

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Human Resources

AGENDA DATE: February 1, 2011

CONTACT PERSON(S) NAME(S)
AND PHONE NUMBER(S): Linda Ball Thomas, 541-4102, Irene Y. Morales, 541-4448

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve a resolution that the City Manager be authorized to sign the differed compensation 401(a) City of El Paso Profit Sharing Plan document.

BACKGROUND / DISCUSSION:

The 401(a) plan document establishes a deferred compensation plan for eligible employees as defined under Internal Revenue Service rules and regulations. The previous 401(a) plan document was restated in 2005.

The 401(a) Plan document was updated to comply with current IRS regulations and administrative practices. Some specific updates include:

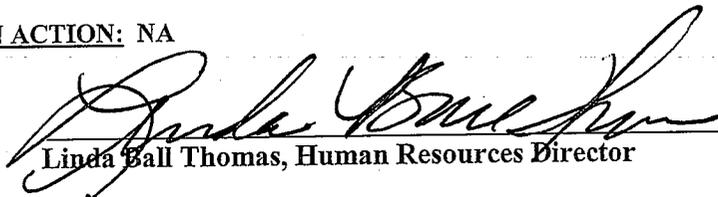
- Changes to and additions to the definitions for compensation, trust, trustee, and valuation date.
- Updates for 401(a)(9) of the IRS code relating to the required begin date of distributions and Section 414(u) relating to qualified military service.
- Benefit payment provisions have been expanded to provide more detail and update rollover provisions for law changes.
- Removal of the trust agreement to include this in a separate document outside of the plan document.
- Removal of ERISA references and other provisions not applicable to governmental plans.
- Addition of provision for the settlement of a dispute.

PRIOR COUNCIL ACTION: Council previously restated the 401(a) plan document in 2005.

AMOUNT AND SOURCE OF FUNDING: NA

BOARD / COMMISSION ACTION: NA

DEPARTMENT HEAD:


Linda Ball Thomas, Human Resources Director

RESOLUTION

WHEREAS, pursuant to Section 401(a) of the Internal Revenue Code, as amended, employers may create a tax deferred compensation plan whereby the employer may make tax deferred contributions to the deferred compensation plan for the benefit of its employees (a “401(a) Plan”);

WHEREAS, the City of El Paso (the “City”) created a 401(a) Plan in 2005 for the purpose of recruiting of qualified individuals, in remaining a competitive employer in the market place, and in providing a retirement vehicle for eligible employees; and

WHEREAS, the City desires to amend and restate the City’s 401(a) Plan in order to comply with current federal law.

NOW, THEREFORE, BE IT RESOLVED:

1. **THAT** the City hereby approves that certain Amended and Restated City of El Paso Profit Sharing Plan and Trust, effective as of January 1, 2011; and

2. **THAT** the City Manager be authorized to sign the Plan Documents and any other documents necessary to effectuate this approval.

ADOPTED this _____ day of _____, 2011.

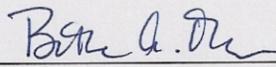
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

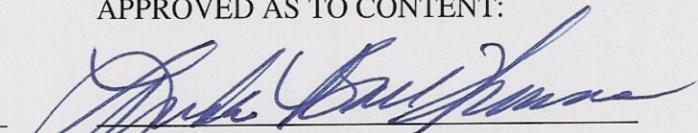
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Linda Ball Thomas, Director
Human Resources Department

CITY OF EL PASO
PROFIT SHARING PLAN

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PROFIT SHARING PLAN

AMENDED AND RESTATED AS OF JANUARY 1, 2011

This is the Plan Document for the City of El Paso Profit Sharing Plan (herein referred to as the "Plan") amended and restated as of January 1, 2011, covering the eligible employees of the City of El Paso.

ARTICLE I. GENERAL PROVISIONS**Section 1-1. Effective Date**

The effective date of this Plan is September 1, 2004. The effective date of this amendment and restatement of the Plan is January 1, 2011.

Section 1-2. Definitions

The following words and phrases as used herein shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Account" shall mean one of the Accounts maintained to record the interest of a Participant in the Plan.

(2) "Account Balance" shall mean the balance of Participant's Account or Accounts.

(3) "Alternate Payee" is a spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the vested sum of the Participant's Account Balance under the Plan.

(4) "Anniversary Date" of the Plan shall be August 31 of each year.

(5) "Beneficiary" shall mean the person designated pursuant to Section 6-3.

(6) "Code" shall mean the Internal Revenue Code of 1986 and amendments thereto.

(7) "Compensation" with respect to any Participant means such Participant's wages as defined in Section 3401(a) of the Code and all other payments of compensation by the Employer (in the course of the Employer's trade or business) for a Plan Year for which the Employer is required to furnish

the Participant a written statement under Sections 6041(d), 6051(a)(3) or 6052 of the Code plus amounts that would be paid to the Employee during the year but for the Employee's election, under an eligible deferred compensation plan described in Section 457(b) of the Code, a cafeteria plan under Section 125 of the Code, or a qualified transportation fringe benefit plan under Section 132(f) of the Code. Except as expressly provided in the preceding sentence, Compensation shall not include contributions by the Employer to this or any other plan or plans for the benefit of its employees, fringe benefits, or amounts identified by the employer as expense allowances of reimbursements, regardless of whether such amounts are treated as wages under the Code.

