

CERTIFICATE OF RESOLUTIONS  
OF THE  
PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE

I certify that I am a member of the Public Works Commission of the City of Fayetteville, North Carolina (hereinafter referred to as the "Commission"), and that the following are true and correct copies of resolutions duly adopted by the Commission at a meeting held this the 8<sup>th</sup> day of March, 2000.

WHEREAS, pursuant to Chapter 557 of the Session Laws of 1979 of the General Assembly of North Carolina, the City Council of the City of Fayetteville, North Carolina (hereinafter referred to as the "Council") established the Employees' Retirement Plan of the Public Works Commission of the City of Fayetteville (hereinafter referred to as the "Retirement Plan") for the benefit of the employees of the Commission; and

WHEREAS, the Retirement Plan needs to be amended and restated in order to bring it up to date for changes in the law and to incorporate all prior amendments to the Plan; and

WHEREAS, the Commission wishes to recommend to the Council that the Council adopt the Retirement Plan as amended and restated.

NOW, THEREFORE, IT IS RESOLVED, that the Commission recommends to the Council that the Council adopt the Retirement Plan as amended and restated, a copy of which is attached hereto and made a part of these resolutions.

RESOLVED, that upon approval by the Council of the Retirement Plan as amended and restated that the officers of the Commission are authorized and directed to do such things as may be found necessary and proper to assure continuance of the Retirement Plan and the rights and benefits of all present and future participants, retired participants, and beneficiaries under the Retirement Plan.

RESOLVED, that the officers of the Commission will file said Retirement Plan and all other necessary documents, information, and data with the Internal Revenue Service and will take such appropriate action as shall be required to obtain a letter determining that the Retirement Plan meets the requirements of the Internal Revenue Code of 1986 as a qualified plan under said Code.

The undersigned does hereby certify that the copy of the Retirement Plan as amended and restated is a true and correct copy of the document referred to in the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned has set his hand this the 8<sup>th</sup>  
day of March, 2000.

PUBLIC WORKS COMMISSION OF THE  
CITY OF FAYETTEVILLE, NORTH CAROLINA



Member

ATTEST:



## **EXHIBIT 1**

### **EMPLOYEES' RETIREMENT PLAN OF THE PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE**

EMPLOYEES' RETIREMENT PLAN OF THE  
PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE

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EMPLOYEES' RETIREMENT PLAN OF THE PUBLIC WORKS COMMISSION OF THE  
CITY OF FAYETTEVILLE

ARTICLE 1

DEFINITIONS

As used herein, the following words and phrases shall have the meaning indicated unless otherwise defined or required by the context:

Section 1.01 ACCRUED BENEFIT - The "Accrued Benefit" of a Participant as of any date prior to his Normal Retirement Date shall be equal to the product of (a) and (b), where:

- a. is a fraction, the numerator of which is the Participant's Credited Service as of the date the determination is to be made, and the denominator of which is the Credited Service which he would have had if he had remained with the Employer until the first day of the month coinciding with or following his 65th birthday, and
- b. is the Normal Retirement Benefit he would be entitled to under the Plan as in effect on the date the determination is being made, computed in accordance with the benefit formula set forth in Section 5.01 and based on his Average Compensation as of the date of determination and the Credited Service he would have if he had remained with the Employer until the first day of the month coinciding with or following his 65th birthday.

Section 1.02 ACTUARIAL EQUIVALENT - Shall mean a benefit of equal value when computed in accordance with the factors set forth in Exhibit A, which is attached hereto and which is made a part of the Plan.

Section 1.03 AVERAGE COMPENSATION - Shall mean the average annual compensation of a Participant during the four (4) consecutive years within the last ten (10) years of his employment, producing the highest such average. If total employment is less than four (4) years, the total period of employment will be used.

Section 1.04 BENEFICIARY - Shall mean the recipient or recipients, last designated in writing on forms provided by the Employer, who shall receive any death benefits payable under the Plan.

Section 1.05 BOARD - Shall mean the Board of Trustees appointed by the Council in accordance with Chapter 557 of the Session Laws of 1979 which shall perform the administrative duties and responsibilities set forth in Article 8.

Section 1.06 CODE - Shall mean the Internal Revenue Code of 1986, as amended.

Section 1.07 COMPENSATION - Shall mean the total salary and wages paid to an Employee, including overtime, bonuses, longevity pay, commissions, any elective contributions made by the Employer on behalf of an Employee which are not includable in W-2 wages under Code Sections 125 and 457, and any contributions made on behalf of a Participant in accordance with Sections 3.01 and 3.04. Compensation shall not include the following items: reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, welfare benefits, and payment at separation from service for unused vacation time or sick leave.

For Plan Years beginning on or after January 1, 1989, the Compensation of each Participant taken into account under the Plan for any Plan Year shall not exceed \$200,000, as adjusted by the Secretary of the Treasury, at the same time and in the same manner as under Code Section 415(d). However, application of the dollar limitation of this paragraph shall not be applied to the extent it would result in a reduction of a Participant's Accrued Benefit as determined on December 31, 1988. In applying this limitation prior to January 1, 1997, the rules of Code Section 414(q)(6) (requiring aggregation of certain highly compensated employees (as that term is defined in Code Section 414(q)) with family members) shall apply, except 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 year. If as a result of the application of such rules the adjusted \$200,000 limitation is exceeded, the limitation shall be prorated among the affected Participants in proportion to each such Participant's Compensation as determined under this Section prior to the application of this limitation.

Section 1.08 COUNCIL - Shall mean the City Council of the City of Fayetteville, North Carolina.

Section 1.09 CREDITED SERVICE - Shall mean the number of full years and full months of uninterrupted employment of an Employee from his first day of employment to the date of his death, Early Retirement, Normal Retirement, or other termination of employment with each full month being credited as 1/12th of a year of Credited Service. Credited Service shall not be interrupted by and shall include (a) a leave of absence authorized by the Employer or extension thereof not to exceed twelve (12) months; (b) any period of time during which an Employee is disabled and for which he would be entitled to receive disability benefit payments from any disability program of any type or kind maintained by law or by the Employer, with any such waiting or elimination period as may be required as a condition precedent to the receipt of such benefits being included in such period of time; (c) any service, voluntary or involuntary, in the Armed Forces of the United States, if the Employee is legally entitled to reemployment within the time specified by law and in the manner and under the conditions prescribed by law; provided, however, that Credited Service shall be interrupted by voluntary reenlistments.

Section 1.10 EFFECTIVE DATE - The words "Effective Date" shall mean the effective date of the Plan which shall be July 1, 1965. The Effective Date of the first amended and restated Plan shall be July 1, 1979. The Effective Date of the second amended and restated Plan shall be July 1, 1984. The Effective Date of this third amended and restated Plan shall be July 1, 1987 unless another date is otherwise specified in the Plan.

Section 1.11 EMPLOYEE - Shall mean any individual who is employed by the Employer on a full-time basis, but excluding any person whose regular employment is for twenty (20) hours or less per week, or for five (5) months or less per calendar year.

Section 1.12 EMPLOYEE CONTRIBUTIONS ACCOUNT - Shall mean the sum of the contributions made by a Participant under the terms of the Plan plus interest at three percent (3%) compounded annually to June 30, 1979 and interest at five percent (5%) compounded annually thereafter to the date benefits are determined.

Section 1.13 EMPLOYER - Shall mean the Public Works Commission of the City of Fayetteville, North Carolina.

Section 1.14 NORMAL RETIREMENT DATE - For Participants who separate from service with the Employer before July 1, 1989, the words "Normal Retirement Date" shall mean the first day of the month coincident with or next following the earlier of (a) attainment of age sixty-five (65), or (b) completion of thirty (30) years of Credited Service and attainment of age sixty-two (62).

For Participants who separate from service with the Employer on or after July 1, 1989 but before July 1, 1995, the words "Normal Retirement Date" shall mean the first day of the month coincident with or next following the earlier of (a) attainment of age sixty-five (65), or (b) completion of thirty (30) years of Credited Service and attainment of age fifty-five (55).

For Participants who are in the employ of the Employer on or after July 1, 1995, the words "Normal Retirement Date" shall mean the first day of the month coincident with or next following the earlier of (a) attainment of age sixty-five (65), or (b) completion of thirty (30) years of Credited Service.

Section 1.15 PARTICIPANT - Shall mean any Employee who becomes a Participant as provided in Article 2.

Section 1.16 PLAN - Shall mean the Employees' Retirement Plan of the Public Works Commission of the City of Fayetteville, North Carolina, as amended and restated and contained herein, and as it may be further amended from time to time.

Section 1.17 PLAN ACTUARY - Shall mean an individual, partnership, or corporation who or which is employed by the Employer to assist the Board in the valuation and administration of the Plan.

Section 1.18 PLAN YEAR - Shall mean each twelve-month period beginning on July 1st and ending on June 30th.

Section 1.19 RETIRED PARTICIPANT - Shall mean any Participant or Terminated Vested Participant who has retired from the Employer and is receiving retirement benefits under the terms of the Plan.

Section 1.20 SPOUSE - Shall mean an individual to whom the Participant is legally married on the date of such Participant's death or on the date his benefits commence, whichever is applicable.

Section 1.21 TRUSTEE - Shall mean any individual, individuals or any corporate banking institution appointed as Trustee by the Board in accordance with Chapter 557 of the Session Laws of 1979 to invest, administer, and care for the funds contributed to the Employees' Retirement Trust of the Public Works Commission of the City of Fayetteville for the benefit of Participants, Retired Participants, and their Beneficiaries. Such Trust, as executed and as it may be amended from time to time, is hereby incorporated by reference into the Plan.



## ARTICLE 2 ELIGIBILITY AND PARTICIPATION

Section 2.01 CONDITIONS OF ELIGIBILITY - Each Employee hired on or after January 1, 1986 shall become a Participant as a condition of his employment on the later of January 1, 1987 or his date of employment.

