Contributions.* All amounts designated as Mandatory Contributions under this Section 18½-26 of the Plan shall be picked up by the City, within the meaning of Section 414(h)(2) of the Code. Such Mandatory Contributions shall be assumed by the City and paid to the Fund through a reduction in each Participants’ salary. The Participant shall be given no option or election to receive such amounts directly. This subsection shall not modify or change the amount of gross compensation of any Participant in the Plan for any purpose, including but not limited to the purpose of determining Participant rights and amounts of salaries and contributions under the Plan, and the amounts so paid and assumed by the City shall continue to be a part of such Participants’ gross compensation.

Comment [TL55]: Please do not type any text in this area.

(e) *Make Up Mandatory and Matching Contributions.* The City will, contribute Make Up City contributions on behalf of an Employee who returns to the employment of the City following Military Service within sixty days of such return to employment. “Make Up City Contributions” means the five percent City contributions which would have been made on behalf of the Employee during the period of Military Service pursuant to Section 18½-25(a) had he been a Participant during the term of such Military Service. An Employee may contribute Make Up Mandatory Contributions upon return to employment of

Comment [TL56]: Please do not type any text in this area.

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the City following a period of Military Service. Such Make Up Mandatory Contributions must be made no later than the last day of a period equal to three times the period of the Employee’s Military Service or the last day of a five year period, whichever first occurs following the Employee’s reemployment with the City after his return from such Military Service. “Make Up Mandatory Contributions” means the Mandatory Contributions which the Employee would have made pursuant to Section 18½-26(a) had he been an Employee during the period of such Military Service. The City will contribute Make Up Matching Contributions on behalf of an Employee who makes Make Up Mandatory Contributions. Make Up Matching Contributions must be made by the City within sixty days of the date the Employee makes Make Up Mandatory Contributions. “Make Up Matching Contribution” mean the City contributions, in addition to the five percent City contributions, which would have been contributed on behalf of the Employee during the period of Military Service had he been a Participant during such Military Service. All Make Up Contributions shall be based upon the Employee’s average Compensation for the twelve month period immediately preceding the commencement of his Military Service. Make Up City, Mandatory and Matching Contributions shall be made without regard to the limitations of Sections 18½-25, 18½-26 and 18½-27 for the Plan Year in which they are paid. Make Up City and Matching Contributions shall be credited to the Participant’s Current Account and Make Up Mandatory Contributions shall be credited to the Participants Mandatory Contributions Account. No earnings shall be credited with respect to such make up contributions before they are paid to the Fund.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 8089, §§1, 2, 11-21-91)

Sec. 18½-27 Accounts for each Participant; Allocation of Contributions; Fund Gains and Losses.

(a) *Contributions Part of Fund.* All Contributions made by the City to the Fund shall, when paid to the Board of Trustees, become part of the Fund.

Comment [TL57]: Please do not type any text in this area.

(b) *Establishment of Accounts.*

- (1) The Board shall establish and maintain or shall cause to be established and maintained a Current Account in the name of each Participant, Former Participant and Beneficiary. Each Participant’s pro rata share of the City contributions shall be credited to his Current Account. The Board shall also establish and maintain or shall cause to be established and maintained the Mandatory Contributions Account as provided in Section 18½-26 hereof. The contributions made by each Participant pursuant to Section 18½-26 shall be credited in full to his Mandatory Contributions Account at the time such contributions are made. Such records are primarily for accounting purposes and do not require a segregation of Fund assets to each such Account.
- (2) The Board shall establish and maintain or shall cause to be established and maintained a Retirement Plan Account in the name of each Participant in the Plan. The Retirement Plan Account shall consist of the following:
 - a. The actuarial equivalent of the Participant’s earned benefit (as defined in the applicable Prior Plan) under the applicable Prior Plan, unless the Participant elected to have an annuity purchased with the actuarial equivalent of his earned benefit under the Prior Plan, in which such case nothing shall be credited to the Participant’s Retirement Account with respect to his earned benefit; plus

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- b. The Participant's Mandatory Contributions to the applicable Prior Plan with interest on the Participant's Mandatory Contribution to the Plan from July 1, 1973, through December 31, 1985, at the rate of two (2) per cent per annum, compounded annually.

For purposes of this Section 18½-27, "actuarial equivalent" means a benefit or benefits which are of equal value at the date of determination to the benefits for which they are being substituted. Equivalence of value is determined by an actuary selected by the Board and is based on the following actuarial assumptions:

Mortality: The 1984 PBGC Unisex Pension Mortality Table.

Interest rate: 8.2 per cent per annum.

Each Participant shall be one hundred (100) percent vested at all time in the amount credited to and held in his Retirement Plan Account.

(c) *Allocation to Current Account.* As of the day the City shall make a contribution, the Board shall credit the amount of such contribution made on behalf of each Participant pursuant to Section 18½-25(a), to the Current Account of each such Participant.

Comment [TL58]: Please do not type any text in this area.

(d) *Limitations on Annual Additions.* Anything contained herein to the contrary notwithstanding, in no event shall the annual additions allocated to a Participant's Account for a Plan Year under this Plan and under all other defined contribution plans satisfying the requirements of Section 401(a) of the Code and any other statute of similar import, which the City maintains and under which such Participant is also a Participant under such other plans, except as otherwise provided in Section 415(n) of the Code, exceed the lesser of forty thousand dollars (\$40,000.00) (as adjusted by the Secretary of the Treasury for cost of living) or 100 percent of such Participant's compensation (as defined in Section 415(c)(3)) of the Code for such Plan Year, or such other limitations as the Secretary of the Treasury may prescribe. If for any Plan Year an amount is not allocated to a Participant's Current Account because the above limitations, or such other limitations as may be prescribed by the Secretary of the Treasury, have been exceeded, such amounts not allocated shall be credited to a suspense account and the City contribution for the Plan Year immediately following the Plan Year for which such amounts were not allocated shall be reduced by the amount credited to the suspense account and said account shall be treated as part of the City contribution for such Plan Year.

Comment [TL59]: Please do not type any text in this area.

For Plan Years beginning on or after April 1, 2008, corrections of excess annual additions shall be made in accordance with the principles set forth in the Employee Plans Compliance Resolution System.

For purposes of this Section 18½-27(d), the term "annual additions" means, when used with respect to any defined contribution plan for any Plan Year, the sum of (a) City contributions for such Plan Year, plus (b) the amount of the Participant's Contributions for such Plan Year, plus (c) forfeitures for such Plan Year, plus (d) amounts allocated after March 31, 1984 to an individual medical account (as defined in Section 415(i)(1) of the Code), which is part of a defined benefit plan maintained by the City, plus (e) amounts derived from such contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Section 419A(d)(3) of the Code) under a welfare benefit fund (as defined in Section 419(e) of the Code) maintained by the City; provided, however, that the compensation limit under this subsection shall not apply to any contributions for medical benefits

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after a Participant’s separation from service with the City (within the meaning of Section 401(h) or 419A(b)(2) of the Code) which is otherwise treated as an annual addition.

(e) *Adjustments to Accounts.* With respect to each investment fund established under Section 18½-32(d), on a daily basis, the then net credit balance in the Current, Mandatory and Rollover Contribution Accounts of each Participant, Former Participant and Beneficiary, shall be adjusted upward or downward, as the case may be, in the same proportion that the total amount of the then net credit balance in each such Accounts invested in the investment Fund bears to the total amount of the then net credit balances in such Accounts of all Participants, Former Participants and Beneficiaries invested in the investment fund, so that the total of the then net credit balances in such Accounts of all Participants, Former Participants and Beneficiaries invested in the Investment Fund will equal the value of the investment fund as of such date less, however, the amount of any suspense account established in accordance with Section 18½-27(d).

Comment [TL60]: Please do not type any text in this area.

(Ord. No. 8660, §2, 10-16-97; Ord. No. 9114, §9, 1-3-02; Ord. No. 9340, §4, 10-2-03)

Sec. 18½-28 Valuation of the Fund.

(a) *Valuation.* The value of the Fund, other than the amount of any suspense account established in accordance with Section 18½-27(d), shall be determined on a daily basis. The Board of Trustees shall report such value to the City Council and Participants in writing on a quarterly basis. In making such determination, the Board of Trustees shall value the assets of the Fund, other than the amount of any suspense account established in accordance with Section 18½-27(d), at their current fair market value as of such valuation date, with all accrued income, and shall deduct all accrued expenses and other amounts properly chargeable to the Fund. Such valuation shall include any contributions made by the City and Participants as of such valuation date, as well as any losses sustained in the administration of the Fund since the preceding valuation date. The Board’s determination of the value of the Fund shall be final and conclusive for all purposes of this Plan and shall be binding upon the City, Participants, Former Participants, their respective Beneficiaries and all other Persons interested in or concerned with the Fund. (Ord. No. 8660, §3, 10-16-97)

Comment [TL61]: Please do not type any text in this area.