Compensation must be determined without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services provided (such as the exception for agricultural labor in Section 3401(a)(2) of the Code). In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Employee taken into account under the Plan shall not exceed \$200,000, as adjusted by the Commissioner 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 period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

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

(9) "Eligible Employee" shall mean an employee who has met the eligibility requirements of Section 2-1.

(10) "Eligible Retirement Plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or a qualified trust described in Section 401(a) of the Code, an eligible plan described in Section 457(b) of the Code, which is maintained by a state, political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective with respect to distributions made after 2007, an Eligible Retirement Plan shall also mean a Roth IRA described in Section 408A of the Code that accepts a distributee's Eligible Rollover Distribution. However, for distributions made on or after January 1,

2010the case of a designated Beneficiary who is not the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(11) "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of a distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; 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 any distribution made upon hardship to the Employee.

(12) "Employee" shall mean an individual who is employed by the Employer or a Leased Employee.

(13) "Employer" shall mean the City of El Paso.

(14) "Employment Commencement Date" of an Employee shall be the first day on which he is paid, or entitled to be paid, for the performance of duties for the Employer.

(15) "Investment Medium" means any fund, contract, obligation, or other mode of investment to which a Participant may direct the investment of the assets of his Account.

(16) "Limitation Year" shall mean the Plan Year.

(17) "Normal Retirement Age" shall mean age 65. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or age 65.

(18) "Normal Retirement Date" of a Participant shall be the Anniversary Date of this Plan coincident with or next following the Participant's attainment of Normal Retirement Age.

(19) "Participant" shall mean any Employee of the Employer who has met the eligibility and participation requirements of the Plan.

(20) "Participant's Required Beginning Date" shall mean the required date on which a Participant must begin distribution from the Plan as described in Section 401(a)(9) of the code and Section 6-8 (4)(E) of this document.

(21) "Plan" shall mean the profit sharing plan set forth in, and given effect by, this instrument and all amendments thereto.

(22) "Plan Administrator" or "Administrator" shall mean the Employer or the person or entity designated by the procedure set forth in Section 7-1.

(23) "Plan Year" shall mean the calendar year; provided that the first calendar year shall be the four month period beginning September 1, 2004 and ending December 31, 2004.

(24) "Qualified Domestic Relations Order" shall mean a Domestic Relations Order which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under the Plan, does not alter the amount or form of benefits, and clearly specifies the following information: (a) the name and last known mailing address (if any) of the Participant and the name and mailing address of each Alternate Payee covered by the order, (b) the amount or percentage of the Participant's benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined, (c) the number of payments or the period to which the order applies, and (d) each plan to which the order relates.

(25) "Taxable Year" shall mean a person's tax year for federal income tax purposes.

(26) "Trust" means the legal entity created by the trust agreement between the employer and the Trustee, fixing the rights responsibilities, and liabilities with respect to controlling and managing the Trust Fund for purposes of the Plan.

(27) "Trustee" means the trustee or any successor trustee or trustees hereafter designated by the Employer and named in the trust agreement or any amendment thereto.

(28) "Trust Fund" as of a particular date shall mean the total fair market value of the funds and property held by the Trustee under this Plan after all adjustments for income and expenses, profit or loss, and benefits paid or due to be paid.

(29) "Valuation Date" means the close of each business day.

Section 1-3. Gender

Whenever appropriate herein, the masculine gender shall include the feminine and the singular may include the plural, and vice versa.

ARTICLE II. PARTICIPATION IN THE PLAN

Section 2-1. Eligibility

Each Employee who has been designated by the City Manager or designated by action of the Mayor and City Council as an Eligible Employee, including the City Manager, shall be eligible to participate in the Plan.

Section 2-2. Qualification

An Employee who meets the eligibility requirement of Section 2.1 shall be a Participant as of the later of his Employment Commencement Date or the effective date of his designation as an Eligible Employee.

Section 2-3. Reemployment

A Participant in the Plan who terminated employment and who subsequently is reemployed as an Eligible Employee shall again become a Participant in the Plan as though his employment had been uninterrupted.

Section 2-4. Time of Participation

A Participant who ceases to be an Eligible Employee shall cease to earn benefits under the Plan as of the date he ceases to be an Eligible Employee.

ARTICLE III. CONTRIBUTIONS TO THE PLAN

Section 3-1. Employer Contributions

Subject to its power to amend or terminate this Plan as herein set forth, the Employer shall contribute to the Plan for each participant for each Plan Year an amount determined by the Employer with respect to each Participant. Such contributions shall be made at the time determined by the Employer with respect to such Participant, which may be based on the Employer's payroll period, monthly, quarterly or annually. The total contribution made for any Plan for any Participant shall not exceed the maximum annual contribution amount permitted under Section 457(b)(2) of the Code.

Employer contributions will not be discontinued or decreased because of a Participant's attainment of any age.

Section 3-2. Employee Contributions

A Participant may not make any employee contributions to the Plan.

ARTICLE IV. PARTICIPANT ACCOUNTS

Section 4-1. Allocation of Employer Contributions

Subject to the limitations described below, the Plan Administrator shall, as soon as administratively practicable after a contribution is made on behalf of a Participant allocate such contribution to the Account of such Participant.