Each Employee on July 1, 1965 shall be eligible to become a Participant on the earlier of the following dates: July 1, 1965, provided he has then completed at least one (1) year of uninterrupted employment and has reached his twenty-fifth (25<sup>th</sup>) birthday, or the first anniversary of July 1, 1965 on which he has satisfied the above age and service conditions. Each Employee hired after July 1, 1965 but prior to July 1, 1974 shall become a Participant as a condition of his employment on the July 1st coinciding with or next following his completion of at least one (1) year of uninterrupted employment and attainment of age twenty-five (25). Each Employee hired on or after July 1, 1974 shall become a Participant as a condition of his employment on the first day of the month coinciding with or next following his completion of at least one (1) year of uninterrupted employment. Once an Employee has become a Participant, he shall continue to be a Participant as long as he continues to be an Employee. Each Employee on July 1, 1965 who has the option to become a Participant and each other Employee shall submit to the Employer an application to participate. The application to participate must be in writing, and in the form and manner prescribed by the Employer.

Each Employee on July 1, 1965 who has the option to become a Participant on July 1, 1965 but at that time does not elect to become a Participant, shall be eligible to become a Participant on July 1, 1966. If he chooses not to become a Participant on July 1, 1966, this is an irrevocable choice and he will not be given the choice to become a Participant at a later date. If he elects to become a Participant on July 1, 1966, he shall be required to contribute the amounts required as Employee Contributions by Section 3.01 for the twelve-month (12-month) period between July 1, 1965 and July 1, 1966, plus interest thereon at three percent (3%) per annum as provided in Section 3.01.

Section 2.02 PARTICIPATION- The Plan shall not be deemed to constitute a contract of employment between the Employer and any Participant. No provision of the Plan shall be deemed to abridge or limit any managerial right of the Employer, or to give any Employee or Participant the right to be retained in the employment of the Employer, or to interfere with the right of the Employer to discharge any Employee or Participant at any time, regardless of the effect which such discharge will have upon him as a Participant.

ARTICLE 3  
FINANCING OF PLAN

Section 3.01 EMPLOYEE CONTRIBUTIONS - For the period beginning July 1, 1965 and ending on June 30, 1979, each Participant shall contribute each payday three percent (3%) of his biweekly Compensation, which sum shall be deducted by payroll deductions. An Employee on July 1, 1965 who is eligible to participate as of that date but who deferred his participation to July 1, 1966, shall be required at the time of participation to contribute, in addition to the above, three percent (3%) of his biweekly Compensation for each of the twelve (12) months between July 1, 1965 and July 1, 1966.

For the period beginning July 1, 1979 and ending on June 30, 1989, each Participant shall contribute each payday three and one half percent (3½%) of his biweekly Compensation, which sum shall be deducted by payroll deductions.

For the period beginning July 1, 1989 and ending on June 30, 1995 (or such later date as indicated in the following paragraph), each Participant shall contribute each payday five percent (5%) of his Compensation (as defined in Section 1.07), which sum shall be deducted by payroll deductions.

Beginning July 1, 1995, or if later, the first payday that follows five (5) working days after adoption of the change in the definition of "Normal Retirement Date" that is effective July 1, 1995, each Participant shall contribute each payday five and one half percent (5½%) of his Compensation (as defined in Section 1.07), which sum shall be deducted by payroll deductions.

Effective July 1, 1988, in the event a Participant remains in the active employment of the Employer beyond his Normal Retirement Date, he shall continue to make Employee Contributions to the Plan for as long as he remains an active Employee.

Section 3.02 EMPLOYER CONTRIBUTIONS - The cost of the Plan not provided under Section 3.01 will be borne by actuarially determined contributions made by the Employer. Actuarial determinations will be made each year on or about the first day of each Plan Year. Contributions by the Employer shall be made irrevocably and shall be used solely for the benefit of Participants, Retired Participants and Beneficiaries. Contributions made by the Employer to the Plan for the benefit of all Participants shall not be allocated to each Participant. Contributions which have been made on account of Participants whose employment with the Employer is terminated before they are eligible to receive any benefits provided by the Plan shall remain in the Plan upon such terminations and shall be taken into account actuarially in determining the contributions of the Employer and shall not be used in any way to increase benefits under the Plan.

Notwithstanding anything herein to the contrary, upon the Employer's request, a contribution which was made by a mistake of fact, or conditioned upon initial qualification of the Plan, or upon the deductibility of a contribution under federal law, shall be returned to the Employer within one (1) year after the payment of the contribution, the denial of the initial qualification, or the disallowance of the deduction (to the extent disallowed), whichever is applicable. The amount which may be returned to the Employer is the excess of the amount

contributed over the amount that would have been contributed had there not occurred a mistake of fact or a mistake in determining the deduction. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

Section 3.03 MEDIUM OF FINANCING THE PLAN - Investment of all contributions made toward the cost of the plan and payment of benefits to Participants will be accomplished by a trust instrument, as executed and as it may be amended from time to time, which shall constitute a part of the Plan and which is incorporated by reference herein.

Section 3.04 PICK UP OF EMPLOYEE CONTRIBUTIONS – As provided in Section 414(h)(2) of the Code effective December 15, 1989, the Employer elects to pick up and pay all Employee Contributions which are payable by the Participants under Section 3.01 with respect to all Employee Contributions to be made after the effective date of the Ordinance adopting this Section.

The Employee Contributions picked up by the Employer shall be designated for all purposes of this Plan and Trust as Employee Contributions, except for the determination of tax upon a distribution from the Plan. These Employee Contributions shall be credited to the Trust Fund in the Employee Contributions Account which shall be separately established for the purpose of accounting for the picked up contributions. These Employee Contributions, although designated as Employee Contributions, shall be paid by the Employer in lieu of contributions by the Participants. The Participants shall not be given the option of choosing to receive any portion of these amounts directly instead of having them paid by the Employer to the Plan's Trust Fund.

Employee Contributions picked up by the Employer shall be payable from the same source of funds used for payment of Compensation to a Participant. A deduction shall be made from a Participant's Compensation equal to the amount of his Employee Contributions picked up by the Employer. This deduction, however, shall not reduce his Compensation as defined in Section 1.07. Picked up Employee Contributions shall be paid to the Trustee monthly for the preceding month, and a schedule of the picked up Employee Contributions shall accompany this payment.



ARTICLE 4  
BENEFITS – CONDITIONS

Section 4.01 APPLICATION FORMS - Payment of all benefits under the Plan shall be pursuant to written application by the Participant or Beneficiary, as the case may be, submitted in such form as the committee may direct from time to time.

Section 4.02 NORMAL RETIREMENT - CONDITIONS - Each Participant in the employ of the Employer on his Normal Retirement Date shall be eligible to retire on that date and to receive a benefit as provided in Section 5.01.

Section 4.03 DELAYED RETIREMENT - CONDITIONS - If a Participant remains in the active employment of the Employer beyond his Normal Retirement Date, he shall be eligible to retire on the first day of any month following his Normal Retirement Date, such date to be designated his Delayed Retirement Date, and to receive a benefit as provided in Section 5.02.

Section 4.04 EARLY RETIREMENT - CONDITIONS - A Participant who has reached his fifty-fifth (55th) birthday and completed at least twenty (20) years of Credited Service shall be eligible to retire on the first day of any month which is coincident with or following satisfaction of such requirements and which is prior to his Normal Retirement Date, and to receive a benefit as provided in Section 5.03. The first day of the month after a Participant terminates his employment after having met the requirements for Early Retirement shall be designated as his Early Retirement Date.

Section 4.05 DISABILITY - CONDITIONS - If a Participant becomes disabled and is eligible to receive disability benefits under any disability program maintained by law or by the Employer, he shall continue to be a Participant in the Plan as provided in Section 5.04. Otherwise, he shall be terminated from the Plan.

Section 4.06 DEATH BEFORE RETIREMENT BENEFITS ARE PAYABLE - If a Participant dies before retirement benefits are payable, his Beneficiary shall receive the benefit, if any, provided in Section 5.05.

Section 4.07 DEATH AFTER RETIREMENT BENEFITS ARE PAYABLE - If a Retired Participant dies after retirement benefits are payable, his Beneficiary shall receive the benefit, if any, provided in Section 5.06.

Section 4.08 OTHER TERMINATION OF EMPLOYMENT - If a Participant terminates for reasons other than Normal Retirement, Delayed Retirement, Early Retirement, Disability, or Death as set forth above, the Participant shall be entitled to receive the benefit, if any, provided in Section 5.07 or 5.08.

Section 4.09 INCREASED BENEFITS FOR RETIRED PARTICIPANTS, CONTINGENT ANNUITANTS, AND BENEFICIARIES - Any person who, on July 1, 1981, was receiving monthly benefit payments from the Plan either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, effective with his benefit payment due and payable for July 1, 1981, receive an increase in such monthly benefit payment, as provided in Section 5.13.

Any person who, on January 1, 1987, was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for January, 1987) from the Plan,

either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, effective with his benefit payment due and payable for January 1, 1987, receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who, on July 1, 1990, was receiving monthly benefit payments from the Plan, either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, effective with his benefit payment due and payable for January 1, 1991, receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who before January 1, 1995 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for January, 1995) from the Plan, either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who on January 1, 1995 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for January, 1995) from the Plan, either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, effective with his benefit payment due and payable for January 1, 1995, receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who before January 1, 1996 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for January, 1996) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who before July 1, 1997 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for July, 1997) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who before July 1, 1998 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for July, 1998) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall receive an increase in such monthly benefit payment as provided in Section 5.13.

Any person who before July 1, 1999 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for July, 1999) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall receive an increase in such monthly benefit payment as provided in Section 5.13.

ARTICLE 5  
BENEFITS - METHOD OF CALCULATION

Section 5.01 NORMAL RETIREMENT BENEFIT – A Participant, upon retirement on his Normal Retirement Date, shall receive a monthly Normal Retirement Benefit which shall be payable on his Normal Retirement Date and on the first day of each month thereafter during his lifetime (hereinafter referred to as the Basic Form of Benefit Payment). For Participants who are employed by the Employer on or after July 1, 1995, the amount of such monthly benefit computed as of his Normal Retirement Date shall be 1/12 of the product of (a) and (b) as follows:

- (a) Credited Service
- (b) 1.8% of Average Compensation.

