

ORDINANCE NO. 5450 -N. S

ESTABLISHING CITY OF BERKELEY SUPPLEMENTARY RETIREMENT AND INCOME PLAN.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the City of Berkeley Supplementary Retirement and Income Plan, as set forth in Exhibit A, attached hereto and made a part hereof, is hereby established.

Section 2. Copies of this Bill are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as set forth in Section 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the eighteenth day of May, 1982, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Bach, Dean, Feller, McDonald, Sweeney, Washburn and President Newport.

Noes: None.

Abstaining: Councilmembers Denton and Fukson.

Absent: None.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

In effect: July 1, 1982

At a regular meeting of the Council of the City of Berkeley, held on the first day of June, 1982, this Ordinance was finally adopted by the following vote:

Ayes: Councilmembers Bach, Dean, Feller, McDonald, Sweeney, Washburn, and President Newport.

Noes: None.

Abstaining: Councilmembers Denton and Fukson.

Absent: None.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

Approved this 1st day of June, 1982

EUGENE NEWPORT
Mayor and President of the Council

This is to certify that the foregoing is a true and correct copy of Ordinance No. 5450-N.S., and the same was finally adopted on June 1, 1982, and that it was duly and regularly posted as provided by law.

ATTEST: Edythe Campbell
City Clerk and Clerk of the Council

THE CITY OF BERKELEY SUPPLEMENTARY RETIREMENT
AND INCOME PLAN

Effective
January 1, 1983

EXHIBIT A

THE CITY OF BERKELEY SUPPLEMENTARY RETIREMENT
AND INCOME PLAN

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THE CITY OF BERKELEY
MONEY PURCHASE PENSION PLAN

INTRODUCTION

THE CITY OF BERKELEY ("The City") hereby established this Money Purchase Pension Plan effective as of January 1, 1983, pursuant to which, the City may provide retirement and other benefits for its Employees. The Plan is intended to qualify under section 401(a) of the Internal Revenue Code. In no event shall any part of the principal or income of the Trust created hereby be paid to or revert to the Employer, or be used for any purpose whatsoever other than for the exclusive benefit of the Employees of the Employer or their beneficiaries.

ARTICLE I

DEFINITIONS

When used herein and capitalized the following words shall have the following meanings unless the context clearly indicates otherwise:

Section 1.01 "Account" shall include the term "Participant Account" and shall mean the individual account of a Participant to which are credited Employer contributions and the allocation of earnings, gains, losses and changes in fair market value of the assets of the Trust Fund as of the last Valuation Date. Wherever the context requires, "Account" shall also include a Participant's Rollover Account.

Section 1.02 "Age" for any specified year shall be deemed to have been attained at the arrival of the birthday of the number of years in question.

Section 1.03 "Anniversary Date" shall mean the last day of the Plan Year.

Section 1.04 "Beneficiary" shall mean the person or persons who, upon a Participant's death, is entitled to receive his interest under the provisions of Section 9.05 of the Plan.

Section 1.05 "Code" shall mean the Internal Revenue Code of 1954, as amended from time to time.

Section 1.06 "Council" shall mean the City Council of the City of Berkeley.

Section 1.07 "Committee" shall mean the Investment Plans Committee appointed under the provisions of Article X.

Section 1.08 "Compensation" shall mean the entire amount of each Participant's compensation paid by the Employer for the Plan Year (including any amounts elected to be deferred under any deferred compensation plan or arrangement), but excluding the following:

- (a) All amounts in excess of \$32,400.00; and
- (b) Any payment which would not be subject to FICA tax if the Participant were covered by the Federal Social Security system.

Section 1.09 "Effective Date" shall mean January 1, 1983.

Section 1.10 "Employee" shall mean any person now or hereafter in the employ of the Employer except those persons whose employment is not covered under the City's miscellaneous employees contract with the Administrator of the State of California Public Employees Retirement System.

Section 1.11 "Employer" shall mean the City of Berkeley or any successor to such Employer which adopts the Plan under the provisions of Section 14.03.

