

SECOND AMENDMENT TO THE 2002 RESTATEMENT OF THE
CITY OF NEWBERG EMPLOYEES RETIREMENT PLAN

The 2002 Restatement of the CITY OF NEWBERG EMPLOYEES RETIREMENT PLAN dated June 26, 2002, and amended December 16, 2002, is amended by amending Section 7.01(a) to read as follows, effective as if included in the 2002 Restatement:

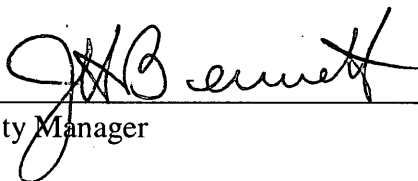
- "(a) Death Benefit before Retirement Date (Normal Retirement Date, if earlier): If the death of a Participant occurs prior to his Retirement Date (Normal Retirement Date, if earlier), a single sum death benefit equal to the sum of (i) two (effective July 1, 1990, two and two-tenths (2.2)) times his Participant's Contribution Account as of the date of his death, and (ii) his Voluntary Account as of the date of his death will be paid to his Beneficiary. All or any portion of such single sum death benefit may be applied under one of the optional forms in Section 4.02 for the benefit of such Beneficiary.

"In no event, however, will such death benefit be less than the death benefit that would have been payable upon the death of such Participant under the Prior Plan on the day before the Effective Date."

The above amendment corrects a drafting error in Section 7.01(a) of the 2002 Restatement, which did not include the change made to Section 7.01(a) in Amendment No. 3 to the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN (then numbered as Section 5.01(a)).

DATED this April 7, 2003.

CITY OF NEWBERG

By 
City Manager

SECOND AMENDMENT

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1980

CITY OF NEWBERG EMPLOYEES RETIREMENT PLAN
2002 Restatement

CITY OF NEWBERG EMPLOYEES RETIREMENT PLAN

2002 Restatement

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INTRODUCTION

The City of Newberg adopted a defined benefit pension plan in 1964 for its employees. Effective July 1, 1979, the plan was restated as two separate plans, the CITY OF NEWBERG GENERAL EMPLOYEES RETIREMENT PLAN for general employees of the City and the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN for police officers and firefighters. Effective July 1, 1982, both plans were restated. Both plans have since been amended. It is the City's desire to combine the assets of both plans as provided herein and to update both plans for law changes after 1981 by amending and restating both plans in this Plan effective July 1, 2002, unless otherwise stated.

ARTICLE 1. DEFINITIONS

SECTION 1.01--THE PLAN AND PARTIES CONCERNED.

- (a) "Plan" means the restated defined benefit retirement plan of the Employer as set forth herein and as amended from time to time.
- (b) "Prior Plan" means the CITY OF NEWBERG GENERAL EMPLOYEES RETIREMENT PLAN and the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN prior to the Effective Date.
- (c) "Group Contract" means the group annuity contract or contracts which the Employer enters into with the Insurer for the purpose of payment of retirement income and other benefits in accordance with this Plan and for the purpose of investment of Contributions made under the Plan. All benefits payable under the Plan will be paid or provided for solely from the Group Contract, and the Employer assumes no liability or responsibility therefor.
- (d) "Employer" means CITY OF NEWBERG, OREGON, and any successor by change of name or merger.
- (e) "Insurer" means Principal Financial Group, Inc., or such other insurance company or companies as may, from time to time, be designated by the Employer.
- (f) "Employee" means any natural person who is employed by the Employer. "Employee" excludes:
 - (1) Any person who would be treated as a leased employee of the Employer under IRC Section 414(n).
 - (2) An individual whose wages are paid by an agency or other business that provides individuals who perform services for the Employer and pays the individuals' wages.
 - (3) Persons not treated as an employee on the Employer's payroll records.
- (g) Effective July 1, 2002, "Eligible Employee" means, except for purpose of Article 9., any full-time regular Employee employed in a position not eligible for membership in the Oregon Public Employees Retirement System under the Employer's agreements with the System and whose employment with the Employer is as follows:
 - (1) General Employee.

- (2) Police Officer.
- (3) Firefighter.
- (4) City Attorney, effective July 1, 1992.

The City Attorney shall be eligible as a General Employee with five years employment with the Employer and shall be given credit for contributions as of July 1, 1988, through June 30, 1992. Pursuant to Resolution No. 92-1726, the City Attorney shall be classified with the Police Officer and Firefighter personnel instead of the General Employee classification, effective July 1, 1992.

- (h) "Participant" means a person who is either an Active Participant or an Inactive Participant.
- (i) "Active Participant" means an Eligible Employee who has become an Active Participant as provided in Section 2.01.
- (j) "Inactive Participant" means a person who has become an Inactive Participant as provided in Section 2.02.
- (k) "Beneficiary" means any person or persons designated by a Participant pursuant to Section 14.05 to receive any death benefit upon the death of the Participant.
- (l) "Contingent Annuitant" means a natural person designated by the Participant to receive a lifetime benefit after the death of such Participant in accordance with the survivorship life annuity optional form of retirement benefit provided in Section 4.02.

SECTION 1.02--IMPORTANT DATES AND PERIODS.

- (a) "Effective Date" means July 1, 1982.
- (b) "Anniversary Date" means the Effective Date and the same day of each year thereafter.
- (c) "Quarterly Date" means the effective date and every third Monthly Date thereafter.
- (d) "Monthly Date" means the Effective Date and the same day of each month thereafter.
- (e) "Eligibility Date" means, as to a Participant, the Eligibility Date as provided in Section 2.01.

- (f) "Re-entry Date" means, for a Participant, the Re-entry Date as provided in Section 2.01.
- (g) "Retirement Date" means, for a Participant, the date for commencement of monthly retirement benefit which will be his Early, Normal, or Late Retirement Date, whichever is applicable.
- (h) "Normal Retirement Date" means, for a Participant, the first day of the month coinciding with (immediately following, if none coincides with) the date on which he attains age 60 (58 for Police Officers and Firefighters and, effective July 1, 1992, the City Attorney).
- (i) "Early Retirement Date" means the first day of the month selected by the Participant for beginning an early retirement benefit before his Normal Retirement Date which is on or after the later of the following:
 - (1) The date he ceases to be an Employee.
 - (2) The date he attains age 55 (50 for Police Officers, Firefighters, and the City Attorney).
- (j) "Late Retirement Date" means, for a Participant who continues active work for the Employer after his Normal Retirement Date, the first day of the month selected by him for commencement of monthly retirement benefit which follows his Normal Retirement Date and is no later than the first day of the month coinciding with (immediately following, if none coincides with) the date of his Termination of Employment.
- (k) "Service" means, as to an Employee, any service for which he is either (i) directly or indirectly compensated by the Employer or (ii) performing duties for the Employer. No interruption in Service (based on the regular work week for his job without overtime) will be deemed to have occurred during any approved periods of absence from the Employer by reason of
 - (1) temporary lay-off,
 - (2) leave of absence (not to exceed one year),
 - (3) a temporary absence on account of disability, illness, or injury, or
 - (4) pregnancy.

Any discretion of the Employer under the provisions of this definition will be exercised without discrimination in accordance with definitely established rules

uniformly applicable to Participants whose approved periods of absence were occasioned by similar circumstances.

- (l) "Years of Service" means, as to an Employee on any date of determination, unless indicated otherwise, the number of years (counting completed months as fractional parts of a year) of Service since his latest date of employment, but excluding any Service after the establishment of the Prior Plan during which he made no contributions, if contributions were required by him under said Prior Plan during any such period and he failed or refused to so contribute.
- (m) "Plan Participation" means, as to a Participant, all periods of his employment with the Employer during which he has been an Active Participant.
- (n) "Termination of Employment" means cessation of active work (resulting in an interruption in Service) with the Employer, other than by reason of retirement, death, or disability, due to
 - (1) voluntary or involuntary termination or separation of employment, or
 - (2) failure to return to work upon the expiration of any approved period of absence from the Employer, in which event cessation of active work shall be deemed to have occurred at the time such approved period of absence expired.
- (o) "Plan Year" means a period commencing on an Anniversary Date and ending on the day immediately preceding the next Anniversary Date.
- (p) "Compensation Year" means a one-year period ending on the June 30 immediately preceding a Participant's Eligibility Date and ending on the same month and day of each year thereafter on which he is an Active Participant.

SECTION 1.03--DEFINITIONS RELATING TO DETERMINATION OF BENEFITS.

- (a) (1) This Section 1.03(a)(1) applies to Plan Years beginning before July 1, 1993.

"Average Compensation" means, for a Participant on any specified date, the monthly average of his total pay from the Employer for those three consecutive Compensation Years (all Compensation Years, if less than three) which give the highest average out of the 10 latest Compensation Years (all Compensation Years, if less than 10) occurring prior to such specified date.

Pay as used in this definition means the type of compensation subject to tax for Social Security benefits without regard to the dollar limitation on such compensation subject to FICA taxes.

However, for a Participant who was not employed by the Employer for at least one of the Compensation Years immediately preceding either his Eligibility Date or his Re-entry Date, his fixed rate of monthly pay from the Employer on either such applicable date will be deemed to be his monthly average for such Compensation Year.

(2) This Section 1.03(a)(2) applies to Plan Years beginning on or after July 1, 1993.

(i) Average Compensation means 1/12th of the following (as such 1/12th is increased below):

(A) For an employee who has completed at least 10 Years of Service, the average of the person's Monthly Earnings for each month in a 36 consecutive month period during the last 120 months of employment preceding the date the benefit is being determined which produces the highest average of Monthly Earnings.

(B) For an employee who has completed at least three Years of Service, but less than 10 Years of Service, the average of the person's Monthly Earnings for each month in a 36 consecutive month period preceding the date the benefit is being determined which produced the highest average of Monthly Earnings.

(C) For an employee who has completed less than three Years of Service, the average of the person's Monthly Earnings for each month preceding the date of benefit is being determined.

"Monthly Earnings" means the base remuneration which the Employer pays to an Employee in a month before any payroll deduction for income taxes, social security, group insurance, deferred compensation, or any other purpose. The full amount of required employee contributions picked up, assumed, or paid by the Employer on behalf of its employees shall be considered Monthly Earnings under the provisions of this Plan.

- (ii) The Average Compensation determined above shall be increased as follows:
 - (A) The Average Compensation determined above is divided by 173.33 to arrive at the average hourly rate of earnings.
 - (B) The number of unused sick leave hours is multiplied by the result in Section 1.03(a)(2)(ii)(A) above to arrive at the value of unused sick leave.
 - (C) One-half of the value of unused sick leave, divided by 36, shall be added to the Average Compensation determined above.
- (b) "Vesting Percentage" means, for a Participant
 - (1) prior to the date on which he has completed three years of Plan Participation, 0%, if employed prior to July 1, 1982, or prior to the date on which he has completed five years of Plan Participation, 0%, if employed after June 30, 1982.
 - (2) on or subsequent to the date in Section 1.03(b)(1) above, 100%.