For Participants who are not employed by the Employer on or after July 1, 1995, the amount of such monthly benefit computed as of his Normal Retirement Date shall be 1/12 of the product of (a) and (b) as follows:

- (a) Credited Service
- (b) 1.75% Average Compensation

In no case shall the Participant be entitled to less than the greater of (a) his Normal Retirement Benefit computed in accordance with this Section; or (b) the Early Retirement Benefit computed in accordance with Section 5.03 which the Participant would have been entitled to receive if he had elected Early Retirement at any time after meeting the conditions for such Early Retirement as set forth in Section 4.04, or (c) his Accrued Benefit on June 30, 1995 determined in accordance with the terms of the Plan in effect on that date.

If a Participant reaches his Normal Retirement Date while still employed by the Employer, his retirement benefit, determined in accordance with the formula set forth in this Section, shall become 100% vested and nonforfeitable.

Section 5.02 DELAYED RETIREMENT BENEFIT – Effective July 1, 1988, a Participant upon retirement on his Delayed Retirement Date, shall receive a monthly Delayed Retirement Benefit, which shall be payable on his Delayed Retirement Date and on the first day of each month thereafter during his lifetime. The Delayed Retirement Benefit shall be the greater of the Actuarial Equivalent of the Participant's Normal Retirement Benefit, or his Accrued Benefit determined using years of Credited Service and Average Compensation as of the date of his actual retirement.

Prior to July 1, 1988, a Participant upon retirement on his Delayed Retirement Date, shall receive a monthly Delayed Retirement Benefit, which shall be payable on his Delayed Retirement Date and on the first day of each month thereafter during his lifetime. The Delayed Retirement Benefit shall be the Actuarial Equivalent of the Participant's Normal Retirement

Benefit determined as of the first day of the month coinciding with or following his sixty-fifth (65<sup>th</sup>) birthday. Service that would have accrued between his Normal Retirement Date and July 1, 1988 shall be excluded.

Section 5.03 EARLY RETIREMENT BENEFIT – A Participant who terminates employment after having met the eligibility requirements for Early Retirement shall be eligible to receive a deferred retirement benefit commencing at his Normal Retirement Date equal to his Accrued Benefit.

A Participant on his Early Retirement Date, may elect to receive an immediate monthly Early Retirement Benefit which shall be payable on his Early Retirement Date and on the first day of each month thereafter in accordance with the method of payment provided in Section 5.01 or Article 6, as may be applicable.

If such Participant does not elect an immediate Early Retirement Benefit, he may, at any time thereafter, elect to receive his retirement benefit commencing on the first day of any month between his Early Retirement Date and his Normal Retirement Date.

Age When Early Retirement Payments Begin*	Percent of Benefit Payable
64	99%
63	97%
62	95%
61	92%
60	88%
59	83%
58	77%
57	69%
56	60%
55	50%

\*There shall be a pro rata increase in the percentages for full months totaling less than a year.

A Terminated Vested Participant who has completed twenty (20) years of Credited Service may elect, upon attainment of age fifty-five (55), to receive an immediate Early Retirement Benefit which shall be payable on his Early Retirement Date and on the first day of each month thereafter in accordance with the method of payment provided in Section 5.01, or Article 6, as may be applicable. Such benefit shall be equal to the Participant's Deferred Vested Benefit, reduced according to the percentages provided in the preceding paragraph.

Section 5.04 DISABILITY - If a Participant becomes disabled within the meaning of "Disability" as determined from any program of disability benefits of any kind or type maintained by law or by the Employer, and such Participant is eligible to receive disability benefits from such program, he shall continue to be a Participant during such period or periods in which he is receiving, or is eligible to receive, such disability benefit payments without being required to make Employee Contributions as specified in Section 3.01. For purposes of

continuance in the Plan during disability, the rate of compensation of such disabled Participant during all such periods of disability shall be deemed to be his Compensation for the last twelve-month (12-month) period preceding the date of commencement of the period of disability. Should he be disabled as determined above upon the attainment of his Normal Retirement Date, such Participant shall be eligible to receive a Normal Retirement Benefit as provided in Section 5.01 based on his Compensation as determined above and Credited Service determined as of his Normal Retirement Date.

If at the time disability benefits cease, such Participant has satisfied the eligibility requirements for Early Retirement under the Plan, he shall be eligible to receive an Early Retirement Benefit as provided in Section 5.03, based on his Compensation as determined above and Credited Service determined as of his Early Retirement Date.

If an Employee becomes mentally or physically disabled, as determined by a physician selected by the Committee, to the extent he is unable to continue his employment and (a) he is not eligible to receive a benefit under any program of disability benefits maintained by law or by the Employer, nor is he eligible for Early Retirement, or (b) he has not satisfied the eligibility requirements for Early Retirement at the time disability benefits cease, such Participant shall be terminated from the Plan and shall receive a benefit as set forth in section 5.07 or 5.08.

Section 5.05 DEATH BEFORE RETIREMENT BENEFITS ARE PAYABLE - If a Participant dies before his Early Retirement Date, or Normal Retirement Date, his Beneficiary shall receive a refund of all his Employee Contributions Account. If the Beneficiary predeceases the Participant and no successor Beneficiary has been named, then all of the Participant's Employee Contributions Account shall be paid to the executors or administrators of the Participant's estate.

Prior to January 1, 1995, if a Participant dies after he is eligible to retire under the Plan, but before retirement benefits have commenced, and he was in the employment of the Employer on his date of death, his surviving Spouse shall receive a monthly survivor benefit, which shall be payable on the first day of the month following the date of death of the Participant and on the first day of each month thereafter during the lifetime of the surviving Spouse. Such monthly survivor benefits shall be computed as though the Participant had retired on the day before his date of death and had elected an optional retirement benefit under "Option C" of Section 6.02 (Modified Joint and Survivor Option), which provides a decreased retirement benefit payable to the Retired Participant for life and which continues after his death to his surviving Spouse for life in the amount of fifty percent (50%) of the decreased retirement benefits payable to the Retired Participant. The benefit provided by this paragraph shall apply only to Participants who die before January 1, 1995.

Effective January 1, 1995, if a Participant dies after he is eligible to retire under the Plan, but before retirement benefits have commenced, and he was in the employment of the Employer on his date of death, his surviving Spouse shall receive a monthly survivor benefit, which shall be payable on the first day of the month following the date of death of the Participant and on the first day of each month thereafter during the lifetime of the surviving Spouse. Such monthly survivor benefits shall be computed as though the Participant had retired on the day before his date of death and had elected an optional retirement benefit under "Option B" of Section 6.02



(Joint and Survivor Option), which provides a decreased retirement benefit payable to the Retired Participant for life and which continues after his death to his surviving Spouse for life in the amount of one hundred percent (100%) of the decreased retirement benefits payable to the Retired Participant. The benefit provided by this paragraph shall apply only to Participants who die on or after January 1, 1995.

In the event the Spouse has predeceased the Participant, all the Participant's Employee Contributions Account will be paid in one lump sum to the successor Beneficiary, if any, or if no successor Beneficiary has been named, to the executors or administrators of the Participant's estate. In the event the surviving Spouse dies prior to full distribution of a Participant's Employee Contributions Account, any portion thereof remaining undistributed will be paid in a lump sum to the successor Beneficiary, if any, or in the event there is no successor Beneficiary to the executors or administrators of the estate of the surviving Spouse.

Section 5.06 DEATH AFTER RETIREMENT BENEFITS ARE PAYABLE - If a Participant dies after retirement benefits are payable without having elected an optional form of benefit payment which specifically provides for death benefits, and without having received benefit payments equal to the amount of his Employee Contributions Account, his Beneficiary shall receive the amount of retirement benefits payable to the deceased Participant until the total benefits payable to the deceased Participant and his Beneficiary equal the amount of his Employee Contributions Account. In the event the Beneficiary has predeceased the Participant and no successor Beneficiary has been named, the Participant's Employee Contributions Account shall be payable in a lump sum to the executors or administrators of the Participant's estate. If the surviving Beneficiary should die prior to full distribution of the Participant's Employee Contributions Account, then any portion remaining thereof shall be paid in a lump sum to the successor Beneficiary, or if no successor Beneficiary has been named, to the executor or administrators of the estate of the surviving Beneficiary.

Section 5.07 OTHER TERMINATION OF EMPLOYMENT - If the employment of a Participant is terminated other than by Normal, Early, or Delayed Retirement, Disability, or Death, and he is not eligible under the foregoing provisions to receive a benefit, the Participant shall be entitled to the following:

1. If the Participant has less than five (5) years of Credited service, return of his Employee Contributions Account. Such Account shall be payable within ninety (90) days following termination of employment, if payment is deferred beyond thirty (30) days following termination of employment. Interest of 5% per annum shall be credited from the date of termination of employment until the date of actual payment.
2. If the Participant has five (5) or more years of Credited Service, he shall be entitled to a deferred benefit payable at his Normal Retirement Date. Such benefit shall be the sum of the Participant's Accrued Benefit Derived From Employee Contributions, plus the Participant's Accrued Benefit Derived From Employer Contributions.
3. Notwithstanding the above, a Participant who terminates employment before January 1, 1987 shall be entitled only to the benefit provided under the terms of the Plan in effect before this amendment and restatement.

If at the time a Participant terminates his employment he has completed the requisite years of Credited Service for Early Retirement, but has not attained age fifty-five (55), then such Participant, upon attaining his fifty-fifth (55<sup>th</sup>) birthday, may apply for his deferred vested benefits to be paid as a reduced retirement benefit as provided in Section 5.03.

The Accrued Benefit Derived From Employee Contributions shall be equal to the Participant's Employee Contributions Account multiplied by a conversion factor prescribed by law, as it may be adjusted from time to time by regulation.

The Accrued Benefit Derived From Employer Contributions is equal to the total Accrued Benefit minus the Accrued Benefit Derived From Employee Contributions, as determined above. Provided, however, that if the Accrued Benefit Derived From Employee Contributions equals or exceeds the Accrued Benefit Derived From Employer Contributions, the Accrued Benefit Derived From Employer Contributions shall be zero (0).