Sec. 18½-29 Benefits.

(a) *Retirement Date.* If a Participant continues his employment beyond his Normal Retirement Date, he shall continue to be treated in all respects as a Participant until his Late Retirement Date, except that no benefit on account of his retirement shall be distributable to such Participant until his actual retirement. A Participant’s right to the amounts credited to his Accounts shall be one hundred (100) percent vested and nonforfeitable upon attaining his Retirement Date.

Comment [TL62]: Please do not type any text in this area.

(b) *Retirement.* Upon retirement at his Retirement Date, a Participant shall be entitled to receive and there shall be distributed to him, as provided in Section 18½-29(f), a benefit in an amount equal to the total of the net credit balance in his Accounts as of the date of his retirement, which balance shall be computed after all adjustments and allocations, if any, required as of such date have been made.

Comment [TL63]: Please do not type any text in this area.

(c) *Permanent Disability.*

- (1) *Amount.* Upon the termination of a Participant’s active employment with the City because of Permanent Disability or upon the Board’s determination that a Participant, during his authorized leave of absence (in accordance with the provisions of Section 18½-24) and while he remained a Participant, incurred Permanent Disability (referred in this Section 18½-29(c) to as “the date of

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Permanent Disability”), such Participant shall be entitled to receive a benefit in an amount equal to the total of the vested portion of the net credit balance in his Accounts as of the date of his termination of employment which balance shall be computed after all adjustments and allocations required as of such date, if any, have been made.

- (2) *Date of Termination of Employment.* For purposes of this Section 18½-29(c) only, “date of his termination of employment” means the earlier of (i) the date a Participant who is Permanently Disabled attains age sixty-five (65), (ii) the date a Participant ceases to be entitled to benefits under the City’s long-term disability program, (iii) the date of the Participant’s death, or (iv) the date of the written election of the Participant to receive all or a portion of his benefits. A disabled Participant who terminates employment and who is not entitled to receive benefits under the City’s long-term disability program shall receive his vested benefit, if any, in accordance with Section 18½-29(e).
- (3) *Contributions During Disability.* In the case of a Participant who is receiving benefits under the City’s long-term disability program, the City shall continue to make contributions to the Plan, as required by Section 18½-25(a)(i), on behalf of such Participant based on the Compensation the Participant would have received for the Plan Year if the Participant was paid at the rate of Compensation on the date of Permanent Disability, which contributions shall continue until the earlier of: (i) the date the Permanently Disabled Participant attains age sixty-five (65), (ii) the date the Participant ceases to be entitled to benefits under the City’s long-term disability program, (iii) the date of the Participant’s death or (iv) the date of the written election of the Participant to receive all or a portion of his benefit. The contribution, if any, required by Subsection 18½-25(a)(ii) and Section 18½-26 of the Plan shall not be made by the City and the Participant during the entire period of his Permanent Disability.
- (4) *Vesting Service.* No additional Years of Vesting Service will be earned by a Permanently Disabled Participant until such time as he returns to active employment with the City except that a Permanently Disabled Participant will be 100% vested in his Accounts upon the earlier of the attainment of age sixty (60) or the date of his death, regardless of his Years of Vesting Service.
- (5) *Form of Benefit.* The Participant’s benefit under this Section 18½-29(c) shall be payable in the form provided in Section 18½-29(f); provided, however, that a Participant may elect in writing to have all or a portion of his benefit payable while still Permanently Disabled. If a Participant so elects, no further contributions shall be made by the City pursuant to paragraph 3 of this Section 18½--29(c) for any period after the date of such written election and such Participant shall cease to be a Participant in the Plan as of such date.

(d) *Death.* Upon the death of a Participant while in active employment with the City or upon the death of a Participant during his period of authorized leave of absence (in accordance with the provisions of Section 18½-24), and upon the Board being furnished with evidence satisfactory to it of such Participant’s death, the Participant’s designated Beneficiary entitled to receive and there shall be distributed to him, as provided in Sections 18½-29 (f) and (g), a benefit in an amount equal to the total of the net credit balance in his Accounts, as of the date of his death, which balance shall be computed after all adjustments and allocations, if any, required as of such date, shall have been made.

Comment [TL64]: Please do not type any text in this area.

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(e) *Termination for Other Reasons*. A Participant, whose active employment terminates prior to retirement (for reasons other than death or Permanent Disability), shall be entitled to receive and there shall be distributed to him, as provided in Section 18½-29(f), a benefit in an amount equal to the sum of (a) the net credit balance in his Retirement Plan Account, (b) the Net Credit Balance in his Mandatory Contributions Account (c) the net credit balance in his Rollover Account, and (d) the net credit balance in his Current Account as of the date of his termination of employment; less, however, in either case, the applicable percentage of the net credit balance of his Current Account set forth in the following schedule based upon the number of his Years of Vesting Service with the City as of the date of his termination of active employment with the City:

Comment [TL65]: Please do not type any text in this area.

Number of Years of Vesting Service	Percentage of Amounts Not Vested
Less than 5	100
5 or more	0

Notwithstanding the foregoing, a Participant shall be one hundred (100) per cent vested when he attains sixty (60) years of age. The net credit balance in the Current Account of a Participant referred to in this Section 18½-29(e) shall be determined after all adjustments and allocations required as of the date of the determination of the net credit balance in his Current Account shall have been made.

The amount, if any, of the net credit balance in his Current Account to which a terminated Participant referred to in this Section 18½-29(e) is not entitled in accordance with the above schedule shall be forfeited at the time payment of his benefits commences. For purposes of this Section 18½-29(e), a Participant who is 0% vested in his benefit is deemed to have received a distribution of his vested benefit and the non nonvested vested portion of his benefit is forfeited. The City contribution for such Plan Year shall be reduced by the amount of such forfeiture and said amount shall be treated as part of the City contribution for such Plan Year in which such forfeiture occurs. The preceding sentence notwithstanding, in the event such Participant again becomes an employee of the City but before he has five (5) consecutive breaks in service, the amount he forfeited shall be restored and credited to his Current Account. Such restoration shall first be derived from forfeitures of other Participants occurring in the Plan Year in which such restoration is made and, to the extent such amount is not derived from said forfeitures, it shall be restored from a separate City contribution. The term “break in service” means a continuous period of twelve consecutive months during which the Employee is not employed by the City commencing on the date the Participant terminates under this Section 18½-29(e). In the case of an Employee who is absent from work pursuant to a leave or absence which City is required to extend to the Participant under the provisions of the Family and Medical Leave Act of 1993, the twelve consecutive month period begins on the first anniversary of the first date of such absence. Absence on account of Military Service shall be treated as employment with the City for purposes of determining whether a break in service occurs.

Comment [TL66]: Please do not type any text in this area.

(f) *Form of Benefit*. Subject to the provisions of Sections 18½-29(k), 18½-29(n) 18½-29(o), the second paragraph of this Section 18½-29(f) and Section 18½-29.1, as promptly as practicable after the date as of which a Participant or Beneficiary becomes entitled to a distribution from the Fund in accordance with Subsections 18½-29(b), (c), (d) or (e) and in all events no later than sixty (60) days after the close of the Plan Year during which the Participant or Beneficiary becomes entitled to such distribution, the Board shall distribute or instruct the Custodian to distribute the benefit to which such Participant or Beneficiary is entitled in one of the following methods of payment, as selected by the Participant, subject to the provisions of each of Subsections 18½-29(b), (c), (d) and (e):

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- a. One lump sum; or
- b. An annuity in the form selected by the Participant, which annuity shall be purchased by the Board. The payments under such annuity will be for the life of such Participant or Beneficiary or over the lives of such Participant and his designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant or the life expectancy of such Participant and his designated Beneficiary).
- c. a series of substantially equal installments over a period which does not extend beyond the life expectancy of such Participant or Beneficiary or the joint life expectancy of such Participant and a designated Beneficiary.

