

RESOLUTION NO. 36 OF 2011

**A RESOLUTION ADOPTING AN AMENDED AND RESTATED
CITY OF BENTON EMPLOYEES' PENSION PLAN AND
BENTON UTILITIES EMPLOYEES' PENSION PLAN AND TRUST**

WHEREAS, the City of Benton has previously adopted the City of Benton Employees' Pension Plan and the Benton Utilities Employees' Pension Plan;

WHEREAS, such plans have not previously provided for employee contributions;

WHEREAS, it is proposed that the plans provide for employee contributions commencing for employees hired after December 31, 2011, and other changes required by law;

WHEREAS, it is desired that employee contributions be made on a before-tax basis; and

WHEREAS, it is proposed that the City Council be the exclusive authority required to amend the Plan.

NOW THEREFORE, BE IT RESOLVED:

1. That Employees hired after December 31, 2011 shall agree to reduce eligible compensation as set forth in the attached amended and restated plan;
2. That the City of Benton will assume the obligation to pay the amounts deducted from Employees' pay and shall contribute such amounts to the plan;
3. That such amounts are intended to be "picked up" by the City of Benton and thus are intended to be nontaxable to Employees for federal and state income tax purposes;
4. That the City Council shall be the sole and exclusive authority required to adopt plan amendments;
5. The City of Benton does adopt the amended and restated City of Benton Employees Pension Plan and the Benton Utilities Employees Pension Plan in the form attached hereto.

PASSED AND APPROVED this 12 day of September, 2011.

APPROVED:

By _____

Mayor

ATTEST:

Cindy Stracane
City Clerk

**CITY OF BENTON, ARKANSAS
AMENDED AND RESTATED
EMPLOYEES' PENSION PLAN**

The City of Benton, Arkansas, an Arkansas municipal corporation, has previously established, originally effective September 1, 1971, a pension plan for certain of its employees. The Employer desires to amend and restate its Employees' Pension Plan effective January 1, 2012, except as otherwise provided.

The amended and restated Plan has been approved by the legally constituted authority of the Employer and is intended to qualify under § 401 and § 501 of the Internal Revenue Code of 1986, as amended from time to time. Under the amended and restated Plan, employee contributions are designated as picked up by the Employer, with the intention that such employee contributions are not subject to federal or state income taxes but are subject to FICA and Medicare taxes.

The City of Benton Employees' Pension Plan is hereby amended and restated as a unit benefit type of defined benefit pension plan.

The terms and conditions of the Plan and Trust are as follows:

ARTICLE 1. DEFINITIONS

As used in this document, the following terms shall have the indicated meanings:

1.01. "ACCRUED BENEFIT" shall mean the amount of benefit, expressed as a benefit payable at Normal Retirement Date to which a Participant would be entitled if he terminated Employment as of any date. Such amount is one-twelfth (1/12) of the sum of (a) and (b) as follows:

(a) The amount determined for a Participant under Exhibit A (if applicable), payable at the Participant's Normal Retirement Date; and

(b) The projected benefit of the Participant under Section 5.01(b) at his Normal Retirement Date, multiplied by a fraction, the numerator of which is his Years of Service at the date of determination, and the denominator of which is his Years of Service (not limited to 30) projected to his Normal Retirement Date. For purposes of this paragraph, Years of Service are limited to Years of Service after December 31, 1989.

1.02. "ACTUARIAL EQUIVALENCE" shall mean, for the purposes of establishing the present value of a stated benefit, the present value determined by discounting all future payments for interest and mortality on the following:

- (a) Interest Rate: 7.5%, pre-retirement;
 7.5%, post-retirement;
- (b) Mortality Table: Pre-retirement: UP 1984;
 Post-retirement: UP 1984.

Solely for purposes of establishing a lump sum distribution amount other than a return of Participant Contributions with Interest, the interest shall be the annual interest rate on 30-year Treasury securities as published in the Internal Revenue Bulletin for the second calendar month preceding the first day of the Plan Year, which rate shall remain constant for the Plan Year. The mortality for purpose of establishing a lump sum distribution amount shall be determined using the mortality projections taken from mortality tables described in Rev. Rul. 2001-62 with 50% male and 50% female weighting.

1.03. "ADMINISTRATOR" or "PLAN ADMINISTRATOR" shall mean the person or persons or corporation named pursuant to Article 2 to administer the Plan.

1.04. "ANNIVERSARY DATE" shall mean the last day of each Plan Year.

1.05. "ANNUITY STARTING DATE" shall mean the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).

1.06. "AVERAGE ANNUAL COMPENSATION" shall mean the greater of

(a) the sum of the annual Compensation received by a Participant over the highest five complete consecutive Years of Service divided by 5 (or if a Participant does not have five complete Years of Service, averaged over his actual complete Years of Service); or

(b) the annual Compensation averaged over the five year period ending on the Participant's termination date. For the year of termination, actual Compensation for the year is used. For the earliest portion of the 5-year period, Compensation considered is determined by multiplying Compensation for that entire year by a fraction, the numerator of which is 12 minus the number of months worked in the year of termination, and the denominator of which is 12.

1.07. "BENEFICIARY" shall mean the person or other legal entity who under the Plan becomes entitled to receive a Participant's benefits upon his death, if any. If no such designation of Beneficiary has been received by the Plan Administrator prior to the date of death of the

Participant or if there is no surviving Beneficiary and if a benefit is due and payable, the death benefits shall be paid to:

- (i) the Participant's spouse, if living;
- (ii) If the Participant has no spouse, to the Participant's estate.

1.08. "1-YEAR BREAK IN SERVICE" shall mean a twelve (12) consecutive month period during which the Employee is not in the Employment of the Employer.

1.09. "COMPENSATION" shall mean, with respect to any Employee, the total compensations paid by the Employer for services rendered to Employer which are subject to federal income tax, excluding noncash fringe benefits, but including elective contributions to a cafeteria plan under Section 125 of the Code, under Section 132(f)(4) of the Code or to a deferred compensation plan under Section 457(b) of the Code.

Compensation for this purpose shall not include accrued vacation pay or sick leave or any other extraordinary compensation payable within 30 days prior to or at any time after severance from employment.

For Plan Years beginning after December 31, 2001, annual compensation taken into account shall not exceed \$200,000. The \$200,000 limit on annual compensation in paragraph 1 shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

For purposes of determining any accruals beginning after December 31, 2001, the annual compensation limit for any determination period beginning before January 1, 2002, shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Effective for wages paid after December 31, 2008, Differential Wages Payments paid to an individual in active Qualified Military Service will be treated as wages for retirement plan purposes. For purposes of this Subsection, the term "Differential Wage Payment" means any payment which:

(i) is made by an Employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days; and

(ii) represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer.

For the purpose of the Plan:

(i) an individual receiving a Differential Wage Payment shall be treated as an Employee of the Employer making the payment;

(ii) the Differential Wage Payment shall be treated as Compensation; and

(iii) the Plan shall not be treated as failing to meet the requirements of any plan qualification requirements under Code section 401(a) where a contribution or benefit is based on the Differential Wage Payment.

1.10. "CONTRACT" or "POLICY" shall mean a life insurance policy, an annuity policy, or annuity contract issued by the Insurer.

1.11. "EARLY RETIREMENT AGE" shall mean the day on which a Participant (1) attains his 55th birthdate and (2) has completed ten (10) Years of Service.

1.12 "EFFECTIVE DATE" of this Plan as amended and restated shall mean January 1, 2012, unless otherwise provided.

1.13. "EMPLOYEE" shall mean any person on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and for the purposes of the Federal Insurance Contributions Act.

Employees shall include Leased Employees. Otherwise, an individual who is not classified for the relevant period as an employee on the Employer's (or Affiliated Employer's) payroll records, whether because the individual is treated as an independent contractor or an employee of another person, shall not be an Employee, even if such classification is determined to be erroneous, or is retroactively revised pursuant to an audit by a governmental agency, civil litigation or otherwise, and even though such individual's pay shall be later determined to be subject to withholding as an employee for previous periods.

1.14. "EMPLOYER" shall mean City of Benton, Arkansas, or any organization which assumes the obligations of this Plan.

1.15. "EMPLOYMENT" shall mean service as an Employee, beginning on the date the Employee first performed an Hour of Service for Employer, and ending on the earlier of (a) the date on which Employee quits, retires, is discharged or dies, or (b) the first anniversary of the first date on which an Employee is absent from service for 12 consecutive months, by reason (with or without pay) of an authorized leave of absence.

Employment shall mean service only as a full time Employee. A full time Employee shall be any Employee whose job responsibilities require that he regularly devote such hours as would total 1,000 or more in a year. A part time Employee shall be an Employee who regularly devotes such hours to his job as will produce less than 1,000 hours in a year. A part time Employee is not considered in the Employment of Employer for purposes of accruing a benefit or vesting. If a full time Employee becomes a part time Employee, he shall cease receiving credit for accrual of benefits and vesting.

Leaves of absence shall be authorized if granted by the Plan Administrator under rules applied on a uniform and nondiscriminatory basis, such as for (i) extended illnesses of an Employee which do not render him Disabled; or (ii) extended illnesses or death of a member of an Employee's family.

1.16. "ENTRY DATE" shall mean the January 1 following the completion of six months of Employment.

1.17. "HOUR OF SERVICE" shall mean an Hour of Service as defined in paragraphs (a), (b), and (c) below. The Employer may round up hours at the end of a computation period or more frequently.

(a) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer during the applicable computation period.

(b) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence,

(i) no more than 501 Hours of Service shall be credited, under this paragraph (b), to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);

(ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and

(iii) Hours of Service shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

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

(c) An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c).

1.18. "LEASED EMPLOYEE" shall mean any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control by the recipient employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

1.19. "NORMAL RETIREMENT AGE" shall mean the date the Participant reaches age 65 and has completed at least five (5) Years of Service.

1.20. "NORMAL RETIREMENT DATE" shall mean the first day of the month after a Participant reaches his Normal Retirement Age.

1.21. "PARTICIPANT" shall mean an Employee who shall have met all requirements for participation in the Plan. Each Participant ceases to be such when he terminates his Employment with Employer, except where pursuant to this Plan the distribution of benefits shall be deferred to a later date.

1.22. "PARTICIPANT'S CONTRIBUTIONS WITH INTEREST" shall mean the sum of the mandatory contributions made by the Participant under the Plan, plus interest (if any) on such contributions, computed at 4% per annum. Interest shall be calculated through the calendar quarter preceding distribution.

1.23. "PLAN" shall mean this document as now written and any amendments thereto which may be in force from time to time.

1.24. "PLAN YEAR" shall mean the twelve (12) month period ending on December 31 of each year.

1.25. "TRUST AGREEMENT" shall mean the Agreement, if any, between Employer and any Trustee or successor Trustee named under the Trust Agreement which may be executed which provides for the administration of the Trust Fund.

1.26. "TRUSTEE" shall mean the person or persons or corporation having trust powers so designated by the Employer to serve as Trustee, if any, and who, by joining in the execution of the Trust documents, acting in his capacity as a party to the Trust, signifies his acceptance of the Trust, or any person or persons or corporation having trust powers duly appointed as a successor Trustee.

1.27. "YEAR OF SERVICE" shall mean a calendar year during which the Employee is in the Employment of the Employer for the entire calendar year. An Employee who is in the Employment of the Employer for less than an entire calendar year shall be given credit for a partial Year of Service, based on the number of full months of Employment.

For vesting purposes and for purposes of calculating Average Monthly Compensation, Years of Service while an Employee was excluded from the Plan under Section 3.01(b) shall be counted. For benefit calculation purposes, Years of Service while an Employee was excluded under Section 3.01(b) shall not be counted.

For vesting purposes, and for purposes of calculating Average Monthly Compensation, Years of Service for Benton Utilities shall be counted.

ARTICLE 2. PLAN ADMINISTRATOR

2.01. DESIGNATION AND ACCEPTANCE.

The Mayor, City Finance Director and Chairman of the City Finance Committee shall serve as the Plan Administrative Committee, except that the City Council may name substitute or additional persons. The committee so formed shall be known as the Administrative Committee and all references in the Plan and Trust to the Plan Administrator shall be deemed to refer to the Administrative Committee.

The Plan Administrator is hereby designated as agent for the service of legal process.

The Plan Administrator shall not be required to be a Participant.

2.02. RESIGNATION AND REMOVAL.

(a) The Plan Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation to take effect on a date specified therein, which shall not be less than thirty (30) days after the delivery thereof, unless such notice shall be waived.

(b) The Plan Administrator, or any member of the Administrative Committee, may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than thirty (30) days after delivery thereof, unless such notice shall be waived.

(c) The Employer, upon receipt of or giving notice of the resignation or removal of the Plan Administrator, shall promptly designate a successor Plan Administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the Employer will function as the Plan Administrator until a new Plan Administrator has been appointed and has accepted such appointment.

(d) A simple majority of the members of the Administrative Committee shall constitute a quorum, and any act by such majority, by vote at a meeting, or in writing without a meeting, shall constitute the action of the Administrative Committee. The Administrative Committee shall keep minutes of its meetings, and shall appoint and prescribe the duties of a chairman, and a secretary, who may, but need not be, one of its members.