Section 5.08 IMMEDIATE PAYMENT OF TERMINATION OF EMPLOYMENT BENEFIT AND REEMPLOYMENT RIGHTS OF TERMINATED EMPLOYEES - Effective January 1, 1997:

a. Refund of Employee Contributions Account

1. A Participant who is entitled to a deferred vested benefit under Section 5.07 may elect, in lieu of such benefit, to receive a refund of his Employee Contributions Account, determined as of his date of termination of employment. If the Participant makes such an election, the amount in his Employee Contributions Account shall be distributed to him in a lump sum within 90 days following termination of employment or notification of termination of employment. If payment is deferred beyond 30 days following termination of employment, interest at 5% compounded annually on his Employee Contributions Account shall be credited from the date of termination of employment to the date of actual payment.
2. If a Participant is not entitled to his Accrued Benefit Derived from Employer Contributions under Section 5.07, and he elects, in accordance with the preceding paragraph, to receive his Employee Contributions Account, the distribution of the amount in such Account shall be in full satisfaction of all benefits to which he is entitled under the terms of the Plan, and he shall forfeit Credited Service accrued under the Plan up to the date of termination of employment.
3. If the Participant is entitled to his Accrued Benefit Derived from Employer contributions under Section 5.07 and he elects, in accordance with the first paragraph of this subsection (a), to receive his Employee Contributions Account, the distribution of the amount of such Account shall be in full satisfaction only of the portion of his Accrued Benefit Derived from Employee Contributions.

Following distribution of his Employee Contributions Account, such Participant shall still be entitled to a deferred benefit equal to the portion of his Accrued Benefit Derived from Employer Contributions.

4. When a Participant who has received a distribution equal to the amount in his Employee Contributions Account is reemployed, the Board shall notify him of his right to make a payment of the amount of the distribution with interest thereon, of the amount of such payment, and the consequences of not making such payment.

b. Reemployment of Terminated Employees

1. If a Participant has received a distribution equal to the amount in his Employee Contributions Account in accordance with the subsection (a) of this Section but he is still entitled to a deferred benefit equal to the portion of his Accrued Benefit Derived from Employer Contributions and he is subsequently reemployed, such Participant may, within 60 days after his date of reemployment or notification of the amount to be repaid, if later, repay the full amount of the distribution with interest thereof at the rate of 5% per annum from the date of distribution. Upon such payment, the Participant shall have his Accrued Benefit Derived from Employee Contributions reinstated.

If a reemployed Participant who has received a distribution equal to the amount in his Employee Contributions Account elects not to repay the full amount of such distribution with interest thereon, his Accrued Benefit Derived from Employee Contributions shall not be reinstated.

2. For the period beginning on or after January 1, 1997 for Participants who are not eligible to repay their Employee Contributions Account:

If a Participant was not eligible to repay his Employee Contributions Account in accordance with subsection (b)(1) of this Section, he may purchase all or part of his prior Credited Service with the Employer by paying to the Plan an amount equal to:

- i. For Employees hired on or before January 1, 1997:

the present value of the increase in his Accrued Benefit due to the additional year(s) of Credited Service he wishes to purchase.

- ii. For Employees hired after January 1, 1997:

the difference between the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit taking into account his prior Credited Service with the Employer and the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit without taking into account his prior Credited Service with the Employer.



Participants, who are eligible to purchase prior service in accordance with subsection (b)(2)(i) above, must complete the purchase no later than June 1, 1998; thereafter, prior service will be purchased in accordance with subsection (b)(2)(ii) above.

3. For the period beginning on or after January 1, 1997 for Participants who elect not to repay their Employee Contributions Account:

If a Participant elected not to repay his Employee Contributions Account in accordance with subsection (b)(1) of this Section, he may purchase part or all of his prior Credited Service attributable to his Employee Contributions Account by paying to the Plan an amount equal to:

- i. For Employees hired on or before January 1, 1997,

the present value of the increase in his Accrued Benefit due to the additional year(s) of Credited Service he wishes to purchase less the present value of his Accrued Benefit Derived from Employer Contributions ("deferred vested benefit").

- ii. For Employees hired after January 1, 1997, the difference between a) and b) below:

- a) the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit taking into account his prior Credited Service with the Employer; and
- b) the sum of the present value of the Participant's deferred vested benefit plus the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit without taking into account his prior Credited Service with the Employer except for purposes of determining his earliest retirement age.

Participants, who are eligible to purchase prior service in accordance with subsection (b)(3)(i), must complete the purchase no later than June 1, 1998; thereafter, prior service will be purchased in accordance with subsection (b)(3)(ii) above.

4. For purposes of subsections (b)(2)(i) and (b)(3)(i) of this Section, the present value of the Participant's deferred vested benefit with and without the Participant's prior years of Credited Service with the Employer will be determined as of the date of payment by the Plan Actuary using the 1971 Group Annuity Mortality Table (Male), a 7 1/2% interest rate, and a retirement age of 65.

For purposes of subsections (b)(2)(ii) and (b)(3)(ii) of this Section, the present value of the Participant's projected benefit with and without the Participant's prior years

of Credited Service with the Employer will be determined as of the date of payment by the Plan Actuary using the 1983 Group Annuity Mortality Table (Male), a 7 1/2% interest rate, 5% annual increases in salary, and the earliest date on which the Participant could receive an unreduced retirement benefit.

Any amounts repaid or made to purchase prior service under this Section 5.08 shall be deposited into the Participant's Employee Contributions Account as defined in Section 1.12 and shall be accounted for as after-tax employee contributions.

The Board will establish rules and procedures regarding the administration of this Section 5.08 including rules for determining equivalent years of service for purposes of this Plan

#### Section 5.09 LIMITATIONS ON BENEFITS PAYABLE

##### a. Definitions and Rules Applicable to this Section Only

- (1) "Annual Benefit" shall mean the total benefit payable from the Plan in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this Article. For Limitation Years beginning before January 1, 1995, such actuarially equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate specified in the definition of Actuarial Equivalent or five percent (5%). For Limitation Years beginning after December 31, 1994, such annuity is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form or using a five percent (5%) interest rate and the applicable mortality table. In determining the actuarially equivalent straight life annuity for a benefit form other than a nondecreasing annuity payable for a period of not less than the life of the Participant or Inactive Participant (or in the case of a qualified preretirement survivor annuity, the life of the surviving Spouse), or that decreases during the Participant's or Inactive Participant's life merely because of (1) the survivor annuitant's death (but only if the reduction is not below fifty percent (50%) of the annual benefit payable before the survivor annuitant's death), or (2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 411(a)(9)), the applicable interest rate will be substituted for the five percent (5%) interest rate in the preceding sentence. No actuarial adjustment to the benefit is required for the value of a qualified joint and survivor annuity, benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and post-retirement cost-of-living increases made in accordance with Code Section 415(d) and Treasury Regulations Section 1.415-3(c)(2)(iii). The Annual Benefit does not include any benefit attributable to Employee contributions, rollover contributions, or assets transferred from a qualified plan not maintained by the Employer.

- (2) "Average Compensation" shall mean the average of a Participant's Compensation for the period of three (3) consecutive calendar years with the Employer that produce the highest average. If a Participant is employed for less than three (3) calendar years, his Average Compensation shall be his average Compensation over his calendar years of employment.

If a Participant or Inactive Participant has separated from service, his Average Compensation will be adjusted automatically by multiplying his Average Compensation by the cost-of-living adjustment factor published by the Secretary of the Treasury under Code Section 415(d) in such manner as the Secretary shall prescribe. Average Compensation as adjusted shall apply to the Limitation Year ending within the calendar year that includes the date of adjustment.

- (3) "Compensation" shall mean wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Compensation shall be determined without regard to any rule under Code Section 3401(a) that limits the remuneration included in wages based on the nature or location of employment or services performed.

Compensation for any Limitation Year is the compensation actually paid or includable in gross income during such year.

For Limitation Years beginning after December 31, 1997, Compensation shall include any elective deferral, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Employer at the Employee's election that is not includable in the Employee's gross income under Code Section 125 or 457.

b. Maximum Annual Benefits. Subject to the provisions of Section 5.09(d), a Participant's or Inactive Participant's Annual Benefit under the Plan, when aggregated with benefits under any other defined benefit plan (whether or not terminated) ever maintained by the Employer or Related Employer, shall not exceed \$90,000 (as adjusted pursuant to Code Section 415(d)) (the "Maximum Annual Benefit"). If the benefit a Participant otherwise would accrue in a Limitation Year would exceed the Maximum Annual Benefit, the rate of accrual shall be reduced to equal the Maximum Annual Benefit.

c. Adjustments to Maximum Annual Benefit.

- (1) Adjustment for Years of Participation. If a Participant or Inactive Participant has completed less than ten (10) years of participation in the Plan, the Participant's or Inactive Participant's Accrued Benefit shall not exceed the Maximum Annual Benefit multiplied by a fraction the numerator of which is the Participant's or

Inactive Participant's number of years (or part thereof) of participation in the Plan, and the denominator of which is ten (10).