Anything to the contrary herein contained notwithstanding, a Participant entitled to a distribution from the Fund may elect to defer payment of his entire benefit and elect to receive a portion of his benefit as a distribution from any of the separate investment Funds (established pursuant to Section 18½-32(d)) in which he has invested the net credit balance in his Accounts or portions thereof as of his date of termination or retirement. For purposes of this paragraph, each Participant shall designate in writing, at the time he becomes entitled to a distribution hereunder or at any time thereafter, from which separate investment Fund or Funds he wishes the net credit balance in his Accounts or portions thereof to be distributed to him and the form of payment of such distribution as otherwise permitted under the Plan. Under such election, the entire amount of the separate investment Fund or Funds of the Participant shall be distributed to him. The Participant may not defer commencement of payment of his benefit under this paragraph beyond his Required Beginning Date as defined in Section 18½-29.1(g)(5).

(g) *Time of Payment of Death Benefit.* The amount distributable pursuant to Section 18½-29(d) shall be paid or commence to be paid as soon as practicable after the date of the Participant's death and will be payable to his Beneficiary in accordance with Section 18½-29.1.

Comment [TL67]: Please do not type any text in this area.

(h) *Benefits Paid after Final Valuation.* Anything to the contrary herein contained notwithstanding, no benefit shall be payable hereunder until the Board of Trustees determines the value of the Fund as of the appropriate date, if such value needs to be determined in order to determine the benefit to which the Participant is entitled.

Comment [TL68]: Please do not type any text in this area.

(i) *Death of Former Participant.* Upon the death of a Former Participant prior to receipt of any of his benefits hereunder, an amount equal to the aggregate amount of such undistributed benefits shall be paid to the Beneficiary of such deceased Former Participant within sixty (60) days after receipt by the Board of evidence satisfactory to it concerning such death in accordance with Section 18½-29.1.

Comment [TL69]: Please do not type any text in this area.

(j) *Designation of Beneficiary.* Each Participant and Former Participant shall have the right, from time to time, to designate or change the designation of a primary and a contingent Beneficiary, or either thereof, to receive on his death the benefit provided herein, or, as the case may be, any undistributed balance of any benefit distributable to him pursuant to the provisions hereof. A Beneficiary designation by a Participant must (i) be in writing in a form or forms as the Board may require, and (ii) be an original document signed by the Participant. To the extent that (i) a Participant or Former Participant has not named a Beneficiary at the time of his death; (ii) the original copy of the Beneficiary designation of the Participant or Former Participant cannot be located; or (iii) the designated Beneficiary and contingent designated Beneficiary or Beneficiaries is or are deceased or cannot be located, the Participant's or Former Participant's Beneficiary shall be his surviving spouse at the time of the Participant's or Former Participant's death. If such Participant or Former Participant does not have a surviving spouse at his death, the Participant's or Former Participant's children (natural and adopted) surviving at his death shall be the Beneficiary or Beneficiaries, and shall be entitled to payment of the

Comment [TL70]: Please do not type any text in this area.

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Participant's or Former Participant's undistributed Account balance in equal shares without the application of any anti-lapse statute. If the Participant or Former Participant does not have surviving children at his death, the Participant's or Former Participant's estate shall be his Beneficiary.

Upon the death of a Beneficiary entitled to the distribution of an amount pursuant to the provisions of this Section 18½-29 prior to receipt of all amounts distributable to such Beneficiary hereunder, an amount equal to the unpaid balance shall be paid to the estate of such deceased Beneficiary in a single lump sum.

(k) *Solvency of Fund.* When any amount becomes payable under the provisions of this Section 18½-29, the same shall be paid to the extent that there are assets in the Fund available for the payment thereof, after deduction of accrued expenses and other amounts properly chargeable to the Fund. In the event the assets of the Fund available for payment, after the aforesaid deductions, are not sufficient to pay all such amounts required to be paid on a payment date, then the assets of the Fund shall be used to pay such amounts on the basis of direct proportion to the extent such assets are available for payment.

Comment [TL71]: Please do not type any text in this area.

(l) *Address for Benefit Payments.* All benefits and installments thereof are distributable from the address hereinafter provided for in Section 18½-33(c) as the address to which notices shall be mailed to the City, or such other address as the Board may designate.

Comment [TL72]: Please do not type any text in this area.

(m) *Latest Date for Commencement Payments.* The benefit to which a Participant is entitled shall begin to be distributed to him not later than his Required Beginning Date as defined in Section 18½-29.1(g)(5).

Comment [TL73]: Please do not type any text in this area.

(n) *Lump Sum Distribution.* If a Participant's, Former Participant's or Beneficiary's total benefit due under the Plan is equal to or less than five thousand dollars (\$5,000.00), such benefit will be paid in one (1) lump sum only. In the event of a distribution greater than \$1,000 in accordance with the provisions of this Section, if the Participant, Former Participant or Beneficiary does not elect to have such distribution paid directly to an individual retirement account specified by the Participant, Former Participant or Beneficiary in a direct rollover in accordance with Section 18½-33(p), or to receive the distribution directly in accordance with this Section, then the benefit will be paid in a direct rollover to an individual retirement plan designated by the Board. For purposes of determining a Participant's total benefit under the Plan, the Participant's Account balance attributable to Rollover Amount, within the meaning of Section 18½-33(o)(5) shall be disregarded.

Comment [TL74]: Please do not type any text in this area.

(o) *Lost Participant.* In the event the Board is unable to locate a Former Participant or Beneficiary who is entitled to a benefit from the Plan, the benefit to which such Former Participant or Beneficiary is entitled shall be forfeited as of the last day of the Plan Year in which the Board determines the Former Participant or Beneficiary cannot be located, and such benefit shall be treated as part of the City contribution for such Plan Year in which such forfeiture occurs. If the Former Participant or Beneficiary whose benefit was forfeited is subsequently located or claims such benefit, such benefit shall be restored and paid to the Former Participant or Beneficiary in accordance with Section 18½-29(f). Such restoration shall first be derived from forfeitures to be treated as part of the City contribution in accordance with Section 18½-29(e) and, to the extent such amount is not derived from said forfeitures, it shall be restored from a separate City contribution for such purpose. This Section 18½-29(o) shall only apply if a Former Participant or Beneficiary cannot be located.

Comment [TL75]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 7809, §§8-11, 9-15-88; Ord. No. 8075, §1, 8-1-91; Ord. No. 8117, §5, 3-5-92; Ord. No. 8468, §1, 11-16-95; Ord. No. 8660, §4, 10-16-97; Ord. No. 9114, §§10-11, 1-3-02; Ord. No. 9561, §2, 1-19-06; Ord. No. 9608, §8, 7-20-06; Ord. No. 9962, §§6-7, 10-7-10)

Sec. 18½-29.1 Minimum Distribution Requirements.

(a) *General Rule.* The following provisions of this Section will apply for purposes of determining required minimum distributions under Section 401(a)(9) of the Code. The requirements of this Section will take precedence over any inconsistent provisions of the Plan. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

Comment [DNC76]: This paragraph is Heading 9 Style & the subparagraph was set to Restart Numbering.

Comment [TL77]: Please do not type any text in this area.

(b) *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.

Comment [TL78]: Please do not type any text in this area.

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

Comment [TL79]: Please do not type any text in this area.

- (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
- (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (3) 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.
- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 18½-29.1(c), other than Section 18.4-29.1(c)(i), will apply as if the surviving spouse were the Participant.

For purposes of Section 18½-29.1(c), 18½-29.1(e) and Section 18½-29.1(f), unless Section 18½-29.1(c)(4), applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 18½-29.1(c) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 18½-29.1 (c)(1). If distributions under an annuity purchased from an insurance company 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 Section 18½-29.1(c)(1), the date distributions are considered to begin is the date distributions actually commence.

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 Sections 18½-29.1(d), 18½-29.1(e) and 18½-29.1(f). 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 Code and the Treasury regulations.

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(d) Required Minimum Distributions During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

Comment [TL80]: Please do not type any text in this area.

- (1) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Section 18½-29.1(d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(e) Required Minimum Distributions Upon Participant's Death on or After Date Distributions Begin.

Comment [TL81]: Please do not type any text in this area.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
 - (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(f) Required Minimum Distribution Upon Participant's Death Before Date Distributions Begin

Comment [TL82]: Please do not type any text in this area.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in paragraph (e) of this Section 18½-29.1.
- (2) 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.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (c)(1) of this Section 18½-29.1, paragraph (f)(3) of Section 18½-29.1 will apply as if the surviving spouse were the Participant.

(g) Definitions

Comment [TL83]: Please do not type any text in this area.

- (1) 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, Q&:A-4, of the Treasury regulations.
- (2) 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 under Section 18½-29.1(c). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

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- (4) Participant's Account Balance. The Account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (5) Required Beginning Date. April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains 70 1/2 years of age; and (b) the calendar year in which the Participant terminates employment.