2.03. POWERS.

The Plan Administrator shall have full power and discretion to administer the Plan and to construe and apply all of its provisions. The Plan Administrator's powers and duties, unless properly delegated, shall include, but are not limited to:

- (a) Determining questions of eligibility and benefit entitlement;
- (b) Establishing policies for leaves of absence;
- (c) Compiling and maintaining all records necessary for the Plan, including preparing, filing and furnishing reports and other documents required under the provisions of any law;
- (d) Authorizing the Insurer or Trustee, as applicable, to make payment of all benefits as they become payable under the Plan;
- (e) Adopting rules and regulations for the administration of the Plan, not inconsistent with the Plan and the Trust Agreement, if applicable;
- (f) Engaging such legal, administrative, actuarial, investment, accounting and other professional services as necessary;
- (g) Interpreting the provisions of the Plan and making rules for the regulation of the Plan;
- (h) Doing and performing such other matters as may be provided for in other parts of this Plan or the Trust Agreement, if applicable.

2.04. ACTIONS.

The Plan Administrator, Employer and its legally constituted authority shall be entitled to rely conclusively upon the tables, valuations, certificates and reports furnished by an actuary or accountant employed by the Plan Administrator or an Insurer issuing Contracts under this Plan, and/or upon opinions of counsel or other experts; and such members, and each of them, shall be fully protected as to any action taken or allowed by them in good faith and reliance upon any such tables, valuations, certificates, reports or opinions; and all actions taken or allowed by them shall be conclusive upon all persons having or claiming any interest under the Plan.

2.05. EXPENSES.

The Employer, or in its absence, the Trust fund, if any, shall reimburse the Plan Administrator for any necessary or proper expenses incurred in exercising its duties. Except for such

reimbursement, the Plan Administrator shall not receive any compensation for the administration of the Plan.

2.06. CLAIM PROCEDURE.

(a) Any Participant or Beneficiary may file with the Plan Administrator a written statement setting forth a claim for benefits. The written statement shall be signed and set forth the claim in a manner reasonably calculated to bring it to the Plan Administrator's attention.

(b) If a claim is wholly or partially denied, notice of the decision shall be furnished by the Plan Administrator to the claimant within ninety (90) days after receipt of the claim. If within such ninety (90) days, the claim has neither been denied in writing nor granted, it shall be deemed denied on the 90th day.

(c) Any notice of denial of claim shall be written in a manner calculated to be understood by the claimant and shall include the following:

(i) the specific reason or reasons for denial;

(ii) specific reference to pertinent plan provisions on which the denial is based;

(iii) a description of additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(iv) appropriate information as to the steps to be taken if the claimant wishes to submit the claim for review.

(d) A claimant may obtain a full and fair review by appealing a denied claim to the Plan Administrator in writing within sixty (60) days after receipt by the claimant of the notice of denial. A claimant may review pertinent documents and may submit issues and comments in writing. An appeal may be requested or pursued by a duly authorized representative of the claimant. Within sixty (60) days of receipt of a request for review, a written decision shall be rendered. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent provisions of the Plan on which the decision is based.

2.07. INDEMNIFICATION OF THE PLAN ADMINISTRATOR.

The Plan Administrator shall be indemnified by the Employer against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan if the act or failure to act is judicially determined not to be a breach of

fiduciary responsibility. The indemnification shall include expenses and attorney's fees reasonably incurred in the defense of any claim relating thereto. When making a determination or calculation, the Plan Administrator shall be entitled to rely conclusively upon, and shall be fully protected by the Employer in any action it may take or suffer in reliance upon, information furnished by the Employer. The Employer and Plan Administrator shall be entitled to rely upon all reports furnished by any consultant and actuary and upon all opinions given by legal counsel selected by the Employer and Plan Administrator.

2.08. ESTABLISHMENT OF TRUST.

The Plan Administrator shall decide whether the Plan shall be an Insured Contract Plan or whether a Trust shall be established. If a Trust is to be established, the Plan Administrator shall select the Trustee and shall insure that the requirements of the Trust Agreement are met.

2.09. INVESTMENT MANAGER.

The Plan Administrator shall have the right, but shall be under no obligation, to appoint an investment manager or managers to direct the investment of all or of any portion of the assets of the Plan. The investment manager or managers shall be:

- (a) Registered as an investment advisor under the Investment Advisor's Act of 1940,
- (b) A bank as defined in the Act, or
- (c) An insurance company qualified to manage, acquire or dispose of assets of the Plan under the laws of more than one State.

Upon appointment, the investment manager shall certify and acknowledge to the Plan Administrator receipt of a copy of the Plan and Trust, if any, that the investment manner is fiduciary with respect to such Plan and Trust, and that the investment manager has assumed the duties and responsibilities conferred by the Plan Administrator.

ARTICLE 3. ELIGIBILITY

3.01. ELIGIBILITY REQUIREMENTS.

(a) Any Employee who is employed prior to January 1, 2012, is regularly employed on a full-time basis (as defined in Section 1.15) and has not previously become a Participant shall become a Participant on January 1, 2012. An Employee hired after December 31, 2012 who is regularly employed on a full-time basis (as defined in section 1.15) shall become a Participant on the date such Employee first performs an Hour of Service for the Employer.

(b) Notwithstanding paragraph (a), any person who is included in a Class of Employees covered by another retirement plan maintained by the Employer or to which the Employer contributes (even if such person is not a participant in such plan), shall be excluded from this Plan. Any municipal attorney, the City Clerk, any Deputy City Clerk, Mayor or City Treasurer or his Beneficiary shall be entitled, before the time retirement benefits are to commence, to receive either the benefit under this Plan or the benefit as set forth in Ark. Code Ann. § 24-12-120 through 24-12-125, which respect to service in such capacity. Such persons shall not be entitled to both benefits. If such an Employee elects to receive benefits pursuant to statute and not this Plan, and such Employee has made Participant Contributions, such Employee shall receive his Participant Contributions with Interest. Leased Employees shall be excluded from this Plan.

If a Participant becomes a member of an excluded class of Employees, he shall be treated as a terminated Employee, except that Years of Service with the Employer after such date shall be counted for vesting purposes only. If an Employee who is excluded becomes eligible for participation in the Plan, Employment while a member of the excluded class shall be counted for purposes of determining eligibility under this Plan.

3.02. PARTICIPATION.

Participation in the Plan by an eligible Employee is a condition of employment.

3.03. PARTICIPANT CONTRIBUTIONS FOR EMPLOYEES HIRED AFTER 12-31-2011. As a condition of employment with the Employer, each Employee included in the class of Employees eligible to participate hired after December 31, 2011, must agree to have his Compensation reduced on a payroll deduction basis as set forth in this section. The payroll deduction shall be 2% of Compensation until the January 1 following the Employee's date of employment and 4% of Compensation commencing on the January 1 following the Employee's date of employment. Once a Participant has completed 30 Years of Service, Employee payroll deductions shall cease at the end of the calendar year. Once amounts are deducted from Employee's paychecks, the Employer shall assume the obligation for such amounts and shall pay such amounts to the Plan as Participant Contributions. Participant Contributions shall be

considered "picked up" for federal tax purposes and therefore shall not be subject to federal income tax.

Except as provided in sections 6.02 and 6.03, the Participant shall not receive a refund of the Participant Contributions with Interest, but shall instead receive the Participant's Accrued Benefit as provided in this Plan.

3.04 ACCEPTANCE.

No provisions of the Plan shall be construed as abridging or limiting any managerial right of the Employer, or giving an Employee or Participant the right to be retained in employment with the Employer, or interfering with the right of the Employer to discharge any Employee or Participant at any time, subject to applicable law, regardless of the effect which such discharge may have upon him as a Participant.

ARTICLE 4. CONTRIBUTIONS

4.01. FUNDING OF BENEFITS.

The Employer may contribute from time to time such amounts in cash or property as the Employer shall determine.

The Employer intends, but does not guarantee, to make contributions to provide the benefits provided by the benefit formula specified in the Plan. Benefits shall be limited to the extent funded in the Trust, and nothing contained herein shall be construed as imposing any obligation on the Employer to continue its contributions hereunder or following any suspension of contributions to resume or thereafter to continue his contributions. No temporary suspension of contributions by Employer shall be deemed a termination of the Plan.

4.02. EMPLOYEE CONTRIBUTIONS.

Except for any Participant Contributions as provided in section 3.03, Employees shall not be permitted to contribute to the Plan.

ARTICLE 5. BENEFITS

5.01. NORMAL RETIREMENT INCOME.

The Normal Retirement Income to be provided each Participant who retires on his Normal Retirement Date shall be in a form permitted under Article 6 of the Plan, determined on the basis of a benefit which shall commence on the Participant's Normal Retirement Date and which shall be payable on the first day of each month thereafter during his lifetime, where the monthly benefit shall be equal to one-twelfth (1/12) of the sum of (a) and (b):

(a) With respect to a Participant's Employment prior to January 1, 1990, the amount determined for a Participant under Exhibit A, payable at the Participant's Normal Retirement Date.

(b) With respect to a Participant's Employment after December 31, 1989, 2.75% of Average Annual Compensation multiplied by the Participant's Years of Service after December 31, 1989. Years of Service after December 31, 1989 under (b) are limited to 30.

5.02. EARLY RETIREMENT.

(a) A Participant whose Employment with the Employer is terminated for reasons other than death or disability on or after his Early Retirement Age but prior to his Normal Retirement Date shall be eligible to receive an Early Retirement Benefit, and his Early Retirement date shall be the first day of the month coincident with or next following the date on which said Employment terminates.

(b) The Early Retirement Benefit payable to a Participant who meets the requirements of paragraph (a) shall be in a form permitted under Article 6, and shall be equal to the Accrued Benefit calculated under Section 1.01 at date of termination, reduced actuarially in accordance with Section 1.02 for the period that the date on which his Early Retirement Benefit commences precedes his Normal Retirement Date.

A Participant whose benefits under the Plan have not commenced may change the date elected prospectively on a request in writing to the Employer at least 30 days prior to the newly elected date.

5.03. DISABILITY BENEFIT.

(a) If a Participant has both attained age 45 and completed 10 Years of Service and the Participant becomes disabled, he shall receive a disability benefit under this Plan. If a Participant becomes disabled and has not both attained age 45 and completed 10 Years of Service, no

disability benefit shall be payable separate from the retirement benefits, if any, to which Participant is entitled.

(b) If a Participant is entitled to a disability benefit, such benefit shall be a monthly benefit commencing on the Participant's Normal Retirement Date and payable on the first day of each month thereafter during his lifetime. The amount of such benefit shall be his Normal Retirement Income calculated under Section 5.01, using his Average Annual Compensation as of the date of termination due to disability, but calculating his Years of Service as if the Participant's Employment continued until his Normal Retirement Date.

(c) For purposes of this Plan, a Participant shall be disabled if a physician or physicians chosen by the Employer certifies to the satisfaction of the Employer that the Participant's physical or mental condition permanently incapacitates him from engaging in any employment for remuneration or profit.

5.04. DEFERRED RETIREMENT AFTER NORMAL RETIREMENT DATE.

If a Participant remains in service past his Normal Retirement Date, the retirement benefit commencing at his deferred retirement date shall be the greater of (1) his Accrued Benefit based on his Average Annual Compensation and Years of Service, as of his deferred retirement date, or (2) the Actuarial Equivalent of his Accrued Benefit under Section 1.01 at Normal Retirement Age.

5.05. LIMITATION ON MAXIMUM BENEFITS.

(a) The annual benefit otherwise payable to a Participant at any time shall not exceed the maximum permissible benefit, as determined in (b) below. If the benefit the Participant would otherwise accrue in a limitation year produces an annual pension benefit in excess of the maximum permissible benefit, the rate of accrual will be reduced so that the annual pension benefit will equal the maximum permissible benefit.

If a Participant is, or has ever been, covered under more than one defined benefit plan maintained by the Employer, the sum of the Participant's annual benefits from all such plans, determined as of the same retirement age, may not exceed the maximum permissible benefit. If the sum of the annual benefits does exceed the maximum permissible benefit, the benefits from the plan in which benefits are currently being accrued will be reduced first. In the case where benefits are being accrued under more than one plan, including this Plan, the accruals under this Plan will be reduced prior to the benefits in the other plan(s.)

(b) Determination of annual pension benefit and maximum permissible benefit.

(1) Annual Pension Benefit. For purposes of this section, the term "annual pension

benefit" shall mean for any limitation year, the benefit, expressed in a form payable at normal retirement age, payable annually 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 section. No actuarial adjustment to the benefit is required for (1) the value of a qualified joint and survivor annuity, (2) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (3) the value of post-retirement cost-of-living increases made in accordance with section 415(d) of the Code and the regulations thereunder.