In any event, a Participant's Vesting Percentage shall be 100% on or subsequent to the earlier of (i) the date on which he attains age 50 (45 for Police Officers, Firefighters, and the City Attorney) or (ii) the date on which he becomes Totally and Permanently Disabled.

- (c) "Contributions" means Employer Contributions, Required Participant Contributions, and Voluntary Contributions as set out in Article 3., unless the term as used refers to one of these only, in which event it means the one thus referred to.
- (d) "Participant's Contribution Account" means, for a Participant as of any specified date, the aggregate value of the Required Participant Contributions (including any interest earnings thereon) made for or by him pursuant to the Prior Plan, under Section 3.02 of the CITY OF NEWBERG GENERAL EMPLOYEES RETIREMENT PLAN, under Section 3.02 of the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN, or under Section 3.02 of this Plan, and which have not been previously paid or applied as to him. Such Participant's Contribution Account will be zero upon the earliest to occur of (1), (2), or (3) below:

- (1) The date a death benefit is paid on account of his death pursuant to Section 7.01.
- (2) The date a cash termination benefit is paid to him pursuant to Article 8.
- (3) His Retirement Date.

A Participant's Contribution Account will be credited with interest at the rate of 7.5% (8% for periods beginning on or after July 1, 1990) compounded annually.

- (e) "Normal Form" means a straight life annuity with five year certain period pursuant to Section 4.02(b).
- (f) "Totally and Permanently Disabled" means, as to a Participant, that he is disabled, as a result of sickness or injury to the extent that he is prevented from engaging in any occupation for wage or profit and is entitled to a disability benefit under Title II of the Federal Social Security Act, as determined by the Employer and reported to the Insurer.
- (g) "Voluntary Account" means the value of a Participant's Voluntary Contributions which have been made as provided in Article 10.

A Participant's Voluntary Account will be credited with interest at a rate of not less than the rate credited to his Participant's Contribution Account.

A Participant's Voluntary Account will be reduced by any distribution therefrom made under the Plan.

- (h) "Voluntary Contributions" means Voluntary Contributions as set out in Section 10.01.
- (i) "Actuarial Equivalent" means:
 - (1) Police Officers and Firefighters: 7.5% and 1971 GAM for pre-retirement; and 7.5% and UP-84 Unisex for post-retirement.
 - (2) For General Employees and the City Attorney:
 - (i) For Retirement Dates and other annuity starting dates before September 1, 2002: 7.5% and 1971 GAM for pre-retirement; and 7.5% and UP-84 Unisex for post-retirement.
 - (ii) For Retirement Dates and other annuity starting dates after August 31, 2002: 7.5% and the table prescribed in Revenue Ruling 2001-

62. However, in no circumstance will the amount of a General Employee's or the City Attorney's benefit as of a Retirement Date or other annuity starting date be less than the amount determined using (A) the factors in Section 1.03(i)(2)(i) above, (B) the Participant's Accrued Benefit earned as of June 30, 2002, based on Average Compensation and Years of Service as of June 30, 2002, and (C) the amount of the Participant's Contribution Account as of June 30, 2002.

The cost of living adjustment provided in Article 6. shall not be considered in determining Actuarial Equivalent benefits.

SECTION 1.04--ADDITIONAL DEFINITIONS.

- (a) "IRC" means the Internal Revenue Code of 1986, as amended.
- (b) "ORS" means Oregon Revised Statutes, as amended.

SECTION 1.05--ACCRUED BENEFIT.

An Active Participant's monthly Accrued Benefit as of any specified date will be an amount equal to the product of a Participant's Average Compensation, times 1.67 % (2 % for Police Officers and Firefighters and, effective July 1, 1992, the City Attorney), times his total Years of Service.

In no event will a Participant's Accrued Benefit be less than his Accrued Benefit on July 1, 1982.

ARTICLE 2. PARTICIPATION

SECTION 2.01--ACTIVE PARTICIPANT.

- (a) An Eligible Employee may first become an Active Participant under the Plan on his employment commencement date or, if later, the date he becomes an Eligible Employee.
- (b) A Participant who became an Inactive Participant pursuant to Section 2.02 may again become an Active Participant on the date on which he again becomes an Eligible Employee by reason of re-employment or otherwise. Such date is his Re-entry Date.
- (c) A former Participant who ceased to be a Participant pursuant to Section 2.03 may again become an Active Participant on the date on which he again becomes an Eligible Employee by reason of re-employment or otherwise. Such date is his Re-entry Date.

SECTION 2.02--INACTIVE PARTICIPANT.

An Active Participant will become an Inactive Participant on the earliest of the following:

- (a) The date following the date on which a monthly income is provided as to him under this Plan.
- (b) The date he ceases to be an Eligible Employee by reason of Termination of Employment or otherwise, occurring one month or more prior to his Retirement Date.
- (c) The date he ceases to be an Eligible Employee by reason of partial termination of the Plan pursuant to Article 11.
- (d) The effective date of complete termination of the Plan pursuant to Article 11.

SECTION 2.03--CESSATION OF PARTICIPATION.

A Participant will cease to be a Participant on the earlier of the following:

- (a) His death.
- (b) The date he receives a single sum distribution which is in lieu of all other benefits under the Plan as to him.

SECTION 2.04-TRANSFERRED EMPLOYEES.

Despite any contrary provision of the Plan, the Plan shall be applied to transferred employees who are subject to ORS 236.605 to 236.640 as the Employer determines appropriate in the Employer's discretion to implement ORS 236.605 to 236.640.

ARTICLE 3. CONTRIBUTIONS

SECTION 3.01--EMPLOYER CONTRIBUTIONS.

The Employer will make contributions at such times and in such amounts as will be determined based upon periodic actuarial valuations and recommendations as to the amount or amounts required to fund retirement benefits and other benefits payable in accordance with this Plan.

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

Dividends declared under the Group Contract or any forfeitures resulting from a Participant's Termination of Employment or death will be applied to reduce future Employer Contributions.

SECTION 3.02--REQUIRED PARTICIPANT CONTRIBUTIONS.

Monthly required contributions will be made under this Plan on behalf of each Active Participant. The amount of each such Required Participant Contribution will be equal to 6% of such Participant's monthly earnings.

For purposes of this Section 3.02, monthly earnings shall include all forms of compensation received by an Employee during such month, including bonuses and overtime. However, effective July 1, 2002, monthly earnings excludes, for General Employees and the City Attorney, overtime, longevity pay, and pager pay.

Required Participant Contributions are fully vested and nonforfeitable as to each Participant at all times.

Effective January 1, 1995, or as required by state law, the Employer shall not make the Required Participant Contributions for Employees.

SECTION 3.03--MANDATORY EMPLOYEE CONTRIBUTIONS.

Effective January 1, 1995, or as required by state law, the Employer shall pick-up and pay on behalf of all Active Participants a 6% mandatory contribution of monthly earnings as defined in Section 3.02. Such picked-up mandatory contributions shall be made pursuant to the provisions of IRC Section 414(h).

SECTION 3.04--INVESTMENT OF CONTRIBUTIONS.

All Contributions made under the Plan will be deposited with the Insurer and invested in accordance with the provisions of the Group Contract. To the extent not prohibited by State law, the Employer may specify whether all or any portion of an Employer Contribution deposited under the Group Contract is to be invested in any of the separate accounts of the Insurer in which the Group Contract participates.

ARTICLE 4. RETIREMENT BENEFITS

SECTION 4.01--AMOUNT OF MONTHLY RETIREMENT BENEFIT.

The amount of monthly retirement benefit for an Active Participant on his Retirement Date in accordance with the provisions of Section 4.02 will be determined as follows.

- (a) At Normal Retirement Date, the amount of monthly retirement benefit for an Active Participant on his Normal Retirement Date will be equal to his Accrued Benefit as of such date.
- (b) At Early Retirement Date, an Active Participant's retirement benefit on his Early Retirement Date will be equal to his Accrued Benefit on such specified date, multiplied by the factor shown below corresponding to the number of years his Early Retirement Date is before his Normal Retirement Date.

Number of Years Early Retirement Date is Before Normal Retirement Date	Factor
1	.92
2	.84
3	.76
4	.68
5	.60

However, in lieu of the above table the following table applies to Police Officers and Firefighters and, effective July 1, 1992, the City Attorney:

Number of Years Early Retirement Date is Before Normal Retirement Date	Factor
1	1.0
2	1.0
3	1.0
4	.92
5	.84
6	.76
7	.68
8	.60

Provided, however, no reduction will apply to the Accrued Benefit of an Active Participant who retires on his Early Retirement Date with 30 (25 for Police Officers and Firefighters and, effective July 1, 1992, the City Attorney) Years of Service.

The above factors will be adjusted proportionately for fractional parts of a year (counting a partial month as a complete month).

- (c) At Late Retirement Date, the amount of monthly retirement benefit for an Active Participant on his Late Retirement Date will be equal to his Accrued Benefit as of his Late Retirement Date.

SECTION 4.02--OPTIONAL FORMS OF MONTHLY RETIREMENT BENEFIT.

The monthly retirement benefit for a Participant on his Retirement Date may be paid in accordance with any one of the optional methods of payment under the Group Contract, which will be limited to the following Actuarial Equivalent optional forms.

- (a) Straight life annuity; for the lifetime of the Participant, without death benefits.
- (b) Life annuity with certain period; for the lifetime of the Participant and, if the death of the Participant occurs prior to the end of the certain period, the balance of the remaining certain period payments to his Beneficiary.
- (c) Survivorship life annuity; for the lifetime of the Participant and, upon his death, a percentage of such annuity for the lifetime of his named Contingent Annuitant.
- (d) Life annuity with modified cash refund; for the lifetime of the Participant and upon his death, a single sum payment will be made to his Beneficiary of the excess, if any, of his initial death benefit over the monthly annuity payments made to the Participant. The Participant may change his Beneficiary at any time.

A Participant's initial death benefit is an amount equal to the sum of (1) his Participant's Contribution Account plus (2) his Voluntary Account, if any, both determined on his Retirement Date.

The amount of each payment to a Participant under any of the optional forms of benefit in Section 4.02(a), 4.02(b), 4.02(c), or 4.02(d) above (other than the Normal Form) will be the amount required for the optional form to be the Actuarial Equivalent of the Normal Form.

The Participant may elect in writing the method of payment of any one of the optional forms above within 90 days prior to his Retirement Date.

In no event will an "interest-only" optional form be available. The Participant will name any certain period or any survivorship percentage and Contingent Annuitant prior to his Retirement Date.