Section 4-2. Limitation on Allocations

Notwithstanding any other provisions of the Plan, contributions and other additions with respect to a Participant may not exceed the limitation of Section 415(c) of the Code. Contributions and other additions exceed such limitation if, when expressed as an annual addition (within the meaning of Section 415(c)(2) of the Code) to the Participant's Account, such annual addition is greater than the lesser of (i) \$40,000 (as adjusted by the Commissioner for cost of living increases under Section 415(d) of the Code), or (ii) 100% of the Participant's Compensation. For any short Limitation Year, the Dollar Limitation in (i) above shall be reduced by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is 12. Annual Addition shall mean, for each Limitation Year, the sum of:

- (1) Employer contributions,
- (2) Employee Contributions,
- (3) Forfeitures,
- (4) Amounts allocated to an individual medical account, as defined in Section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to postretirement 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 Employer, and
- (5) Allocations under a simplified employee pension, as defined in Section 408(k) of the Code.

For purposes of this Section 4.2 a Participant's Compensation means his Compensation as defined in Section 1-2, but shall include (A) any post-severance regular compensation that would have been paid had the Participant not terminated employment (such as overtime, shift differential, commission, bonuses or other similar compensation) paid by the later of 2-1/2 months after severance from employment or the end of the Limitation Year that includes the date of severance from employment,

and (B) payments for bona fide sick, vacation, or other leave that the Employee would have been able to use if employment continued, and payments from a nonqualified deferred compensation plan that are includable in income and that would have been paid at the same time had employment continued, that are made by the later of 2-1/2 months after severance from employment or the end of the Limitation Year that includes the date of severance from employment.

If, as a result of the allocation of forfeitures, a reasonable error in estimating a Participant's annual Compensation that may be made with respect to any individual under limits of Section 415, or under other limited facts and circumstances as permitted by the Commissioner of the Internal Revenue Service, the Employer shall adjust the amount of the Annual Addition for the Participant so that it does not exceed the limitations in this Section or in the manner permitted by the Commissioner.

Section 4-3. Participant Directed Accounts

The Trustee may maintain separate accounts for each Participant's interest in each Investment Medium.

If such separate accounts are not maintained, all contributions and earnings thereon for an Investment Medium may be invested in one commingled account for the benefit of all Participants. However, in order that the interest of each Participant may be accurately determined and computed, separate bookkeeping records shall be maintained for each Participant with respect to each Investment Medium and each Participant's Accounts shall be made up of subaccounts reflecting his investment elections pursuant to Section 4-4.

The accounts established for a Participant in accordance with the paragraphs above shall represent the Participant's individual interest. All contributions shall be credited to Participants' Accounts as set forth in this Article IV.

Section 4-4. Investments

The Trustee shall invest all contributions deposited in the Trust Fund and income thereon in such Investment Media as each Participant may select in accordance with this Section.

In accordance with rules established by the Plan, each Participant shall have the right to designate the Investment Medium or Media in which new contributions allocated to such Participant and prior balances are invested. Any designation or change in designation of Investment Media shall be made in such manner and be subject to such frequency rules limitations as the Plan shall from time to time specify. The designation or change shall become effective on the date specified by the Plan Administrator on or after which it is received. Any election by a Participant shall, on its effective date, cancel any prior election. The right to elect among Investment Media forth herein shall be the sole investment power granted to Participants. The Plan Administrator may limit

the right of a Participant to increase or decrease contributions to a particular Investment Medium, to transfer amounts to or from a particular Investment Medium or to transfer amounts between particular Investment Media, if such limitation is required by the rules establishing an Investment Medium or necessary to facilitate administration of the Plan. The Plan Administrator may promulgate separate accounting and administrative rules to facilitate the establishment or maintenance of an Investment Medium.

The Plan Administrator, with approval of the Plan Sponsor, shall designate the investment Medium or Media in which the Account of a Participant who does not make an affirmative investment election is invested.

Section 4-5. Valuation of Each Participant's Account

The Accounts will be valued on a daily basis. Each Participant's Account will reflect any change in market value of the assets.

Section 4-6. Participants' Vested Interests

Each Participant shall at all times have a nonforfeitable vested interest in his Accounts.

ARTICLE V. LOANS TO PARTICIPANTS

Section 5-1. Loans

Upon application of a Participant (hereinafter referred to as "Participant") who is a party in interest to the Plan, the Plan Administrator may, in accordance with uniform, nondiscriminatory policies, direct the Trustee to make a loan to the Participant. In no event shall the outstanding balance of loans to the Participant under this Plan and any other qualified plans of the Employer exceed the lesser of (i) \$50,000, reduced by the highest outstanding loan balance during the one-year period immediately preceding the date the loan is made; or (ii) one-half of the Participant's vested Account Balance under the Plan. Fifty percent of the Participant's interest in the Trust will be considered as security for such loans. All such loans shall comply with the following terms and conditions:

- (1) Each application for a loan must be in writing to the Trustee and must be filed at least 15 days in advance of the time funds are required.
- (2) A Participant is only allowed one outstanding loan taken for any reason other than the purchase of a principal residence and one outstanding loan taken for the purchase of a principal residence at any one point in time.
- (3) The loan amount shall be taken from the Participant's Account on a pro-rata basis across all investments and all contribution sources.