Solely for purposes of determining whether a benefit exceeds the limits of Code section 415 under this section, for benefits payable other than in the form of a lump sum, the actuarially equivalent straight life annuity is equal to the greater of (i) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan at the same annuity starting date as the form of benefit payable to the Participant or (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Participant, computed using a 5 percent interest assumption and the applicable mortality table for that annuity starting date.

Solely for purposes of determining whether a benefit exceeds the limits of Code section 415 under this section, for benefits payable in the form of a lump sum, the actuarially equivalent straight life annuity is the greatest of: (i) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table specified in section 1.02; (ii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit, computed using a 5.5% interest assumption and the applicable mortality table for the distribution; or (iii) the annual amount of the straight life annuity commencing on the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate and the applicable mortality table), divided by 1.05. The terms applicable interest rate and applicable mortality rate shall be as defined in the final 415 regulations.

(2) **Maximum Permissible Benefit.** For purposes of this section, the term "maximum permissible benefit" shall mean, for any limitation year, the defined benefit dollar limitation, as defined below. This amount may be further adjusted in Subsection (c). The "defined benefit dollar limitation" shall be \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the IRS shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to limitation years ending with or within the calendar year for which the adjustment applies. Unless otherwise provided by law, adjustments for increases in the cost of living shall not be taken into account for any year before the year for which such adjustment first takes effect.

(3) Adjustments to the Maximum Permissible Benefit.

(i) If the Participant has less than ten (10) years of participation, the defined benefit dollar limitation described above, shall be multiplied by a fraction, the numerator of which is the number of years of participation and the denominator of which is ten (10). A Participant is credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the Participant is credited with the period of service required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and the Participant is included as eligible to participate in the plan for at least one day of the accrual computation period. A Participant who is permanently and totally disabled within the meaning of section 415(c) of the Code shall be credited with a year of participation (or part thereof) with respect to that period. In no event will more than one year of participation be credited for any twelve (12) month period.

(ii) For purposes of determining a member's "maximum permissible benefit," the defined benefit dollar limitation above shall be adjusted for commencement of benefits before the attainment of 62 or after the attainment of 65. If benefits commence before the Participant attains age 62, the defined benefit dollar limitation applicable to the Participant is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation at age 62, with the actuarial adjustment as provided in the final 415 regulations.

If benefits commence after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant is an annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation at age 65, with the actuarial adjustment as provided in the final 415 regulations.

(4) Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant hereunder shall be deemed not to exceed the maximum permissible benefit limitation if:

(i) the retirement benefits payable for a Plan Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the Employer do not exceed \$1,000 multiplied by the Participant's number of years of service or parts thereof (not to exceed 10) with the Employer; and

(ii) the Employer has not at any time maintained a defined contribution plan, a welfare benefit fund, an individual medical account, or simplified employee pension, in which the Participant participated. For this purpose only, employee contributions under a defined benefit plan (whether voluntary or mandatory) are not treated as a defined contribution plan.

5.06. NON-DUPLICATION OF BENEFITS.

It is the intent of this Plan to avoid duplication of benefits provided under this Plan and another pension plan of the Employer or the pension plans of any other Employers with respect to which credit for prior service is given, if any, under this Plan. The following rules apply for the purpose of eliminating duplication:

(a) A benefit payable under this Plan shall be offset by the amount of employer-paid benefits earned under a pension plan of another employer for a period of service for which credit is given under this Plan. Generally the offset shall be applied by reducing the benefit payable to the Participant under the Plan for the life of the Participant commencing at Normal Retirement Date by the benefit payable under the other pension plan in the same form and commencing at the same time; the resulting benefit shall be paid at the time and in the form determined under the provisions of the Plan. If the benefit under this Plan commences prior to the Participant's Normal Retirement Age, the offset shall be the Actuarial Equivalent of the benefit payable under the other pension plan. The offset shall be made whether or not the Participant has forfeited his prior benefit by withdrawing his contributions or has taken his prior benefit in a form other than the form in which benefits are payable under this Plan. However, a Participant's benefit under this Plan shall not be less than the benefit would have been if credit had not been given for the prior service with the other employer.

(b) A benefit payable under this Plan shall be offset by any benefit previously earned and payable to the Participant or his Beneficiary under this Plan. The offset shall be applied by reducing the benefit payable to the Participant under this Plan at the time the benefit commences by the Actuarial Equivalent of the prior benefit payable under the Plan.

5.07. BENEFITS NONFORFEITABLE UPON RETIREMENT.

A Participant's right to his retirement benefits is nonforfeitable upon the attainment of his Normal Retirement Age.

5.08. TERMINATION PRIOR TO EARLY RETIREMENT.

If a Participant terminates employment prior to his Early Retirement Age, his benefit shall be payable under Article 6.

5.09. MILITARY SERVICE.

Notwithstanding any provision of this Plan to the contrary, with respect to a Participant who is in qualified military service, as defined in Code § 414(u)(5) and who is reemployed within the time required by law after the expiration of his qualified military service, such Participant may make-up any required Participant Contributions for the period of his qualified military service, based on his deemed compensation during his qualified military service as defined in Code § 414(u). Such make-up Participant Contributions may be made in either a single payment or in installments and must be made during the period beginning with the date of the Participant's reemployment after his military leave equal to the lesser of (i) three times the period of his military leave and (ii) five years. If such Participant makes the Participant contributions, the Participant shall be credited with Years of Service for the period required to be recognized for such military service.

5.10. ADJUSTMENT FOR OVERPAYMENTS AND UNDERPAYMENTS.

Whenever as a result of administrative error, a benefit is paid in excess of the amount payable under the provisions of this Plan, the Participant shall immediately reimburse the Trustee upon written request the aggregate amount of such excess payment. If as a result of administrative error, the amount paid to the Participant is less than the amount to which he is entitled under the terms of this Plan, the Trustee shall immediately pay, upon discovery of such error, an amount equal to the deficiency through the date of such payment. Subsequent payments in either event shall be the correct amount payable under this Plan.

ARTICLE 6. TERMINATION OF SERVICE

6.01. VESTED INTEREST ON TERMINATION.

(a) If a Participant terminates service for reasons other than death or disability (in accordance with Section 5.03) prior to Early or Normal Retirement Age, he shall be entitled to a percentage of his Accrued Benefit, as determined in accordance with the following:

<u>Years of Service at termination of Employment</u>	<u>Vested %</u>
Less than 5	0
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

(b) The vested benefit payable to a Participant who terminates employment shall be in a form permitted under Article 7 and payable, at the Participant's election as set forth below:

(i) a deferred benefit commencing on his Normal Retirement Date, or

(ii) a benefit commencing at any age after age 55 which is the Actuarial Equivalent of his vested Accrued Benefit under Section 1.01.

However, in accordance with policies established by the Plan Administrator, which may be revised from time to time, distribution of a terminated Participant's vested Accrued Benefit to which he is entitled may commence on the first day of any month coincident with or next following his date of termination. In such event the benefit shall be the Actuarial Equivalent of his vested Accrued Benefit. The Plan Administrator's discretion shall be applied in a uniform and consistent manner.

6.02. OTHER TERMINATION OF EMPLOYEE.

If an Employee's Employment is terminated and the Participant is not vested under Section 6.01, the Participant shall be entitled to the Participant Contributions with Interest, payable in a lump sum. Payment shall be made as soon as administratively feasible after the end of the Plan Year in which such Employee/Participant terminates. Interest shall be calculated through the end of the calendar quarter preceding distribution. No further benefit shall be payable to such Employee/Participant under the Plan.

6.03. SMALL BENEFITS.

In the event the Participant is at least partially vested under section 6.01 but the present value of the Participant's vested Accrued Benefit is less than the Participant Contributions with Interest, the Participant shall be paid the Participant Contributions with Interest in a single sum upon the occurrence of a 1-Year Break in Service. In the event that the present value of the Participant's vested Accrued Benefit is greater than the Participant Contributions with Interest but the value of the Employer-provided benefit (the present value of the vested Accrued Benefit less the Participant Contributions With Interest) is less than or equal to \$5,000, then the present value of the Participant's Accrued Benefit will be paid to the Participant or Beneficiary in a single sum upon the incurrance of a 1-Year Break in Service. If any single sum payment is made in accordance with this Section 6.03, no further benefit will be payable to the Participant, his Beneficiary, or his surviving Spouse, as the case may be. For purposes of this Section 6.03, the lump sum present value of the Accrued Benefit shall be computed according to the interest rate and mortality assumptions used to calculate the lump sum payment under Section 1.02.

Notwithstanding the above, if the total amount payable to the Participant shall exceed \$1,000, distribution shall not be made without the Participant's consent.

6.04. DIRECT ROLLOVER.

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. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and any hardship distribution. 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, a qualified trust described in Section 401(a) of the Code, an annuity

contract described in section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that accepts the distributee's eligible rollover distribution and that agrees to separately account for amounts transferred into such plan from this plan. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. For purposes of the direct rollover provisions above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

The Plan will permit a Direct Rollover of an Eligible Rollover Distribution to a Roth IRA in a Qualified Rollover Contribution. For taxable years beginning before January 1, 2010, an individual cannot make a Qualified Rollover Contribution from an this Plan to a Roth IRA of assets other than those contained in a Roth account if for the year the Eligible Rollover Distribution is made, his modified adjusted gross income exceeds \$100,000 or he or she is married and files a separate return.

ARTICLE 7. FORM OF BENEFITS

7.01. JOINT AND SURVIVOR BENEFIT.

The benefit to which a Participant is entitled normally shall be payable in equal monthly installments in accordance with paragraphs (a) and (b), unless the Participant (and his spouse, if applicable) elect, in the manner provided in Section 7.02, to have the benefit paid in another form permitted under Section 7.03.

(a) The benefit payable to a Participant who is married on the date the Participant's benefit commences shall be payable for the lifetime of the Participant, with one-half of the amount payable to the Participant continued thereafter for the lifetime of his spouse. The amount of the benefit shall be the Actuarial Equivalent of the life annuity for the Participant calculated under Section 1.02.

(b) The benefit payable to any Participant who does not have a spouse on the date the Participant's benefit commences shall be a benefit payable only for the lifetime of the Participant.

7.02. ELECTION OF OPTIONAL RETIREMENT BENEFITS.

(a) Each Participant in the Plan may elect at anytime to waive the form of benefit payable under Section 7.01 and elect an optional form of benefit. Each Participant may revoke any such election at any time prior to commencement of benefits. Any such election or revocation must meet the requirements of paragraphs (b) and (c). Once a Participant has commenced receipt of benefits, any election is irrevocable.

(b) Any election under paragraph (b) shall not take effect unless

(i) the spouse, if any, of the Participant irrevocably consents in writing to such election, and the spouse's consent is witnessed by a notary public, or

(ii) it is established to the satisfaction of the Plan Administrator that the Participant has no spouse or that the spouse cannot be located.

Any consent (or establishment that no consent may be obtained) shall be effective only with respect to such spouse.

(c) The Plan Administrator shall provide to each Participant, within a reasonable period of time before the Annuity Starting Date, a written explanation of:

- (i) The terms and conditions of the normal form of payment;
- (ii) The Participant's right to make, and the effect of, an election under paragraph (b) to waive the normal form of benefit;
- (iii) The right of the Participant's spouse under section 7.02 (b); and
- (iv) The right to make, and the effect of a revocation of such an election.

7.03. OPTIONAL PAYMENT FORMS

(a) If a Participant elects not to receive the form of benefit named in Section 7.01, his benefits shall be distributed in such manner as the Participant shall elect in accordance with one or more of the following means:

- (i) in the form of an annuity for the life of the Participant;
- (ii) in the form of an annuity for the life of the Participant with 120 months guaranteed; or
- (iii) in the form of an annuity for the life of the Participant and an annuity in the same amount for the life of his surviving Beneficiary after the Participant's death (joint and 100% survivor).

(b) Any optional form of distribution shall be the actuarial equivalent of the life annuity for the Participant computed under Section 1.02.

7.04. REQUIRED DISTRIBUTIONS.

(a) Requirements of Treasury Regulations Incorporated. All distributions under the Plan will meet the requirements of Treas. Reg. 1.401(a)(9)-2 through 1.401(a)(9)-9, including the incidental benefit requirements of IRC section 401(a)(9)(G).

(b) Notwithstanding any other provision of this Plan, distribution shall commence no later than the required beginning date. The required beginning date is April 1 following the later of (i) the calendar year in which the Participant reaches age 70 ½ or (ii) the calendar year in which the Participant retires.

(c) Under no circumstances shall a Participant be permitted to select any method of payment unless, under the terms of the method selected, the entire interest of such Participant will be distributed in accordance with the final regulations prescribed by the Secretary of the Treasury under § 401(a) (9) of the Internal Revenue Code of 1986 over the life of the Participant

(or over the lives of the Participant and his Spouse) or over a period not extending beyond the life expectancy of the Participant (or the joint life expectancy of the Participant and his Spouse).

7.05. DISTRIBUTION TO MINOR BENEFICIARY.

In the event a distribution is to be made to a minor, then the Plan Administrator may, in its discretion, make such distribution to the legal guardian or, if none, to a parent of such beneficiary with whom the Beneficiary maintains his residence. Such payment shall fully discharge the Trustee, the Employer and the Plan from all liability.