If no optional form has been elected by the Participant, payment will be made to him under the Normal Form.

SECTION 4.03--ADDITIONAL MONTHLY INCOME.

The monthly retirement benefit determined for a Participant under Section 4.01 may be increased, as determined in accordance with the following provisions:

- (a) For a Participant hired prior to July 1, 1993, and also for Police Officers, Firefighters, and the City Attorney, that portion of a Participant's Contribution Account derived from Required Participant Contributions made on or after July 1, 1979, shall be applied as of the Participant's Retirement Date to provide him an amount of monthly retirement income in addition to that provided under Section 4.01(a), 4.01(b), or 4.01(c), whichever is applicable.
- (b) A Participant described in Section 4.03(a) above may elect to receive all of his Participant's Contribution Account in a single sum cash payment on his Retirement Date. Payment of his Participant's Contribution Account derived from Required Participant Contributions made on or after July 1, 1979, is in lieu of any additional monthly income that otherwise would be provided under this Section 4.03. Payment of his Participant's Contribution Account derived from Required Participant Contributions made prior to July 1, 1979, is in lieu of the Actuarially Equivalent Monthly Benefit of that portion of his Accrued Benefit (Section 1.05) attributable to such Required Participant Contributions.
- (c) Effective on and after July 1, 1993, a Participant who is not described in Section 4.03(a) above may elect to receive all of his Participant's Contribution Account in a single sum cash payment on his Retirement Date. Lump Sum payment of his Participant's Contribution Account will reduce his Accrued Benefit (Section 1.05) by the monthly benefit that is the Actuarial equivalent of the lump sum.

SECTION 4.04--MINIMUM DISTRIBUTION.

In no event will a Participant who is vested on the date of his Termination of Employment receive a distribution less than the Actuarial Equivalent of his Participant's Contribution Account on such date.

ARTICLE 5. DISABILITY PAYMENTS

SECTION 5.01--ELIGIBILITY.

An Active Participant will become eligible for monthly disability payments under this Article 5. in the event (i) he becomes Totally and Permanently Disabled while in the actual performance of his duties for the Employer or (ii) he becomes Totally and Permanently Disabled on or after the date he completes 10 or more Years of Service and while he is an Employee but before his Retirement Date (Normal Retirement Date, if earlier).

Such Participant will become an Inactive Participant as of the date he becomes Totally and Permanently Disabled.

For purposes of this Article 5. Termination of Employment is deemed not to have occurred as to such Participant because of his disability, until and unless his employment is otherwise terminated; provided, however, that any periods of absence due to his disability under this Article 5. will not be counted wherever in this Plan Service is a determining factor.

SECTION 5.02--AMOUNT OF PAYMENTS.

- (a) This Section 5.02(a) is effective before July 1, 1990, for all Participants and is effective on and after July 1, 1990, for Participants other than Police Officers, Firefighters, and the City Attorney.

The amount of monthly disability payment for a Participant is equal to his Accrued Benefit determined as of the first day of the month coinciding with (immediately following, if none coincides with) the date on which he is disabled.

In no event, however, will the amount of each disability payment for any Participant be less than \$100.

- (b) This Section 5.02(b) is effective on and after July 1, 1990, for Police Officers, Firefighters, and the City Attorney.

The amount of monthly disability payment for a Participant is equal to his Accrued Benefit determined as of the first day of the month coinciding with or immediately following the date on which he is disabled, based on Average Compensation as of the date of disability and Years of Service as of the disability date or projected to age 55, if later. Benefits determined under Section 4.03 will be paid in addition to these amounts.

In no event, however, will the amount of each disability payment for any Participant be less than \$100 nor greater than 75% of the Participant's Average Compensation.

SECTION 5.03--DURATION OF PAYMENTS.

Monthly disability payments will commence on the first day of the month coinciding with (immediately following, if none coincides with) the date such Participant becomes Totally and Permanently Disabled and will continue thereafter through the first day of the month preceding the earliest of the following dates:

- (a) His Normal Retirement Date.
- (b) The date of his death.
- (c) The effective date of termination of Plan.
- (d) The date he is no longer Totally and Permanently Disabled.

If such payments continue through the first day of the month preceding such Participant's Normal Retirement Date, monthly retirement benefits will be provided for him on his Normal Retirement Date in accordance with the provisions of Article 4. in like manner as for an Active Participant, with Accrued Benefit equal to the amount of monthly disability payment paid to him pursuant to Section 5.02. If, prior to such Participant's Normal Retirement Date, he recovers and returns to active work for the Employer within one month of the date he is no longer Totally and Permanently Disabled, such payments will stop and he will again become an Active Participant pursuant to Section 2.01. If, prior to such Participant's Normal Retirement Date, he recovers and does not return to active work for the Employer within one month of his recovery, such payments will stop and his Termination of Employment will be deemed to have occurred as of the date he became Totally and Permanently Disabled and his benefits will be redetermined pursuant to Article 8.

If the Participant dies while receiving monthly disability payments and he meets the requirements pursuant to Section 7.01(a), death benefits will be paid in accordance with the provisions of said Section 7.01(a).

ARTICLE 6. COST OF LIVING ADJUSTMENT

SECTION 6.01--IMPORTANT TERMS.

For the purpose of determining the cost of living adjustment of benefits, the following terms are defined here:

ADJUSTMENT DATE means each Anniversary Date on and after the Effective Date on which the Price Index has changed from the Price Index on the last preceding Anniversary Date as of which the monthly retirement benefit payments under this Plan were changed in accordance with this Article 6. (on the Effective Date if no prior changes have been made).

ADJUSTMENT FACTOR means, as of any Adjustment Date, the quotient of (a) divided by (b):

- (a) The Price Index as of such Adjustment Date.
- (b) The Price Index as of the last previous Adjustment Date.

In no event, however, will the Adjustment Factor exceed 1.02. Prior to July 1, 1982, the Adjustment Factor will not exceed 1.04.

ANNUITANT means either an Inactive Participant whose Retirement Date has occurred and who is entitled to monthly retirement benefit payments under this Plan, an alternate payee, or the Beneficiary or Contingent Annuitant of such Participant, if any, who is entitled to monthly retirement benefit payments under this Plan as the result of such Participant's death.

PRICE INDEX means, as of any Anniversary Date, the Consumer Price Index (Portland area-all items) as published by the Bureau of Labor Statistics of the United States Department of Labor in the City of Portland, Oregon, or a comparable index as determined by the Employer if such index ceases to be published.

SECTION 6.02--CHANGE IN MONTHLY RETIREMENT BENEFIT.

As of each Adjustment Date, the monthly retirement benefit payments payable to an Annuitant will be changed to the amount determined by multiplying such payments by the Adjustment Factor as of such Adjustment Date, subject to the following provisions:

- (a) If such change results in an increase in the amount of monthly retirement benefit payments to an Annuitant, an amount of monthly retirement benefit will be provided for him under the Group Contract in the amount of such increase with

payments consistent with the payments being made as to the monthly retirement annuity provided under the Group Contract on the Participant's Retirement Date.

- (b) If such change results in a decrease in the amount of the monthly retirement benefit payments to an Annuitant, an amount or amounts of monthly retirement benefit previously provided for him under the Group Contract will be cancelled as of such Adjustment Date so that the total amount of monthly retirement benefit remaining will be only the reduced amount to which he is then entitled.

In no event will any decrease become effective which would reduce the monthly retirement benefit payments for an Annuitant to an amount which would be less than the amount he would have received had the provisions of this Article 6. not been in effect.

- (c) On and after the effective date of termination of Plan pursuant to Article 11., no further changes in monthly retirement benefit payments will be made in accordance with this Article 6.

SECTION 6.03--MINIMUM ADJUSTMENT FOR RETIREMENTS AFTER JULY 1, 1990.

Effective on and after July 1, 1990, for Police Officers, Firefighters, and the City Attorney, monthly payments for such Participants retiring on or after July 1, 1990, will be increased annually to a level that is no less than that which would have been in effect had the initial monthly benefits been payable from the Oregon Public Employees Retirement System, determined without including any payments under ORS 238.375 to 238.387 or any other tax remedy payments.

ARTICLE 7. DEATH BENEFITS

SECTION 7.01--DEATH BENEFIT BEFORE RETIREMENT.

- (a) Death Benefit before Retirement Date (Normal Retirement Date, if earlier): If the death of a Participant occurs prior to his Retirement Date (Normal Retirement Date, if earlier), a single sum death benefit equal to the sum of (i) two times his Participant's Contribution Account as of the date of his death, and (ii) his Voluntary Account as of the date of his death will be paid to his Beneficiary. All or any portion of such single sum death benefit may be applied under one of the optional forms in Section 4.02 for the benefit of such Beneficiary.

Effective July 1, 1990, for Participants other than Police Officers, Firefighters, and the City Attorney, "two and two-tenths (2.2) times" shall replace "two times" where "two times" appears in the above paragraph.

In no event, however, will such death benefit be less than the death benefit that would have been payable upon the death of such Participant under the Prior Plan on the day before the Effective Date.

- (b) Deferred Retirement Death Benefit: If the death of an Active Participant occurs on or after his Normal Retirement Date and prior to his Retirement Date, and
- (1) If the straight life annuity optional form under Section 4.02 is in effect for him on the date of his death, there are no death benefits payable under this Article 7.
 - (2) If the life annuity with certain period optional form under Section 4.02 is in effect for him on the date of his death, there will be provided for his Beneficiary, beginning on the Monthly Date following his death, a certain period benefit payable monthly for the certain period applicable under said option. The amount of the monthly payments to such Beneficiary will be equal to the amount that would have been payable monthly to such Participant had his Retirement Date occurred on the Monthly Date coinciding with (immediately preceding, if none coincides with) the date of his death.
 - (3) If the survivorship life annuity optional form under Section 4.02 is in effect for him on the date of his death, there will be provided for his designated Contingent Annuitant, beginning on the Monthly Date coinciding with (immediately following, if none coincides with) the date of his death, a retirement benefit payable monthly in like manner as if such Contingent Annuitant were a Participant with Retirement Date beginning on such

Monthly Date if and so long as such Contingent Annuitant lives. The amount of such monthly retirement benefit will be equal to the amount that would have been payable to such Participant had his Retirement Date occurred on the Monthly Date coinciding with (immediately preceding, if none coincides with) the date of his death, multiplied by the percentage in effect under such optional form.

- (4) If the life annuity with modified cash refund optional form under Section 4.02 is in effect for him on the date of his death, there will be provided for his Beneficiary, a single sum payment equal to his Participant's Contribution Account.
- (5) If none of the above optional forms is in effect for him on the date of his death, a single sum death benefit equal to the amount provided in Section 7.01(a) (determined as if Section 7.01(a) applied) will be paid to his Beneficiary. All or any portion of such single sum death benefit may be applied under one of the optional forms in Section 4.02 for the benefit of such Beneficiary.