- (2) Adjustment for Years of Service. If a Participant or Inactive Participant has completed less than ten (10) years of service with the Employer or Related Employer, the limitation described in subsection (5) shall be multiplied by a fraction the numerator of which is the Participant's or Inactive Participant's number of years of service (or part thereof), and the denominator of which is ten (10). Solely for the purpose of computing the defined benefit plan fraction under Section 5.09(d), years of service shall include future years of service (or part thereof) beginning before a Participant's Normal Retirement Date, but shall include the year of the Participant's Normal Retirement Date only if it reasonably can be anticipated that the Participant will complete a year of service for such year, or the year in which he terminates employment, if earlier.
- (3) Adjustment for Payment before Age Sixty-Two. If the \$90,000 Maximum Annual Benefit is payable to a Participant or Inactive Participant before age sixty-two (62), such Annual Benefit, as reduced in subsection (2) above, if applicable, shall be reduced by 5/9 of one percent for each of the first thirty-six (36) months and 5/12 of one percent for each additional month (up to twenty-four (24) months) by which benefits commence before age sixty-two (62). If benefits begin before age fifty-seven (57), such annual benefit shall be the actuarial equivalent of the limitation for age fifty-seven (57) reduced for each month before age fifty-seven (57), determined as the lesser of the equivalent Annual Benefit computed using the interest rate and mortality table (or other tabular factor) under the Plan for early retirement benefits, and the equivalent Annual Benefit computed using a five percent (5%) interest rate and the applicable mortality table. Any such decrease shall not reflect any mortality decrement to the extent that benefits will not be forfeited upon the Participant's or Inactive Participant's death. Notwithstanding the foregoing, the Maximum Annual Benefit shall not be reduced below \$75,000 if the benefit begins at or after age fifty-five (55), or the actuarial equivalent of the \$75,000 limitation for age fifty-five (55) if the benefit begins before age fifty-five (55).
- (4) Adjustment for Payment after Age Sixty-Five (65). If retirement benefits begin after a Participant or Inactive Participant reaches age sixty-five (65), the \$90,000 Maximum Annual Benefit, as reduced in subsection (2) above, if applicable, shall be the lesser of the equivalent Annual Benefit computed using the interest rate and mortality table (or other tabular factor) under the Plan for determining actuarial equivalence for delayed retirement, and the equivalent Annual Benefit computed using a five percent (5%) interest rate and the applicable mortality table.
- (5) Minimum Adjusted Benefit. Notwithstanding anything in this Section to the contrary, the Annual Benefit otherwise payable to a Participant or Inactive Participant shall be deemed not to exceed the Maximum Annual Benefit if (1) the

benefit payable for a Plan Year under any form of benefit with respect to such Participant or Inactive Participant under the Plan and all other defined benefit plans (regardless of whether terminated) ever maintained by the Employer does not exceed \$10,000, and (2) the Employer has not at any time maintained a defined contribution plan, a welfare benefit fund (as defined in Code Section 419(e)), or an individual medical account (as defined in Code Section 415(1)(2)) in which the Participant or Inactive Participant participated.

- (6) Exception for Disability Benefits. Subsections (1), (2), and (3) shall not apply to amounts received due to the Participant's disability by reason of personal injury or sickness or by a Spouse, Beneficiary, or estate as a result of the Participant's death.

d. Limitation for Participants in Defined Benefit Plan and Defined Contribution Plan. This Section applies to Limitation Years beginning before January 1, 2000.

- (1) If an Employee is or was a Participant in one or more defined benefit plans (whether or not terminated) and one or more defined contribution plans (whether or not terminated) ever maintained by the Employer or Related Employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for the Participant shall not exceed 1.0 for any Limitation Year. If the sum exceeds 1.0 in any year, the Employer shall adjust the numerator of the defined contribution plan fraction in accordance with the provisions set forth in the defined contribution plan, which are incorporated herein by reference thereto.
- (2) For the purpose of this Section, the term "defined benefit plan fraction" for any Limitation Year shall mean a fraction the numerator of which is the sum of the Participant's projected Annual Benefits under all defined benefit plans maintained by the Employer and any Related Employer, and the denominator of which is the lesser of 125 percent of the maximum dollar limitation for such Limitation Year, as provided under Code Section 415, or one hundred forty percent (140%) of the Participant's Average Compensation limit, including any adjustment under Code Section 415(b)(5).

Notwithstanding the foregoing, if the Participant was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986 in one or more defined benefit plans maintained by the Employer or any Related Employer that were in existence on May 6, 1986, the denominator of this fraction shall not be less than one hundred twenty-five percent (125%) of the sum of the Participant's Annual Benefits under such plans as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of such plans after May 5, 1986. The preceding sentence shall apply only if such defined benefit plans individually and in the aggregate satisfied the requirements of Code Section 415 for all Limitation Years beginning before January 1, 1987.



- (3) The term "defined contribution plan fraction" for any Limitation Year shall mean a fraction the numerator of which is the sum of the annual additions to a Participant's accounts under all defined contribution plans maintained by the Employer and any Related Employer for the current and all prior Limitation Years (including the annual additions attributable to the Participant's nondeductible contributions to the Plan and all other defined benefit plans maintained by this Employer or Related Employer and the annual additions attributable to all welfare benefit funds or individual medical accounts and simplified employee pensions maintained by the Employer and any Related Employer), and the denominator of which is the sum of the defined contribution denominator increments for the current and all prior Limitation Years of the Participant's service with the Employer and any Related Employer (regardless of whether a defined contribution plan was maintained during those years).

For each Limitation Year, the defined contribution denominator increment is the lesser of one hundred twenty-five percent (125%) of the dollar limitation in effect under Code Section 415(c)(1)(A) after adjustment under Code Section 415(d), or thirty-five percent (35%) of the Participant's Compensation for such year.

If the Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986 in one or more defined contribution plans maintained by the Employer or any Related Employer that were in existence on May 6, 1986, the numerator of the defined contribution plan fraction will be adjusted if the sum of such fraction and the defined benefit plan fraction otherwise would exceed 1.0. An amount equal to the product of (1) the excess of the sum of such fraction over 1.0, multiplied by (2) the denominator of the defined contribution plan fraction will be subtracted permanently from the numerator of such fraction. Such adjustment shall be calculated using the defined contribution plan fraction and the defined benefit plan fraction as computed as of the end of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986, but using the Code Section 415 limitation applicable to the first Limitation Year beginning after January 1, 1987.

e. Preservation of Accrued Benefit under the Tax Equity and Fiscal Responsibility Act of 1982. Notwithstanding the above provisions of this Article 5, if a Participant was a Participant in this Plan before January 1, 1983, the Maximum Annual Benefit shall not be less than the Participant's Accrued Benefit at the close of the 1982 Limitation Year.

f. Preservation of Accrued Benefit under the Tax Reform Act of 1986.

- (1) This Section 5.09(f) shall apply to defined benefit plans that were in existence on May 6, 1986 and met the requirements of Code Section 415 of the as in effect for all Limitation Years.

- (2) If the Current Accrued Benefit of an individual who is a Participant as of the first day of the Limitation Year beginning on or after January 1, 1987 exceeds the benefit limitations under Code Section 415(b) (as modified by changes made by the Tax Reform Act of 1986) referred to in Sections 5.09(d), 5.09(e) and 5.09(f), then for purposes of Code Section 415(b) and (e), the defined benefit dollar limitation with respect to such individual shall be equal to such Current Accrued Benefit.

g. Transition Rule under the Retirement Protection Act of 1994. If an individual was a Participant in the Plan as of the first Limitation Year beginning after December 31, 1994, and the Plan met the requirements of Code Section 415 on December 7, 1994, the Maximum Annual Benefit for such Participant shall be the greater of (a) the sum of the Maximum Annual Benefit applicable to the RPA 94 Old Law Benefit, determined in accordance with Code Section 415(b)(2)(E) as in effect on December 7, 1994, and the Maximum Annual Benefit applicable to the portion of the total Plan benefit that exceeds the RPA 94 Old Law Benefit, determined under the provisions of this Article, and (b) the Participant's RPA 94 Old Law Benefit.

For this purpose, the RPA 94 Old Law Benefit shall mean the Participant's Accrued Benefit under the terms of the Plan as in effect on the RPA 94 Freeze Date for the Annuity Starting Date and method of payment, and taking into account the limitations of Code Section 415, as in effect on December 7, 1994, including the participation requirements under Code Section 415(b)(5). In determining the amount of a Participant's RPA 94 Old Law Benefit, the following shall be disregarded: (x) any amendment increasing benefits that is adopted after the RPA 94 Freeze Date, and (y) any cost-of-living adjustment that becomes effective after the RPA 94 Freeze Date. A Participant's RPA 94 Old Law Benefit shall not be increased after the RPA 94 Freeze Date, but if the Code Section 415 limitations, as in effect on December 7, 1994, are less than the limitations that were applied to determine the Participant's RPA 94 Old Law Benefit on the RPA 94 Freeze Date, then his RPA 94 Old Law Benefit shall be reduced accordingly. If, at any date after the RPA 94 Freeze Date, the Participant's total Plan benefit, before application of Code Section 415, is less than his RPA 94 Old Law Benefit, the RPA 94 Old Law Benefit shall be reduced to the Participant's total Plan benefit.

The RPA 94 Freeze Date shall mean the date that the changes made by the Retirement Protection Act of 1994 to Code Section 415(e)(3) are effective for the Plan.

Section 5.10 REEMPLOYMENT OF RETIREES - Benefit payments to a Participant who has retired under the Early Retirement provisions of the Plan and elected an immediate benefit shall continue if such Retired Participant is reemployed by the Employer following the date the payment of benefits commences, but prior to his otherwise Normal Retirement Date. Such Retired Participant shall become an active Participant upon his reemployment and shall accrue benefits in accordance with the terms of the Plan. Upon his subsequent retirement, the benefit to which such Participant is entitled will be adjusted in an equitable manner to take into account benefit payments previously made and any additional benefits accrued under the Plan.

If a Retired Participant is reemployed by the Employer following the date the payment of benefits commence but after his Normal Retirement Date, no additional benefits shall accrue

under the terms of the Plan and no Employee Contributions shall be required, and benefit payments shall continue during his period of reemployment.

Section 5.11 LIMITATION ON DISTRIBUTIONS - There shall be no distribution from the Plan except in accordance with the provisions of Article 5 of the Plan.

Section 5.12 DISTRIBUTION RESTRICTIONS

a. General Rules.

- (1) Except as otherwise provided in Article 6, regarding the joint and survivor annuity requirements, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provision of the Plan.
- (2) All distributions required under this Article shall be determined and made in accordance with Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit requirement of Treasury Regulations Section 1.401(a)(9)-2.

b. Required Beginning Date. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required beginning date.

c. Limits on Distribution Periods. As of the first distribution calendar year, distributions not made in a single sum may be made only over one of the following periods (or a combination thereof):

- (1) the life of the Participant;
- (2) the life of the Participant and a designated Beneficiary;
- (3) a period certain not extending beyond the life expectancy of the Participant; or
- (4) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

d. Determination of Amount to be Distributed Each Year.