Section 1.12 "City Manager" shall mean the City Manager of the Employer.

Section 1.13 "Investment Manager" shall mean a person who is (i) registered as an investment advisor under the Investment Advisor's Act of 1940, or (ii) a bank, as defined in that Act, located in the State of California.

Section 1.14 "Joint and Survivor Annuity" shall mean an annuity for the life of the Participant with a survivor annuity for the life of his/her spouse, which is not less than one-half nor greater than, the amount of the annuity payable during the joint lives of the Participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the Participant. The percentage of survivor annuity shall be elected by the Participant; however, if no election has been made, the percentage shall be fifty per cent (50%).

Section 1.15 "Normal Retirement Age" shall mean any age for which an Employee qualifies for retirement in accordance with the City's contract for miscellaneous employees with the Administrator of the State of California Public Employees Retirement System.

Section 1.16 "Participant" shall mean any Employee who has satisfied the requirements of Article II of this Plan.

Section 1.17 "Participant's Rollover Account" shall mean a separate account maintained by the Committee for any rollover contributions permitted pursuant to Article VI of the Plan.

Section 1.18 "Plan" shall mean the City of Berkeley Supplementary Retirement and Income Plan.

Section 1.19 "Plan Administrator" shall mean the Investment Plans Committee appointed under the provisions of Article X.

Section 1.20 "Plan Year" shall mean the calendar year.

Section 1.21 "Total Disability" shall mean the condition or mental or physical infirmity which constitutes total disability under the Public Employee Retirement System, as now in effect and amended as such amendments are made effective under that System.

Section 1.22 "Trust Fund" shall mean the sum of the contributions (adjusted for income and losses, payments and reasonable expenses) made by the Employer hereunder and any rollover contributions made by a Participant (adjusted for income and losses, payments and reasonable expenses) and held in accordance with the terms of the related Trust established by the Employer for the purpose of holding and managing the assets of this Plan.

Section 1.23 "Trustee" shall mean Central Bank, its successors and assigns or any duly appointed successor from time to time acting hereunder.

Section 1.24 "Valuation Date" shall mean the Anniversary Date or an interim date provided under Section 4.04.

Section 1.25 "Vested" shall mean that portion of a Participant's Account which shall not be forfeitable for any reason.

Section 1.26 "Special Disability Income" shall mean the monthly salary in effect at the time of the determination of Total Disability status without regard to the exclusions provided for in Section 1.08.

ARTICLE II

PARTICIPATION OF EMPLOYEES

Section 2.01 Eligibility. All Employees who are employed by the Employer and covered under the Employees contract for miscellaneous employees with the Administrator of the State of California Public Employees Retirement System, as of the Effective Date of this plan, shall become Participants as of the Effective Date.

Section 2.02 Former Participants. A former Participant shall become a Participant immediately upon his/her return to the service of the Employer.

Section 2.03 Future Participants. All Employees whose service with the Employer begins after the Effective Date and who are covered under the City's miscellaneous employees contract with the Administrator of the State of California Public Employees Retirement System shall become Participants upon completion of the first hour thereafter.

Section 2.04 Cessation of Participation. A Participant's participation in the Plan ceases when he has received the entire balance of his Participant Account and Participant's Rollover Account.

ARTICLE III

EMPLOYER CONTRIBUTIONS

Section 3.01 Determination of Contribution. With respect to each Plan Year during which the Plan is in effect, the Employer shall pay to the Trustee as its contribution to the Plan an amount equal to 6.7% of the annualized Compensation of each Participant for such Plan Year; however, such contribution shall not exceed \$2,170.80 to any Participant for a single Plan Year, less the Employer's premium for the year to maintain the industrial and nonindustrial disability insurance policy necessary to provide the benefits provided under Article VIII.

The contribution may be paid in cash or other property acceptable to the Trustee in its sole discretion. The Trustee shall not be responsible for the collection of any contributions to the Trust Fund.