(Ord. No. 9375, §1, 2-19-04)

Sec. 18½-30 Claims Procedure.

(a) Filing Claims. Claims for benefits under the Plan shall be filed with the Board, on forms supplied by the Board. Notice of the Board's determination shall be furnished the claimant within ninety (90) days of the receipt of the claim, unless special circumstances require an extension of time. In such case, the Board may extend the period for not in excess of an additional ninety days, provided that the claimant is given written notice of the extension within the original ninety day period. Such notice shall indicate the special circumstances requiring the extension of time and the date by which the Board expects to render a final decision. The claimant shall be given written notice of the Board's determination. If the claim is denied, in whole or in part, the notice of the denial shall set forth in a manner calculated to be understood by the claimant, the following:

Comment [TL84]: Please do not type any text in this area.

- (1) The specific reason or reasons for such denial;
- (2) Specific reference to pertinent Plan provisions on which such denial is based;
- (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (4) Appropriate information as to the steps to be taken if the claimant desires to request a review of the determination by the Board.

If the determination of the Board is not furnished to the claimant within the time permitted herein, the claim shall be deemed denied.

(b) Review of Denied Claims. A claimant whose claim is denied, in whole or in part, may submit a written request to the Board for a review of its determination within sixty days after receipt by the claimant of written notification of the denial of the claim. Such claimant, or his or her duly authorized representative, shall be given the opportunity to review pertinent documents and submit issues and comments in writing. A decision on review shall be made within sixty days after the receipt of the request for review unless special circumstances require an extension of time. In such case, the Board may extend the period for not in excess of an additional sixty days, provided that the claimant is given written notice of the extension of time within the original sixty day period. The claimant shall be given written

Comment [TL85]: Please do not type any text in this area.

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notice of the decision on review. The decision on review shall be written in a manner calculated to be understood by the claimant and shall include:

- (1) Specific reason or reasons for the decision; and
- (2) Specific references to the pertinent Plan provisions on which the decision is based.

If the decision on review is not furnished to the claimant in writing within the time permitted herein, the claim shall be deemed denied on review. The Board shall maintain minutes of any meeting denying a claim for benefits and of any review thereof and copies thereof shall be made available to the claimant upon written request.

(c) *Notices.* Any notice, claim for benefit or request as provided hereunder shall be sent in accordance with the provisions of Section 18½-33(c). Any notice, claim for benefit or request as provided hereunder shall be deemed to be given when mailed in accordance with the provisions of this Section 18½-30(c).

Comment [TL86]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87)

Sec. 18½-31 Amendment and Termination.

(a) *Amendments by City.*

- (1) The City, by action of the City Council, shall have the right at any time, and from time to time, to amend the Plan in such manner and to such extent as it may deem necessary or advisable, except that no such amendment may be made without first having submitted such amendment to the Board for its review, which review shall be completed within sixty (60) days of receipt by the Board of such amendment. Any such amendment shall be set out in an ordinance approved by the City Council and shall be deemed to have been amended in the manner and to the extent set forth in said ordinance and all Participants and persons claiming any interest under the Plan shall be bound thereby.
- (2) No amendment to the Plan:
 - a. Shall cause or permit the Fund or any part thereof to be used for or diverted to purposes other than for the exclusive benefit of the present or future Participants, Former Participants and their respective Beneficiaries or other persons entitled to benefits under this Plan;
 - b. Shall increase the duties or obligations of the Board of Trustees without its written consent; or
 - c. Shall decrease the accrued benefit of a Participant.
- (3) No amendment to the Plan required as a condition of exemption or continuation of exemption of the Plan as a qualified Plan under the provisions of Section 401(a) of the Code, or any statute of similar import, shall be deemed contrary to the limitations upon amendments provided in subparagraph (2) above.

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(b) *Discontinuance of City Contributions*. To the extent permitted by Federal an or state law, the City shall have the right at any time to discontinue its contributions hereunder or to terminate the Plan by delivering to the Board of Trustees written notice of such discontinuance or termination accompanied by a certified resolution of the City Council authorizing such discontinuance or termination.

Comment [TL87]: Please do not type any text in this area.

(c) *Termination of Plan; Dates*. To the extent permitted by Federal and state law, the Plan shall terminate on whichever of the following dates shall first occur:

Comment [TL88]: Please do not type any text in this area.

- (1) The date specified for the termination of the Plan in a notice of termination as provided for in Section 18½-31(b) above;
- (2) Upon the happening of any event, the enactment of any law, the issuance of any rule, regulation, direction, command, demand or order of any court, administrative, regulative or other agency, or of any group or organization, or of any individual on behalf of the same, which in any way or manner or to any extent whatsoever, impairs or prevents the free exercise of the uncontrolled discretion of the City Council in connection with terminating the Plan hereby created, in any of which such events, the Plan shall thereupon, ipso facto, be terminated;
- (3) The date on which the City shall be adjudicated bankrupt, or the date on which the City shall make a general assignment to or for the benefit of creditors, or the date on which the dissolution of the City shall occur.

(d) *Distribution of Funds to Former Participants or their Beneficiaries*. Upon complete discontinuance of the City's contributions hereunder or the termination of the Plan, the amount of undistributed installments of the benefits to which each Former Participant, or the Beneficiary of a Former Participant, as the case may be, is entitled on the date of such discontinuance or termination of the Plan shall be distributed to such Former Participant or such Beneficiary, as the case may be, in one (1) lump sum as soon as reasonably practicable after such discontinuance or termination of the Plan. Pending such distribution, no installments or benefit shall be distributed to any such Former Participant or Beneficiary. In the event a Former Participant shall die prior to distribution to him of the lump sum amount herein provided for after such discontinuance or termination of the Plan, the amount shall be distributed to the Beneficiary of such Former Participant.

Comment [TL89]: Please do not type any text in this area.

(e) *Distribution of Benefits to Participants or their Beneficiaries*.

Comment [TL90]: Please do not type any text in this area.

- (1) Upon complete discontinuance of the City's contributions or the termination of the Plan, the rights of each Participant to the benefits accrued to the date of such discontinuance or termination are nonforfeitable. After payment of all expenses of the Plan and after making the distributions provided for in Section 18½-31(d) above, each Participant shall be entitled to receive, and there shall be distributed to him as hereinafter provided in this Section 18½-31(e), the total amount credited to the Accounts of such Participant as of the date of such distribution.
- (2) Upon the partial termination of the Plan, the rights of each Participant with respect to whom the Plan is partially terminated to the benefits accrued to the date of such partial termination shall be nonforfeitable. The Board of Trustees, at the direction of the City Council, shall thereupon proceed, as promptly as shall then be reasonable under the circumstances, to distribute to the Participants with respect to whom the Plan is partially terminated the net credit balance in the

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Accounts of each such Participant as of the date the Plan is partially terminated, which distribution may be made in any manner or method of payment permitted by Section 18½-29(f) hereof.

- (3) Upon the termination of the Plan, assets remaining Trust II shall be used to purchase paid up disability and life insurance benefits and/or benefits under Section 18½-36 for Employees who are Participants at the time of such termination. To the extent funds remain in Trust II immediately following such purchase, these assets shall be used to purchase paid up disability and life insurance benefits and/or benefits under Section 18½-36 for any other Employees. Any remaining funds in Trust II shall be distributed in accordance with Subsection 18½-37(c). Any remaining funds in Trust II which cannot be distributed under Subsection 18½-37(c) shall be distributed with applicable state law.

(f) *Board to Complete Distribution of Assets.* The Board in office at the time of any termination of the Plan shall continue to act with its full powers hereunder until the completion of the distribution of the assets of the Fund. A majority of the members of the Board then in office shall have the power to fill any vacancy occurring in the Board after such termination by resignation, death, or otherwise. In the event that the City, within a reasonable time after such termination, shall not have given the Board of Trustees the directions provided for in Sections 18½-31(d) and (e) above, whichever may be applicable, the assets then remaining in the Fund shall be distributed in such manner as may be directed by a judgment or decree of a court of competent jurisdiction.

Comment [TL91]: Please do not type any text in this area.

(g) *Conditions for Merger and Consolidation of Plan and Fund.* The Plan and Fund shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to, any other Plan unless the benefits payable to each Participant, if the Plan were terminated immediately after such action, would be equal to or greater than the benefits to which such Participant would have been entitled if this Plan had been terminated immediately before such action.

Comment [TL92]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87)

Sec. 18½-32 Fund.