7.06. MAXIMUM PAYOUT TIME.

Unless a Participant elects to defer in writing, payment of benefits under the Plan to the Participant shall begin not later than the 60th day after the end of the Plan Year in which the latest of the following occurs:

- (i) the Participant attains the earlier of age 65 or the Normal Retirement Date specified under the Plan,
- (ii) the 10th anniversary of the year in which the Participant commenced participation in the Plan, or
- (iii) the Participant terminates his Employment with the Employer.

An election shall be made by submitting to the Plan Administrator a written statement, signed by the Participant, which describes the benefit and the date on which the payment of such benefit may commence. The failure of a Participant (and spouse, if applicable) to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election sufficient to satisfy this Section.

ARTICLE 8. DEATH BENEFITS

8.01. QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.

(a) Except as elected otherwise pursuant to this Article, in the case of

(i) a Vested Participant who dies while in the employment of Employer prior to his Early Retirement Age; or

(ii) a Vested Participant who has terminated employment with Employer (before his Early Retirement Age) who dies (whether before or after his Early Retirement age) prior to the Annuity Starting Date,

if such Participant has a surviving spouse, a Qualified Preretirement Survivor Annuity shall be provided to the spouse.

(b) A Qualified Preretirement Survivor Annuity shall not be provided unless the Participant and his spouse had been married throughout the 1-year period ending on the earlier of the Participant's death or his Annuity Starting Date.

(c) A Qualified Preretirement Survivor Annuity shall mean an annuity for the life of the surviving spouse which shall commence on the first day of the calendar month coincident with or next following the later of the Participant's date of death or the date the Participant would have attained the Early Retirement Age. Preretirement Death Benefit payments shall be made on the first day of each month following the applicable commencement date, and the last payment shall be the payment due in the month in which the spouse's death occurs. The spouse may elect an annuity with 120 months certain which shall be the Actuarial Equivalent of the life annuity.

(d) The amount of the Qualified Preretirement Survivor Annuity for a Participant described in paragraph (a) shall be the amount payable to the spouse if

(i) in the case of a Vested Participant who had previously terminated employment, the Participant had

(A) survived to the Early Retirement Age;

(B) retired with a benefit under Section 7.01(a) commencing at the Early Retirement Age in accordance with Article 6; and

(C) died on the day after the day on which such Participant would have attained the Early Retirement Age; or

(ii) in the case of a Vested Participant who dies while in the employment of Employer, the Participant had

(A) separated from service on the date of death;

(B) survived to the Early Retirement Age;

(C) retired with a benefit under Section 7.01(a) commencing at the Early Retirement Age in accordance with Articles 6; and

(D) died on the day after the day on which such Participant would have attained the Early Retirement Age.

8.02. DEATH BENEFITS AFTER EARLY RETIREMENT AGE.

(a) In the case of a Vested Participant who dies after his Early Retirement Age while in the employment of Employer, or who dies after retiring on or after his Early Retirement Age but before his Annuity Starting Date, and who has a surviving spouse, a death benefit shall be provided to the spouse.

(b) The death benefit shall be an annuity for the life of the spouse and shall commence on the first day of the calendar month coincident with or next following the Participant's date of death. Such death benefit payments shall be made on the first day of each month following the commencement date, and the last payment shall be the payment due in the month in which the spouse's death occurs. The spouse may elect an annuity with 120 months certain which shall be the Actuarial Equivalent of the life annuity.

(c) The amount of death benefit for a Participant described in paragraph (a) shall be the amount which would have been payable to the spouse after the death of the Participant assuming that a Participant who dies while in the employment of Employer had terminated on the day prior to his death with a benefit under Section 6.01(a).

8.03. DEATH BENEFITS UNDER USERRA-QUALIFIED MILITARY SERVICE.

If a non-vested Participant dies while performing Qualified Military Service (as defined in Code section 414(u)), the death benefit under this Plan shall be determined as if the Participant resumed service with the Employer and then terminated employment on account of death. The additional benefits shall not include benefit accruals relating to the period of Qualified Military Service.

8.04 DIRECT ROLLOVER OF NON-SPOUSAL CONTRIBUTIONS.

(a) For distributions after December 31, 2006, a non-spouse Beneficiary who is a

“designated beneficiary” under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer (“direct rollover”), may roll over all or any portion of his/her distribution to an individual retirement account the Beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

(b) Although a non-spouse Beneficiary may roll over directly a distribution as provided in this section, the distribution is not subject to the direct rollover requirements of Code §401(a)(31), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c). In a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

(c) A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance.

8.05 NO DEATH BENEFITS EXCEPT AS PROVIDED.

Death benefits shall not be payable hereunder except as provided in this Article or under the terms of an optional form of benefit selected by the Participant. This exclusion applies to, but is not limited to the following:

(a) A death benefit shall not be payable under the Plan if a Participant dies after benefit payments to the Participant have commenced unless the form of benefit specifically provides for a benefit.

(b) A death benefit shall not be payable under the Plan if a Participant dies while not in the employment of Employer and before commencement of benefits unless otherwise required under this Article.

(c) A death benefit shall not be payable under the Plan if a Participant dies while in the employment of Employer and before commencement of benefits unless otherwise required under this Article.

(d) A death benefit shall not be provided to a Participant who is not survived by his spouse unless the Participant survives the Annuity Starting Date and the form of benefit selected has a death benefit.

Notwithstanding the above, the death benefit for a Participant who has had Participant Contributions made shall not be less than the Participant Contributions with Interest.

ARTICLE 9. AMENDMENT OF PLAN

9.01. RIGHT OF EMPLOYER TO AMEND PLAN.

The City Council of the City of Benton shall have the right to amend this Plan at any time to any extent that it may deem advisable. A copy of such amendment shall be delivered to the Trustee, if any. All Participants shall be bound by amendments adopted in accordance herewith, subject to the following provisions:

(a) No amendment shall increase the duties or liabilities of the Trustee or the Plan Administrator without their respective written consents.

(b) No amendment may make it possible for any part of the corpus or income of the Plan to be used or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries, if such diversion is not allowed by applicable law.

ARTICLE 10. TERMINATION OF PLAN

10.01. TERMINATION OF PLAN.

The City Council of the City of Benton shall have the right to terminate the Plan at any time by delivering to the Plan Administrator and Trustee, if any, notice of such termination. Upon termination, distribution of the Participants' Accrued Benefits, to the extent funded, shall be made at such time and in such manner as though the Plan had not been terminated. Such payments may be made through the purchase of annuities. Any assets exceeding those necessary to fund the Participants' Accrued Benefits as of date of termination shall revert to the Employer.

10.02. NONFORFEITURE PROVISIONS.

It is hereby expressly provided that upon termination of the Plan, the rights of all Participants to benefits accrued to the date of such discontinuance, to the extent then funded, shall be nonforfeitable.

ARTICLE 11. MISCELLANEOUS PLAN PROVISIONS

11.01. HEADINGS AND SUBHEADINGS.

The headings and subheadings in this Agreement are inserted for convenience of reference only and are not to be considered in construction of the provisions hereof.

11.02. INTERPRETATION.

This Plan and Trust shall be construed, administered and governed in all respects under and by the laws of the State of Arkansas. In that connection, wherever appropriate, singular words used in this Agreement may include the plural, the plural may include the singular, and the masculine may include the feminine or neuter gender.

11.03. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their beneficiaries, heirs, executors, administrators, and assigns.

11.04. FAILURE OF INITIAL QUALIFICATION.

In the event this Plan or Trust shall initially fail to qualify under § 401 of the Internal Revenue Code of 1986, as amended, all contributions, together with any income received or accrued thereon, less appropriate expenses payable by the Trustee which have not been paid by the Employer, shall be returned to the Employer, or to the person making such contribution, as the case may be, within one year after the date the initial qualification is denied. Notwithstanding any other provision to the contrary in this Plan or the Trust Agreement, no Participant or Beneficiary shall have any vested right or claim to any assets of the Trust Fund resulting from Employer contributions prior to the issuance by the Internal Revenue Service of a favorable letter of determination, provided application for determination of qualification is made within the time prescribed by law for filing the employer's tax return for the tax year in which the plan is adopted.

11.05. SUCCESSOR EMPLOYER.

In the event of a dissolution, merger or consolidation of the Employer, provisions may be made by the successor for the continuance of this Plan, and said successor shall in such event be substituted in the place of the present Employer by an instrument authorizing such substitution executed by the Employer and its successor, a copy of which shall be delivered to the Trustee, if any.

11.06. SERVICE FOR PREDECESSOR EMPLOYER.

For all purposes of this Plan, if the Employer is maintaining the plan of a predecessor employer, service for such predecessor shall be treated as service for the Employer.

11.07. CONTROLLED CORPORATIONS, AFFILIATED SERVICE GROUPS AND LEASED EMPLOYEES.

For all purposes of this Plan, service with certain related employers is treated as service for the Employer. These related employers include members of a controlled group of corporations (within the meaning of Internal Revenue Code § 563(a), determined without regard to subsections (a) (4) and (e) (3) (c) thereof), trades or businesses (whether or not incorporated) which are under common control, and affiliated service groups (within the meaning of § 414 (m) of the Internal Revenue Code. Also, for purposes of the pension requirements of Section 414 (n) (3) of the Code, leased employees (as defined in Section 414(n) (2), shall be treated as employees of the Employer.

11.08. MISTAKE IN CONTRIBUTION.

In the event that a contribution is made by reason of a mistake of fact, it shall be returned to the Employer. The amount to be returned to the Employer is the excess of (a) the amount contributed over (b) the amount which would have been contributed had there not occurred a mistake of fact. The return to the Employer of the amount involved must be made within one year of the mistake in payment. 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. If the withdrawal of the amount attributable to the mistake in contribution will cause the balance of Plan assets to be reduced to less than the balance which would have existed had the mistaken amount not been contributed, then the amount to be returned to the Employer shall be reduced so as to avoid such reduction.

11.09. SPENDTHRIFT CLAUSE.

No person entitled to any benefits under this Plan shall have any right to assign, transfer, hypothecate, encumber, commute or anticipate his interest in any benefits under this Plan, and such benefits shall not in any way be subject to any legal process or levy of execution upon, or attachment or garnishment proceedings against, the same for the payment of any claim against any such person.

The above paragraph shall not apply to the creation, assignment or recognition of any benefit payable with respect to any Participant pursuant to a domestic relations order, to the extent required by Arkansas law.

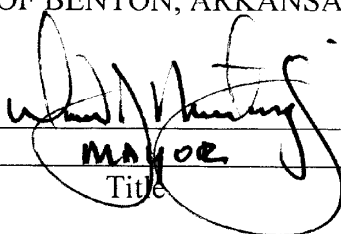
11.10 EXCLUSIVE BENEFIT. The Employer shall have no beneficial interest in the Fund or any part thereof, and no part of the Fund shall ever revert or be repaid to the Employer, either directly or indirectly, except as set forth in the Plan. The corpus or income of the Fund may not be diverted to or used for other than the exclusive benefit of the Participants and their Beneficiaries

11.11. NON-TRANSFERABILITY OF ANNUITY CONTRACTS.

All annuity contracts issued under the Plan shall be non-transferable at any time when such contracts are held by any person other than a Trustee. On any distribution of annuity contracts held hereunder, such contracts shall first be endorsed to provide in substance that such contracts may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of any obligation or for any other purpose, to any person other than the insurance company issuing such contracts.

Executed by Employer on this the 13 day of September, 2011.

CITY OF BENTON, ARKANSAS

By 
Its MAYOR
Title

**BENTON UTILITIES
AMENDED AND RESTATED
EMPLOYEES' PENSION PLAN**

Benton Utilities, an instrumentality of the City of Benton, Arkansas Arkansas municipal corporation, has previously established, originally effective October 31, 1968, a pension plan for its utility employees. The Employer desires to amend and restate its Employees' Pension Plan effective January 1, 2012, except as otherwise provided.

The amended and restated Plan has been approved by the legally constituted authority of the Employer and is intended to qualify under § 401 and § 501 of the Internal Revenue Code of 1986, as amended from time to time. Under the amended and restated Plan, employee contributions are designated as picked up by the Employer, with the intention that such employee contributions are not subject to federal or state income taxes but are subject to FICA and Medicare taxes.

The Benton Utilities Employees' Pension Plan is hereby amended and restated as a unit benefit type of defined benefit pension plan.

The terms and conditions of the Plan and Trust are as follows:

ARTICLE 1. DEFINITIONS

As used in this document, the following terms shall have the indicated meanings:

1.01. "ACCRUED BENEFIT" shall mean the amount of benefit, expressed as a benefit payable at Normal Retirement Date to which a Participant would be entitled if he terminated Employment as of any date. Such amount is one-twelfth (1/12) of the sum of (a) and (b) as follows:

(a) The amount determined for a Participant under Exhibit A (if applicable), payable at the Participant's Normal Retirement Date; and

(b) The projected benefit of the Participant under Section 5.01(b) at his Normal Retirement Date, multiplied by a fraction, the numerator of which is his Years of Service at the date of determination, and the denominator of which is his Years of Service (not limited to 30) projected to his Normal Retirement Date. For purposes of this paragraph, Years of Service are limited to Years of Service after December 31, 1989.