Section 3.02 Time and Manner of Contribution. The Employer shall deliver to the Trustee its contribution with respect to Compensation paid to Participants as soon as reasonably practicable following the date FICA taxes would have been withheld from such Compensation in accordance with the usual payroll practices of the Employer if Participants had been covered by the Federal Social Security system during the applicable payroll period.

Section 3.03 Impossibility of Reversion. No contribution by the Employer to the Trust Fund nor any income therefrom shall revert to the Employer except:

- (a) If a contribution is conditioned on initial qualification of the Plan as adopted and if the Plan as adopted does not qualify, this Section shall not prohibit the return of such contribution and earnings thereon, to the Employer within one year after the date of denial of qualification; or
- (b) If a contribution is made by the Employer under a good faith mistake of fact as indicated by the facts and circumstances surrounding such mistake, this Section shall not prohibit the return to the Employer, within one year after the payment of the contribution, of an amount equal to the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to such excess amount shall not be returned but losses attributable to such amount shall be used to reduce the amount to be returned.

ARTICLE IV

ALLOCATION OF EMPLOYER CONTRIBUTIONS AND FORFEITURES

Section 4.01 Establishment of Participant Accounts. The Committee shall establish and maintain a separate Account for each Participant, and shall establish and maintain records reflecting the value and interest of each Participant in the Trust Fund.

Section 4.02 Allocation of Employer Contributions. The Employer contribution on behalf of each Participant shall be allocated to such Participant's Account as of the last day of the Plan Year with respect to which such contribution is made.

Section 4.03 Allocation of Earnings, Losses and Changes in Fair Market Value of the Trust Fund. Within a ninety (90) day period of time after the Anniversary Date of each Plan Year, the Trustee shall report to the Committee in writing, the value of the Trust Fund as of such Anniversary Date, not including the amount of Employer contributions for the Plan Year received by the Trustee subsequent to the Anniversary Date. Such valuation shall be made upon the basis of the fair market value of the assets in the Trust Fund, and upon its approval by the Committee, shall be binding upon the Participants and all other persons interested in the Plan (other than the Employer). The passage of sixty (60) days after receipt of the report without written notice of objection by the Committee shall constitute approval thereof.

Earnings, gains, losses and changes in the fair market value of the assets of the Trust Fund, as reported by the Trustee, shall be allocated annually as of the Anniversary Date of each Plan Year in the ratio which the dollar value of each Participant's Account bears to the dollar value of all Participants' Accounts as of the last Valuation Date.

Section 4.04 Interim Valuations. In the event there is a substantial change in the fair market value of the assets of the Trust Fund between Valuation Dates and the interest of any Participant becomes distributable during such period, the Committee shall designate an interim Valuation Date as of the last day of the calendar month preceding the date each interest becomes distributable. In such case, the dollar value of each Participant's Account shall be adjusted to reflect the values determined on the interim Valuation Date, and the dollar value of each Account as adjusted shall be the amount which is distributable, to the extent that it is vested, to any Participant whose interest becomes distributable subsequent to such interim Valuation Date and prior to the next regular Valuation Date.

Section 4.05 Participant's Election of Funding Media. A Participant may elect to have his Participant Account and Participant's Rollover Account invested in one or more investment funds established by the Committee pursuant to Section 10.06. Once each year (or more frequently as prescribed by the Committee) a Participant may change his election as to investment funds with respect to his existing Accounts and future Employer contributions by filing the prescribed form with the Committee.

ARTICLE V

LIMITATIONS ON ALLOCATIONS

Section 5.01 Limitation on Annual Additions. If the Employer does not maintain any other qualified plan, the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount. If, in addition to this Plan, the Employer maintains any other qualified defined contribution plan the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Accounts for the same Limitation Year under this Plan and such other defined contribution plan. If, in addition to this Plan, the Employer maintains a qualified defined benefit plan the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf shall be limited so as to prevent the aggregate contributions and benefits under this Plan and such defined benefit plan from exceeding the maximum aggregate limitations prescribed by section 415 of the Code.