(a) *Fund Part of Plan, Assets of Trusts I and II.* The Fund shall consist of all assets of Prior Plans which have been transferred to the Fund and such contributions with respect to the Plan as shall from time to time be made by the City and Participants to the Board, and all income and profits thereon and accruals thereto, which assets, payments and accruals are herein referred to as the "Fund." The Fund shall be deemed to form part of the Plan and any and all rights or benefits which may accrue to any person under this Plan shall be subject to all the terms and provisions of the Fund as hereafter provided or as may be amended from time to time. The Fund shall be divided into two (2) sections which shall be denominated Trust I and Trust II. The assets of Trust I shall consist of Accounts of Participants, the Retirement Plan Accounts established in this Plan for certain Participants in the Prior Plans, as well as all contributions made by the City and Participant pursuant to Sections 18½-25, and 18½-26, and all income and profits thereon and accruals thereto. The assets of Trust II shall consist of the assets of the Prior Plans not allocated to Trust I, plus all contributions made by the City to Trust II, and all income and profits thereon and accruals thereto, all of which are hereby dedicated for the purpose of providing the benefits described in Sections 18½-34, 18½-35, 18½-36 and 18½-37.

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(b) *Power and Authority of Board Relative to Fund.* Except as otherwise herein specifically provided or under the law of the State of Missouri, the Board of Trustees shall in general have the power

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and authority to do and perform, in the same manner and to the same extent as an individual might or could do with his own property, any and all acts and thin s in relation to the Fund which in its judgment are necessary or appropriate for the management, investment and distribution of the Fund.

(c) *Duties of Custodian.* The Board may appoint a Custodian to hold cash, securities and other assets of the Fund, subject to the control and direction of the Board, and to apply the income and principal thereof in accordance with the directions of the Board for the purpose of paying, in accordance with the Plan, retirement and other benefits to Participants in the Plan and their Beneficiaries entitled thereto, and the administrative expenses of the Plan, as hereinafter provided. Any Custodian shall have custody of the Fund to the extent of his cash, securities and assets of his Fund transferred to it and collect all interest due and other income thereon. As prescribed by said Board, any Custodian shall keep separate books and complete accounts of the Fund, and his books and accounts shall always be subject to public inspection. Such person shall be bonded, as required by the Board. Upon its resignation or removal by the Board, the Custodian shall deliver to its successor all unexpended cash, securities, books, records and other assets which may have come into its possession as Custodian of the Fund. Any Custodian shall make disbursements from the Fund to such persons or persons, at such times and in such amounts as the Board shall direct in writing. A Custodian shall be fully protected in making such disbursements from the Fund from time to time upon such written directions of the Board and shall be charged with no responsibility whatever respecting the application of such disbursements.

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(d) *Separate Investment Funds.*

(1) The Board may, from time to time, establish separate investment funds within the Fund; provided, however, at no time shall there be less than four (4) such funds in existence.

(2) If separate investment funds are established, the following shall apply:

Each Participant, Former Participant and Beneficiary may, in accordance with procedures established by the Plan Administrator, designate into which of the investment Funds he wishes the net credit balance in his Account or portions thereof to be invested as of said date. Should any Participant, Former Participant or Beneficiary fail to make a designation, he shall be deemed to have designated that the net credit balance in his Account be invested entirely in the separate investment Fund designated by the Board for such purpose. Each Participant, Former Participant or Beneficiary may, in accordance with procedures established by the Board, change his investment option as to future contributions and/or his existing Account balance.

(3) If separate investment funds are established, the Board shall cause a segregation of assets into separate investment funds within the Fund in such proportion as indicated in designations received from Participants, Former Participants and Beneficiaries and in accordance with the terms hereof. The segregated separate investment funds shall be denominated and shall be managed in accordance with the provisions hereof. After the establishment of the separate investment funds, the net credit balance in all Accounts shall be invested in such investment Funds. The Board shall determine the portion of each contribution to be invested in each investment Fund and the Board shall cause transfers to be made from one investment Fund to others based upon the designations of Participants, Former Participants and Beneficiaries as provided herein.

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(e) *Investment Manager*

Comment [TL97]: Please do not type any text in this area.

- (1) In the event the Board, in its discretion, appoints one (1) or more Investment Managers to manage (including the power to acquire or dispose of) all, or one (1) or more portions, of the Fund, all or, as the case may be, any portion of the Fund under the management of an Investment Manager shall be hereafter referred to as “directed fund.”
- (2) A Custodian shall have no responsibility with respect to terms and conditions of appointment, authority and retention of an Investment Manager. Upon appointment of an Investment Manager, the Board shall give notice to the Custodian, if any, certifying (a) the name and address of the Investment Manager; (b) that said Investment Manager is an “investment manager” as such term is defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, as now or hereafter amended from time to time, and has acknowledged in writing that he is a fiduciary with respect to the Plan; and (c) the assets of the Fund to be allocated the directed fund over which such Investment Manager shall have responsibility. Upon the termination of the appointment of an Investment Manager (whether by expiration of the term of his appointment, removal or resignation or otherwise), the Board shall give notice to any Custodian of such termination. Unless a Custodian shall receive notice that another Investment Manager has been appointed to replace the Investment Manager whose appointment was terminated, the directed fund over which the Investment Manager whose appointment was terminated had responsibility shall cease being a directed fund. A Custodian shall not be liable for any losses to the Fund from assets acquired, held or transferred by an Investment Manager.
- (3) Each Investment Manager shall have exclusive authority to manage (including the power to acquire or dispose of assets of) the directed and which is his responsibility except that the Board or a Custodian may invest and reinvest cash of a directed fund for the short term. For this purpose, the Board or a Custodian may, in its sole discretion, invest such cash in savings accounts and certificates of deposit with any financial institution and purchase, hold and sell United States Treasury bills, commercial paper, bankers’ acceptances and similar investments including individual interest or participations therein and in commingled or collective funds composed of such investments.
- (4) Each Investment Manager shall furnish the Board and any Custodian from time to time with the names and signatures of those persons authorized to direct the Board and Custodian on its behalf. The Board and any Custodian may request that all direction of an Investment Manager be in writing and, if the Board or Custodian shall so request, the Board or Custodian shall assume no liability hereunder for failure to act pursuant to directions from the Investment Manager unless and until the Board or Custodian shall receive directions in writing.
- (5) The Board or a Custodian shall settle purchases and sales of assets of a directed fund upon the direction of the Investment Manager responsible for such directed fund. An Investment Manager may issue orders for the purchases or sales of securities directly to a broker or dealer. Written notification of the execution of each such order shall be given promptly to the Board or Custodian by the Investment Manager and the execution of each such order shall be confirmed by

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the broker to the Investment Manager and to the Board or Custodian. Such notification shall be authority to the Board or Custodian to receive securities purchased against payment therefor and to deliver securities sold against receipt of the proceeds therefrom, as the case may be.

- (6) The Board or a Custodian shall have no responsibility for supervision of an Investment Manager. The Board or Custodian shall be under no duty or obligation to review or to question any direction of an Investment Manager or to review the securities or other property held in any directed fund with respect to prudence, proper diversification of Trust funds, or compliance with any limitation on an investment manager's authority whatsoever.
- (7) Neither the Board or Custodian shall not be liable for the acts or omissions of any Investment Manager unless the Board or Custodian knowingly participates in or knowingly undertakes to conceal an act or omission of such Investment Manager knowing such act or omission constitutes a breach of fiduciary responsibility of the Investment Manager. The performance by the Board or Custodian of trades, custody, reporting, recording and bookkeeping with respect to a directed fund shall not be deemed to give rise to any participation or knowledge on the part of a the Board or Custodian. If the Board or Custodian has other knowledge of a breach committed by the Investment Manager, it shall notify the Board and City Council which shall assume responsibility to remedy such breach.

(f) *Charges upon Fund.* The expenses incurred by the Board or a Custodian in the performance of its duties hereunder including, but not limited to, reasonable fees for legal, accounting or actuarial services rendered to the Board or Custodian and expenses incident thereto, the compensation of Investment Managers, and all other proper charges, including all real and personal property taxes, income taxes, transfer taxes and other taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Fund hereby created, or any money, property or securities forming a part thereof, not paid by the City, shall be paid by the Board or Custodian out of the Fund and the same shall constitute a charge upon the Fund.

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Subject to rules established by the Board, fees and expenses for investment services incurred in connection with the Participant's direction of the investment of assets attributable to his Account shall be charged directly to his Account.