(4) Any fees associated with the election to take a loan will be paid by the participant requesting the loan.

(5) Loans will be repaid through payroll deductions, which shall be made with each payroll deduction period. Loan repayments will be invested in accordance with the participant's current investment elections.

(6) All loans shall bear a rate of interest as determined in the loan policy agreed to by the Plan and implemented by the Plan Administrator. The rate of interest shall be commensurate with commercial rates for loans of similar types.

(7) The specific period for repayment shall be determined by mutual agreement between the Plan Administrator and the borrower, but in no event shall the period exceed five years, except for loans made in connection with the purchase of a principal residence of a Participant. The loan must be amortized in equal payments made not less frequently than quarterly over the term of the loan.

(8) Each loan shall be evidenced by the borrower's promissory note for the amount of the loan payable to the order of the Trust and secured by collateral as described above and any other collateral the Trustee may require.

(9) No distribution shall be made to any Participant or former Participant or Beneficiary unless and until all unpaid loans to the Participant have been paid in full. If a Participant fails to repay the loan in full, the Participant's Account will be charged with the principal and interest outstanding when distribution is made from the Participant's Participant Account upon severance of employment, death, disability or retirement.

ARTICLE VI. BENEFIT PAYMENTS

Section 6-1. Eligibility for Benefit Payment

Participants (or their Beneficiaries, in the case of the Participant's death) are eligible for distribution of benefits upon severance of employment on account of retirement, death, disability, or any other reason.

Section 6-2. Retirement

A Participant shall be entitled to his vested Account Balance upon his retirement on or after his Normal Retirement Date. Subject to Section 6-7, such distribution shall be made, or shall begin, as soon as administratively practicable following the Participant's completion of an application for distribution.

Section 6-3. Death

A Participant's Account Balance (reduced by any security interest held by the Plan by reason of a loan outstanding to such Participant) shall be payable in full to the Participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse has consented in writing before a notary public to a designated Beneficiary, to such designated Beneficiary). Subject to Section 6-7, such death benefit shall be as soon as practicable following the Participant's death in an amount equal to the Account Balance as of the Valuation Date immediately preceding the date of distribution.

Each Participant and his spouse shall have the right to change the Beneficiary or Beneficiaries at any time, and the last designation of a Beneficiary prior to the Participant's death shall be final and conclusive. If there is no surviving spouse and no written instrument designating a Beneficiary or Beneficiaries has been filed with the Plan Administrator, or if no designated Beneficiary shall survive the deceased Participant or ex-Participant, then all such amounts shall be paid to the following persons, with priority in the order named where living:

- (1) The Participant's children and children of deceased children, per stirpes;
- (2) The Participant's parents;
- (3) The Participant's brothers and sisters;
- (4) The executor or administrator of the estate of the Participant, or the heirs at law of such Participant, upon presentation of satisfactory evidence of such standing to the Plan Administrator.

Section 6-4. Severance from Employment

If a Participant either voluntarily resigns, terminates employment on account of disability, or is discharged from the employment of the Employer for any reason other than death or retirement at or subsequent to his Normal Retirement Date, then he shall be entitled to receive a distribution of his Account Balance determined as of the Valuation Date immediately preceding the date of distribution.

A Participant shall not be considered to have severed his employment, and shall continue to be considered a Participant under this Plan, during any period in which he is absent from work but directly or indirectly entitled to payment for reasons other than the performance of duties (e.g., vacation, sickness or disability), or because of authorized leave of absence, temporary layoff or similar good cause as approved by the Employer in a nondiscriminatory manner, provided the Participant returns to active service of the Employer promptly upon termination of such cause or in the case of a leave of absences on account of "qualified military service" as defined in Section 414(a) of the Code, within the period during which his reemployment rights are protected by law.

Section 6-5. Form of Distribution Payments

All benefits shall be paid in the form of a cash lump sum.

Section 6-6. Cashouts

If a Participant's vested Account Balance attributable to Employer contributions is \$1,000 or less at the time he terminates employment or any time thereafter and the Participant does not affirmatively elect a cash distribution or a "direct rollover" in accordance with the rules of Section 6.8, his entire Account Balance shall be paid to him in a cash lump sum without his consent as soon as administratively feasible following such termination or calculation.

If a Participant's vested Account Balance attributable to Employer contributions exceeds \$1,000 and is less than or equal to \$5,000 at the time he terminates employment and the Participant does not affirmatively elect a cash distribution or a "direct rollover" in accordance with the rules of Section 6.7, the Plan Administrator shall direct the Trustee to make a direct rollover of his Accounts into an individual retirement account selected by the Plan Administrator. If the participant does not have a vested interest in his Accounts, he shall be deemed to have received a distribution of his entire vested Account Balance.

If a Participant's vested Account Balance attributable to Employer contributions exceeds \$5,000, at the time he terminates employment and the Participant does not affirmatively elect a cash distribution or a "direct rollover" in accordance with the rules of Section 6.8, the Plan Administrator shall continue to administer the account until the Participant requests a distribution or a distribution from the Plan is required under Section 6-8 of this document.