There are no death benefits under this Plan before retirement, except as may be provided under Article 10.

SECTION 7.02--DEATH BENEFIT AFTER RETIREMENT.

Any death benefit after retirement will be in accordance with the form of retirement benefit in effect on a Participant's Retirement Date and will be payable in accordance with the provisions under Article 4.

ARTICLE 8. TERMINATION OF BENEFITS

SECTION 8.01--TERMINATION BENEFITS.

An Employee who becomes an Inactive Participant one month or more prior to his Retirement Date shall be entitled to one of the following benefits:

- (a) Deferred Payment. If an Inactive Participant so elects, he will receive a deferred monthly retirement benefit to commence on his Normal Retirement Date. The amount of such deferred monthly retirement benefit, in accordance with the Normal Form, shall be equal to the following:

- (1) Effective on and after July 1, 1993, for an Inactive Participant hired on or after July 1, 1993, other than an Inactive Participant who was a Police Officer, Firefighter, or the City Attorney:

An amount equal to his Vested Accrued Benefit on the day before he became an Inactive Participant. The amount may not exceed 100% of his Average Compensation, but in no event shall be less than the monthly benefit provided by the Actuarial Equivalent of his Participant's Contribution Account.

- (2) For an Inactive Participant hired prior to July 1, 1993, and for an Inactive Participant who was a Police Officer, Firefighter, or the City Attorney, an amount equal to the sum of (i) and (ii) below:

- (i) An amount equal to the amount of monthly retirement benefit which could be provided on his Normal Retirement Date by that portion of his Participant's Contribution Account made on or after July 1, 1979; and

- (ii) An amount equal to his Vested Accrued Benefit on the day before he became an Inactive Participant,

provided that the sum of (i) and (ii) do not exceed 100% of his Average Compensation, but in no event shall be less than the monthly benefit provided by the Actuarial Equivalent of his Participant's Contribution Account.

- (b) An Inactive Participant may elect to have his deferred monthly retirement benefit commence on his Early Retirement Date. The amount of such deferred monthly retirement benefit shall be equal to the amount of deferred benefit determined in Section 8.01(a) above multiplied by the factor shown in Section 4.01(b)

corresponding to the number of years his Early Retirement Date precedes his Normal Retirement Date.

Payment of the deferred monthly retirement benefit will be in the form of retirement benefit in effect on a Participant's Retirement Date as provided under Section 4.02.

- (c) Immediate Payment. In lieu of any benefits otherwise available under this Article 8., a Participant may elect to receive his Participant's Contribution Account in a single sum payment.

If the Inactive Participant elects to receive his Participant's Contribution Account in a single sum payment, he shall receive his payment 90 days after the date he ceases to be an Employee and before his Retirement Date. Any such payment will be a voluntary cash-out, in lieu of a part of the deferred retirement benefit otherwise available to him on his Retirement Date. Payment of his Participant's Contribution Account cancels the part of his benefit determined under Section 8.01(a) above.

If, upon the date a Participant ceases to be an Employee, the present value of his deferred retirement benefit is less than \$1,750, it will, unless otherwise directed by the Employer, be paid as an involuntary cash-out in a single sum in full settlement of all benefits otherwise payable to him. This value will be determined under the provisions of the Group Contract.

SECTION 8.02--REPAYMENT OF SINGLE SUM PAYMENT.

- (a) A Participant

(1) who received a single sum payment under this Plan of less than the present value of his Accrued Benefit on the date of payment, and

(2) who again performs Service as an Eligible Employee

may make repayment to the Plan no longer than the earlier of

(3) the last day of the two-year period which begins on the date he again performs Service as an Eligible Employee, or

(4) the last day of the five-year period which begins on the date the single sum payment is made.

The amount which must be repaid is the full amount of the single sum payment he received with interest at the rate of 8% per annum compounded annually, on such

payment compounded annually from the date the payment was made to the date he repaid the full amount. If repayment is made, the Participant's Accrued Benefit will not be reduced for the single sum payment.

(b) Beginning July 1, 2002, the Plan will accept a Participant's repayment in the form of the following rollovers, contributions, and transfers made after December 31, 2001, from the types of plans described below:

(1) A direct rollover of an eligible rollover distribution from, or a participant contribution of an eligible rollover distribution from:

- (i) A qualified plan described in IRC Section 401(a) or 403(a);
- (ii) An annuity contract described in IRC Section 403(b); or
- (iii) An eligible deferred compensation plan described in IRC Section 457(b) maintained by an eligible employer described in IRC Section 457(e)(1)(A),

but only if the Plan is an eligible retirement plan with respect to the direct rollover or participant contribution.

(2) A participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in IRC Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income.

(3) A direct trustee-to-trustee transfer authorized by IRC Section 457(e)(17) from an eligible deferred compensation plan described in IRC Section 457(b) maintained by an eligible employer described in IRC Section 457(e)(1)(A).

The definitions in Section 13.03 apply for purposes of this Section 8.02(b).

ARTICLE 9. ADDITIONAL BENEFITS FOR PERS BENEFIT INCREASES

SECTION 9.01--PURPOSE.

This Article 9. implements the requirement that the Employer provide increases in benefits for certain Public Safety Employees that are equal to or the actuarial equivalent of certain increases in benefits under the Oregon Public Employees Retirement System granted in 1991 and 1995 to certain police officers and firefighters. That requirement and those increases are provided in ORS 237.635 and 237.637, 1991 Oregon Laws chapter 796, and 1995 Oregon Laws chapter 569.

SECTION 9.02--INCREASE IN DISTRIBUTION.

Upon distribution of an Eligible Employee's Accrued Benefit in a calendar year in which distributions under this Plan are not exempt from Oregon personal income taxation, the amount of the distribution shall be increased by the greater of the following amounts:

- (a) The amount determined by multiplying the Eligible Payments of the Eligible Portion of the Employee's Accrued Benefit by the following percentage:

<i>If the Employee's Years of PSE Service at the Employee's last Severance of Employment are:</i>	<i>The percentage is:</i>
Less than 10	0%
At least 10 but not 20	1%
At least 20 but not 25	2½%
25 or more	4%

- (b) The amount determined by multiplying the Eligible Payments of the Eligible Portion of the Employee's Accrued Benefit by the percentage determined under the following formula:

$$\left(\frac{1}{.91} - 1 \right) \left(\frac{\text{the Employee's Years of PSE Service before October 1, 1991}}{\text{the Employee's Years of PSE Service}} \right)$$

The amount of such increase shall be allocated among the components of the Employee's Accrued Benefit in proportion to the Actuarial Equivalent value of each. The increase allocated to each component shall be paid in the same form as the component is paid.

SECTION 9.03--ALTERNATE PAYEES.

Despite Section 9.02 above, (1) the amount by which the distribution to an alternate payee is to be increased shall not be determined or paid before the participant's Severance of Employment, (2) no increase shall be paid (even after the participant's Severance of Employment) with respect

to a lump sum distribution (including a direct rollover) made to an alternate payee before the participant's Severance of Employment, and (3) the amount of the increase in the distribution to the alternate payee with respect to distributions previously made shall be distributed in the following forms, without interest for delayed payment:

- (a) In a lump sum distribution if the benefit is attributable to monthly payments previously made under an annuity.
- (b) As a supplement to the annuity if the increase is attributable to monthly payments to be made in the future under a previously started annuity.

SECTION 9.04--DEFINITIONS; CHANGE IN TAX RATE.

For purposes of this Article 9.:

- (a) An "Eligible Employee" is any Employee who before July 14, 1995, was a Public Safety Member and whose last Severance of Employment occurred or occurs while the Employee is a Public Safety Employee and either occurred before January 1, 1991, for a reason other than the Employee's death or occurred or occurs after December 31, 1990, for any reason.
- (b) "Public Safety Member" means an Active Participant employed by the Employer as a firefighter or police officer as those terms are defined in ORS 237.610.
- (c) "Public Safety Employee" means an Employee employed by the Employer as a firefighter or police officer as those terms are defined in ORS 237.610.
- (d) "Accrued Benefit" means the participant's Accrued Benefit as defined in Section 1.05, but specifically excluding the cost of living adjustment provided in Article 6., the benefit provided in this Article 9., and the benefit attributable to the participant's Voluntary Account.
- (e) "Eligible Payments" are all payments made after December 31, 1990, other than:
 - (1) Payments that would have been made before January 1, 1991, but for the Employee's election to defer distribution, as determined in the discretion of the Employer.
 - (2) Payments with respect to an Eligible Employee whose last Severance of Employment occurred before January 1, 1991, other than periodic payments made under an annuity. Whether a payment is periodic shall be determined in the discretion of the Employer.

- (f) The "Eligible Portion" is the part of the Accrued Benefit attributable to Plan Participation as a Public Safety Member.
- (g) "Years of PSE Service" are Years of Service during which the Eligible Employee was a Public Safety Employee, which Years of Service shall be determined by counting only completed months of Service during which the Employee was at all times a Public Safety Employee.
- (h) "Severance of Employment" means permanent termination of employment with the Employer for any cause.
- (i) The decimal .91 in the formula in Section 9.02(b) above shall automatically be adjusted as provided in this Section 9.04(i) to reflect changes in the maximum Oregon personal income tax rate imposed upon individuals who are full-year residents of Oregon. An increase in such rate by x percentage points shall cause such decimal to be reduced by x 100ths, and a reduction in such rate by x percentage points shall cause such decimal to be increased by x 100ths. For example, following are the decimals that correspond to particular rates:

<u>If the rate is:</u>	<u>The decimal is:</u>
7%	.93
8%	.92
9%	.91
10%	.90
11%	.89

Any such change in the decimal shall be effective only for distributions made on or after the effective date of the change in such rate. No amount distributed to an Eligible Employee, Beneficiary, Contingent Annuitant, or alternate payee before the change is implemented may be recovered from any person or offset against any undistributed benefit of any person to account for any such change.

SECTION 9.05--PRIOR DISTRIBUTIONS.

The Employer shall as soon as administratively feasible cause to be distributed to Eligible Employees (and where applicable their Beneficiaries, Contingent Annuitants, and alternate payees) without interest any benefits provided in this Article 9. or Article 6. attributable to distributions previously made and shall appropriately adjust the cost of living adjustment provided in Article 6. for payments to be made in the future. Such benefits shall be distributed in the following forms:

- (a) In a lump sum distribution if the benefit is attributable to:
 - (1) A lump sum distribution (including a direct rollover); or

- (2) Monthly payments previously made under an annuity.
- (b) As a supplement to the annuity if the benefit is attributable to monthly payments to be made in the future under a previously started annuity.