1.02. "ACTUARIAL EQUIVALENCE" shall mean, for the purposes of establishing the present value of a stated benefit, the present value determined by discounting all future payments for interest and mortality on the following:

- (a) Interest Rate: 7.5%, pre-retirement;
 7.5%, post-retirement;

- (b) Mortality Table: Pre-retirement: UP 1984;
 Post-retirement: UP 1984.

Solely for purposes of establishing a lump sum distribution amount other than a return of Participant Contributions with Interest, the interest shall be the annual interest rate on 30-year Treasury securities as published in the Internal Revenue Bulletin for the second calendar month preceding the first day of the Plan Year, which rate shall remain constant for the Plan Year. The mortality for purpose of establishing a lump sum distribution amount shall be determined using the mortality projections taken from mortality tables described in Rev. Rul. 2001-62 with 50% male and 50% female weighting.

1.03. "ADMINISTRATOR" or "PLAN ADMINISTRATOR" shall mean the person or persons or corporation named pursuant to Article 2 to administer the Plan.

1.04. "ANNIVERSARY DATE" shall mean the last day of each Plan Year.

1.05. "ANNUITY STARTING DATE" shall mean the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).

1.06. "AVERAGE ANNUAL COMPENSATION" shall mean the greater of

(a) the sum of the annual Compensation received by a Participant over the highest five complete consecutive Years of Service divided by 5 (or if a Participant does not have five complete Years of Service, averaged over his actual complete Years of Service); or

(b) the annual Compensation averaged over the five year period ending on the Participant's termination date. For the year of termination, actual Compensation for the year is used. For the earliest portion of the 5-year period, Compensation considered is determined by multiplying Compensation for that entire year by a fraction, the numerator of which is 12 minus the number of months worked in the year of termination, and the denominator of which is 12.

1.07. "BENEFICIARY" shall mean the person or other legal entity who under the Plan becomes entitled to receive a Participant's benefits upon his death, if any. If no such designation of Beneficiary has been received by the Plan Administrator prior to the date of death of the Participant

or if there is no surviving Beneficiary and if a benefit is due and payable, the death benefits shall be paid to:

- (i) the Participant's spouse, if living;
- (ii) If the Participant has no spouse, to the Participant's estate.

1.08. "1-YEAR BREAK IN SERVICE" shall mean a twelve (12) consecutive month period during which the Employee is not in the Employment of the Employer.

1.09. "COMPENSATION" shall mean, with respect to any Employee, the total compensations paid by the Employer for services rendered to Employer which are subject to federal income tax, excluding noncash fringe benefits, but including elective contributions to a cafeteria plan under Section 125 of the Code, under Section 132(f)(4) of the Code, or to a deferred compensation plan under Section 457(b) of the Code.

Compensation for this purpose shall not include accrued vacation pay or sick leave or any other extraordinary compensation payable within 30 days prior to or at any time after severance from employment.

For Plan Years beginning after December 31, 2001, annual compensation taken into account shall not exceed \$200,000. The \$200,000 limit on annual compensation in paragraph 1 shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

For purposes of determining any accruals beginning after December 31, 2001, the annual compensation limit for any determination period beginning before January 1, 2002, shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Effective for wages paid after December 31, 2008, Differential Wages Payments paid to an individual in active Qualified Military Service will be treated as wages for retirement plan purposes. For purposes of this Subsection, the term "Differential Wage Payment" means any

payment which:

(i) is made by an Employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days; and

(ii) represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer.

For the purpose of the Plan:

(i) an individual receiving a Differential Wage Payment shall be treated as an Employee of the Employer making the payment;

(ii) the Differential Wage Payment shall be treated as Compensation; and

(iii) the Plan shall not be treated as failing to meet the requirements of any plan qualification requirements under Code section 401(a) where a contribution or benefit is based on the Differential Wage Payment.

1.10. "CONTRACT" or "POLICY" shall mean a life insurance policy, an annuity policy, or annuity contract issued by the Insurer.

1.11. "EARLY RETIREMENT AGE" shall mean the day on which a Participant (1) attains his 55th birthdate and (2) has completed ten (10) Years of Service.

1.12 "EFFECTIVE DATE" of this Plan as amended and restated shall mean January 1, 2012, unless otherwise provided.

1.13. "EMPLOYEE" shall mean any person on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and for the purposes of the Federal Insurance Contributions Act.

Employees shall include Leased Employees. Otherwise, an individual who is not classified for the relevant period as an employee on the Employer's (or Affiliated Employer's) payroll records, whether because the individual is treated as an independent contractor or an employee of another person, shall not be an Employee, even if such classification is determined to be erroneous, or is retroactively revised pursuant to an audit by a governmental agency, civil litigation or otherwise, and even though such individual's pay shall be later determined to be subject to withholding as an employee for previous periods.

1.14. "EMPLOYER" shall mean Benton Utilities, an instrumentality of the City of Benton, Arkansas, or any organization which assumes the obligations of this Plan.

1.15. "EMPLOYMENT" shall mean service as an Employee, beginning on the date the Employee first performed an Hour of Service for Employer, and ending on the earlier of (a) the date on which Employee quits, retires, is discharged or dies, or (b) the first anniversary of the first date on which an Employee is absent from service for 12 consecutive months, by reason (with or without pay) of an authorized leave of absence.

Employment shall mean service only as a full time Employee. A full time Employee shall be any Employee whose job responsibilities require that he regularly devote such hours as would total 1,000 or more in a year. A part time Employee shall be an Employee who regularly devotes such hours to his job as will produce less than 1,000 hours in a year. A part time Employee is not considered in the Employment of Employer for purposes of accruing a benefit or vesting. If a full time Employee becomes a part time Employee, he shall cease receiving credit for accrual of benefits and vesting.

Leaves of absence shall be authorized if granted by the Plan Administrator under rules applied on a uniform and nondiscriminatory basis, such as for (i) extended illnesses of an Employee which do not render him Disabled; or (ii) extended illnesses or death of a member of an Employee's family.

1.16. "ENTRY DATE" shall mean the January 1 following the completion of six months of Employment.

1.17. "HOUR OF SERVICE" shall mean an Hour of Service as defined in paragraphs (a), (b), and (c) below. The Employer may round up hours at the end of a computation period or more frequently.

(a) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer during the applicable computation period.

(b) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence,

(i) no more than 501 Hours of Service shall be credited, under this paragraph (b), to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);

(ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and

(iii) Hours of Service shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

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

(c) An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c).

1.18. "LEASED EMPLOYEE" shall mean any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control by the recipient employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

1.19. "NORMAL RETIREMENT AGE" shall mean the date the Participant reaches age 65 and has completed at least five (5) Years of Service.

1.20. "NORMAL RETIREMENT DATE" shall mean the first day of the month after a Participant reaches his Normal Retirement Age.

1.21. "PARTICIPANT" shall mean an Employee who shall have met all requirements for participation in the Plan. Each Participant ceases to be such when he terminates his Employment with Employer, except where pursuant to this Plan the distribution of benefits shall be deferred to a later date.

1.22. "PARTICIPANT'S CONTRIBUTIONS WITH INTEREST" shall mean the sum of the mandatory contributions made by the Participant under the Plan, plus interest (if any) on such contributions, computed at 4% per annum. Interest shall be calculated through the calendar quarter preceding distribution.

1.23. "PLAN" shall mean this document as now written and any amendments thereto which may be in force from time to time.

1.24. "PLAN YEAR" shall mean the twelve (12) month period ending on December 31 of each year.

1.25. "TRUST AGREEMENT" shall mean the Agreement, if any, between Employer and any Trustee or successor Trustee named under the Trust Agreement which may be executed which provides for the administration of the Trust Fund.

1.26. "TRUSTEE" shall mean the person or persons or corporation having trust powers so designated by the Employer to serve as Trustee, if any, and who, by joining in the execution of the Trust documents, acting in his capacity as a party to the Trust, signifies his acceptance of the Trust, or any person or persons or corporation having trust powers duly appointed as a successor Trustee.

1.27. "YEAR OF SERVICE" shall mean a calendar year during which the Employee is in the Employment of the Employer for the entire calendar year. An Employee who is in the Employment of the Employer for less than an entire calendar year shall be given credit for a partial Year of Service, based on the number of full months of Employment.

For vesting purposes and for purposes of calculating Average Monthly Compensation, Years of Service with the City of Benton, Arkansas shall be counted. For benefit calculation purposes, only Years of Service with the Employer shall be counted.

ARTICLE 2. PLAN ADMINISTRATOR

2.01. DESIGNATION AND ACCEPTANCE.

The Mayor, City Finance Director and Chairman of the City Finance Committee shall serve as the Plan Administrative Committee, except that the City Council may name substitute or additional persons. The committee so formed shall be known as the Administrative Committee and all references in the Plan and Trust to the Plan Administrator shall be deemed to refer to the Administrative Committee.

The Plan Administrator is hereby designated as agent for the service of legal process.

The Plan Administrator shall not be required to be a Participant.

2.02. RESIGNATION AND REMOVAL.

(a) The Plan Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation to take effect on a date specified therein, which shall not be less than thirty (30) days after the delivery thereof, unless such notice shall be waived.

(b) The Plan Administrator, or any member of the Administrative Committee, may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than thirty (30) days after delivery thereof, unless such notice shall be waived.

(c) The Employer, upon receipt of or giving notice of the resignation or removal of the Plan Administrator, shall promptly designate a successor Plan Administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the Employer will function as the Plan Administrator until a new Plan Administrator has been appointed and has accepted such appointment.

(d) A simple majority of the members of the Administrative Committee shall constitute a quorum, and any act by such majority, by vote at a meeting, or in writing without a meeting, shall constitute the action of the Administrative Committee. The Administrative Committee shall keep minutes of its meetings, and shall appoint and prescribe the duties of a chairman, and a secretary, who may, but need not be, one of its members.

2.03. POWERS.

The Plan Administrator shall have full power and discretion to administer the Plan and to construe and apply all of its provisions. The Plan Administrator's powers and duties, unless properly delegated, shall include, but are not limited to:

- (a) Determining questions of eligibility and benefit entitlement;
- (b) Establishing policies for leaves of absence;
- (c) Compiling and maintaining all records necessary for the Plan, including preparing, filing and furnishing reports and other documents required under the provisions of any law;
- (d) Authorizing the Insurer or Trustee, as applicable, to make payment of all benefits as they become payable under the Plan;
- (e) Adopting rules and regulations for the administration of the Plan, not inconsistent with the Plan and the Trust Agreement, if applicable;
- (f) Engaging such legal, administrative, actuarial, investment, accounting and other professional services as necessary;
- (g) Interpreting the provisions of the Plan and making rules for the regulation of the Plan;
- (h) Doing and performing such other matters as may be provided for in other parts of this Plan or the Trust Agreement, if applicable.

2.04. ACTIONS.

The Plan Administrator, Employer and its legally constituted authority shall be entitled to rely conclusively upon the tables, valuations, certificates and reports furnished by an actuary or accountant employed by the Plan Administrator or an Insurer issuing Contracts under this Plan, and/or upon opinions of counsel or other experts; and such members, and each of them, shall be fully protected as to any action taken or allowed by them in good faith and reliance upon any such tables, valuations, certificates, reports or opinions; and all actions taken or allowed by them shall be conclusive upon all persons having or claiming any interest under the Plan.

2.05. EXPENSES.

The Employer, or in its absence, the Trust fund, if any, shall reimburse the Plan Administrator for any necessary or proper expenses incurred in exercising its duties. Except for such reimbursement, the Plan Administrator shall not receive any compensation for the administration of the Plan.

2.06. CLAIM PROCEDURE.

(a) Any Participant or Beneficiary may file with the Plan Administrator a written statement setting forth a claim for benefits. The written statement shall be signed and set forth the claim in a manner reasonably calculated to bring it to the Plan Administrator's attention.

(b) If a claim is wholly or partially denied, notice of the decision shall be furnished by the Plan Administrator to the claimant within ninety (90) days after receipt of the claim. If within such ninety (90) days, the claim has neither been denied in writing nor granted, it shall be deemed denied on the 90th day.

(c) Any notice of denial of claim shall be written in a manner calculated to be understood by the claimant and shall include the following:

(i) the specific reason or reasons for denial;

(ii) specific reference to pertinent plan provisions on which the denial is based;

(iii) a description of additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(iv) appropriate information as to the steps to be taken if the claimant wishes to submit the claim for review.

(d) A claimant may obtain a full and fair review by appealing a denied claim to the Plan Administrator in writing within sixty (60) days after receipt by the claimant of the notice of denial. A claimant may review pertinent documents and may submit issues and comments in writing. An appeal may be requested or pursued by a duly authorized representative of the claimant. Within sixty (60) days of receipt of a request for review, a written decision shall be rendered. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent provisions of the Plan on which the decision is based.