- (1) If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments shall satisfy the following requirements:
  - (A) the distributions shall be paid in periodic payments made at intervals not longer than one year;



- (B) the distribution period shall be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in Code Section 401(a)(9)(A)(ii) or 401(a)(9)(B)(iii), whichever applies;
- (C) the life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy;
- (D) once payments have started over a period certain, the period certain may not be lengthened even if it is shorter than the maximum permitted;
- (E) payments must either be nonincreasing or increase only as follows:
  - (i) with any percentage increase in a specified and generally recognized cost-of-living index;
  - (ii) to the extent of the reduction to the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 5.14(c) dies and the payments continue otherwise in accordance with that Section over the Participant's life;
  - (iii) to provide cash refunds of Employee contributions on the Participant's death; or
  - (iv) because of an increase in benefits under the Plan.
- (F) If the annuity is a life annuity (or a life annuity with a period certain not greater than twenty (20) years), the amount that must be distributed on or before the Participant's required beginning date (or, in the case of distributions after the Participant's death, the date distributions are required to begin pursuant to Section 5.12(f)) shall be the payment required for one payment interval. The second payment need not be made until the end of the next payment interval, even if such interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually or annually.

If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain greater than twenty (20) years), periodic payments for each distribution calendar year shall be combined and treated as an annual amount. The amount that must be distributed by the Participant's required beginning date (or, in the case of distributions after the Participant's death, the date distributions are required to begin

pursuant to this Section 5.12(d)(1)(F) is the annual amount for the first distribution calendar year. The annual amount for other distribution calendar years, including the annual amount for the calendar year in which the Participant's required beginning date (or the date distributions are required to begin pursuant to Section 5.12(f) occurs must be distributed on or before December 31 of the calendar year for which the distribution is required. :

- (2) Annuities purchased after December 31, 1988 are subject to the following additional conditions:
  - (A) Unless the Participant's Spouse is the designated Beneficiary, if the Participant's interest is distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first distribution calendar year shall not exceed the applicable period determined using the table set forth in Treasury Regulations Section 1.401(a)(9)-2, Q&A-5.
  - (B) If the Participant's interest is distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary, annuity payments made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death shall not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Treasury Regulations Section 1.401(a)(9)-2, Q&A-6.
- (3) If the form of distribution is an annuity made in accordance with this Section 5.12(d), any additional benefit accruing to a Participant after his required beginning date shall be distributed as a separate and identifiable component of the annuity, beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

e. Death Distribution Provisions.

- (1) Distribution beginning before death. If a Participant dies after distribution of his interest has started, the remaining portion of such interest shall continue to be distributed at least as rapidly as under the method of distribution used before the Participant's death.
- (2) Distribution beginning after death. If a Participant dies before distribution of his interest begins, distribution of his entire interest shall be completed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of his death except to the extent the Beneficiary makes an election to receive distributions in accordance with (A) or (B) below:

- (A) If any portion of the Participant's interest is payable to a designated Beneficiary, distribution may be made over the life of the designated Beneficiary or over a period certain not greater than the life expectancy of the designated Beneficiary commencing on or before December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died; or
- (B) If the designated Beneficiary is the Participant's surviving Spouse, the date distributions are required to begin in accordance with (A) above shall not be earlier than the later of (i) December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died, and (ii) December 31<sup>st</sup> of the calendar year in which the Participant would have attained age seventy and one half (70½).

The Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (1) December 31<sup>st</sup> of the calendar year in which distributions would be required to begin under this Section, or (2) December 31<sup>st</sup> of the calendar year that contains the fifth (5<sup>th</sup>) anniversary of the Participant's date of death. If the Participant has no designated Beneficiary or the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31<sup>st</sup> of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

- (3) For the purpose of subsection (2), if the surviving Spouse dies after the Participant but before payments to the Spouse begin, the provisions of subsection (2), with the exception of paragraph (B), shall apply as if the surviving Spouse were the Participant.
- (4) For the purpose of this Section 5.12(e), any amount paid to a child of the Participant will be treated as if paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.
- (5) For the purpose of this Section 5.12(e), distribution of a Participant's interest is considered to begin on his required beginning date (or, if subsection (3) applies, the date distribution is required to begin to the surviving Spouse pursuant to subsection (2)). If distribution in the form of an annuity described in Section 5.12(d) irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

f. Definitions

- (1) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan in accordance with Code Section 401(a)(9) and the regulations thereunder.

- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 5.12(e).
- (3) Life expectancy. Life expectancy and joint life and last survivor expectancy are determined using the Age of the Participant (or designated Beneficiary) in the applicable calendar year and the expected return multiples in Treasury Regulations Section 1.72-9, Tables V and VI. The applicable calendar year is the first distribution calendar year. If annuity payments begin before the required beginning date, the applicable calendar year is the year such payments begin. Unless otherwise elected by a Participant (or Spouse in the case of distributions described in subsection 5.12(e)(2)(B) by the time distributions are required to begin, life expectancy shall be recalculated annually. An election shall be irrevocable and shall apply to all subsequent years. The life expectancy of a non-Spouse Beneficiary shall not be recalculated.

- (4) Required beginning date.

General rule. The required beginning date of a Participant who is not a five percent (5%) owner is April 1<sup>st</sup> of the calendar year following the calendar year in which the Participant attains age seventy and one half (70½) or retires, whichever is later.

Section 5.13 INCREASED BENEFITS FOR RETIRED PARTICIPANTS, CONTINGENT ANNUITANTS, AND BENEFICIARIES- Any person who, on July 1, 1981, was receiving monthly benefit payments from the Plan, either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, beginning with his benefit payment due and payable for July 1, 1981, receive an increase in such monthly benefit payment in the amount of one quarter of one percent (1/4%) for each calendar month that has elapsed from the first day of the month coinciding with or following the date on which retirement payments first began to the Participant up to and including June 30, 1981.

Any person who, on January 1, 1987, was receiving monthly benefit payments (or who had retired and was due to receive a monthly benefit payment for January, 1987) from the Plan, either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, beginning with his benefit payment due and payable for January 1, 1987, receive an increase in such monthly benefit payment in the amount of ten percent (10%), plus one quarter of one percent (1/4%) for each calendar month that has, elapsed from the later of the Participant's date of retirement or July 1, 1981 up to and including June 30, 1986.

Any person who, on July 1, 1990, was receiving monthly benefit payments from the Plan, either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, beginning with his

benefit payment due and payable for January 1, 1991, receive an increase in such monthly benefit payment in the amount of one quarter of one percent ( $1/4\%$ ) for each calendar month that has elapsed from the later of the Participant's date of retirement or July 1, 1986, up to and including June 30, 1990.

Any person who before January 1, 1995 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for January, 1995) from the Plan either as a Retired Participant, Contingent Annuitant, or Beneficiary, shall, beginning with his benefit payment due and payable for July 1, 1995, receive an increase in such monthly benefit payment in the amount of 1.375%.

Any person who, on January 1, 1995 was receiving monthly benefit payments (or who had retired and was due to receive a monthly benefit payment for January, 1995) from the Plan, either as a retired Participant, Contingent Annuitant, or Beneficiary, shall, beginning with his benefit payment due and payable for January 1, 1995, receive an increase in such monthly benefit payment in the amount of one quarter of one percent ( $1/4\%$ ) for each calendar month that has elapsed from the later of: July 1, 1990, or the first day of the month coinciding with or following the date on which the retirement payments first began (or were due to begin) to the Participant, up to and including December 31, 1994.

Any person who before January 1, 1996 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for January, 1996) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall, beginning with his benefit payment due and payable for July 1, 1996, receive an increase in such monthly benefit payment in the amount of one quarter of one percent ( $1/4\%$ ) for each month between July 1, 1995 or retirement date, if later, and July 1, 1996.

Any person who before July 1, 1997 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for July, 1997) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall, beginning with his benefit payment due and payable for July 1, 1997, receive an increase in such monthly benefit payment in the amount of one quarter of one percent ( $1/4\%$ ) for each month between July 1, 1996 or retirement date, if later, and July 1, 1997.

Any person who before July 1, 1998 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for July, 1998) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall, beginning with his benefit payment due and payable for July 1, 1998, receive an increase in such monthly benefit payment in the amount of one sixth of one percent ( $1/6\%$ ) for each month between July 1, 1997 or retirement date, if later, and July 1, 1998.

Any person who before July 1, 1999 was receiving monthly benefit payments (or had retired and was due to receive a monthly benefit payment for July, 1999) from the Plan, either as a Retired Participant, Contingent Annuitant or Beneficiary, shall, beginning with his benefit payment due and payable for July 1, 1999, receive an increase in such monthly benefit payment in the amount of one sixth of one percent ( $1/6\%$ ) for each month between July 1, 1998 or retirement date, if later, and July 1, 1999.



Section 5.14 PURCHASE OF CREDITED SERVICE BASED ON PRIOR SERVICE  
WITH OTHER GOVERNMENTAL EMPLOYERS

a. Purchase of Additional Years of Service with another Governmental Employer (other than Military Service)

1. A Participant may purchase additional years of Credited Service for years of employment previously provided to another governmental employer.

- i. For Employees hired on or before January 1, 1997

The cost will be the present value of the increase in his Accrued Benefit due to the additional year(s) of Credited Service he wishes to purchase

- ii. For Employees hired after January 1, 1997

The cost will be equal to the difference between the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit taking into account his prior Credited Service with another governmental employer and the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit without taking into account his prior Credited Service with another governmental employer.