SECTION 9.06--LIMITATIONS.

The benefits provided in this Article 9.:

- (a) Shall not be paid with respect to any portion of an Eligible Employee's Accrued Benefit that is transferred to the Oregon Public Employees Retirement System or the payment of which is assumed or made by the Oregon Public Employees Retirement System.
- (b) May by amendment of this Plan be reduced, eliminated, or changed for all or some Employees with respect to service performed before or after the amendment:
 - (1) To the extent a court of competent jurisdiction or the Employer determines that the Employer is not required to implement one or more of the provisions of ORS 237.635 and 237.637, 1991 Oregon Laws chapter 796, and 1995 Oregon Laws chapter 569 that by their terms apply to the Employer.
 - (2) To the extent a court of competent jurisdiction or the Employer determines that any of the benefits, or the aggregate benefits, provided in this Article 9. are more than is required to implement the provisions of ORS 237.635 and 237.637, 1991 Oregon Laws chapter 796, and 1995 Oregon Laws chapter 569.
 - (3) As the Employer determines appropriate to respond to any law modifying any requirement of ORS 237.635 and 237.637, 1991 Oregon Laws chapter 796, and 1995 Oregon Laws chapter 569.
 - (4) As the Employer in the Employer's absolute discretion deems appropriate, even though none of the events described above in this Section 9.06(b), and no like event, has occurred.

Any such benefits that are reduced, eliminated, or changed after they have been distributed may not be recovered from any person or offset against any undistributed benefit of any person to account for any such reduction, elimination, or change.

SECTION 9.07--NO CONTRACT RIGHTS.

No Eligible Employee, Beneficiary, Contingent Annuitant, or alternate payee shall acquire a right, contractual or otherwise, to the increased benefits provided by this Article 9.

ARTICLE 10. VOLUNTARY CONTRIBUTIONS

SECTION 10.01--VOLUNTARY CONTRIBUTIONS.

An Active Participant may make Voluntary Contributions. These Contributions may be made during any period in which he is an Active Participant. Voluntary Contributions will be made in accordance with procedures set up by the Employer.

A Participant's Voluntary Contributions, including any voluntary contributions he has made under any other qualified plan of the Employer or predecessor of the Employer, may not, in the aggregate, exceed 10% of his aggregate earnings from the Employer and predecessor for the period of time that he has actively participated under this and such other plan or plans.

An Active Participant may begin to make Voluntary Contributions on any Quarterly Date.

An Active Participant may change the amount of future Voluntary Contributions on any Quarterly Date.

An Active Participant may stop making his Voluntary Contributions on any Quarterly Date. He may then resume making Voluntary Contributions on any Quarterly Date.

Before the date he ceases to be an Employee, a Participant may withdraw any part of his Voluntary Account resulting from his Voluntary Contributions in a single sum, but not more than the original amount of those Contributions. A withdrawal may occur only once in a Plan Year.

Stopping, changing, or withdrawing Voluntary Contributions will not affect a Participant's participation in the Plan. No portion of his Voluntary Account resulting from any other Contributions will be forfeited solely because of such withdrawal. An Active Participant's request to begin, change, stop, or withdraw his Voluntary Contributions will be in writing on a form furnished for that purpose. This form will include any necessary authorization for payroll deduction and will be delivered to the Employer before the date Contributions are to begin, change, stop, or be withdrawn.

No Voluntary Contributions will be made by a Participant after the second calendar month preceding his Retirement Date.

Voluntary Contributions will be credited to the Participant's Voluntary Account as they are made and will be forwarded to the Insurer at least quarterly.

Voluntary Contributions are fully vested and nonforfeitable.

SECTION 10.02--INVESTMENT OF VOLUNTARY CONTRIBUTIONS.

All Voluntary Contributions made by or on behalf of an Active Participant will be forwarded by the Employer to the Insurer to be deposited under the Group Contract and invested according to its provisions.

However, no Voluntary Contributions may be invested in any of the separate accounts of the Insurer in which the Group Contract participates.

SECTION 10.03--RETIREMENT BENEFITS.

On a Participant's Retirement Date, his Voluntary Account will be used to purchase additional benefits for him as provided in Section 4.03.

SECTION 10.04--DEATH BENEFITS.

If the death of the Participant occurs before his Retirement Date, a distribution of his Voluntary Account will be made to his Beneficiary as provided in this Article 10. A Participant's Voluntary Account will not be distributed to his Beneficiary under this Article 10. if a death benefit is paid under Section 7.01(a) or 7.01(b)(5) on account of the Participant's death.

SECTION 10.05--VESTED BENEFITS.

The Participant's Voluntary Account will be held for him until the earlier of his Retirement Date or death and will then be applied as provided in Section 10.03 or Section 10.04, unless he receives earlier distribution under this Section 10.05.

An Inactive Participant may elect to have his Voluntary Account distributed under one or more of the methods described in Section 4.02 before his Retirement Date or death. The distribution may be in the form of an immediate annuity only if the amount which would be applied to purchase the annuity under the Group Contract is \$1,750 or more. Benefit payments may begin at the time after the Participant ceases to be an Employee but not later than his Normal Retirement Date.

Any election by a Participant to receive a distribution of all or part of his Voluntary Account must be made before he again becomes an Employee.

If, on the date he ceases to be an Employee, a Participant's Voluntary Account is less than \$1,750, it will, unless otherwise directed by the Employer be paid to him in a single sum as an involuntary cash-out.

ARTICLE 11. TERMINATION OF PLAN

SECTION 11.01--TERMINATION OF PLAN.

The Employer expects to continue the Plan indefinitely but reserves the right to terminate the Plan in whole or in part at any time by giving written notice to all parties concerned.

SECTION 11.02--VESTING ON TERMINATION.

Upon termination or partial termination of the Plan or complete discontinuance of contributions under the Plan, the rights of all affected employees to benefits accrued to the date of such termination, to the extent then funded, shall become nonforfeitable.

SECTION 11.03--PROCEDURES UPON TERMINATION OF PLAN.

Upon termination of Plan, the following provisions shall apply:

- (a) No further Employees shall become Participants and no further contributions shall be made.
- (b) Each Participant's account shall be held under the Group Contract and applied as heretofore provided in this Plan upon such Participant's death, Termination of Employment, or Retirement Date.

In lieu of a portion of his deferred monthly retirement income under this Section 11.03(b), such Participant may elect to receive his Participant's Contribution Account in a single sum payment at any time on or subsequent to his Termination of Employment and prior to his Retirement Date.

- (c) All disability payments will cease and the Plan assets, other than those arising from Section 11.03(b) held by the Insurer under the Group Contract as to those Participants whose Retirement Dates have not yet occurred shall be allocated and applied to the extent they are sufficient to purchase benefits for all Participants who had not reached their Retirement Dates prior to the effective date of termination of Plan, in accordance with the following classifications and order of precedence.
 - (1) First, to purchase immediate monthly retirement benefits for those Participants whose Normal Retirement Dates occurred on or prior to the effective date of termination of Plan, but who had not retired, and for those Participants who were receiving disability benefits pursuant to Article 5. on the effective date of termination of Plan.

- (2) Second, to purchase deferred monthly retirement benefits for such Participants who have attained age 60 or older on the effective date of termination of Plan and who are not included in Section 11.03(c)(1) above.
- (3) Third, to purchase deferred monthly retirement benefits for such Participants who have attained age 55 or older on the effective date of termination of Plan and who are not included in Section 11.03(c)(1) or 11.03(c)(2) above.
- (4) Fourth, to purchase deferred monthly retirement benefits for all other Participants.

The monthly retirement benefit to be purchased for each such Participant shall be payable in accordance with the Normal Form beginning on his Normal Retirement Date (on the effective date of termination of Plan, if later) and the amount shall be equal to (i) his Accrued Benefit (or disability benefit, if applicable) on the effective date of termination of Plan; provided, however, that if the Plan assets are insufficient to purchase such monthly retirement benefits in full for any class, the monthly retirement benefits for all in such class shall be reduced, as determined by the Insurer, to such fraction as the amount available will provide.

In any event, that portion of the Plan assets attributable to each Participant's Voluntary Account, if any, will be applied on the effective date of termination of Plan to provide for him an amount of deferred monthly retirement income benefit before the allocation and application of assets determined according to the classification and order of precedence in Section 11.03(c).

No part of the assets of the Plan shall be paid or distributed to such Employer at any time except as provided in Section 3.01 (about returned contributions) and except that, after satisfaction of all liabilities under such Plan, any overpayments made by such Employer as a result of erroneous actuarial computations shall be repaid to such Employer.

ARTICLE 12. ADMINISTRATION OF PLAN

SECTION 12.01--ADMINISTRATION.

The Employer will have complete control of the administration of the Plan, subject to the provisions hereof, with all powers necessary to enable it properly to carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, it will have the discretionary power to construe the Plan and to determine all questions that may arise hereunder, including all questions relating to the eligibility of Employees to participate in the Plan and the amount of benefit to which any Participant, Beneficiary, Contingent Annuitant, or alternate payee may become entitled hereunder. Its decision upon all matters within the scope of its authority will be final.

The Employer will establish rules and procedures to be followed by Participants, Beneficiaries, Contingent Annuitants, and alternate payees in filing applications for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan. It may delegate to any person or firm such recordkeeping and other duties necessary to assist the Employer with the administration of the Plan not otherwise set out in the Plan or the Group Contract, as specifically agreed to by such person or firm.

The Employer will receive all applications for benefits and will determine all facts necessary to establish the right of the applicant to benefits under the provisions of the Plan and the amount thereof as herein provided.

The Employer will be entitled to rely upon all tables, valuations, certificates, and reports furnished by the consultant or actuary appointed by the Employer and upon all opinions given by any counsel selected or approved by it.

SECTION 12.02--RECORDS.

All acts and determinations of the Employer will be duly recorded and all such records, together with such other documents as may be necessary for the administration of the Plan, will be preserved in its custody.

SECTION 12.03--DELEGATION OF AUTHORITY.

The administrative duties and responsibilities set forth in Section 12.01 may be delegated by the Employer to a retirement committee consisting of such persons as it selects. The Employer shall notify the Insurer in writing of the authority conferred upon the retirement committee and of the membership of the retirement committee and any changes therein as they occur from time to time. The Insurer shall be entitled to rely on the last such notification received, until written notification to the contrary has been received from the Employer. The members of the retirement committee shall be free from all liability, joint or several, for their acts, omissions, and conduct, and for the

acts, omissions, and conduct of their duly constituted agents, in the administration of the Plan, and the Employer shall indemnify and save each of them harmless from effects and consequences of their acts, omissions, and conduct in their official capacity, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence.