Section 5.02 Estimated Annual Compensation. Prior to the determination of the Participant's actual compensation for a Limitation Year, the Maximum Permissible Amount may be determined on the basis of the Participant's estimated annual compensation for such Limitation Year. Such estimated annual compensation shall be determined on a reasonable basis and shall be uniformly determined for all Participants similarly situated. Any Employer contributions based on estimated annual compensation shall be reduced by any Excess Amounts carried over from prior years.

Section 5.03 Determination of Actual Compensation. As soon as administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for such Limitation Year shall be determined on the basis of the Participant's actual compensation for such Limitation Year.

Section 5.04 Reduction of Excess Amount. If there is an Excess Amount with respect to a Participant for a Limitation Year, such Excess Amount shall be disposed of as follows:

- (a) In the event that the Participant is in the service of the Employer which is covered by the Plan at the end of the Limitation Year, then such Excess Amount must not be distributed to the Participant, but shall be reapplied to reduce future Employer contributions under this Plan for the next Limitation Year (and for each succeeding year, as necessary) for such Participant, so that in each such year the sum of actual Employer contributions plus the reapplied amount shall equal the amount of Employer contributions which would otherwise be allocated to each Participant's Account.

- (b) In the event that the Participant is not in the service of the Employer which is covered by the Plan at the end of the Limitation Year, then such Excess Amount must not be distributed to the Participant, but shall be reapplied to reduce future Employer contributions for all remaining Participants.

Section 5.05 Excess Amounts From Other Plans. If a Participant's Annual Additions under this Plan and all other qualified defined contribution plans result in an Excess Amount, such Excess Amount shall be deemed to consist of the amounts last allocated.

Section 5.06 Allocation of Excess Amounts. If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of:

- (a) The total Excess Amount allocated as of such date (including any amount which would have been allocated but for the limitations of section 415 of the Code), multiplied by
- (b) the ratio of (i) the amount allocated to the Participant as of such date under this Plan, divided by (ii) the total allocated as of such date under all qualified defined contribution plans (determined without regard to the limitations of section 415 of the Code).

Section 5.07 Definitions. For purposes of this Article, the following terms shall be defined as follows:

- (a) "Annual Additions" - All Employer contributions allocated on behalf of a Participant for a Limitation Year.
- (b) "Excess Amount" - The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount, less loading and other administrative charges allocable to such excess.
- (c) "Limitation Year" - The calendar year.
- (d) "Maximum Permissible Amount" - For a Limitation Year, the Maximum Permissible Amount with respect to any Participant shall be the lesser of (1) \$42,800 (or such larger amount as may be prescribed by the Secretary of the Treasury or his delegate), or (2) 25 per cent of the Participant's total compensation (determined without regard to the exclusions set forth in Section 1.08) for the Limitation Year.

ARTICLE VI

ROLLOVER CONTRIBUTIONS

Section 6.01 Rollover Contributions. The Committee may permit a Participant or Employee to contribute to the Trust Fund a "rollover amount" as defined by sections 402(a) (5), 403(a) (4), 408(d) (3) or 409(b) (3) (C) of the Code. The Participant or Employee shall provide the Committee with any information it deems necessary to determine that the contribution satisfies the requirements of such sections of the Code. Any rollover contribution made pursuant to this Article VI shall be segregated in a Participant Rollover Account.

ARTICLE VII

VESTING OF PARTICIPANT ACCOUNTS

Section 7.01 Participant's Account. The Participant shall have at all times a 100% Vested and nonforfeitable interest in his Participant's Account.

Section 7.02 Participant's Rollover Account. The Participant shall have at all times a 100% Vested and nonforfeitable interest in any Participant's Rollover Account which may be established pursuant to Article VI hereof.

ARTICLE VIII

DISABILITY BENEFITS

Section 8.01 Eligibility. All Participants in the Plan, as provided in Article II, shall be eligible for disability benefits.

Section 8.02 Disability Benefits. In the event of Total Disability, as determined by the Committee pursuant to the guidelines of the Public Employee Retirement System of the State of California, a Participant will receive as a disability benefit an amount equal to sixty per cent (60%) of the Special Disability Income in effect for such Participant at the time of the determination of Total Disability on a monthly, or more frequent, basis until termination of the Total Disability status or Death, whichever occurs first. This benefit is in addition to amounts which might be received as provided for in Article IX.