Section 6-7. Rollovers from the Plan

Notwithstanding any provision of the Plan the contrary, a Participant shall be permitted to elect to have any Eligible Rollover Distribution rolled directly to an Eligible Retirement Plan specified by the Participant. The Participant shall, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the Eligible Retirement Plan to receive the rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.

The rollover election also applies to a Participant's surviving spouse or a spouse or a former spouse who is the alternate payee under a Qualified Domestic Relations Order as defined in Code Section 414(p). Effective for distributions made on or after January 1, 2010, this election also applies to a non-spouse Beneficiary, provided the direct rollover is made by a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity and such direct rollover is made in accordance

with Section 402(c)(11)(A) of the Code, applicable regulations, and other guidance issued by the Internal Revenue Service.

The Plan Administrator shall provide each recipient eligible to receive a distribution of his Account Balance that is an Eligible Rollover Distribution with the notice required under Section 402(f) of the Code, not less than 30 nor more than 90 days prior to the date of payment. The distribution may commence less than 30 days after the notice is given, provided that:

(1) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution or elect a direct rollover, and

(2) the Participant, after receiving the notice, affirmatively elects to waive such 30 day notice and receive a distribution or make a direct rollover in less than 30 days.

Section 6-8. Section 401(a)(9) Minimum Distribution Rules

The provisions of this Section will take precedence over and supersede any inconsistent provisions of the Plan. This Section shall be construed in a manner necessary to satisfy the minimum distribution rules of the Code. Except for superseding inconsistent provisions and addressing any matter related to minimum required distributions not otherwise addressed in the Plan, the distribution provisions of the remainder of Article VI of the Plan shall control effective as of September 1, 2004.

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.

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.

(1) **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:

(A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated

beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) 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.

(D) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6-9, other than Section 6-9(1)(A), will apply as if the surviving spouse were the Participant.

For purposes of this Section 6-8 unless Section 6-8(1)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 6-8(1) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6-8(1)(A). 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 6-8(1)(A), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with paragraphs (2) and (3) of this Section 6-8.

(2) Required Minimum Distributions During Participant's Lifetime.

(A) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of (A): 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 (B) 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.

(B) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 6-8(2) beginning with the first distribution

calendar year and up to and including the distribution calendar year that included the Participant's date of death.

(3) Required Minimum Distributions After Participant's Death.

(A) 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:

(a) 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.

(b) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(c) If the Participant's surviving spouse is not the Participant's 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.

(B) 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 Section 6-8(3)(A).

(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 Section 6-8 (1)(A), this Section 6-8(3)(A) will apply as if the surviving spouse were the Participant.

(4) Definitions. Notwithstanding the general definition provisions of the Plan, the following terms, when used in the section, shall have the meaning set forth below.

(A) Designated beneficiary. The individual who is designated as the beneficiary under the general provisions of the Plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4, of the Treasury regulations.

(B) 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 6-8(1). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(C) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(D) 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 last Valuation Date and decreased by distributions made in the valuation calendar year after the last 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.

(E) Required Beginning Date. The required beginning date of a Participant is April 1 of the calendar year following the calendar year in which the Participant attains age 70 ½.

Section 6-9. Payment to Minors and Incompetents

Whenever any person entitled to payments under this Plan shall be a minor or under other legal disability or in the sole judgment of the Plan Administrator shall otherwise be unable to apply such payments to his own best interest and advantage (as in the case of illness, whether mental or physical, or where the person not under legal disability is unable to preserve his estate for his own best interest), the Plan Administrator may, in the exercise of his or its discretion, direct all or any portion of such payments to be made to or for the benefit of such person in any way the Plan Administrator shall deem advisable, or to any third person who, in the judgment of the Plan Administrator, will apply such payments for the benefit of the person entitled thereto. The decision of the Plan Administrator will, in each case, be final and binding upon all persons and, except in the case of direct expenditures made by the Trustee,

the Trustee shall not be obligated to see to the proper allocation or expenditure of any payments so made. Any payment made pursuant to the power herein conferred upon the Plan Administrator shall operate as a complete discharge of the obligations of the Trustee.

If the Plan Administrator deems it advisable, he or it may withhold approval of payment of all or any part of the amounts due such disabled person until a representative of such person competent to receive payment in his behalf shall have been appointed pursuant to applicable law.

Section 6-10. Restriction on Alienation

Except as provided in 6-11 to the contrary, with respect to Qualified Domestic Relations Orders, neither a Participant nor a Beneficiary may anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee will not recognize any such anticipation, assignment or alienation. Furthermore, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process with the following exception:

A Participant's benefits may be reduced if a court order or requirement to pay arise from: (1) a judgment of conviction for a crime involving the Plan, or (2) a civil judgment (or consent order or decree) that is entered by a court in an action brought in connection with a breach (or alleged breach) of fiduciary duty. The court order, judgment, decree or settlement agreement must specifically require that all or part of the amount to be paid to the Plan be offset against the Participant's Plan benefits.

Section 6-11. Bankruptcy and Divorce

Any interest or right of a Participant, his spouse or Beneficiary under this Plan shall not be subject to being reached or applied by any trustee in bankruptcy, receiver, assignee for the benefit of creditors, spouse or divorced spouse of any such Participant or Beneficiary, nor by or under any agreement or decree of separation or divorce, voluntarily or involuntarily, of any Participant or Beneficiary.