2.07. INDEMNIFICATION OF THE PLAN ADMINISTRATOR.

The Plan Administrator shall be indemnified by the Employer against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan if the act or failure to act is judicially determined not to be a breach of fiduciary responsibility. The indemnification shall include expenses and attorney's fees reasonably incurred in the defense of any claim relating thereto. When making a determination or calculation, the Plan Administrator shall be entitled to rely conclusively upon, and shall be fully protected by the Employer in any action it may take or suffer in reliance upon, information furnished by the Employer. The Employer and Plan Administrator shall be entitled to rely upon all reports furnished by any consultant and actuary and upon all opinions given by legal counsel selected by the Employer and Plan Administrator.

2.08. ESTABLISHMENT OF TRUST.

The Plan Administrator shall decide whether the Plan shall be an Insured Contract Plan or whether a Trust shall be established. If a Trust is to be established, the Plan Administrator shall select the Trustee and shall insure that the requirements of the Trust Agreement are met.

2.09. INVESTMENT MANAGER.

The Plan Administrator shall have the right, but shall be under no obligation, to appoint an investment manager or managers to direct the investment of all or of any portion of the assets of the Plan. The investment manager or managers shall be:

- (a) Registered as an investment advisor under the Investment Advisor's Act of 1940,
- (b) A bank as defined in the Act, or
- (c) An insurance company qualified to manage, acquire or dispose of assets of the Plan under the laws of more than one State.

Upon appointment, the investment manager shall certify and acknowledge to the Plan Administrator receipt of a copy of the Plan and Trust, if any, that the investment manner is fiduciary with respect to such Plan and Trust, and that the investment manager has assumed the duties and responsibilities conferred by the Plan Administrator.

ARTICLE 3. ELIGIBILITY

3.01. ELIGIBILITY REQUIREMENTS.

(a) Any Employee who is employed prior to January 1, 2012, is regularly employed on a full-time basis (as defined in Section 1.15) and has not previously become a Participant shall become a Participant on January 1, 2012. An Employee hired after December 31, 2012 who is regularly employed on a full-time basis (as defined in section 1.15) shall become a Participant on the date such Employee first performs an Hour of Service for the Employer.

(b) The only Employees who shall be eligible to participate in this Plan shall be Employees of the Employer. If an Employee ceases to be eligible to participate in this Plan but is in the Employment of the City of Benton, Arkansas, he shall be treated as a terminated Employee except that Years of Service thereafter shall be counted for vested purposes. If an individual employed by the City of Benton, Arkansas, becomes eligible to participate in this Plan, Employment for the City of Benton shall be counted for purposes of determining eligibility under this Plan.

Leased Employees shall be excluded from this Plan.

3.02. PARTICIPATION.

Participation in the Plan by an eligible Employee is a condition of employment.

3.03. PARTICIPANT CONTRIBUTIONS FOR EMPLOYEES HIRED AFTER 12-31-2011. As a condition of employment with the Employer, each Employee included in the class of Employees eligible to participate hired after December 31, 2011, must agree to have his Compensation reduced on a payroll deduction basis as set forth in this section. The payroll deduction shall be 2% of Compensation until the January 1 following the Employee's date of employment and 4% of Compensation commencing on the January 1 following the Employee's date of employment. Once a Participant has completed 30 Years of Service, Employee payroll deductions shall cease at the end of the calendar year. Once amounts are deducted from Employee's paychecks, the Employer shall assume the obligation for such amounts and shall pay such amounts to the Plan as Participant Contributions. Participant Contributions shall be considered "picked up" for federal tax purposes and therefore shall not be subject to federal income tax.

Except as provided in sections 6.02 and 6.03, the Participant shall not receive a refund of the Participant Contributions with Interest, but shall instead receive the Participant's Accrued Benefit as provided in this Plan.

3.04 ACCEPTANCE.

No provisions of the Plan shall be construed as abridging or limiting any managerial right of the Employer, or giving an Employee or Participant the right to be retained in employment with the Employer, or interfering with the right of the Employer to discharge any Employee or Participant at any time, subject to applicable law, regardless of the effect which such discharge may have upon him as a Participant.

ARTICLE 4. CONTRIBUTIONS

4.01. FUNDING OF BENEFITS.

The Employer may contribute from time to time such amounts in cash or property as the Employer shall determine.

The Employer intends, but does not guarantee, to make contributions to provide the benefits provided by the benefit formula specified in the Plan. Benefits shall be limited to the extent funded in the Trust, and nothing contained herein shall be construed as imposing any obligation on the Employer to continue its contributions hereunder or following any suspension of contributions to resume or thereafter to continue his contributions. No temporary suspension of contributions by Employer shall be deemed a termination of the Plan.

4.02. EMPLOYEE CONTRIBUTIONS.

Except for any Participant Contributions as provided in section 3.03, Employees shall not be permitted to contribute to the Plan.

ARTICLE 5. BENEFITS

5.01. NORMAL RETIREMENT INCOME.

The Normal Retirement Income to be provided each Participant who retires on his Normal Retirement Date shall be in a form permitted under Article 6 of the Plan, determined on the basis of a benefit which shall commence on the Participant's Normal Retirement Date and which shall be payable on the first day of each month thereafter during his lifetime, where the monthly benefit shall be equal to one-twelfth (1/12) of the sum of (a) and (b):

(a) With respect to a Participant's Employment prior to January 1, 1990, the amount determined for a Participant under Exhibit A, payable at the Participant's Normal Retirement Date.

(b) With respect to a Participant's Employment after December 31, 1989, 2.75% of Average Annual Compensation multiplied by the Participant's Years of Service after December 31, 1989. Years of Service after December 31, 1989 under (b) are limited to 30.

5.02. EARLY RETIREMENT.

(a) A Participant whose Employment with the Employer is terminated for reasons other than death or disability on or after his Early Retirement Age but prior to his Normal Retirement Date shall be eligible to receive an Early Retirement Benefit, and his Early Retirement date shall be the first day of the month coincident with or next following the date on which said Employment terminates.

(b) The Early Retirement Benefit payable to a Participant who meets the requirements of paragraph (a) shall be in a form permitted under Article 6, and shall be equal to the Accrued Benefit shall be calculated under Section 1.01 at date of termination, reduced actuarially in accordance with Section 1.02 for the period that the date on which his Early Retirement Benefit commences precedes his Normal Retirement Date.

A Participant whose benefits under the Plan have not commenced may change the date elected prospectively on a request in writing to the Employer at least 30 days prior to the newly elected date.

5.03. DISABILITY BENEFIT.

(a) If a Participant has both attained age 45 and completed 10 Years of Service and the Participant becomes disabled, he shall receive a disability benefit under this Plan. If a Participant

becomes disabled and has not both attained age 45 and completed 10 Years of Service, no disability benefit shall be payable separate from the retirement benefits, if any, to which Participant is entitled.

(b) If a Participant is entitled to a disability benefit, such benefit shall be a monthly benefit commencing on the Participant's Normal Retirement Date and payable on the first day of each month thereafter during his lifetime. The amount of such benefit shall be his Normal Retirement Income calculated under Section 5.01, using his Average Annual Compensation as of the date of termination due to disability, but calculating his Years of Service as if the Participant's Employment continued until his Normal Retirement Date.

(c) For purposes of this Plan, a Participant shall be disabled if a physician or physicians chosen by the Employer certifies to the satisfaction of the Employer that the Participant's physical or mental condition permanently incapacitates him from engaging in any employment for remuneration or profit.

5.04. DEFERRED RETIREMENT AFTER NORMAL RETIREMENT DATE.

If a Participant remains in service past his Normal Retirement Date, the retirement benefit commencing at his deferred retirement date shall be the greater of (1) his Accrued Benefit based on his Average Annual Compensation and Years of Service, as of his deferred retirement date, or (2) the Actuarial Equivalent of his Accrued Benefit under Section 1.01 at Normal Retirement Age.

5.05. LIMITATION ON MAXIMUM BENEFITS.

(a) The annual benefit otherwise payable to a Participant at any time shall not exceed the maximum permissible benefit, as determined in (b) below. If the benefit the Participant would otherwise accrue in a limitation year produces an annual pension benefit in excess of the maximum permissible benefit, the rate of accrual will be reduced so that the annual pension benefit will equal the maximum permissible benefit.

If a Participant is, or has ever been, covered under more than one defined benefit plan maintained by the Employer, the sum of the Participant's annual benefits from all such plans, determined as of the same retirement age, may not exceed the maximum permissible benefit. If the sum of the annual benefits does exceed the maximum permissible benefit, the benefits from the plan in which benefits are currently being accrued will be reduced first. In the case where benefits are being accrued under more than one plan, including this Plan, the accruals under this Plan will be reduced prior to the benefits in the other plan(s.)

(b) Determination of annual pension benefit and maximum permissible benefit.

(1) Annual Pension Benefit. For purposes of this section, the term "annual pension benefit" shall mean for any limitation year, the benefit, expressed in a form payable at normal retirement age, payable annually 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 section. No actuarial adjustment to the benefit is required for (1) the value of a qualified joint and survivor annuity, (2) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (3) the value of post-retirement cost-of-living increases made in accordance with section 415(d) of the Code and the regulations thereunder.

Solely for purposes of determining whether a benefit exceeds the limits of Code section 415 under this section, for benefits payable other than in the form of a lump sum, the actuarially equivalent straight life annuity is equal to the greater of (i) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan at the same annuity starting date as the form of benefit payable to the Participant or (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Participant, computed using a 5 percent interest assumption and the applicable mortality table for that annuity starting date.

Solely for purposes of determining whether a benefit exceeds the limits of Code section 415 under this section, for benefits payable in the form of a lump sum, the actuarially equivalent straight life annuity is the greatest of: (i) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table specified in section 1.02; (ii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit, computed using a 5.5% interest assumption and the applicable mortality table for the distribution; or (iii) the annual amount of the straight life annuity commencing on the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate and the applicable mortality table), divided by 1.05. The terms applicable interest rate and applicable mortality rate shall be as defined in the final 415 regulations.

(2) Maximum Permissible Benefit. For purposes of this section, the term "maximum permissible benefit" shall mean, for any limitation year, the defined benefit dollar limitation, as defined below. This amount may be further adjusted in Subsection (c). The "defined benefit dollar limitation" shall be \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the IRS shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to limitation years ending with or within the calendar year for which the adjustment applies. Unless otherwise provided by law, adjustments for increases in the cost of living shall not be taken into account for any year before the year for which such adjustment first

takes effect.

(3) Adjustments to the Maximum Permissible Benefit.

(i) If the Participant has less than ten (10) years of participation, the defined benefit dollar limitation described above, shall be multiplied by a fraction, the numerator of which is the number of years of participation and the denominator of which is ten (10). A Participant is credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the Participant is credited with the period of service required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and the Participant is included as eligible to participate in the plan for at least one day of the accrual computation period. A Participant who is permanently and totally disabled within the meaning of section 415(c) of the Code shall be credited with a year of participation (or part thereof) with respect to that period. In no event will more than one year of participation be credited for any twelve (12) month period.

(ii) For purposes of determining a member's "maximum permissible benefit," the defined benefit dollar limitation above shall be adjusted for commencement of benefits before the attainment of 62 or after the attainment of 65. If benefits commence before the Participant attains age 62, the defined benefit dollar limitation applicable to the Participant is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation at age 62, with the actuarial adjustment as provided in the final 415 regulations.

If benefits commence after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant is an annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation at age 65, with the actuarial adjustment as provided in the final 415 regulations.

(4) Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant hereunder shall be deemed not to exceed the maximum permissible benefit limitation if:

(i) the retirement benefits payable for a Plan Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the Employer do not exceed \$1,000 multiplied by the Participant's number of years of service or parts thereof (not to exceed 10) with the Employer; and

(ii) the Employer has not at any time maintained a defined contribution plan, a welfare benefit fund, an individual medical account, or simplified employee pension, in which the Participant participated. For this purpose only, employee contributions under a defined benefit plan (whether voluntary or mandatory) are not treated as a defined contribution plan.

5.06. NON-DUPLICATION OF BENEFITS.

It is the intent of this Plan to avoid duplication of benefits provided under this Plan and another pension plan of the Employer or the pension plans of any other Employers with respect to which credit for prior service is given, if any, under this Plan. The following rules apply for the purpose of eliminating duplication:

(a) A benefit payable under this Plan shall be offset by the amount of employer-paid benefits earned under a pension plan of another employer for a period of service for which credit is given under this Plan. Generally the offset shall be applied by reducing the benefit payable to the Participant under the Plan for the life of the Participant commencing at Normal Retirement Date by the benefit payable under the other pension plan in the same form and commencing at the same time; the resulting benefit shall be paid at the time and in the form determined under the provisions of the Plan. If the benefit under this Plan commences prior to the Participant's Normal Retirement Age, the offset shall be the Actuarial Equivalent of the benefit payable under the other pension plan. The offset shall be made whether or not the Participant has forfeited his prior benefit by withdrawing his contributions or has taken his prior benefit in a form other than the form in which benefits are payable under this Plan. However, a Participant's benefit under this Plan shall not be less than the benefit would have been if credit had not been given for the prior service with the other employer.