2. Participants, who are eligible to purchase prior service in accordance with subsection (a)(1)(i) above, must complete the purchase no later than June 1, 1998; thereafter, prior service will be purchased in accordance with subsection (a)(1)(ii) above.
3. For purposes of subsection (a)(1)(i), the present value of the Participant's deferred vested benefit with and without the Participant's prior years of Credited Service with the Employer will be determined as of the date of payment by the Plan Actuary using the 1971 Group Annuity Mortality Table (Male), a 7 1/2% interest rate, and a retirement age of 65.
4. For purposes of subsection (a)(1)(ii), the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit with and without taking into account his prior years of Credited Service with another governmental employer will be determined as of the date of payment by the Plan Actuary using the 1983 Group Annuity Mortality Table (Male), a 7 1/2% interest rate, 5% annual increases in salary, and the earliest date on which he can receive an unreduced retirement benefit.
5. For purposes of subsection 5.14(a), a Participant may purchase service rendered to another governmental employer only if the service rendered to such governmental employer was not taken into account or credited under any other retirement plan or retirement system, or did not result in a vested benefit under any other retirement

plan or retirement system. The words "retirement plan or retirement system" shall mean defined benefit pension plan. Service with a governmental employer will include:

- i. service with the U.S. Government or any political subdivision thereof and any territories of the U.S. Government; or
- ii. service with a public community service organization located in North Carolina and funded entirely with funds from the federal government; or
- iii. service with a unit or a political subdivision of the state of North Carolina; or
- iv. service with a unit or a political subdivision of any other state of the United States of America.

b. A Participant who purchases service under subsection 5.14(a)(1)(ii) above must have five (5) years of service with the Employer as a contributing member of the Plan before he is eligible to purchase service provided to another governmental employer as defined in subsection 5.14(a)(5). The five (5) years of service with the Employer must be completed after his service with the other governmental employer. Except for service described in 5.14(a)(5)(iii), the Participant who can purchase service under subsection 5.14(a)(1)(ii) can only purchase one year of service for every two years of service he has earned under this Plan while employed by the Employer, and; the maximum years he can purchase as a result of service with another governmental entity besides the state of North Carolina or any governmental unit or subdivision thereof is ten (10).

c. Purchase of Years of Military Service

1. A Participant may purchase additional years of Credited Service for years of employment previously rendered to the Armed Forces of the United States of America ("military") and not covered by Section 1.09 in accordance with subsections (c)(2) through (c)(3) below.
2. For Employees hired on or before January 1, 1997

The cost will be the present value of the increase in his Accrued Benefit due to the additional year(s) of Credited Service he wishes to purchase

3. For Employees hired after January 1, 1997

The cost will be an amount equal to the difference between the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit taking into account his prior Credited Service with the military and the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit without taking into account his prior Credited Service with the military.

4. Participants who are eligible to purchase prior service in accordance with subsection (c)(2) above must complete the purchase no later than June 1, 1998; thereafter, prior service will be purchased in accordance with subsection (c)(3) above.
5. For purposes of subsection (c)(2), the present value of the Participant's deferred vested benefit with and without the Participant's prior years of Credited Service with the Employer will be determined as of the date of payment by the Plan Actuary using the 1971 Group Annuity Mortality Table (Male), a 7 1/2% interest rate, and a retirement age of 65.
6. For purposes of this subsection (c)(3), the present value of the Participant's projected benefit at the earliest age he can receive an unreduced benefit with and without taking into account his years of Credited Service with the military will be determined as of the date of payment by the Plan Actuary using the 1983 Group Annuity Mortality Table (Male), a 7 1/2% interest rate, 5% annual increases in salary, and the earliest date on which he can receive an unreduced retirement benefit.
7. For purposes of subsection 5.14(c), a Participant may purchase service rendered to the Armed Forces of the United States of America for the period beginning on the date of the Participant's initial period of active duty with the Armed Forces and ending on the date the Participant was first eligible to be discharged or released; and for subsequent periods of active duty required by the Armed Forces beginning on the initial date of such subsequent periods of active duty and ending on the date the Participant was first eligible to be discharged or released; but not for periods of active duty which are taken into account under any retirement program or system in which the Armed Forces of the United States participates except for the National Guard or any reserve component of the Armed Forces of the United State of America.
8. A Participant must have received a general or honorable discharge from the Armed Forces, and if he is purchasing prior service under subsection 5.14(c)(3), he must have five (5) years of service with the Employer as a contributing member of the Plan before he may purchase service provided to the Armed Forces.

Any amounts repaid or made to purchase prior service under this Section 5.14 shall be deposited into the Participant's Employee Contributions Account as defined in Section 1.12 and shall be accounted for as after-tax employee contributions.

The Board will establish rules and procedures regarding the administration of this Section 5.14 including rules for determining equivalent years of service for purposes of this Plan.



Section 5.15 LATEST REQUIRED BENEFIT COMMENCEMENT DATE – Payments to the Participant will commence not later than sixty (60) days after the latest of:

- a. the close of the Plan Year in which the Participant attains age sixty-five (65);
- b. the close of the Plan Year in which occurs the tenth (10<sup>th</sup>) anniversary of the year in which the Participant commenced participation in the Plan; or
- c. the close of the Plan Year in which the Participant terminates his employment with the Employer.

The purpose of this Section is to provide a limitation on the latest date on which payment of benefits under the Plan can commence. This Section shall not preempt other Sections of the Plan which require or permit payment of benefits at an earlier date.

## ARTICLE 6

### OPTIONAL RETIREMENT BENEFITS

Section 6.01 ELECTION OF OPTIONAL RETIREMENT BENEFITS - A Participant entitled to a retirement benefit or a Terminated Vested Participant may elect to have his retirement benefit paid under one of the optional forms of payment hereinafter set forth in lieu of the Basic Form of Benefit Payment.

The election of an optional form of benefit payment must be made by the Participant in writing in such manner and form as the Committee may require and subject to such requirements as the Board may establish. The benefit shall be paid in accordance with the terms of the form of payment elected. The Participant may revoke his election of any form of payment and make a new election, subject to written notice of his new election being filed with the Board at least one year prior to his retirement date and subject to such requirements as the Board may establish.

Section 6.02 DESCRIPTION OF OPTIONAL RETIREMENT BENEFITS - The amount of any optional form of payment set forth below shall be the Actuarial Equivalent of the amount of benefit that would otherwise be payable to the Retired Participant under Section 5.01.

- “Option A”    120 Payments Certain and Life Option - A decreased retirement benefit payable for life with the first one hundred twenty (120) payments guaranteed. Any guaranteed payments due after the death of the Retired Participant shall be payable to his designated Beneficiary, if any, who survives the Retired Participant or, if both the Retired Participant and all designated Beneficiaries should die before the end of the guaranteed period, any remaining guaranteed payments shall be commuted and paid in one sum to the executors or administrators of the last survivor.
- “Option B”    Joint and Survivor Option - A decreased retirement benefit payable to the Retired Participant for life which shall continue after his death to his surviving Beneficiary for life in the same amount as that payable to the Retired Participant.
- “Option C”    Modified Joint and Survivor Option - A decreased retirement benefit payable to the Retired Participant for life, fifty percent (50%) of which shall continue after his death to his surviving Beneficiary for life.

Notwithstanding any provisions hereof to the contrary, if the Beneficiary under any joint and survivor option elected by the Participant or Terminated Vested Participant is a person other than the Participant's or Terminated Vested Participant's Spouse, and if the value of the Participant's or Terminated Vested Participant's benefit under any of the joint and survivor options will be less than fifty-one percent (51%) of the value of his single life pension, the optional benefit shall be adjusted so that the value of the Participant's or Terminated Vested Participant's benefit under the option will be equal to fifty-one percent (51%) of the value of the Participant's single life pension.

Section 6.03 CANCELLATION OF ELECTION - If a Participant or a Terminated Vested Participant has elected any of the foregoing options and he or his Beneficiary dies before benefits commence, the election of such option shall be null and void

ARTICLE 7  
AMENDMENT AND TERMINATION OF PLAN

Section 7.01 AMENDMENT OF PLAN - The Council shall have the right at any time to modify, alter, or amend the Plan in whole or in part by instrument in writing duly executed; provided, however, that the Council shall consult with the Employer and the Plan Actuary and have filed with it written recommendations from the Employer and the Plan Actuary as to the advisability of such amendment, alteration, or modification. No amendment shall cause or permit any part of the Plan assets to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and Retired Participants or their Beneficiaries. No amendment shall have the effect of revesting in the Employer any portion of any Plan assets or funds, except as provided in section 7.02 with respect to actuarial deviations. No amendments, unless it is necessary to meet the requirements of any State or Federal law or regulation, shall operate to deprive any Participant or Beneficiary of any benefits which have been vested in him prior to such amendment.

Section 7.02 TERMINATION OF THE PLAN – The Employer expects the Plan to be continued indefinitely, but it reserves the right to request in writing that the Council terminate the Plan at any time. The Employer also reserves the right to suspend contributions from time to time, and such suspension of contribution shall not be deemed to be a termination of the Plan. Upon termination of the Plan, the Employer shall deliver a written notice of termination of the Plan to the Trustee, which notice shall show the effective date of said termination, and the Employer will then carry out the provisions in the remainder of this Section 7.02 unless, pursuant to law, required to do otherwise. The Board will prepare the list of all Participants and Retired Participants, showing for each, as of the date of Plan termination, the following:

- a. For all Participants, the amount of each Participant's Employee Contributions Account.
- b. For each Retired Participant or Beneficiary receiving benefits, the amount and terms of payment of such benefits.
- c. For each active Participant entitled to a benefit in accordance with Sections 5.02 or 5.03, the amount and terms of payment of such benefit.
- d. For each active Participant entitled to the vested Accrued Benefit attributable to Employer Contributions in accordance with Section 5.07, the amount and terms of payment of such benefit.
- e. For each other active Participant not otherwise entitled to a benefit in accordance with Sections 5.01, 5.02, 5.03, or 5.07 the amount of his Accrued Benefit computed as of the date of Plan termination in the manner as set forth in Section 5.01. The terms of payment of such benefit shall be the same as the benefit described in Section 5.03 unless modified by an election of an option under the terms of Article 6 which was made prior to the date of Plan termination.

In the event of a complete termination of the Plan, all Employer and Employee contributions shall cease, no additional Employees shall enter the Plan, and each Participant shall be fully vested and nonforfeitable in his Accrued Benefit to the extent funded after reduction for expenses of administration and liquidation of the Trust, but in no event will he be vested in more

than his then Accrued Benefit. The amount allocable to such a Participant shall be determined, and shall be distributed to him in accordance with the requirements thereof.