Notwithstanding the foregoing, if the Plan Administrator receives a Domestic Relations Order from a court of competent jurisdiction, the Plan Administrator shall promptly notify the affected Participant and Alternate Payee of the receipt of such order and of the Plan Administrator's procedure, which shall be in writing, for determining whether or not the order would be a Qualified Domestic Relations Order and within a reasonable period after receipt of the order, determine whether the order is qualified and notify the Participant and Alternate Payee of the determination. The notice of the Plan Administrator's determination will be sent by certified mail, return receipt requested, to the addresses specified in the order or, if the order fails to specify an address, to the last address of the Participant and the Alternate Payee known to the Plan Administrator, or if the Alternate Payee has designated in writing a representative

to receive copies of notices with respect to a Domestic Relations Order, to the representative.

Upon receipt of the order, the Plan Administrator shall segregate in a separate Account in the Trust the amounts that would have to be payable to the Alternate Payee until the issue of whether the qualification of the order is determined. Segregation is not required for amounts that would not otherwise be paid during the determination period.

If the order (or modification thereof) is determined to be a Qualified Domestic Relations Order within 18 months after the deferral of benefits, the Plan Administrator shall direct the Trustee to pay the segregated amounts to the persons entitled to receive them. If the Plan Administrator determines that the order is not qualified or, after the 18-month period has expired, has not resolved the issue of whether the order is qualified, the segregated amounts shall be returned to the Participant's Account under the Plan and shall be paid to the persons who would have received the amounts if the order had not been issued.

Any determination that an order is qualified after the expiration of the 18-month period is to be applied prospectively. Thus, if the Plan Administrator determines that the order is qualified after the 18-month period, the Plan is not liable for payments to the Alternate Payee for the period before the order is determined to be qualified.

Notwithstanding anything contained herein to the contrary, if the Plan Administrator determines that the order is a Qualified Domestic Relations Order, the Plan Administrator may, but shall not be required to, make a distribution to the Alternate Payee prior to the earliest retirement age as defined in Section 414(p) of the Code.

Section 6-12. Location of Participant or Beneficiary Unknown

In the event that all, or any portion of the distribution payable to a Participant or his Beneficiary hereunder shall, at the expiration of five years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his Beneficiary, such amount shall be forfeited and used to reduce Employer contributions. If a benefit is forfeited because the Participant or Beneficiary cannot be found, such benefit will be reinstated if a claim is made by the Participant or Beneficiary.

ARTICLE VII. THE PLAN ADMINISTRATOR

Section 7-1. Designation

The Plan Administrator shall be the Employer, or such person or entity as the Employer shall designate. Any person or entity so designated shall signify his acceptance by filing a written acceptance with the Employer.

Section 7-2. Allocation and Delegation of Responsibilities

The Plan Administrator may engage agents to assist him in carrying out his functions hereunder.

If there is a committee, its members are expressly authorized to allocate fiduciary responsibilities, other than Trustee responsibilities, to named persons or parties, providing such allocation or delegation is evidenced and accepted in writing, an executed copy of which must be retained by the Plan Administrator.

The Plan Administrator may appoint an investment manager (as that term is defined in the Employee Retirement Income Security Act of 1974, as amended (ERISA) and delegate to him the authority to manage, acquire, invest or dispose of all or any part of the Trust assets. With regard to the assets entrusted to his care, the investment manager shall provide written instructions and directions to the Trustee, who shall, in turn, be entitled to rely upon such written direction. This appointment and delegation shall be evidenced and accepted in writing, an executed copy of which must be retained by the Plan Administrator.

Section 7-3. Duties and Responsibilities

The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan and shall construe and determine all questions of interpretation or policy in a manner consistent with this Agreement, and his construction or determination in good faith shall be final and conclusive. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as he shall deem necessary or advisable to carry out the purpose of this Agreement; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a qualified plan pursuant to the Code. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under this Plan.

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

- (1) To determine all questions relating to the eligibility of Employees to participate in or remain a Participant hereunder;
- (2) To compute, certify and direct the Trustee with respect to the amount and kind of benefits to which any Participant shall be entitled hereunder;
- (3) To authorize and direct the Trustee with respect to all disbursements from the Trust;

(4) To maintain all the necessary records for the administration of the Plan;

(5) To interpret the provisions of the Plan and to make and publish rules and regulations for the Plan consistent with the terms hereof;

(6) To compute and certify to the Employer and to the Trustee, initially and from time to time, the sums of money necessary to be contributed to the Trust, if any;

(7) To advise, counsel and direct the Trustee with respect to all investments of principal and income and with other matters concerning the Trust corpus, except to the extent the Participant has directed such investments;

(8) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of the Treasury or other governmental authorities.

The Plan Administrator shall furnish to each Participant a written report setting forth the total amount of the Employer's contributions, forfeitures and other adjustments provided for in Article IV, which have been allocated to the Participant's Account during the preceding year, the total amount of the Participant's own contributions credited to his Account during the preceding year, and the total cumulative amount of the Participant's interest attributable to his own contributions, if any, and the portion attributable to the Employer's contributions.

The Plan Administrator shall also furnish to each Participant covered under the Plan, and to each Beneficiary who is entitled to receive benefits under the Plan such information and reports as may be required by law.