(b) A benefit payable under this Plan shall be offset by any benefit previously earned and payable to the Participant or his Beneficiary under this Plan. The offset shall be applied by reducing the benefit payable to the Participant under this Plan at the time the benefit commences by the Actuarial Equivalent of the prior benefit payable under the Plan.

5.07. BENEFITS NONFORFEITABLE UPON RETIREMENT.

A Participant's right to his retirement benefits is nonforfeitable upon the attainment of his Normal Retirement Age.

5.08. TERMINATION PRIOR TO EARLY RETIREMENT.

If a Participant terminates employment prior to his Early Retirement Age, his benefit shall be payable under Article 6.

5.09. MILITARY SERVICE.

Notwithstanding any provision of this Plan to the contrary, with respect to a Participant who is in qualified military service, as defined in Code § 414(u)(5) and who is reemployed

within the time required by law after the expiration of his qualified military service, such Participant may make-up any required Participant Contributions for the period of his qualified military service, based on his deemed compensation during his qualified military service as defined in Code § 414(u). Such make-up Participant Contributions may be made in either a single payment or in installments and must be made during the period beginning with the date of the Participant's reemployment after his military leave equal to the lesser of (i) three times the period of his military leave and (ii) five years. If such Participant makes the Participant contributions, the Participant shall be credited with Years of Service for the period required to be recognized for such military service.

5.10. ADJUSTMENT FOR OVERPAYMENTS AND UNDERPAYMENTS.

Whenever as a result of administrative error, a benefit is paid in excess of the amount payable under the provisions of this Plan, the Participant shall immediately reimburse the Trustee upon written request the aggregate amount of such excess payment. If as a result of administrative error, the amount paid to the Participant is less than the amount to which he is entitled under the terms of this Plan, the Trustee shall immediately pay, upon discovery of such error, an amount equal to the deficiency through the date of such payment. Subsequent payments in either event shall be the correct amount payable under this Plan.

ARTICLE 6. TERMINATION OF SERVICE

6.01. VESTED INTEREST ON TERMINATION.

(a) If a Participant terminates service for reasons other than death or disability (in accordance with Section 5.03) prior to Early or Normal Retirement Age, he shall be entitled to a percentage of his Accrued Benefit, as determined in accordance with the following:

<u>Years of Service at termination of Employment</u>	<u>Vested %</u>
Less than 5	0
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70

13	80
14	90
15 or more	100

(b) The vested benefit payable to a Participant who terminates employment shall be in a form permitted under Article 7 and payable, at the Participant's election as set forth below:

(i) a deferred benefit commencing on his Normal Retirement Date, or

(ii) a benefit commencing at any age after age 55 which is the Actuarial Equivalent of his vested Accrued Benefit under Section 1.01.

However, in accordance with policies established by the Plan Administrator, which may be revised from time to time, distribution of a terminated Participant's vested Accrued Benefit to which he is entitled may commence on the first day of any month coincident with or next following his date of termination. In such event the benefit shall be the Actuarial Equivalent of his vested Accrued Benefit. The Plan Administrator's discretion shall be applied in a uniform and consistent manner.

6.02. OTHER TERMINATION OF EMPLOYEE.

If an Employee's Employment is terminated and the Participant is not vested under Section 6.01, the Participant shall be entitled to the Participant Contributions with Interest, payable in a lump sum. Payment shall be made as soon as administratively feasible after the end of the Plan Year in which such Employee/Participant terminates. Interest shall be calculated through the end of the calendar quarter preceding distribution. No further benefit shall be payable to such Employee/Participant under the Plan.

6.03. SMALL BENEFITS.

In the event the Participant is at least partially vested under section 6.01 but the present value of the Participant's vested Accrued Benefit is less than the Participant Contributions with Interest, the Participant shall be paid the Participant Contributions with Interest in a single sum upon the occurrence of a 1-Year Break in Service. In the event that the present value of the Participant's vested Accrued Benefit is greater than the Participant Contributions with Interest but the value of the Employer-provided benefit (the present value of the vested Accrued Benefit less the Participant Contributions With Interest) is less than or equal to \$5,000, then the present value of the Participant's Accrued Benefit will be paid to the Participant or Beneficiary in a single sum upon the incurrence of a 1-Year Break in Service. If any single sum payment is made in accordance with this Section 6.03, no further benefit will be payable to the Participant, his Beneficiary, or his surviving Spouse, as the case may be. For purposes of this Section 6.03, the

lump sum present value of the Accrued Benefit shall be computed according to the interest rate and mortality assumptions used to calculate the lump sum payment under Section 1.02.

Notwithstanding the above, if the total amount payable to the Participant shall exceed \$1,000, distribution shall not be made without the Participant's consent.

6.04. DIRECT ROLLOVER.

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. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and any hardship distribution. 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, a qualified trust described in Section 401(a) of the Code, an annuity contract described in section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that accepts the distributee's eligible rollover distribution and that agrees to separately account for amounts transferred into such plan from this plan. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. For purposes of the direct rollover provisions above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

The Plan will permit a Direct Rollover of an Eligible Rollover Distribution to a Roth IRA in a Qualified Rollover Contribution. For taxable years beginning before January 1, 2010, an individual cannot make a Qualified Rollover Contribution from an this Plan to a Roth IRA of assets other than those contained in a Roth account if for the year the Eligible Rollover

Distribution is made, his modified adjusted gross income exceeds \$100,000 or he or she is married and files a separate return.

ARTICLE 7. FORM OF BENEFITS

7.01. JOINT AND SURVIVOR BENEFIT.

The benefit to which a Participant is entitled normally shall be payable in equal monthly installments in accordance with paragraphs (a) and (b), unless the Participant (and his spouse, if applicable) elect, in the manner provided in Section 7.02, to have the benefit paid in another form permitted under Section 7.03.

(a) The benefit payable to a Participant who is married on the date the Participant's benefit commences shall be payable for the lifetime of the Participant, with one-half of the amount payable to the Participant continued thereafter for the lifetime of his spouse. The amount of the benefit shall be the Actuarial Equivalent of the life annuity for the Participant calculated under Section 1.02.

(b) The benefit payable to any Participant who does not have a spouse on the date the Participant's benefit commences shall be a benefit payable only for the lifetime of the Participant.

7.02. ELECTION OF OPTIONAL RETIREMENT BENEFITS.

(a) Each Participant in the Plan may elect at anytime to waive the form of benefit payable under Section 7.01 and elect an optional form of benefit. Each Participant may revoke any such election at any time prior to commencement of benefits. Any such election or revocation must meet the requirements of paragraphs (b) and (c). Once a Participant has commenced receipt of benefits, any election is irrevocable.

(b) Any election under paragraph (b) shall not take effect unless

(i) the spouse, if any, of the Participant irrevocably consents in writing to such election, and the spouse's consent is witnessed by a notary public, or

(ii) it is established to the satisfaction of the Plan Administrator that the Participant has no spouse or that the spouse cannot be located.

Any consent (or establishment that no consent may be obtained) shall be effective only with respect to such spouse.

(c) The Plan Administrator shall provide to each Participant, within a reasonable period of time before the Annuity Starting Date, a written explanation of:

(i) The terms and conditions of the normal form of payment;

(ii) The Participant's right to make, and the effect of, an election under paragraph (b) to waive the normal form of benefit;

- (iii) The right of the Participant's spouse under section 7.02 (b); and
- (iv) The right to make, and the effect of a revocation of such an election.

7.03. OPTIONAL PAYMENT FORMS

(a) If a Participant elects not to receive the form of benefit named in Section 7.01, his benefits shall be distributed in such manner as the Participant shall elect in accordance with one or more of the following means:

- (i) in the form of an annuity for the life of the Participant;
- (ii) in the form of an annuity for the life of the Participant with 120 months guaranteed; or
- (iii) in the form of an annuity for the life of the Participant and an annuity in the same amount for the life of his surviving Beneficiary after the Participant's death (joint and 100% survivor).

(b) Any optional form of distribution shall be the actuarial equivalent of the life annuity for the Participant computed under Section 1.02.

7.04. REQUIRED DISTRIBUTIONS.

(a) Requirements of Treasury Regulations Incorporated. All distributions under the Plan will meet the requirements of Treas. Reg. 1.401(a)(9)-2 through 1.401(a)(9)-9, including the incidental benefit requirements of IRC section 401(a)(9)(G).

(b) Notwithstanding any other provision of this Plan, distribution shall commence no later than the required beginning date. The required beginning date is April 1 following the later of (i) the calendar year in which the Participant reaches age 70 ½ or (ii) the calendar year in which the Participant retires.

(c) Under no circumstances shall a Participant be permitted to select any method of payment unless, under the terms of the method selected, the entire interest of such Participant will be distributed in accordance with the final regulations prescribed by the Secretary of the Treasury under § 401(a) (9) of the Internal Revenue Code of 1986 over the life of the Participant (or over the lives of the Participant and his Spouse) or over a period not extending beyond the life expectancy of the Participant (or the joint life expectancy of the Participant and his Spouse).

7.05. DISTRIBUTION TO MINOR BENEFICIARY.

In the event a distribution is to be made to a minor, then the Plan Administrator may, in its discretion, make such distribution to the legal guardian or, if none, to a parent of such beneficiary

with whom the Beneficiary maintains his residence. Such payment shall fully discharge the Trustee, the Employer and the Plan from all liability.

7.06. MAXIMUM PAYOUT TIME.

Unless a Participant elects to defer in writing, payment of benefits under the Plan to the Participant shall begin not later than the 60th day after the end of the Plan Year in which the latest of the following occurs:

- (i) the Participant attains the earlier of age 65 or the Normal Retirement Date specified under the Plan,
- (ii) the 10th anniversary of the year in which the Participant commenced participation in the Plan, or
- (iii) the Participant terminates his Employment with the Employer.

An election shall be made by submitting to the Plan Administrator a written statement, signed by the Participant, which describes the benefit and the date on which the payment of such benefit may commence. The failure of a Participant (and spouse, if applicable) to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election sufficient to satisfy this Section.

ARTICLE 8. DEATH BENEFITS

8.01. QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.

(a) Except as elected otherwise pursuant to this Article, in the case of

(i) a Vested Participant who dies while in the employment of Employer prior to his Early Retirement Age; or

(ii) a Vested Participant who has terminated employment with Employer (before his Early Retirement Age) who dies (whether before or after his Early Retirement age) prior to the Annuity Starting Date,

if such Participant has a surviving spouse, a Qualified Preretirement Survivor Annuity shall be provided to the spouse.

(b) A Qualified Preretirement Survivor Annuity shall not be provided unless the Participant and his spouse had been married throughout the 1-year period ending on the earlier of the Participant's death or his Annuity Starting Date.

(c) A Qualified Preretirement Survivor Annuity shall mean an annuity for the life of the surviving spouse which shall commence on the first day of the calendar month coincident with or next following the later of the Participant's date of death or the date the Participant would have attained the Early Retirement Age. Preretirement Death Benefit payments shall be made on the first day of each month following the applicable commencement date, and the last payment shall be the payment due in the month in which the spouse's death occurs. The spouse may elect an annuity with 120 months certain which shall be the Actuarial Equivalent of the life annuity.

(d) The amount of the Qualified Preretirement Survivor Annuity for a Participant described in paragraph (a) shall be the amount payable to the spouse if

(i) in the case of a Vested Participant who had previously terminated employment, the Participant had

(A) survived to the Early Retirement Age;

(B) retired with a benefit under Section 7.01(a) commencing at the Early Retirement Age in accordance with Article 6; and

(C) died on the day after the day on which such Participant would have attained the Early Retirement Age; or

(ii) in the case of a Vested Participant who dies while in the employment of Employer, the Participant had

(A) separated from service on the date of death;

(B) survived to the Early Retirement Age;

(C) retired with a benefit under Section 7.01(a) commencing at the Early Retirement Age in accordance with Articles 6; and

(D) died on the day after the day on which such Participant would have attained the Early Retirement Age.

8.02. DEATH BENEFITS AFTER EARLY RETIREMENT AGE.

(a) In the case of a Vested Participant who dies after his Early Retirement Age while in the employment of Employer, or who dies after retiring on or after his Early Retirement Age but before his Annuity Starting Date, and who has a surviving spouse, a death benefit shall be provided to the spouse.

(b) The death benefit shall be an annuity for the life of the spouse and shall commence on the first day of the calendar month coincident with or next following the Participant's date of death. Such death benefit payments shall be made on the first day of each month following the commencement date, and the last payment shall be the payment due in the month in which the spouse's death occurs. The spouse may elect an annuity with 120 months certain which shall be the Actuarial Equivalent of the life annuity.

(c) The amount of death benefit for a Participant described in paragraph (a) shall be the amount which would have been payable to the spouse after the death of the Participant assuming that a Participant who dies while in the employment of Employer had terminated on the day prior to his death with a benefit under Section 6.01(a).