If, following a complete termination of the Plan, there are assets in the Trust Fund, after all liabilities of the Plan to Participants and their Beneficiaries have been satisfied, which are attributable to deviations in actuarial computations, such remaining assets shall be distributed to the Employer unless otherwise prohibited by law.

Upon completion of the steps specified above, the Plan will be regarded as finally terminated with respect to the Employer, and no Participant, Retired Participant, or Beneficiary shall have any further right or claim to any benefits under the Plan.

Subject to the foregoing provisions of this Section, any distribution after termination of the Plan may be made in whole or in part, to the extent that no discrimination in value results, in cash, in securities, or other assets in kind, or in nontransferable annuity contracts, as the Committee in its discretion shall determine.

Section 7.03 PARTIAL TERMINATION – Upon termination of the Plan with respect to a group of Participants which constitutes a partial termination of the Plan, the Board shall allocate and arrange for the Trustee to segregate, for the benefit of the Employees then or theretofore employed by the Employer with respect to which the Plan is being terminated, each such Participant's Accrued Benefit to the extent then funded. The Participant's Accrued Benefit to the extent then funded shall be fully vested and nonforfeitable and shall be determined by the Plan Actuary. The Plan Actuary shall make this determination on the basis of the contributions made by the Employer, the provisions of this Section, and such other considerations as the Plan Actuary deems appropriate. The Fiduciaries shall have no responsibility with respect to the determination of any such benefit.

The Board shall then arrange for the funds so allocated and segregated to be used to provide benefits to or on behalf of Participants in accordance with Section 7.03.

Section 7.04 PRETERMINATION RESTRICTIONS – A Restricted Participant may not be paid under a form of payment that would provide greater annual payments in any year to the Restricted Participant than would be provided under the Basic Form of Benefit Payment unless after payment of all benefits to the Restricted Participant the value of Plan assets equals or exceeds one hundred ten percent (110%) of the value of current liabilities, or unless the value of the Restricted Participant's benefits are less than one percent (1%) of the value of current liabilities before payment, or unless the payment is a small annuity cashout described in Section 5.13. For this purpose, "Restricted Participant" means a Participant who is a "highly compensated employee" or a "highly compensated former employee" (as those terms are defined in Code Section 414(q)), and who is one of the twenty-five (25) most highly compensated employees or former employees based on compensation in the current Plan Year or in any prior Plan Year. "Current Liabilities" shall have the meaning provided in Code Section 412(1)(7).

Section 7.05 MERGER, CONSOLIDATION, OR TRANSFER OF ASSETS OR LIABILITIES – Effective July 1, 1998 the Council may direct the merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust Fund to, another trust fund held under any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, and the assets of the Trust Fund applicable to such Participant shall be transferred to the other trust fund provided that:

- a. Each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had then terminated);
- b. Resolutions of the Council authorize such transfer of assets; and
- c. Such other plan and trust are qualified under Section 401(a) and 501(a) of the Code.

In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust Fund to, another trust fund held under any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the Plan shall cease to exist once all of the assets of the Plan have been transferred to the other plan.



ARTICLE 8  
ADMINISTRATION OF THE PLAN

Section 8.01 ADMINISTRATION - The Council shall, pursuant to Chapter 557 of the Session Laws of 1979, appoint a Board of Trustees to administer the Plan. The Board shall be composed of the following members: the General Manager of the Public Works Commission, a participating employee, an attorney, an accountant, and a member of the Public Works Commission. The Board shall 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 shall have the following powers:

1. 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 or Beneficiary may become entitled hereunder its decisions upon all matters within the scope of its authority shall be final.
2. It shall have power to appoint a Trustee and/or Custodian for the investment, care or administration of the funds contributed to the Plan from any and all sources, or remove any Trustee.
3. It shall establish rules and procedures to be followed by Participants and Beneficiaries in filing applications for benefits, in furnishing and verifying proof necessary to determine age, and in any other matters required to administer the Plan.
4. It shall receive all applications for benefits and shall determine all facts necessary to establish the right of the applicant to benefits under the provisions of the Plan and the amount hereof as herein provided, and will afford any applicant the right to a hearing with respect to any findings of fact or determination.
5. It shall prepare and distribute information concerning the Plan to the Participants at the expense of the Employer and in such manner as it shall deem appropriate.

The Board and the Employer shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by the consultant or Plan Actuary appointed by the Board and upon all opinions given by any counsel selected or approved by it; and the Board and the Employer shall be fully protected in respect to any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such consultant, actuary or counsel, and all action so taken or suffered shall be conclusive upon each of them and upon all Participants or other persons interested in the Plan.

Section 8.02 RECORDS - All acts and determinations of the Board shall be duly recorded, and all such records, together with such other documents as may be necessary for the administration of the Plan, shall be preserved in its custody. Such records and documents shall at all reasonable times be open for inspection and for the purpose of making copies by any person duly authorized by it.

Section 8.03 DELEGATION OF AUTHORITY AND EXEMPTION FROM LIABILITY- The Employer shall notify in writing the Trustee of the authority conferred upon the Board and any changes in membership as they occur from time to time. The Trustee shall be entitled to rely on the last received such notification until written notification to the contrary has been received from the Employer. The members of the Board, and each of them, 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 them, and each of them, harmless from effects and consequences of their acts, omissions and conduct in their official capacity, except such effects and consequences that result from their own willful misconduct or gross negligence.

Section 8.04 BOARD ACTION – The Board shall act by a majority of its members at the time in office, and such action maybe taken either by vote at a meeting or in writing without a meeting. The Board may authorize any one or more of its members to execute any document or documents on behalf of the Board. Furthermore, the Board may delegate any of its authority hereunder to any one or more of its members.

In such event, the Board shall notify the Trustee in writing of such action and the name or names of its member or members so designated or to whom authority has been delegated. The Trustee thereafter shall accept and rely upon any document executed by such member or members as representing action by the Board until the Board shall file with the Trustee a written revocation of such designation or delegation of authority.

## ARTICLE 9 MISCELLANEOUS

Section 9.01 HEADINGS - The headings and subheadings in the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

Section 9.02 CONSTRUCTION - In the construction of the Plan, the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate. The Plan shall be construed in accordance with the provisions of the laws of the State of North Carolina.

Section 9.03 SPENDTHRIFT CLAUSE - Except for obligations which may be owed to the Employer, as to which obligations benefits may be applied by the Employer, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, or charge, except pursuant to a qualified domestic relations order as defined in Section 414(p) of the Code, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, attach, garnish or charge shall be void. Such benefit shall not be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit except as specifically provided in the Plan.

Section 9.04 CLAIMS - Any payment of benefit to a Participant or Beneficiary or to their legal representatives in accordance with the provisions of the Plan, shall to the extent of the method of computation as well as the amount thereof constitute full satisfaction of all claims hereunder against the Trustee, the Board, and the Employer, any of whom may require such Participant, Beneficiary, or legal representative as a condition precedent to such payment to execute a receipt and release therefore in such form as shall be determined by the Trustee or the Board, as the case may be.

Section 9.05 LEGALLY INCOMPETENT - If any Participant, Retired Participant, or Beneficiary is a minor, or is, in the judgment of the Employer, otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the Board may, unless and until claim shall have been made by a guardian or conservator of such person duly appointed by a court of competent jurisdiction, withhold payment or direct that payment or any part thereof be made to such person or to such person's spouse, child, parent, brother or sister, or other person deemed by the Employer to be a proper person to receive such payment. Any payment so made shall be a complete discharge of any liability under the Plan for such payment.

Section 9.06 CORRECTION OF ERRORS - If any change in records or error results in any Retired Participant or Beneficiary receiving from the Plan more or less than he would have been entitled to receive had the records been correct or had the error not been made, the Board, upon discovery of such error, shall correct the error by adjusting, as far as practicable, later payments.

ARTICLE 10  
DIRECT ROLLOVER ELIGIBLE DISTRIBUTIONS

Section 10.01 EFFECT OF ARTICLE 10 ON THE PLAN – This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

Section 10.02 DEFINITIONS –

- a. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).
- b. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- c. Distributee: A Distributee includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employees' or Former Employee's Spouse or Former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or Former Spouse.
- d. Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the Distributee.

EXHIBIT A  
UNISEX SETTLEMENT OPTION FACTORS

The following factors will be used to determine actuarially equivalent benefits under the Plan.

1. Joint & 100% Survivor Option: 80% + .80% for age differential between Retiree and Spouse  
Add .80% for each year that Spouse is older than Retiree. Subtract .80% for each year that Spouse is younger than Retiree Maximum factor » 100%
2. Joint & 50% Survivor Option: 89.0% + .51% for age differential between Retiree and Spouse  
Add .51% for each year that Spouse is older than Retiree. Subtract .51% for each year that Spouse is younger than Retiree Maximum factor " 100%
3. 10 Year Certain & Life Option: 92%
4. Lump Sum Annuity Option or Small Annuity Cashout Provision, if Applicable;\*  
Prior to July 1, 1999, UP 84 Table based on interest rate(s) prescribed by the PBGC as of the January 1 coincident with or preceding the determination date. Effective July 1, 1999, the unisex 1983 Group Annuity Mortality Table and an interest rate equal to the annual rate of interest on thirty (30) year Treasury securities published by the Board of Governors for the Federal Reserve System for the Lookback Month. For benefit determinations on or after July 1, 1999, the Lookback Month shall be the November of the Plan Year preceding the benefit determination date. These factors shall be used for determining the cashouts of Participants who terminate employment on or after July 1, 1999, or if applicable, the beneficiaries of Participants who die on or after July 1, 1999. These factors shall also be used for determining the cashouts of Participants who terminate before July 1, 1999, or if applicable, the cashouts of beneficiaries of Participants who die before July 1, 1999.
5. Delayed Retirement Factors:

Age	66	1.12
	67	1.26
	68	1.42
	69	1.61
	70	1.84
	71	2.10
	72	2.41

\*This will also be the basis for determining actuarial equivalency for any settlement option under the Plan not in the form of a term certain annuity or joint and survivor annuity.

NOTE: These factors are applicable where the basic form of benefit payment is a straight life annuity and are designed for a plan where approximately 83 1/3% of the liabilities under the plan are attributable to male participants.