The Plan Administrator shall make copies of the Plan, contract or other instruments under which the Plan was established or is operated available for examination by any Participant or Beneficiary in the principal office of the Employer.

Whenever it is determined by the Plan Administrator to be in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions or exemptions or make such elections for the Plan as may be available under law.

The Plan Administrator shall be responsible for procuring bonding for any persons dealing with the Plan or its assets as may be required by law.

Section 7-4. Expenses and Compensation

The expenses necessary to administer the Plan shall be borne by the Participants of the Plan except to the extent paid or reimbursed by the Employer, including, but not limited to, those involved in retaining necessary professional assistance of an attorney, an accountant, a retirement consultant or an investment advisor. The Employer shall furnish the Plan Administrator with such clerical and other assistance as is necessary in the performance of its duties. Nothing shall prevent the Plan Administrator from receiving reasonable compensation for services rendered in administering this Plan, provided the Plan Administrator is not the Employer or a full-time Employee.

Section 7-5. Information from Employer

To enable the Plan Administrator to perform his functions, the Employer shall supply full and timely information to the Plan Administrator on all matters relating to the Compensation of all Participants, their continuous regular employment, their retirement, death, Disability or termination of employment, and such pertinent facts as the Plan Administrator may require; the Plan Administrator shall advise the Trustee of such facts as may be pertinent to the Trustee's duties under the Plan. The Plan Administrator is entitled to rely on such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

Section 7-6. Administrative Committee; Multiple Signatures

In the event that more than one person serves on the Committee, the signature of any one member of the Committee may be accepted by any interested party as conclusive evidence that the Committee has fully authorized the action therein set forth and as representing the will of, and binding upon, the whole Committee. No person receiving such documents or written instructions and acting in good faith and in reliance thereon shall be obliged to ascertain the validity of such action under the terms of this Plan. The Committee shall act by a majority of its members at the time in office, and such action may be taken either by a vote at a meeting or in writing without a meeting.

Section 7-7. Changes in Plan Administrator Authority

If a new Plan Administrator or a member of the Committee is appointed or a change is made in the number of Committee members designated by the Plan to sign for the Committee in accordance with Section 7-6 above, neither any insurer nor any other party which has previously had dealings with the Plan Administrator shall be chargeable with knowledge of such appointment or such change until furnished with notice thereof. Until such notice, either the insurer or any other such party shall be fully protected in relying on any action taken or signature presented which would have been proper in accordance with that information previously received.

Section 7-8. Exemption from Liability

No bond or other security shall be required of the Plan Administrator except as is specifically required applicable laws and cannot be waived by agreement. Except to the extent required by applicable laws, and any regulations issued thereunder, the Plan Administrator shall have no liability for any action taken, allowed or omitted by him in connection with this Plan in the absence of the Plan Administrator's willful misconduct. The Employer shall indemnify the Plan Administrator against any and all claims, loss, damages, expense, and liability arising from any act or failure to act. To the extent permitted by applicable laws, neither the Trustee nor any Employer shall be liable to third parties for the acts or omissions of the Plan Administrator.

The Plan may purchase insurance for the Plan Administrator to cover liability or losses occurring by reason of any act or omission of the Plan Administrator, if such insurance permits recourse by the insurer against the Plan Administrator in the case of a breach of a fiduciary obligation by the Plan Administrator; or the Plan Administrator may purchase insurance to cover liability from and for the Plan Administrator's own account; or an Employer may purchase insurance to cover potential liability of the Plan Administrator.

Section 7-9. Records

The regularly kept records of the Plan Administrator, the Committee (if any) and any Employer shall be conclusive evidence of the service of a person, his Compensation, his age, his status as an Eligible Employee and all other matters contained herein applicable to this Plan; provided that a person may request a correction in the record of his age or service at any time prior to retirement, and such correction shall be made if within ninety (90) days after such request he furnishes in support thereof a birth certificate, baptismal certificate, or other documentary proof of age or service satisfactory to the Plan Administrator.

Section 7-10. Settlement of Disputes

In the event a dispute arises regarding the rights of an Employee, Participant or Beneficiary under the terms of this Plan, the decision of the Plan Administrator shall be final and binding subject to review as provided below. The Plan Administrator shall provide a notice in writing any person whose claim for benefits under this Plan has been denied, setting forth the specific reasons for such denial, specific references to the Plan provisions on which the denial was based and an explanation of the procedure for review of the denial. Such person, or his duly authorized representative, may appeal to the Plan Administrator for a review of the denial by sending to the Plan Administrator a written request for review within 60 days after receiving notice of the denial. The request for review shall set forth all grounds on which it is based, together with supporting facts and evidence which the claimant deems pertinent, and the Plan Administrator shall give the claimant the opportunity to review pertinent documents in preparing the request. The Plan Administrator may require the claimant to submit such

additional facts, documents or other material as he or it deems necessary or advisable in making the review. Within 60 days after the receipt of the request for review, the Plan Administrator shall communicate to the claimant in writing his or its decision, and if the Plan Administrator confirms the denial, in whole or in part, the communication shall set forth the reasons for the decision and specific references to the Plan provisions on which the decision is based. In the event any dispute arises as to persons to whom payments of the funds or other property should be made under the Plan, the Plan Administrator may withhold any such payment or delivery until such dispute has been determined by a court of competent jurisdiction or shall have been settled by the parties concerned.