Section 8.03 Offsets. There shall be a dollar for dollar offset against the benefit payable under Section 8.02 for any disability benefits payable to the Participant from the Social Security Administration, California State Disability System or from any benefits payable pursuant to a Worker's Compensation Plan maintained by the Employer.

Section 8.04 Coordination With Retirement Benefits. Commencement of disability benefits hereunder shall in no way abridge the right of the Participant to elect the form of his retirement benefit as provided for in Section 9.02.

Section 8.05 Withholding of Tax. Should it be determined that all or a part of the disability benefit payable hereunder shall be taxable income for which state or federal withholding taxes would apply, then the Committee shall authorize withholding such taxes according to the applicable procedures of the taxing authority.

ARTICLE IX

DISTRIBUTIONS TO PARTICIPANTS

Section 9.01 Termination of Employment. Upon the termination of a Participant's employment for any reason (including retirement on or after the Normal Retirement Age, death, Total Disability, resignation or discharge), the Committee shall direct the Trustee to distribute the Participant's Account (including the Participant's Rollover Account, if any) at such time and in such form as may be determined pursuant to this Article.

Section 9.02 Election of Form of Distribution. A Participant may elect to have his benefit under the Plan distributed in a lump sum, a series of substantially equal installments, a straight life annuity, a Joint and Survivor Annuity or any other form (including any form of annuity) which is acceptable to and approved by the Committee. A Participant may make an election as to the form of his distribution under the Plan at any time prior to his termination of employment.

Section 9.03 Failure to Elect a Form of Distribution. If a Participant has failed to elect a form of distribution under Section 9.02, distribution shall be made in the following manner:

- (a) If the Participant is not married on the date as of which distribution of benefits is to commence hereunder, distribution shall be made in the form of a series of substantially equal periodic installments payable at least annually over a period specified by the Committee not extending beyond the life expectancy of the Participant.
- (b) If the Participant is married on the date as of which distribution of benefits is to commence hereunder, distribution shall be made in the form of a Joint and Survivor Annuity.

Section 9.04 Time of Distribution. A Participant's benefits under the Plan shall be distributed (or distribution shall commence) at such time or times as the Participant shall have elected prior to the termination of his employment with the Employer. If the Participant has not made such an election, distribution shall commence on the later of the date the Participant's employment with the Employer terminates or the Participant's 70th birthday. Upon the termination of the Participant's employment with the Employer, such Participant's election as to the time of distribution of benefits under the Plan shall become irrevocable. Notwithstanding the foregoing, the Committee may in its discretion determine to pay any Participant's benefit under the Plan at another time. In exercising its discretion hereunder, the Committee shall act in a nondiscriminatory manner consistent with the purposes of the Plan.

Section 9.05 Effect of Death of Participant. Each Participant shall name a person or persons to be his Beneficiary to receive any distributions under the Plan distributable in the event of the death of the Participant. If there is no named Beneficiary living at the time payment is to be made, payment shall be made to the Participant's estate. A Participant may change the Beneficiary from time to time in accordance with procedures established by the Committee.

Section 9.06 Limitation on Time and Form of Distribution. In no event shall distribution of benefits under the Plan be made over a period of time which exceeds the life expectancy of the Participant (or, if the Participant is married at the time payments are to commence, the joint life expectancies of the Participant and his spouse).

Section 9.07 Involuntary Cash Outs. Notwithstanding any other provision of this Article, if the present value of a Participant's entire nonforfeitable interest in his/her Accounts at the time of his/her termination of employment does not exceed \$1,750, the Committee, in its sole discretion, may direct the Trustee to distribute such benefit to the Participant or his/her designated Beneficiary in a lump sum.