(g) *Indemnification, Defense, etc., of Board Members.* Except as otherwise provided below, the City shall indemnify, defend and otherwise hold harmless the members of the Board and the Plan Administrator, to the extent allowed by law, for any loss, claim, liability, penalty, surcharge or related expense arising out of or in connection with party act or omission of the City or other fiduciary with respect to the Fund and Plan, including without limitation any direction to the Board members by any other fiduciary with respect to the Plan which the Board is required to follow under the terms of the Plan. A Board member shall not be entitled to indemnity, however, in any case in which the Board member is guilty of willful or criminal misconduct; provided, however, that such member shall not be deemed to be guilty of willful or criminal misconduct for which, with respect to any matter, it has no responsibility, duty or obligation under Section 18½-32(e). A Custodian shall not be entitled to any indemnification for any loss or damage it incurs which is attributable to actions of its employees and agents. The Plan Administrator shall not be indemnified for criminal misconduct. The City shall have no obligation to indemnify under this Subsection 18½-32 to the extent such loss, claim, liability, penalty, surcharge or related expenses is covered by insurance and/or an indemnity provision of a third party.

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This provision shall not be construed to relieve any Board member or a Custodian from the performance of any duty he may have under the Plan and to the Participants and their Beneficiaries entitled to benefits hereunder.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 8539, §1, 9-5-96; Ord. No. 8660, §§5-7, 10-16-97)

Sec. 18½-33 Miscellaneous Provisions of Plan.

(a) *Participation in Plan not a Contract.* Neither the adoption and continuance of the Plan, nor any modification of it, nor the creation of any Fund or Account, nor the payment of any benefits shall be construed as giving to any Participant, Former Participant, or other person a legal or equitable right against the City or any officer or employee thereof, or the Board of Trustees, except as herein provided. Under no circumstances shall participation in the Plan and Fund by an Employee constitute a contract of continuing employment or in any manner obligate the City to continue or discontinue the services of an Employee.

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(b) *Benefits Provided from Fund.* All benefits distributable under the Plan shall be distributed or provided for solely from the Fund and the City assumes no liability or responsibility therefor. The obligation of the City is limited solely to making contributions as provided in the Plan.

Comment [TL101]: Please do not type any text in this area.

(c) *Requirements of Due Notice.* Any notice, request, direction or approval required or permitted to be given hereunder shall be deemed to have been duly given or made only:

Comment [TL102]: Please do not type any text in this area.

- (1) If to a person, upon personal delivery thereof to such person or upon the mailing of the same by United States first class mail, postage fully prepaid, and duly addressed to such person at the last address of such person appearing upon the records of the City.
- (2) If to the City, upon personal delivery thereof to the City administrator of the City, or upon mailing the same by United States first class mail, postage full prepaid, and duly addressed to the City at its principal place of business (or such other address as the City Council may hereafter designate by notice to the Board).
- (3) If to the Custodian, upon personal delivery thereof to the Custodian, or upon mailing a copy of the same by United States first class mail, postage fully prepaid, and duly addressed to the Custodian at the address of the City (or such other address as the City Council may hereafter designate by notice to the Board).
- (4) If to the Board of Trustees, upon personal delivery thereof to the chairman of the Board, or upon mailing the same by United States first class mail, postage fully prepaid, and duly addressed to such person at the address show on the records of the City (or at such other address as the City may from time to time designate in accordance with the terms hereof).

(d) *Identification of Distributee.* If at any time any doubt exists as to the identity of any person entitled to distribution hereunder of any benefit or installment thereof, or as to the amount or time of any such distribution, upon certification of such fact to the Board, the Board shall be entitled to, or shall be entitled to direct any Custodian, to hold such sum in a savings account or other savings instrument until further orders of the Board or until final order of a court of competent jurisdiction, or to pay such sum

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into a court of competent jurisdiction in accordance with any lawful procedure in such case made and provided.

(e) Legal Action by the Board or City Council. The Board or the City Council may, at any time, and from time to time, take such legal action as it may deem advisable to have determined judicially any matter arising hereunder, including any matter as to which the Board is empowered to act hereunder and as to which the Board fails, refuses or does not desire to act.

Comment [TL104]: Please do not type any text in this area.

(f) City Council and Board Reliance. The City Council and the Board may (but shall not be required to) rely upon any certificate, statement of other representation made to it or them by an Employee, a Participant, Former Participant or Beneficiary in respect of any fact required to be determined under any of the provisions of the Plan, and shall not be liable on account of the payment or distribution of any moneys or the doing of any act or any failure to act in reliance upon any such certificate, statement or other representation made by such Employee, Participant, Former Participant or Beneficiary. Any such certificate, statement or other representation made by such Employee, Participant, Former Participant or Beneficiary shall be conclusively binding upon such party, his personal representative and heirs (but not upon the City or the Board) and any such Employee, Participant, Former Participant or Beneficiary, his personal representative and heirs (but not the City or the Board) shall thereafter be estoppel from disputing the truth and correctness of any such certificate, statement or other representation.

Comment [TL105]: Please do not type any text in this area.

(g) Non Alienation of Benefits and Qualified Domestic Relations Orders

Comment [TL106]: Please do not type any text in this area.

- (1) Non-Alienation of Benefits. Except for subparagraphs (2) and (3) of this Section 18½-33(g), no benefit which shall be payable under this Plan to any person 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, attachment or legal process for or against such Person, and the same shall not be recognized by the Board of Trustees except to such extent as may be required by law.
- (2) Qualified Domestic Relations Order. The provisions of subparagraph (1) of this Section 18½-33(g) shall not apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a qualified domestic relations order as defined in Section 414(p) of the Code, to the extent such Section 414(p) of the Code is applicable to governmental plans. In the event that a domestic relations order which is determined to be a qualified domestic relations order is received by the Plan, benefits shall be paid to the alternate payee as soon as practicable after the determination that such domestic relations order is a qualified domestic relations order.
- (3) Judgment Against Participant. Notwithstanding any provision to the contrary, the Board may offset against the amount in a Participant's Account any amount which the Participant is ordered or required to pay as a result of a judgment or settlement described in Section 401(a)(13)(C) of the Code, provided that the requirements set forth in Sections 401(a)(13)(C) and 401(a)(13)(d) of the Code are satisfied.

(h) Fund for Exclusive Benefit of Participants. It shall be impossible by operation of the Plan or of the Fund, by termination of either, by power or revocation or amendment, by the happening of any

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contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any fund maintained pursuant to this 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 respective Beneficiaries.

(i) *Performance of Parties.* All parties to, or claiming any interest under, this Plan agree to perform any and all acts and to execute any and all documents and papers which are necessary or desirable for carrying out this Plan and Fund.

Comment [TL108]: Please do not type any text in this area.

(j) *Validity of Plan.* This Plan has been executed in the State of Missouri and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that state, to the extent such laws are not inconsistent with applicable Federal law. Any dispute under the Plan shall be subject to the exclusive jurisdiction of the Circuit Court of St. Louis County, and/or the United States Federal District court in St. Louis, Missouri.

Comment [TL109]: Please do not type any text in this area.

(k) *Invalid Provisions.* In case any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts, but this Plan shall be construed and enforced as if the illegal or invalid provisions had never been inserted.

Comment [TL110]: Please do not type any text in this area.

(l) *Discharge of Liability and Receipt.* The payment and acceptance of any money or property in settlement of any participation under this Plan shall constitute a complete acquittance and discharge of all liability of the City, Board of Trustees and a Custodian with respect to such participation. On final payment or distribution to any Participant, Former Participant or his legal representative or Beneficiary in accordance with the provisions hereof, the Board shall be entitled to demand a receipt or acquittance in full satisfaction of all claims against the Fund, the City, the Board of Trustees and any Custodian.

Comment [TL111]: Please do not type any text in this area.

(m) *Incapacity of Distributee.* In the event any person entitled to receive any distribution hereunder of a benefit or any installment thereof, who in the opinion of the Board shall be legally incapable of giving a valid receipt and discharge for distribution of such benefit and another person or institution is then maintaining or has custody of such person and no guardian or representative of the estate of such person shall have been duly appointed, then such benefit or installment thereof, at the option of the Board, may be distributed to such person or institution. Distribution to such other person or institution shall be in complete discharge of liability under the Plan for the distribution of such benefit or installment thereof and there shall be no responsibility whatsoever on the City, the Board of Trustees or anyone else to see to the application of such benefit or installment thereof so distributed.

Comment [TL112]: Please do not type any text in this area.

(n) *Return of City Contributions.* Contributions made to the Plan by the City shall be returned to the City only under the following circumstances:

Comment [TL113]: Please do not type any text in this area.