8.03. DEATH BENEFITS UNDER USERRA-QUALIFIED MILITARY SERVICE.

If a non-vested Participant dies while performing Qualified Military Service (as defined in Code section 414(u)), the death benefit under this Plan shall be determined as if the Participant resumed service with the Employer and then terminated employment on account of death. The additional benefits shall not include benefit accruals relating to the period of Qualified Military Service.

8.04 DIRECT ROLLOVER OF NON-SPOUSAL CONTRIBUTIONS.

(a) For distributions after December 31, 2006, a non-spouse Beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his/her distribution to an individual retirement account the Beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

(b) Although a non-spouse Beneficiary may roll over directly a distribution as provided in this section, the distribution is not subject to the direct rollover requirements of Code §401(a)(31), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c). In a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

(c) A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance.

8.05. NO DEATH BENEFITS EXCEPT AS PROVIDED.

Death benefits shall not be payable hereunder except as provided in this Article or under the terms of an optional form of benefit selected by the Participant. This exclusion applies to, but is not limited to the following:

(a) A death benefit shall not be payable under the Plan if a Participant dies after benefit payments to the Participant have commenced unless the form of benefit specifically provides for a benefit.

(b) A death benefit shall not be payable under the Plan if a Participant dies while not in the employment of Employer and before commencement of benefits unless otherwise required under this Article.

(c) A death benefit shall not be payable under the Plan if a Participant dies while in the employment of Employer and before commencement of benefits unless otherwise required under this Article.

(d) A death benefit shall not be provided to a Participant who is not survived by his spouse unless the Participant survives the Annuity Starting Date and the form of benefit selected has a death benefit.

Notwithstanding the above, the death benefit for a Participant who has had Participant Contributions made shall not be less than the Participant Contributions with Interest.

ARTICLE 9. AMENDMENT OF PLAN

9.01. RIGHT OF EMPLOYER TO AMEND PLAN.

The City Council of the City of Benton shall have the right to amend this Plan at any time to any extent that it may deem advisable. A copy of such amendment shall be delivered to the Trustee, if any. All Participants shall be bound by amendments adopted in accordance herewith, subject to the following provisions:

(a) No amendment shall increase the duties or liabilities of the Trustee or the Plan Administrator without their respective written consents.

(b) No amendment may make it possible for any part of the corpus or income of the Plan to be used or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries, if such diversion is not allowed by applicable law.

ARTICLE 10. TERMINATION OF PLAN

10.01. TERMINATION OF PLAN.

The City Council of the City of Benton shall have the right to terminate the Plan at any time by delivering to the Plan Administrator and Trustee, if any, notice of such termination. Upon termination, distribution of the Participants' Accrued Benefits, to the extent funded, shall be made at such time and in such manner as though the Plan had not been terminated. Such payments may be made through the purchase of annuities. Any assets exceeding those necessary to fund the Participants' Accrued Benefits as of date of termination shall revert to the Employer.

10.02. NONFORFEITURE PROVISIONS.

It is hereby expressly provided that upon termination of the Plan, the rights of all Participants to benefits accrued to the date of such discontinuance, to the extent then funded, shall be nonforfeitable.

ARTICLE 11. MISCELLANEOUS PLAN PROVISIONS

11.01. HEADINGS AND SUBHEADINGS.

The headings and subheadings in this Agreement are inserted for convenience of reference only and are not to be considered in construction of the provisions hereof.

11.02. INTERPRETATION.

This Plan and Trust shall be construed, administered and governed in all respects under and by the laws of the State of Arkansas. In that connection, wherever appropriate, singular words used in this Agreement may include the plural, the plural may include the singular, and the masculine may include the feminine or neuter gender.

11.03. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their beneficiaries, heirs, executors, administrators, and assigns.

11.04. FAILURE OF INITIAL QUALIFICATION.

In the event this Plan or Trust shall initially fail to qualify under § 401 of the Internal Revenue Code of 1986, as amended, all contributions, together with any income received or accrued thereon, less appropriate expenses payable by the Trustee which have not been paid by the Employer, shall be returned to the Employer, or to the person making such contribution, as the case may be, within one year after the date the initial qualification is denied. Notwithstanding any other provision to the contrary in this Plan or the Trust Agreement, no Participant or Beneficiary shall have any vested right or claim to any assets of the Trust Fund resulting from Employer contributions prior to the issuance by the Internal Revenue Service of a favorable letter of determination, provided application for determination of qualification is made within the time prescribed by law for filing the employer's tax return for the tax year in which the plan is adopted.

11.05. SUCCESSOR EMPLOYER.

In the event of a dissolution, merger or consolidation of the Employer, provisions may be made by the successor for the continuance of this Plan, and said successor shall in such event be substituted in the place of the present Employer by an instrument authorizing such substitution executed by the Employer and its successor, a copy of which shall be delivered to the Trustee, if .

11.06. SERVICE FOR PREDECESSOR EMPLOYER.

For all purposes of this Plan, if the Employer is maintaining the plan of a predecessor employer, service for such predecessor shall be treated as service for the Employer.

11.07. CONTROLLED CORPORATIONS, AFFILIATED SERVICE GROUPS AND LEASED EMPLOYEES.

For all purposes of this Plan, service with certain related employers is treated as service for the Employer. These related employers include members of a controlled group of corporations (within the meaning of Internal Revenue Code § 563(a), determined without regard to subsections (a) (4) and (e) (3) (c) thereof), trades or businesses (whether or not incorporated) which are under common control, and affiliated service groups (within the meaning of § 414 (m) of the Internal Revenue Code. Also, for purposes of the pension requirements of Section 414 (n) (3) of the Code, leased employees (as defined in Section 414(n) (2), shall be treated as employees of the Employer.

11.08. MISTAKE IN CONTRIBUTION.

In the event that a contribution is made by reason of a mistake of fact, it shall be returned to the Employer. The amount to be returned to the Employer is the excess of (a) the amount contributed over (b) the amount which would have been contributed had there not occurred a mistake of fact. The return to the Employer of the amount involved must be made within one year of the mistake in payment. 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. If the withdrawal of the amount attributable to the mistake in contribution will cause the balance of Plan assets to be reduced to less than the balance which would have existed had the mistaken amount not been contributed, then the amount to be returned to the Employer shall be reduced so as to avoid such reduction.

11.09. SPENDTHRIFT CLAUSE.

No person entitled to any benefits under this Plan shall have any right to assign, transfer, hypothecate, encumber, commute or anticipate his interest in any benefits under this Plan, and such benefits shall not in any way be subject to any legal process or levy of execution upon, or attachment or garnishment proceedings against, the same for the payment of any claim against any such person.

The above paragraph shall not apply to the creation, assignment or recognition of any benefit payable with respect to any Participant pursuant to a domestic relations order, to the extent required by Arkansas law.

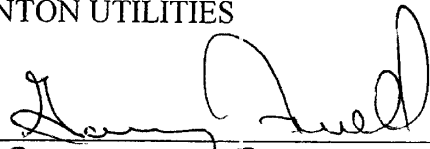
11.10 EXCLUSIVE BENEFIT. The Employer shall have no beneficial interest in the Fund or any part thereof, and no part of the Fund shall ever revert or be repaid to the Employer, either directly or indirectly, except as set forth in the Plan. The corpus or income of the Fund may not be diverted to or used for other than the exclusive benefit of the Participants and their Beneficiaries.

11.11. NON-TRANSFERABILITY OF ANNUITY CONTRACTS.

All annuity contracts issued under the Plan shall be non-transferable at any time when such contracts are held by any person other than a Trustee. On any distribution of annuity contracts held hereunder, such contracts shall first be endorsed to provide in substance that such contracts may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of any obligation or for any other purpose, to any person other than the insurance company issuing such contracts.

Executed by Employer on this the 13 day of September, 2011.

BENTON UTILITIES

By 
Its Chairman 3POC
Title

ORDINANCE NO. 76 OF 2021

AN ORDINANCE ADOPTING AN AMENDMENT TO BENTON UTILITIES EMPLOYEE PENSION PLAN AND TRUST; AND FOR OTHER PURPOSES

WHEREAS, pursuant to ordinance and the current plan documents, the City Council of the City of Benton, Arkansas, has the sole and exclusive authority to consider and adopt all proposed amendments to the Benton Utilities Employee Pension Plan (“Utilities Plan”);

WHEREAS, since the City Council established the Public Utility Commission “to manage and operate” the Utilities Department, there has been a mutual effort to sever the administrative and personnel ties between the two entities;

WHEREAS, before the adoption of Resolution No. 67 of 2019, which amended the Utilities Plan documents to allow for the creation of an “Administrative Committee” made up of utility department personnel and a Utility Commission Representative to provide management of the Utilities Plan, the Public Utility Commission, did not have authority and/or oversight for the administration and operation of the Utilities Plan;

WHEREAS, the Administrative Committee of the Utilities Plan has determined after several meetings with the Plan’s Actuary and Investment Counselors that the Utilities Plan’s interest would best be served if all Utilities Plan amendments were considered and adopted by the Public Utility Commission; and

WHEREAS, Ordinance No. 46 of 2004, Section 3, which created the Public Utility Commission, states that “the Commission is hereby granted full power to manage, operate, control, supervise, improve, extend, maintain and contract concerning the system” of which the employee pension plan is a part.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENTON, ARKANSAS:

SECTION 1: The Benton Utilities Employee Pension Plan is hereby adopted as follows:

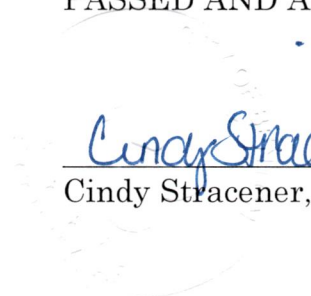
Article 9, Section 9.01 "Right of Employer to Amend Plan"

“The City of Benton Public Utilities Commission as the employer shall have the right to amend the Plan pursuant to recommendations of the Plan’s Administrative Committee.”

SECTION 2: At any time in the future if the Benton Public Utility Commission ceases to exist, the management and oversight of the Utilities Plan shall become the responsibility of the City of Benton.

SECTION 3: All ordinances and resolutions containing provisions that conflict with this ordinance shall be deemed null and void.

PASSED AND APPROVED this the 22th day of November, 2021.


Cindy Stracener
Cindy Stracener, City Clerk

Tom Farmer
Tom Farmer, Mayor

OVERBEY, STRIGEL, BOYD & WESTBROOK, PLC

ATTORNEYS AT LAW

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PROPOSED 401(A) DEFINED CONTRIBUTION AND 457(b) PLAN

This memo describes provisions of a proposed 401(a) defined contribution and 457(b) plan for Benton Utilities. Under federal and state tax law, employee contributions to a governmental 401(a) plan are only before-tax if they are required as a condition of employment. A governmental entity may not maintain a 401(k) plan. A governmental entity may maintain a 457(b) plan, which is similar to a 401(K) plan. This is why two plans are being proposed. Plan features would be as follows:

1) **Eligibility.** All full time employees hired after 1-1-2022 would be eligible to participate in the 401(a) Defined Contribution plan and would not be eligible to participate in the existing defined benefit plan. A full time employee would have the same definition as the current plan. **Full time employees would enter the Defined Contribution plan on their hire date.** All full time employees (regardless of hire date) would be eligible to participate in the 457(b) plan.

2) **Employee Contributions to 401(a) plan and 457(b) plan.** Employees eligible for the 401(a) Defined Contribution Eligible employees would be required, as a condition of employment, to make required employee contributions of 2% of Compensation. These required employee contributions are before-income tax, but are subject to FICA/Medicare tax. No additional employee contributions would be made to the 401(a) Defined Contribution plan. All full-time employees would be eligible to make before-tax or Roth contributions to the 457(b) plan. **Only employees in the DC plan would have employer matching contributions.** An employee would be able to start or change the employee's 457(b) contributions at any time. The maximum 457(b) contribution is current \$19,500 per year, or \$26,000 for an employee who attains age 50+ by the beginning of the year. The employer could, but is not required, to auto enroll employees in the 457(b) plan. Except for Roth 457(b) contributions discussed below, employee contributions to the 457(b) plan are not subject to income tax, but are subject to FICA/Medicare tax.

3) **Roth 457(b) Feature.** The 457(b) plan can permit participants to make Roth 457(b) contributions. Roth 457(b) contributions are currently after-tax, unlike regular salary deferral contributions to the 457(b) plan which are before tax. However, assuming that the employee withdraws the funds from the Roth 457(b) account after age 59 ½ and after 5 years from the first Roth 457(b) contribution, distributions from the Roth 457(b) account (including earnings) are not subject to income tax. Roth 457(b) contributions do not increase the total amount which can be contributed by an employee. The election to make Roth 457(b) contributions must be made before the amounts are deducted from the employee's paycheck.

4) **Employer Contributions.** The employer contribution on behalf of DC participants would be made to the 401(a) Defined Contribution Plan. **The contribution would be 5% of compensation, plus a matching contribution of 100% of contributions made by the employee to the 457(b) plan, up to an additional 5%, with the maximum employer contributions being a total of 10%. No matching contribution**