ARTICLE X

THE INVESTMENT PLANS COMMITTEE

Section 10.01 Appointment and Removal. The Investment Plans Committee, hereinafter referred to as the "Committee", shall consist of six individuals who are Employees. One member of the Committee and an alternate shall be appointed by each of the following:

- (a) The City Manager;
- (b) The City Auditor;
- (c) The City of Berkeley Personnel Board;
- (d) United Public Employees, Local 390, Service Employees International Union, AFL-CIO;
- (e) International Brotherhood of Electrical Workers, Local 1245;
- (f) Social Services Union, Local 535.

The City Manager shall certify to the Trustee the names and specimen signatures of the members and alternate members of the Committee. As members are replaced and appointed, such changes shall be certified to the Trustee in the same manner. The Trustee may rely in good faith on any directions signed by four of the members or their alternates.

Section 10.02 Organization of the Committee. The Committee shall adopt rules and regulations for the administration of the Plan consistent with the terms of the Plan. The member appointed by the City Manager shall be the chairperson and the members may appoint a secretary or one or more agents, any of whom may, but need not be a member.

The actions of four members or their alternates present at a meeting shall constitute the action of the Committee and shall be final and conclusive regarding the exercise of its authority under the terms of the Plan. The Committee shall maintain full and complete written records of its deliberations and decisions.

Section 10.03 Compensation and Expenses of the Committee. The members of the Committee shall serve without compensation. The Committee shall have the right to use the Employer's facilities in maintaining accounts and records and discharging its duties hereunder. The Committee shall be reimbursed out of the Trust Fund for reasonable expenses incurred in connection with the discharge of the duties of the Committee under the Plan, unless the Employer has agreed to reimburse the Committee for any item of expense.

Section 10.04 Plan Administrator. The Committee is the Plan Administrator.

Section 10.05 Powers and Duties of the Committee. The Committee shall have all powers and perform all duties necessary to exercise its functions as Plan Administrator including, but not limited to, the:

- (a) Determination of Employees' eligibility, participation and benefits under the Plan;
- (b) Establishment and maintenance of separate accounts and written records showing at any time the interest of a Participant in his Account and his Participant's Rollover Account;
- (c) Filing of all such annual reports, financial and other statements as may be required by an applicable Federal or State statute or regulation within the time prescribed for filing such documents;
- (d) Provision of such reports, statements and other documents to Participants and Beneficiaries of the Plan as may be required by any applicable Federal or State statute or regulation within the time prescribed for providing such documents;
- (e) Interpretation and construction of the provisions of the Plan;
- (f) Direction of the Trustee to make disbursement of benefits from the Trust;
- (g) Appointment of such agents, advisors, counsel and delegates as may be necessary and appropriate for the administration and operation of this Plan and the delegation to such agents, advisors, counsel and delegates of any of its discretionary and ministerial powers and duties in accordance with this Article;
- (h) Bonding of all members of the Committee and its agents, advisors, counsel and delegates in such amounts as would be required if the Plan were subject to section 412 of the Employee Retirement Income Security Act of 1974;
- (i) Composition of and provision to Participants of all forms as described in this Plan;
- (j) Direction of the Trustee in the management and control of the Plan assets by written notice to the Trustee that it has assumed such directional authority in accordance with the Trust Agreement;

- (k) Appointment of an Investment Manager. Upon written notice to Trustee of such appointment, the Trustee shall segregate the assets to be managed by such Investment Manager into one or more Investment Manager Accounts. The assets of such accounts shall be managed, acquired and disposed of according to the directions of the Investment Manager. The Trustee shall not be liable for following the direction of the Investment Manager in the management, acquisition or disposition of the assets under its management. The Trustee shall act on the written direction of such Investment Manager until it has been notified in writing by the Committee that the Investment Manager has resigned or has been removed, in which case the Trustee shall exercise exclusive authority to manage and control the assets of the former Investment Manager Accounts unless the Committee has appointed a successor Investment Manager or has assumed directional authority over such accounts; and
- (l) Selection of an insurance company for the purchase of any annuities required under the Plan and any other insurance benefits.