- (1) All contributions made to the Plan are conditioned upon legality of the contributions in full under the law of the State of Missouri or any statute of similar import. If all or any portion of the contributions is not legal, the amount so determined to be illegal shall be returned to, as appropriate, the City and affected Participants, if the City so directs the Board of Trustees, within one (1) year of the determination of the illegality of the contribution.
- (2) A contribution made by a mistake of fact shall be returned, as appropriate, to the City and affected Participants within one (1) year after the payment of the Contribution if the City so directs the Board.

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(o) Rollovers to the Plan

Comment [TL114]: Please do not type any text in this area.

- (1) Any Employee may file a written request on such form or forms required by the Board to transfer to the Plan all or any portion of a Rollover Amount received by him; provided, however, that either (i) all or any portion of the Rollover Amount is transferred to the Plan on or before sixty (60) days after the day on which the Employee receives such Rollover Amount, or (ii) all or any portion of the Rollover Amount is transferred directly to Trust I by the trustee or custodian of the plan from which the Rollover Amount is distributed. Such written request shall set forth the amount of the Rollover Amount, the nature of the property contained in the Rollover Amount, and a statement satisfactory to the Board that such amount constitutes a Rollover Amount. The Board, in its sole discretion, shall determine whether or not an Employee shall be permitted to transfer a Rollover Amount to the Plan.
- (2) Rollover Amounts transferred to the Plan shall be credited to a Rollover Account established and maintained for each Employee who elects to transfer to the Plan any funds received pursuant to the rollover provisions of the Code and as specified in this Section 18½-33. Each Employee's Rollover Account shall be increased or decreased based upon the value of the Rollover Account.
- (3) The net credit balance in an Employee's Rollover Account shall be 100 percent vested at all times.
- (4) In the event of retirement, death, Permanent Disability or other termination of employment of the Employee, the amount credited to the Employee's Rollover Account shall be added to the benefit to which he is entitled under the Plan and shall be distributed to him in accordance with the provisions of Section 18½-29(f).
- (5) "Rollover Amount" as used in this Section 18½-33 means an eligible rollover distribution within the meaning of Sections 402(c), 403(b)(8), 408(d)(3) or 457(d) of the Code provided, however, that no part of such Rollover Amount shall be attributable to a trust forming part of a plan under which the person was an employee within the meaning of Section 401(c)(1) of the Code at the time contributions were made to his benefit under the plan, and provided further, that such Rollover Amount shall not include amounts considered to be contributed by the person (determined by applying Section 72(t) of the Code), which contributions shall be reduced by any amounts theretofore distributed to him which were not includable in his gross income.

(p) Direct Rollovers from the Plan

Comment [TL115]: Please do not type any text in this area.

- (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 18½-33(p), distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except than an eligible rollover

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distribution does not include: (i) 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 often years or more; (ii) any distribution to the extent such distribution is required under Section 401 (a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) any hardship distributions described in Section 401(c)(2)(B)(i)(IV) of the Code.

- (3) An eligible retirement plan is any arrangement described in Section 402(c)(8) of the Code.
- (4) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after November 1, 2008, a distributee also includes an Employee's beneficiary who is not the Employee's surviving spouse; provided that in the case of such a distributee, an eligible retirement plan includes only those arrangements described in Section 402(c)(11)(A) of the Code.
- (5) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(q) Service as a Civilian Employee. A Participant in the City's Employees' Pension Plan, who either (i) terminates employment with the City and returns to the active employment of the City in the capacity as an Employee or (ii) remains an active employee of the City but whose status as an active employee changes to an Employee, shall become a Participant in the Plan upon becoming an Employee and shall receive credit under the Plan for all Years of Vesting Credit he earned under the City's Employees' Pension Plan. In the event such a Participant remains an Employee for one full year following his becoming an Employee, (i) his Accounts under the Employees' Pension Plan shall be transferred to this Plan, (ii) the assets funding such Accounts shall be directly transferred to the Fund from the Fund under the City's Employees' Pension Plan, and (iii) such Accounts shall be paid in accordance with the terms of this Plan.

Comment [TL116]: Please do not type any text in this area.

(r) Transfers to City Employees' Pension Plan and Fund. When Accounts and assets funding Accounts under this Plan becomes transferable to the City's Employees' Pension Plan and Fund pursuant to Subsection 18½-13(r), the Board of Trustees shall cause such Accounts and assets to be transferred as soon as practicable as provided in Subsection 18½-13(r) to the City Employees' Pension Plan and Fund.

Comment [TL117]: Please do not type any text in this area.

(s) Election for Payment of Qualified Health Insurance Premiums

Comment [TL118]: Please do not type any text in this area.

- (1) A Retired Participant may elect, for any calendar year, to have the Fund directly pay an insurance provider, on behalf of the Retired Participant, his spouse and dependents (as defined in Section 152 of the Code), Qualified Health Insurance Premiums. Such payments shall not exceed, during a calendar year, the lesser of:

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- a. The amount paid on behalf of the Retired Participant his spouse and dependents (as defined in Section 152 of the Code); or
- b. Three thousand dollars.

Such amounts shall be further limited by Qualified Health Insurance Premiums paid on behalf of the Retired Participant, his spouse and dependents from other retirement plans qualified under Section 401(a) of the Code. The Retired Participant shall provide the Board of Trustees with information regarding such payments by other retired plans so that payments pursuant to this Section may be properly limited. No such Qualified Health Insurance Premiums shall be paid after the Retired Participant's death.

- (2) A Retired Participant shall make such election by providing notice to the Board of Trustees in accordance with subsection (c)(4) of this Section 18½-33 no later than thirty (30) days prior to the effective date of the election. Such election is effective for a calendar year and separate elections must be made for subsequent calendar years. The Board of Trustees may require the Retired Participant to provide any information they deem necessary to properly administer such election.
- (3) For the purposes of applying the provisions of this Section 18 ½ -33(t), the following terms have the meanings indicated:
 - a. "Retired Participant" means a Participant who, by reason of Permanent Disability or after attainment of Normal Retirement Age separates from employment with the City as a Participant.
 - b. "Qualified Health Insurance Premiums" means premiums for coverage for the Retired Participant, his spouse and dependents (as defined in Section 152 of the Code) by an accident or health plan, or qualified long-term care insurance contract (as defined in Section 7702B(b) of the Code).
- (4) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (5) This Subsection 18½-33(p) is effective on and after January 1, 1993.

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

Comment [TL119]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 7809, §§12, 13, 9-15-88; Ord. No. 8618, §1, 5-15-97; Ord. No. 9114, §§12-14, 1-3-02; Ord. No. 9608, §9-10, 7-20-06)

Sec. 18½-34 Certain Retirees.

A Retiree under a Prior Plan who retired from employment with the City on or after January 1, 1987, and prior to April 1, 1987, shall, in addition to his earned benefit payable under the Prior Plan, be entitled to receive from this Plan an amount equal to all of such Retiree's mandatory contributions to the

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prior Plan with interest on the Retiree’s mandatory contributions to the Prior Plan from July 1, 1973, through December 31, 1985, at the rate of two (2) per cent per annum, compounded annually, which amount shall be payable to such Retiree in one (1) lump sum as soon as practicable after April 1, 1987.

Sec. 18½-35 Disability Benefits.

(a) *Participation in Long-Term Disability Insurance Program.* Each Participant shall participate in the City’s long-term disability program subject to the provisions thereunder, and shall be eligible to receive benefits in accordance with the provisions of the program. Benefits payable under this program shall commence after 180 days after the Participant is determined to be disabled under the program and will continue until the Participant attains age sixty-five (65), as otherwise prescribed herein.

Comment [TL120]: Please do not type any text in this area.

(b) *Purchase of Disability Insurance Policy.* The City must approve the purchase of a policy of insurance to provide disability benefits under the program, and shall be purchased upon the basis of competitive bidding. The cost of the insurance policy shall be charged to the Fund under Trust II. The Board of Trustees shall administer the program in accordance with the provisions of the insurance policy. All provisions of this Section 18½-35 shall be subject to the insurance carrier’s exclusions and limitations, subject to the Board’s approval, and any coverage and benefit determinations shall be as set forth in the insurance policy. The City shall have the right to amend or terminate the insurance policy and to purchase other insurance to provide disability benefits. Notice of any amendment or termination of the program shall be given in writing to each Participant.

Comment [TL121]: Please do not type any text in this area.

(c) *Minimum Disability Benefits.* Disability benefits for Participants under this Section 18 ½-35 shall not be less than the level established for such benefits under Section 5.3 of the Charter of the City of Kirkwood.