Members of the retirement committee shall serve without compensation for services as such, but all expenses incurred by it shall be paid by the Employer or by the Plan, upon written authorization of the Employer provided to the Insurer. Such expenses shall include any expenses incident to the functioning of the retirement committee including, but not limited to, fees of accountants, counsel, and other specialists related directly to the administration and operation of the Plan. All other expenses of the Plan or the Group Contract, unless paid by the Employer, shall be paid by the Plan upon written authorization of the Employer provided to the Insurer.

The Employer will have the power to appoint or remove any person to manage (including the power to acquire and dispose of) any assets of the Plan. It may appoint or remove any person or persons to serve in more than one fiduciary capacity with respect to the Plan (including service both as trustee and administrator).

The Employer will have the power to appoint or remove the Insurer.

SECTION 12.04--INFORMATION AVAILABLE.

Any Participant or alternate payee or any Beneficiary or Contingent Annuitant receiving benefits under the Plan may examine copies of this Plan, the Group Contract, or any other instrument under which the Plan was established or is operated. The Employer will maintain all of the items listed in this Section 12.04 in its office, or in such place or places as it may designate from time to time, for examination during reasonable business hours. Upon written request of a Participant or alternate payee or Beneficiary or Contingent Annuitant receiving benefits under the Plan, the Employer will furnish him with a copy of any item listed in this Section 12.04. The Employer may make a reasonable charge to the requesting person for the copy so furnished.

SECTION 12.05--CLAIMS.

Upon the request of a participant or beneficiary (including an alternate payee), or by action of the Employer, the Employer shall provide claim forms to any participant or his beneficiary who becomes entitled to benefits under the Plan. Such claim form shall be completed and submitted to the Employer no later than 30 days after it is received by the participant or beneficiary. Upon receipt of the claim form, the Employer shall review the appropriateness of the claim and if the Employer determines that the claim should not be allowed, the Employer shall respond in writing within 30 days of the receipt of the claim to the participant or beneficiary. The response shall include the specific reason or reasons for the denial, specific references to pertinent Plan provisions on which the denial is based, a description of whatever additional material or information, if any, need be supplied by the participant or beneficiary to perfect the claim, and

an explanation of the Plan's review procedure. If notice of the denial of a claim is not furnished within 30 days of receipt by the Employer, the claim shall be deemed denied.

Within 60 days after receipt of notice of denial of the claim or when the claim is deemed to have been denied, the participant or beneficiary (or representative) may respond to the denial by requesting, in writing, a review of the decision and a review of pertinent documents. If the participant or beneficiary (or representative) responds and seeks a review of the decision to deny benefits, issues and comments must be submitted in writing to the Employer. Such issues and comments shall specify the reasons that the decision of the Employer is claimed to be erroneous. The Employer shall review the contentions regarding the denial of the claim and shall, within 60 days from the Employer's receipt of the request for review, respond to said request. In modification of the foregoing, if the Employer, in the Employer's sole discretion, determines that special circumstances warrant the holding of a hearing, it shall promptly be held and a decision shall be rendered within 120 days from the date the Plan received the request for review. Any decision on review shall be in writing and shall state the specific reasons for the decision, and shall make specific references to the Plan provisions on which the decision is based.

ARTICLE 13. REQUIRED PROVISIONS

SECTION 13.01--REQUIRED STARTING DATE.

- (a) The entire interest of each participant in the Plan:
 - (1) Will be distributed to the participant no later than the Required Starting Date; or
 - (2) Will be distributed, starting not later than the Required Starting Date, in accordance with Treasury regulations, over the life of the participant or over the lives of the participant and a Designated Beneficiary (or over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a Designated Beneficiary).
- (b) If the distribution of the participant's interest has begun in accordance with Section 13.01(a)(2) above and the participant dies before the participant's entire interest has been distributed to the participant, the remaining portion of the participant's interest will be distributed at least as rapidly as under the method of distributions being made under Section 13.01(a)(2) above as of the date of the participant's death.
- (c) If a participant dies before the distribution of the participant's interest has begun in accordance with Section 13.01(a)(2) above, the entire interest of the participant will be distributed within five years after the death of the participant. However, the five-year rule does not apply to any portion of the participant's interest payable to (or for the benefit of) a Designated Beneficiary; and not later than one year after the date of the participant's death or such later date as may be prescribed by Treasury regulations distributions (in accordance with Treasury regulations) of such portion will start over the life of the Designated Beneficiary (or over a period not extending beyond the life expectancy of the Designated Beneficiary).
- (d) With respect to a Designated Beneficiary who is the participant's surviving spouse:
 - (1) The date on which the distributions are required to start for purposes of the exception to the five-year rule in Section 13.01(c) above will not be earlier than the date on which the participant would have attained age 70½; and
 - (2) If the surviving spouse dies before the distributions to the spouse start, Section 13.01(b) and 13.01(c) above will be applied as if the spouse were the participant.

- (e) For purposes of this Section 13.01.:
- (1) "Required Starting Date" means April 1 of the calendar year following the later of (a) the calendar year in which the participant attains age 70½ or (b) the calendar year in which the participant retires.
 - (2) "Designated Beneficiary" means any individual designated as a beneficiary by the participant.
 - (3) "Spouse" and "surviving spouse" include an alternate payee who is the participant's former spouse.
 - (4) In accordance with Treasury regulations, any amount paid to a child will be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under Treasury regulations).
 - (5) Any distribution required under the incidental death benefit requirements of IRC Section 401(a) will be treated as a distribution required under this Section 13.01.
- (f) Despite any contrary provision of the Plan, the Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the following proposed, final, and temporary Treasury regulations:
- (1) With respect to distributions made for calendar years beginning before January 1, 2001, the regulations under IRC Section 401(a)(9) that were proposed in 1987, including Proposed Treasury Regulation Section 1.401(a)(9)-2.
 - (2) With respect to distributions made for the calendar year beginning on January 1, 2001, the regulations under IRC Section 401(a)(9) that were proposed on January 17, 2001.
 - (3) With respect to distributions made for calendar years beginning on or after January 1, 2002, Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9, and also Treasury Regulation Section 1.401(a)(9)-6T for the period it applies.
- (g) This Section 13.01.:
- (1) Applies only to the extent this Section 13.01 requires a distribution to be made earlier than otherwise required under the Plan.

- (2) Overrides any distribution options in the Plan inconsistent with IRC Section 401(a)(9).
- (3) Applies to Plan Years beginning after December 31, 1986, or such later date provided in Public Law No. 98-369, Section 521(d)(5) (about collective bargaining agreements).

SECTION 13.02--ANNUAL COMPENSATION LIMIT.

Except for purposes of Sections 13.05, 13.06, and 13.07, the annual compensation taken into account for each participant in determining plan allocations and benefit accruals under the Plan for any Plan Year is limited to the annual compensation limit under IRC Section 401(a)(17)(A) (\$150,000 for Plan Years beginning before January 1, 2002, and \$200,000 for Plan Years beginning after December 31, 2001), as adjusted for increases in the cost of living in accordance with IRC Section 401(a)(17)(B). For Plan Years beginning before January 1, 1997, in determining the compensation of a participant the rules of IRC Section 414(q)(6) shall apply, except that in applying such rules the term "family" shall include only the spouse of the participant and any lineal descendants of the participant who have not attained age 19 before the close of the Plan Year. The requirements of IRC Section 401(a)(17) and the Treasury regulations thereunder are incorporated into the Plan by this reference. This Section 13.02 applies to Plan Years beginning after December 31, 1995.

SECTION 13.03--DIRECT ROLLOVERS.

Despite any contrary provision of the Plan that would otherwise limit a distributee's election under this Section 13.03, a distributee may elect, at the time and in the manner prescribed by the Employer, to have any portion of an eligible rollover distribution made after December 31, 1992, paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The following definitions shall apply to this Section 13.03 and Section 8.02(b).:

- (a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, but not including:
 - (1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
 - (2) Any distribution to the extent such distribution is required under IRC Section 401(a)(9);

- (3) For distributions made before January 1, 2002, the portion of any distribution that is not includable in gross income;
 - (4) For distributions made after December 31, 2001, any distribution that is made upon hardship of the employee; and
 - (5) Unless the Employer affirmatively elects to the contrary, any minimum amount permitted by IRC Section 401(a)(31) and Treasury regulations issued thereunder that is permitted to be excluded from the definition of eligible rollover distribution.
- (b) Eligible retirement plan: An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:
- (1) An individual retirement account or annuity described in IRC Section 408(a) or 408(b);
 - (2) A qualified plan described in IRC Section 401(a) or 403(a);
 - (3) For distributions made after December 31, 2001, an annuity contract described in IRC Section 403(b); or
 - (4) For distributions made after December 31, 2001, an eligible deferred compensation plan described in IRC Section 457(b) maintained by an eligible employer described in IRC Section 457(e)(1)(A) and that agrees to separately account for amounts transferred into such plan from the Plan.

However:

- (5) In the case of an eligible rollover distribution to the surviving spouse in a distribution made before January 1, 2002, an eligible retirement plan is only an individual retirement account described in IRC Section 408(a) or individual retirement annuity described in IRC Section 408(b).
- (6) In the case of a direct rollover of an amount that is not includable in gross income in a distribution made after December 31, 2001, an eligible retirement plan is only (a) a qualified defined contribution plan described in IRC Section 401(a) or 403(a) that agrees to separately account for amounts transferred in the direct rollover, including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable, (b) an individual retirement plan described in IRC Section 408(a), or (c) an individual retirement annuity described in IRC Section 408(b).

- (c) Distributee: A distributee includes a participant. In addition, the participant's surviving spouse and the participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

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

SECTION 13.04--BENEFITS FOR MILITARY SERVICE.

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

SECTION 13.05--LIMIT ON BENEFITS.

For limitation years beginning after December 31, 1983, and despite any contrary provision of the Plan a participant's annual benefit under the Plan during any limitation year may not exceed the limitations of IRC Section 415 as provided in this Section 13.05.