ARTICLE VIII. THE EMPLOYER

Section 8-1. Employer's Interest in the Plan

This Plan and the Trust created hereby are created and shall be maintained for the exclusive benefit of participating Employees and shall qualify as an employees' profit sharing trust under the provisions of Section 401, et seq. of the Code. In no event shall the Employer have any right, claim, or beneficial or reversionary interest in any asset of this Trust, and the Employer hereby relinquishes all right, title and interest in and to all assets of this Trust. No payment or other distribution from this Trust shall be made to the Employer. Nothing contained herein, however, shall be construed so as to impair the right of the Employer to see to the proper administration of this Plan and the Trust according to their terms.

Also, if a contribution is made by an Employer by a mistake of fact the Employer may recover the contribution within one year after the mistaken payment of the contribution. Except as expressly provided in this paragraph, no contributions shall ever revert to the Employer under any circumstances.

Section 8-2. No Right to Employment

Neither the establishment of the Plan or the Trust nor any modification thereof, nor the payment of any benefit thereunder, shall be construed as giving any Participant, or any person whomsoever, any legal or equitable rights against the Employer or its elected or appointed officials, or as giving any Employee or Participant the right to be retained in the service of the Employer, or as giving any Employee any rights or causes of action against the Employer or the Trustee, except as expressly granted to him as provided herein; and all Participants shall remain subject to discharge to the same extent as heretofore.

Section 8-3. Limitation on Liability

No Employer, nor any agent or representative of the Employer, who is an Employee, officer, or director of the Employer in any manner guarantees the Trust

against loss or depreciation, and to the extent not prohibited by federal law, none of them shall be liable, except for his own gross negligence or willful misconduct, for any act or failure to act done or omitted in good faith with respect to the Plan. The Employer shall not be responsible for any act or failure to act of any Trustee or Plan Administrator appointed to administer the Plan.

ARTICLE IX. AMENDMENT, REVOCATION AND TERMINATION OF THE PLAN

Section 9-1. Termination of the Plan

Although the Plan is intended to be permanent the Employer may terminate the Plan at any time, such termination to become effective at the time specified in a written notice. Notice of such termination shall be given to the Participants as soon as practicable after notice is given to the Trustee.

Section 9-2. Discontinuance of Contributions

The Employer intends to make contributions to the Plan each year, but the continuance of such contributions is not assumed as a contractual obligation, and the Employer reserves the right to discontinue or temporarily suspend its contributions to the Plan. During any such period of discontinuance of contributions, all other provisions of the Plan shall continue in full force and effect and the Participants shall be given credit for participating during those years.

Section 9-3. Amendments

This Plan may be amended at any time and from time to time by an instrument in writing executed by the Employer with the approval of the majority of the Mayor and City Council of the Employer. No amendment may be made, however, which shall vest in the Employer, directly or indirectly, any interest, ownership or control in any of the present or subsequent funds of the Trust or permit any part of the Trust assets or the income therefrom to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or for administration expenses of the Plan; nor shall any amendment take away any form of benefit provided prior to the amendment or reduce the amount then credited to the account of any Participant or any then vested interest of a Participant.

Section 9-4. Successor Plans

In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities to, any other plan, each Participant must (if the plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

ARTICLE X. MISCELLANEOUS PROVISIONS

Section 10-1. Severability

If any provision of the Plan is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but each provision shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.

Section 10-2. Notices

Any notice, request or demand required or permitted by this Plan shall be deemed sufficiently given and served for all purposes:

- (1) On the Employer, if delivered or mailed to the Employer's principal office.
- (2) On the Trustee, if delivered or mailed to the Trustee at his or its principal office.
- (3) On any Employee or Participant, if delivered or mailed to him at his last address as shown on the books of the Employer.
- (4) On a Beneficiary of a Participant, if delivered or mailed to such Beneficiary at his last address furnished the Employer by the Participant or Beneficiary.
- (5) On the Plan Administrator, if delivered or mailed to the Plan Administrator at his or its principal office.

Section 10-3. Litigation

In order to protect the Trust against depletion as a result of litigation, in the event that any Participant or any person or entity claiming an interest by or through a Participant shall bring a legal or equitable action against the Trustee, the Plan Administrator, the Employer, or any of them, pertaining to this Trust, the result of which shall be adverse to such Participant, or in the event that the Trustee, Plan Administrator or the Employer shall find it necessary to bring any legal or equitable action pertaining to this Trust against any Participant, or any person or entity claiming an interest by or through such Participant, the result of which shall be adverse to such Participant or to such person, the Participant, or person claiming an interest by or through the Participant shall reimburse the Trustee, Plan Administrator and/or the Employer for the costs (including reasonable attorney's fees) of bringing or defending such suit, as the case may be, but such costs may not be charged against the Participant's Account(s).

Section 10-4. Governing Law

All legal questions pertaining to the Plan and the administration of the Trust shall be determined in accordance with the laws of the State of Texas, except where preempted by federal law or regulation.

Section 10-5. Veterans' Reemployment Rights under USERRA

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

EXECUTED as of the day and year first written above.

City of El Paso

By: _____

EMPLOYER