(Ord. No. 7667, §23, 6-18-87)

Sec. 18½-36 Group Life Insurance Benefits.

(a) *Participation in Group Life Insurance Program.* Each Participant shall participate in the City’s group life insurance program and death benefits shall be paid to the beneficiary under the group life insurance program as designated by the Participant.

Comment [TL122]: Please do not type any text in this area.

(b) *Purchase of Group Life Insurance Policy.* The City must approve the purchase of a group life insurance policy to provide death benefits under the group life insurance program. The cost of said insurance shall be charged to the Fund under Trust II and shall be purchased upon the basis of competitive bidding. All provisions of the program shall be subject to the insurance carrier’s exclusions and limitations. Any coverage and benefit determinations shall be as set forth in the group life insurance policy. The City shall have the right to amend or terminate the insurance policy and to purchase other insurance to provide death benefits. Notice of any amendment or termination of the program shall be given to each Participant.

Comment [TL123]: Please do not type any text in this area.

(Ord. No. 7667, §23, 6-18-87)

Sec. 18½-37 Benefit Increases.

(a) *Continuation and Increase of Benefits under Prior Plans.* Benefits under the Prior Plans for Retirees, terminated vested Participants, Participants receiving disability benefits who were determined to be disabled and their spouses of such Participants shall receive benefits as follows:

Comment [TL124]: Please do not type any text in this area.

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- (1) After April 1, 1987, Retirees, except as provided in Section 18½-34, under the Prior Plans shall continue to receive no less than the monthly benefit they are receiving under the applicable Prior Plan.
- (2) After April 1, 1987, terminated vested Participants and their spouses, if applicable, under the applicable Prior Plan shall be paid retirement benefits in accordance with the provisions of the applicable Prior Plan.
- (3) After April 1, 1987, Participants receiving disability benefits under the applicable Prior Plans and their spouses, if applicable, shall be paid benefits in accordance with the applicable Prior Plan.

(b) Increased Benefits to Current and Deferred Vested Retirees

Comment [TL125]: Please do not type any text in this area.

- (1) All benefit payments made after March 31, 1988, to Retirees who were receiving benefits on or before December 31, 1977, shall receive an increase in their current monthly benefit so that their total monthly benefit shall be equal to one-half of the proficiency rate of pay of a Kirkwood police officer in effect on March 31, 1988. (This monthly benefit shall not be affected by any future adjustments to the proficiency rate of pay of a Kirkwood police officer).
- (2) Retirees and terminated vested Participants and spouses, if applicable, under the defined benefit plan established under Ordinance No. 6199, shall be paid retirement benefits in accordance with the provisions of the prior Plan with a rank accrual amount of thirty-eight dollars and fifty cents (\$38.50).
- (3) Each monthly benefit payment made after September 30, 1991, to a Retiree who was receiving benefits on or before April 1, 1987, shall be increased by an amount equal to six (6) per cent of the amount of the monthly benefit being paid to such Retiree as of September 30, 1991.
- (4) Each monthly benefit payment made after June 30, 1995, to a Retiree who was receiving benefits on or before April 1, 1987, shall be increased by an amount equal to six percent (6%) of the amount of the monthly benefit being paid to such Retiree as of June 30, 1995.
- (5) Each monthly benefit payment made after October 31, 1997, to a Retiree who was receiving benefits on or before April 1, 1987, shall be increased by an amount equal to 5.5 percent (5.5%) of the amount of the monthly benefit being paid to such Retiree as of July 1, 1997, and there shall be a lump-sum retroactive payment equivalent to such monthly increase for the period from July 1, 1997 to October 31, 1997.

Comment [TL126]: Please do not type any text in this area.

(c) Allocation/Distribution of Excess Funds. At the request of at least five members of the Board of Trustees, the City Council, in its discretion, may from time to time approve an allocation of a specific dollar amount from Trust II of the Fund, and the City Council shall have final authority regarding such allocation; provided, however, that the approval of a request for allocation shall not be unreasonably withheld by the City Council, and provided further that the following conditions shall be met with respect to the requested allocation:

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- (1) The Board shall recommend to the City Council allocation of a specific dollar amount, which recommendation shall be supported by an evaluation which reflects the solvency of Trust II of the Fund to accommodate such recommendation. Such evaluation shall be prepared and attested to by a certified actuary.
- (2) Except as otherwise provided herein, allocation of the amount approved by the City Council under this Section 18½-37(c) shall be made to (i) current Participants who are active Participants at the time the City Council approves such amount, (ii) Former Participants who were Participants in the Plan on April 1, 1987, and (iii) those individuals who were Participants in the Plan on April 1, 1987 and who have received distribution of their entire vested interest in the Plan in the form of a lump sum or an annuity (all persons listed in (i), (ii) and (iii) of this subparagraph 2 are hereafter referred to in this Section 18½-37(c) jointly as "Individuals" and singly as "Individual"). Notwithstanding anything in this Section 18½-37(c) to the contrary, no allocation shall be made hereunder after June 30, 2010 with respect to an Individual listed in (ii) and (iii) of this subparagraph (2) if such Individual dies before the City Council approves an amount under this Section 18½-37(c).
- (3) Allocation of the approved dollar amount shall be made in accordance with the following formula:

$$\frac{A + B}{C + D} \times E = \text{pro rata share of allocation}$$

For purposes of the formula, A equals the value of the Individual's Account as of April 1, 1987; B equals the value of all contributions made to the Individual's Account on and after April 1, 1987; C equals the value of all Individuals' Accounts as of April 1, 1987; D equals the value of all contributions made to the Individuals' Accounts on and after April 1, 1987; and E equals the specific dollar amount approved by the City Council to be distributed. Only Accounts and post March 31, 1987 contributions for those Individuals who are entitled to allocations under this Section 18½-37(c) shall be considered for purposes of this calculation.

- (4) Each Individual's pro rata share of the allocation shall be credited to his Current Account and shall be held in such Current Account until such Individual becomes entitled to a distribution of his vested interest in the Plan. Where no Current Account is maintained for an Individual, the Board shall forward, by certified mail, return receipt requested, to such Individual's last known address notice of his entitlement to an additional benefit from the Plan. The Board shall distribute to such Individual his pro rata share of the allocation in one lump sum upon verification of such Individual's identity and address.
- (5) If an Individual is deceased at such time as an allocated amount is to be distributed, such distribution shall be made to the Individual's Beneficiary, upon verification of such Individual's death, and the identity and address of his Beneficiary. A distribution shall only be made to a Beneficiary of an Individual if such Individual is an active Participant and living at the time the City Council approves the allocation under this Section 18½-37(c).

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- (6) No distribution authorized herein may be used for any purpose other than the provision of benefits for Individuals and their Beneficiaries as provided herein.

All allocations of Participants approved pursuant to this Subsection 18½-37(c) shall be allocated to Current Accounts or distributed as a single sum payment to Former Participants or Beneficiaries who do not have Current Accounts under the Plan.

(Ord. No. 7667, §23, 6-18-87; Ord. No. 7778, §1, 7-7-88; Ord. No. 8096, §1, 12-19-91; Ord. No. 8431, §1, 6-15-95; Ord. No. 8656, §1, 10-16-97; Ord. No. 9962, §8, 10-7-10)

Sec. 18½-38 Violations and Penalties.

Any person who shall knowingly or willfully make any false statement in applying for or securing a benefit under the Plan for such person or any other person, or shall knowingly falsify any record or knowingly permit any record to be falsified, for the purpose of applying for or securing a benefit for such person or any other person under the Plan, shall be guilty of a misdemeanor, and upon conviction thereof be assessed a fine not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (Ord. No. 7667, §23, 6-18-87)

Sec. 18½-39 Tax for Fund on Real Estate and Tangible Personal Property as City Contribution.

There be and hereby is levied on all real estate and tangible personal property, subject to taxation in the City of Kirkwood for the year commencing January 1, 1978, for the Fund a total tax of twenty-five cents (\$0.25) per one hundred dollars (\$100.00) of assessed valuation. Said tax rate may be changed from time to time, provided that any changes therein must be made consistent with the applicable laws of the State of Missouri. Such changes in tax rate may be made by any ordinance generally setting the tax rate for the City government and need not be made by specific amendment to this article. (Ord. No. 6199, §7, 11-3-77; Ord. No. 7627, §32, 3-5-87; Ord. No. 7667, §22, 6-18-87)

(Ord. No. 8660, §1, 10-16-97; Ord. No. 8967, §1, 10-5-00; Ord. No. 9806, §1, 11-6-08)