- (a) A participant's annual benefit under the Plan during any limitation year may not exceed the dollar limitation under IRC Section 415(b)(1)(A) for the limitation year and, for limitation years beginning before January 1, 1995, also may not exceed 100% of the participant's average compensation (as defined in Section 13.09) for the participant's high three years.
- (b) The dollar limitation and the compensation limitation in Section 13.05(a) above and in IRC Section 415(b)(1)(A) and (B) will be annually adjusted for increases in the cost of living in accordance with Treasury regulations, including for participants who have separated from service. Without limiting the foregoing:
 - (1) As of January 1 of each calendar year the dollar limitation will be automatically adjusted to the new dollar limitation determined by the Commissioner of Internal Revenue for that calendar year. The new dollar limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

- (2) In the case of a participant who has separated from service, the participant's average compensation for the participant's high three years will be automatically adjusted by multiplying such average compensation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under IRC Section 415(d) in such manner as the Secretary shall prescribe. Such adjusted average compensation will apply to limitation years ending within the calendar year of the date of adjustment.
- (c) A participant's high three years will be determined based on calendar years.
- (d) If a participant's annual benefit during a limitation year (payable in the normal form or in any optional form subject to adjustment under IRC Section 415(b)(2)(B)) would exceed the amount provided in Section 13.05(a) above, the participant's annual benefit during such limitation year will be reduced to the amount provided in Section 13.05(a).
- (e) Except as provided in IRC Section 415(f)(3) (about multiemployer plans), which is effective for limitation years beginning after December 31, 2001, in the case of any participant in another defined benefit plan of the employer (within the meaning of IRC Section 414(b), (c), (m), and (o), after applying IRC Section 415(h)), (1) all such plans will be treated as one plan and (2) the annual benefit that may be provided to the participant under the Plan as provided in Section 13.05(a) above will be reduced by the amount of the aggregate of the annual benefits provided to the participant under such other plans.
- (f) The limitations in this Section 13.05 will be applied according to the adjustments described in and the provisions of IRC Section 415 (including the effective dates of such adjustments and provisions), as interpreted in Treasury regulations and guidance by the Internal Revenue Service, which adjustments and provisions are incorporated into the Plan by this reference, including without limitation the adjustments described in and the provisions of IRC Sections 415(b)(2)(B) (about benefits payable in other than the normal form), 415(b)(2)(C) and (D) (about benefits commencing before or after a stated age or stated ages), 415(b)(2)(F) (about plans maintained by governments), 415(b)(2)(G) and (H) (about police and firefighters), 415(b)(2)(I) (about disability and survivor benefits under governmental plans), 415(b)(4) (about total annual benefits not exceeding \$10,000), 415(b)(5) (about employees with less than 10 years of participation or service), and 415(n) (about purchase of permissive service credit).
- (g) The adjustments described in IRC Section 415(b)(2)(B), (C), and (D) will be made by ignoring mortality decrement to the extent a forfeiture does not occur upon death and as follows:

- (1) The adjustment described in IRC Section 415(b)(2)(B) will be made using (i) the interest rate and applicable mortality table specified in Section 1.03(i) or (ii) 5% interest and the mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v), whichever produces the greater annual benefit.
- (2) The adjustments described in IRC Section 415(b)(2)(C) and (D) will be made using (i) the interest rate and applicable mortality table specified in Section 1.03(i) or (ii) 5% interest and the mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v), whichever produces the lesser annual benefit.

For limitation years beginning before January 1, 2000, the above provisions of this Section 13.05(g) shall be applied by substituting "the applicable mortality table specified in Section 1.03(i)" for "the mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v)" wherever such latter phrase appears. The mortality table prescribed pursuant to IRC Section 415(b)(2)(E)(v) is, for distributions with annuity starting dates before January 1, 2002, the table prescribed in Revenue Ruling 95-6 and, for distributions with annuity starting dates on or after December 31, 2002, the table prescribed in Revenue Ruling 2001-62.

- (h) For purposes of the adjustment in IRC Section 415(b)(5):
 - (1) A year of participation is a Plan Year for which the participant is a participant;
 - (2) A year of service is a Plan Year for which the participant is employed by the Employer; and
 - (3) A participant who is permanently and totally disabled (as defined in IRC Section 22(e)(3)) for a Plan Year will be credited with a year of participation and a year of service for that year.

SECTION 13.06--LIMIT ON ANNUAL ADDITIONS.

- (a) For limitation years beginning after December 31, 1983, and despite any contrary provision of the Plan, the annual additions to any participant's accounts under the Plan may not exceed the lesser of the dollar limitation in IRC Section 415(c)(1)(A) or 25% (100% for limitation years beginning after December 31, 2001) of the participant's compensation (as defined in Section 13.09). The dollar limit in this Section 13.06(a) will be adjusted as follows:
 - (1) For increases in the cost of living in accordance with IRC Section 415(d).

- (2) For limitation years beginning after December 31, 1986, and before January 1, 1995, the dollar limit will be adjusted to, if greater, one-quarter of the dollar limitation in effect under IRC Section 415(b)(1)(A).
- (b) In the case of any participant in another defined contribution plan of the employer (within the meaning of IRC Section 414(b), (c), (m), and (o), after applying IRC Section 415(h)), all such plans will be treated as one plan, and the maximum annual addition to the participant's accounts as provided above will be reduced by the aggregate of the amount of the annual additions to the participant's accounts under such other plans. For this purpose a defined contribution plan includes a welfare benefit fund (within the meaning of IRC Section 419(e)), an individual medical benefit account (within the meaning of IRC Section 415(l)(2)), and a simplified employee pension (within the meaning of IRC Section 408(k)).
- (c) If as a result of a reasonable error in estimating a participant's compensation or such other reason as is permitted under Treasury Regulation Section 1.415-6(b)(6) a participant's annual addition would exceed the limitations in this Section 13.06, determined after applying Section 13.07, the participant's contributions to the participant's accounts together with any allocable earnings will be distributed to the participant as soon as administratively feasible to the extent required to eliminate such excess.
- (d) The limitations in this Section 13.06 will be applied according to adjustments described in and the provisions of IRC Sections 415 and 419A(d) (including the effective dates of such adjustments and provisions), as interpreted in Treasury regulations and guidance by the Internal Revenue Service, which adjustments and provisions are incorporated into this Plan by this reference, including without limitation the adjustments described in and the provisions of IRC Sections 415(c)(2) (defining "annual addition"), 415(d) (about COLAs), 415(l) (about individual medical benefit accounts), and 419A(d)(2) (about medical benefit accounts for key employees in a welfare benefit fund).

SECTION 13.07--COMBINED LIMIT ON BENEFITS AND ANNUAL ADDITIONS.

For limitation years beginning after December 31, 1983, and before January 1, 2000, and despite any contrary provision of the Plan:

- (a) The sum of a participant's defined benefit plan fraction (within the meaning of IRC Section 415(e)) for the Plan and the participant's defined contribution plan fraction (within the meaning of IRC Section 415(e)) for the Plan for any year may not exceed 1.0. If such sum would otherwise exceed 1.0, the participant's projected annual benefit under the Plan will be reduced to the extent necessary for such sum not to exceed 1.0.

- (b) If a participant is a participant in another defined contribution or defined benefit plan of the employer (within the meaning of IRC Section 414(b), (c), (m), and (o), after applying IRC Section 415(h)), all defined benefit plans of the employer will be treated as one plan, and all defined contribution plans of the employer will be treated as one plan, and the sum of the participant's defined benefit plan fraction (within the meaning of IRC Section 415(e)) for such aggregate defined benefit plans and the participant's defined contribution plan fraction (within the meaning of IRC Section 415(e)) for such aggregate defined contribution plans for any year may not exceed 1.0. If such sum would otherwise exceed 1.0, the participant's projected annual benefit under the Plan will be reduced to the extent necessary for such sum not to exceed 1.0. For this purpose a defined contribution plan includes a welfare benefit fund (within the meaning of IRC Section 419(e)), an individual medical benefit account (within the meaning of IRC Section 415(l)(2)), and a simplified employee pension (within the meaning of IRC Section 408(k)).
- (c) The limitations in this Section 13.07 will be applied according to adjustments described in and the provisions of IRC Section 415 (including the effective dates of such adjustments and provisions), as interpreted in Treasury regulations and guidance by the Internal Revenue Service, which adjustments and provisions are incorporated into this Plan by this reference, including without limitation the adjustments described in and the provisions of IRC Sections 415(e) (about limitation in the case of a defined benefit plan and a defined contribution plan for the same employee).
- (l) At the election of the Employer, in applying the provisions of this Section 13.07 with respect to the defined contribution plan fraction the amount taken into account for the denominator for each participant for all Plan Years ending before January 1, 1983, shall be an equal to the product of (1) the amount of the denominator determined under Section 4.05(k) of the CITY OF NEWBERG GENERAL EMPLOYEES RETIREMENT PLAN for general employees of the City and the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN for Plan Years ending before January 1, 1982, multiplied by (2) the "transition fraction," which is a fraction (i) the numerator of which is the lesser of (A) \$51,875 or (B) 1.4 multiplied by 25% of the participant's compensation for the Plan Year ending in 1981, and (ii) the denominator of which is the lesser of (A) \$41,500 or (B) 25% of the participant's compensation for the Plan Year ending in 1981.

SECTION 13.08--LIMITATION YEAR.

The limitation year shall be the Plan Year.

SECTION 13.09--COMPENSATION FOR PURPOSES OF LIMITS.

For purposes of Sections 13.05, 13.06, and 13.07, "compensation" means wages within the meaning of IRC Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC Section 3401(a)(2)).

- (a) For limitation years beginning after December 31, 1997, "compensation" includes any elective deferral (as defined in IRC Section 402(g)(3)) contributed by the employer and any amount contributed or deferred by the employer at the election of the participant and not includable in the gross income of the participant by reason of IRC Section 125 or 457.
- (b) For limitation years beginning after December 31, 2000, "compensation" includes any amount contributed or deferred by the employer at the election of the participant and not includable in the gross income of the participant by reason of IRC Section 132(f)(4).
- (c) Effective January 1, 2002, "compensation" includes any additional elective deferral under IRC Section 414(v) contributed by the employer.
- (d) For purposes of Sections 13.05, 13.06, and 13.07, the amounts included in a participant's compensation under this Section 13.09 will be based on such amounts from the employer (within the meaning of IRC Section 414(b), (c), (m), and (o) [effective July 18, 1984], after applying IRC Section 415(h)).

SECTION 13.10--ANNUITY CONTRACTS.

Benefits may be paid by distributing an annuity contract purchased by the Employer for the Participant, alternate payee, or Beneficiary (the payee).

- (a) Delivery of any such contract will be in full satisfaction of the rights under the Plan of the payee and the payee's Contingent Annuitant, Beneficiary, and estate, and upon the delivery thereof such persons will have no further interest under the Plan or in the Group Contract with respect to the benefits to be paid under the contract and must look solely to the insurer issuing the contract for the payment of such benefits.
- (b) Any refund or credit under any such contract (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) in excess of the benefits under the Plan to be paid under the contract, and any proceeds from demutualization of the issuer of the contract or the issuer's successor, will be paid to the Plan for addition to the Group Contract.

- (c) Any such contract must be nontransferable.
- (d) The terms of the Plan control in the event of any conflict between the terms of the Plan and the terms of any such contract.

ARTICLE 14. GENERAL PROVISIONS

SECTION 14.01--AMENDMENT OF PLAN.

The Employer, acting through its City Council or City Manager, may amend this Plan at any time, including any remedial retroactive changes (within the specified period of time as may be determined by Treasury regulations or Internal Revenue Service guidance from time to time) to comply with the requirements of any law or regulation issued by any governmental agency to which the Employer is subject. However, the City Manager may amend this Plan only to clarify this Plan, facilitate the administration of this Plan, or make changes adapting this Plan to the requirements of law, changes in law, or the terms of a collective bargaining agreement, all as determined in the discretion of the City Manager.

SECTION 14.02--EXCLUSIVE BENEFIT.

Except as provided in Section 3.01 (about return of contributions) or Article 11. (about termination of the Plan), no asset of the Plan or Group Contract may be used for or diverted to any purpose other than for the exclusive benefit of participants or their beneficiaries and defraying reasonable expenses of administering the Plan and Group Contract; and no amendment or termination of the Plan, or merger or consolidation with, or transfer of assets or liabilities to, any other plan, shall operate to allow any asset of the Plan or Group Contract to be used for or diverted to any such prohibited purpose.

SECTION 14.03--PROVISIONS RELATING TO THE INSURER.

The Insurer is not a party to the Plan, nor will it be bound in any way by the provisions of the Plan, nor will it be required to look to the terms of this Plan, nor to determine whether the Employer has the authority to act in any particular manner or to make any contract or agreement.

SECTION 14.04--EMPLOYMENT STATUS.

Nothing contained in this Plan will be deemed to give any Employee the right to be retained in the employ of the Employer or to interfere with the rights of the Employer to discharge any Employee at any time.

Any final payment or distribution to any Participant or his legal representative or to any Beneficiaries, Contingent Annuitant, or alternate payee of such Participant in accordance with the provisions herein will be in full satisfaction of all claims against the Plan, the Insurer, and the Employer arising under or by virtue of the Plan.

SECTION 14.05--BENEFICIARY.

Each Participant may name a Beneficiary to receive any death benefit (other than any monthly income payable to a Contingent Annuitant) which may arise out of his participation in the Plan and may change such Beneficiary from time to time without the consent of such Beneficiary. It will be the responsibility of the Participant to give written notice to the Insurer of the name of his Beneficiary on a form furnished for that purpose.

In modification of the above, the Employer may maintain records of Beneficiary designations as to Participants prior to their Retirement Dates, in which event the written designations made by Participants will be filed with the Employer and in the event of a Participant's death prior to his Retirement Date, the Employer will certify to the Insurer the Beneficiary designation on its records as to such Participant.

If, at the death of a Participant, there is no Beneficiary named or surviving, the death benefit, if any, under the Plan will be paid to the Participant's estate.

For purposes of determining a Participant's Beneficiary:

- (a) A Beneficiary does not include an individual, even if designated by the Participant, who does not survive the Participant or who is treated under Oregon law as not surviving the Participant. For this purpose (1) the Participant and the individual will be treated as residing in Oregon and (2) Oregon law includes without limitation the Uniform Simultaneous Death Act (ORS 112.570 to ORS 112.590) or its successor and the Uniform Disclaimer of Property Interests Act, ORS 105.623 to 105.649, or its successor but does not include Oregon law regarding conflicts of laws.
- (b) ORS 112.175 to 112.195, about adoption, or successor Oregon statutes, apply to determine relationships. ORS 112.105, about paternity, or successor Oregon statutes, and other comparable state laws apply without regard to any limitation therein regarding intestate succession. ORS 112.455 to 112.555, regarding certain deaths caused by an individual, or successor Oregon statutes, apply without regard to whether the death occurs or the individual or Participant resides in Oregon.

SECTION 14.06--SPENDTHRIFT CLAUSE.

Except as provided in Section 14.14 (about domestic relations orders), no benefit under the Plan or Group Contract may be voluntarily or involuntarily or revocably or irrevocably alienated, transferred, assigned (either at law or in equity), anticipated, mortgaged, or otherwise encumbered, or be subject to garnishment attachment, levy, seizure, execution, sequestration, or other legal or equitable process for the payment of debts, judgments, alimony, separate maintenance, or other amounts or claims, or be transferred by operation of law in the event of bankruptcy, insolvency, or otherwise.

SECTION 14.07--FACILITY OF PAYMENT.

If any person to whom a Plan benefit is payable is a minor or (as determined in the Employer's discretion) incompetent by reason of physical or mental disability, the Employer may direct the Insurer to make the payments becoming due to such person to another for such person's benefit without responsibility for the Employer or the Insurer to see to the application of such payments, including without limitation to a custodian for the person, selected by the Employer or the Insurer without liability for the selection made, under the Oregon Uniform Transfers to Minors Act or under any other comparable state law. Any payment made pursuant to such power will as to such payment operate as a complete discharge of the Employer and the Insurer.

SECTION 14.08--CONSTRUCTION.

The Plan will be construed according to the laws of the State of Oregon and will be interpreted and administered consistent with the applicable requirements of the IRC for the Plan to be qualified under IRC Section 401(a). Any provision of the Plan that is based on a provision of the IRC, including one not necessary for the Plan to be qualified, will be interpreted and administered consistent with such provision of the IRC and the interpretive authorities thereunder.

The Plan includes provisions adopted in good faith to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001. Such provisions shall be interpreted and administered consistent with Treasury regulations and Internal Revenue Service guidance regarding such Act, even where such regulations and guidance are inconsistent with the literal interpretation of such provisions.

In case any provision of this Plan will be held illegal or invalid for any reason, such determination will not affect the remaining provisions of this Plan, but the Plan will be construed and enforced as if said illegal or invalid provision had never been included.

SECTION 14.09--LEGAL ACTIONS.

To any action or proceeding involving the assets held with respect to the Plan or the administration thereof, the Plan and the Employer will be the necessary parties and no person employed by the Employer, Participant, former Participant or their Beneficiaries or any other person having or claiming to have an interest in the Plan will be entitled to any notice or process. Any final judgment which is appealed or appealable that may be entered in any such action or proceeding will be binding and conclusive on all persons having or claiming to have any interest in the Plan.

SECTION 14.10--MODIFICATION IN MODE OF PAYMENT.

If the present value of the initial monthly amount of retirement benefit payable to any Participant on his Retirement Date, to a Participant's Beneficiary or Contingent Annuitant due to such Participant's death, or to an alternate payee, is less than \$1,750, such value may, at the discretion

of the Employer, be paid in a single sum in full settlement of all benefits otherwise payable. Such value will be determined on the basis of the annuity purchase rates in the Group Contract.

SECTION 14.11--INTEREST.

Interest will not be paid on any amount of benefit paid after the date as of which it is to be paid under the Plan if the amount is paid as soon as administratively feasible after such date, taking into account any delay caused by the person entitled to the payment, any inability to locate such person, and any uncertainty regarding the identity of such person or the amount to be paid. Where interest is payable, it will be paid at the rate specified in Section 1.03(i).

SECTION 14.12--PRONOUNS.

Masculine pronouns as used in this Plan will include both masculine and feminine gender unless the context indicates otherwise.

SECTION 14.13--CAPTIONS.

The captions are for convenience only and have no substantive effect.

SECTION 14.14--DISTRIBUTION OF BENEFITS TO ALTERNATE PAYEE.

Despite any contrary provision of the Plan except Section 13.01 (about required starting date), to the extent required by and subject to the restrictions of ORS 237.600, a participant's benefit will be paid, in whole or in part, to an alternate payee (and not to the participant or other beneficiary) if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Payment to the alternate payee may be made before the participant's Termination of Employment with the Employer if provided or allowed by the decree, order, or agreement.

- (a) The Plan will apply ORS 237.600 to decrees, orders, or agreements whenever entered or modified, including those entered or last modified before January 1, 1994.
- (b) No benefit under the Plan will be paid to an alternate payee under the terms of a court decree or order or court-approved property settlement agreement ("Order") until after the date the Employer receives a copy of the Order and such additional information and documentation as satisfy the Employer:
 - (1) That the copy is a true copy of the Order.

- (2) That the Order is, within the meaning of ORS 237.600, a court decree of annulment or dissolution of marriage or of separation, or a court order or court-approved property settlement agreement incident to such a decree.
- (3) Of the extent to which the terms of the Order expressly provide for payment of a benefit under the Plan to an alternate payee.
- (4) Of any other fact or matter required for the Employer to:
 - (i) Determine the application of ORS 237.600 to the Order or the extent to which the Order applies to the Plan.
 - (ii) Comply with the Order or with ORS 237.600.
 - (iii) Administer the Plan under the terms of the Order.
- (c) Neither Employer nor the Plan will charge or collect out of the benefits payable to the participant or the alternate payee any administrative expenses or related costs incurred by Employer or the Plan in obtaining data or making calculations necessary by reason of ORS 237.600.
- (d) For periods beginning before a participant's Termination of Employment with the Employer, the amounts payable to the participant's alternate payee will be determined using the interest rate and mortality table specified in Section 1.03(i), not the factors specified in Section 4.01(b) or the provision in Section 4.01(b) for no reduction.

SECTION 14.15--MERGER.

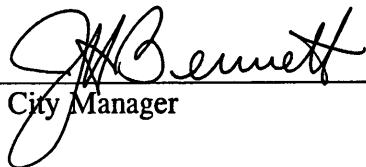
This Plan is funded by Group Contracts issued by the Insurer to fund benefits for participants and their beneficiaries in the CITY OF NEWBERG GENERAL EMPLOYEES RETIREMENT PLAN for general employees of the City and in the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN, which plans are restated in this Plan. Effective as of a date to be determined by the Employer's Finance Director, the Employer shall cause the Insurer to modify or combine the Group Contracts so that all of the assets of the Group Contracts are available to pay benefits to all employees who are covered by this Plan and their beneficiaries. Until that date, the part of this Plan resulting from the CITY OF NEWBERG GENERAL EMPLOYEES RETIREMENT PLAN may continue to be known by such name, and the part of

this Plan resulting from the CITY OF NEWBERG POLICEMEN AND FIREMEN RETIREMENT PLAN may continue to be known by such name.

DATED June 26, 2002.

CITY OF NEWBERG

By

A handwritten signature in cursive script, appearing to read "J. Bennett", is written over a horizontal line.

City Manager

FIRST AMENDMENT TO THE 2002 RESTATEMENT OF THE
CITY OF NEWBERG EMPLOYEES RETIREMENT PLAN

The last sentence of Section 13.05(g) of the 2002 Restatement of the CITY OF NEWBERG EMPLOYEES RETIREMENT PLAN dated June 26, 2002, is amended to change "January 1, 2002" in that sentence to "December 31, 2002".

DATED this December 16, 2002.

CITY OF NEWBERG

By 
City Manager

FIRST AMENDMENT