Section 10.06 Investment Funds. All contributions under the Plan shall be held and invested by the Trustee as part of the Trust Fund. In its discretion the Committee may subdivide the Trust Fund into two or more separate investment funds. Such funds shall be invested in vehicles with a fixed income objective as the Committee shall from time to time authorize. Each such fund shall be treated as a separate fund for all purposes of the Plan, including investment and valuation.

Section 10.07 Claims Procedure and Review Procedure.

- (a) A Participant or Beneficiary making a claim for benefits under this Plan shall make such claim in writing to the Committee on forms provided by the Committee. The claim shall be presented at the address of the Committee given in the last annual report of the Plan filed with the Internal Revenue Service. If the Committee denies a claim in whole or in part, it shall notify the Participant or Beneficiary in writing of such denial within ninety (90) days after receipt of the claim. Such notice shall be written in a manner calculated to be understood by the Participant or Beneficiary and shall include:
- (1) The specific reason or reasons for the denial;

- (2) Specific reference to pertinent Plan provisions on which the denial is based;
 - (3) Description of any additional material or information necessary for the Participant or Beneficiary to perfect the claim and an explanation of why such material or information is necessary;
 - (4) Appropriate information as to the steps to be taken if the Participant or Beneficiary wishes to submit his claim for review.
- (b) The Committee shall establish a procedure by which a Participant, Beneficiary or other person shall have an opportunity for a full and fair review of the denial of his claim for benefits.

Any person, or his duly authorized representative, whose claim for benefits under the Plan has been denied, in whole or in part, may request the Committee for such purpose, and shall include:

- (1) A request for review of the denied claim;
- (2) The grounds upon which the request for review is based and any facts in support thereof; and
- (3) Any other issues or comments which the requesting party deems pertinent to the review.

Such written request for review must be submitted to the Committee within sixty (60) days after the requesting party has received written notice of denial of his claim. The requesting party shall have the opportunity to review all documents pertinent to his claim and request for review.

The Committee shall make such review and render its decision in writing within sixty (60) days after receipt of a written request for review. The Committee's written decision on review shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to pertinent provisions of the Plan on which the decision is based. Under special circumstances, an extension

of time may be required by the Committee, in which case its decision shall be rendered as soon as possible, but not later than 120 days after receipt of a written request for review. Prior to the commencement of the extension of time, the Committee shall notify the requesting party that an extension of time is required. If the decision on review is not furnished to the claimant within the appropriate time period, then the claim shall be considered denied on review.

ARTICLE XI

ASSIGNMENT AND ALIENATION OF BENEFITS

Section 11.01 Spendthrift Clause. No benefit or interest provided to any Participant or Beneficiary under this Plan shall be subject to assignment or alienation, either in whole or in part, whether by means of attachment, garnishment, constructive trust, levy, execution or by any other legal or equitable process. All benefits payable under this Plan shall be paid by the Trustee only to the Participant or the designated Beneficiary. In the event of the mental or physical incapacity of the Participant or designated Beneficiary, the Committee may, in its sole discretion, direct the Trustee to make payment to the legally authorized personal representative of such Participant or Beneficiary.

ARTICLE XII

ESTABLISHMENT OF THE TRUST FUND

Section 12.01 Trust Fund. Concurrently with the adoption of this Plan, the Employer has adopted a Trust Agreement providing for the administration of the Trust Fund by the Trustee thereof and containing provisions with respect to the following:

- (a) Powers and authorities of the Trustee as to the management and control of the assets of the Trust Fund, income therefrom, general administration thereof, subject to the right of the Committee to remove the Trustee's exclusive discretion and subject such discretion to the proper direction of the Committee or an Investment Manager;
- (b) Limitations on the liability of a Trustee; and
- (c) Authority of the Committee to settle the accounts of the Trustee on behalf of all persons having any interest in the Trust Fund from time to time. The Trust Agreement shall be deemed to form a part of this Plan and all rights or benefits which accrued to any person under this Plan shall be subject to all the terms and provisions of such Trust Agreement. Any conflict between the terms of this Plan and Trust Agreement regarding the duties of the Trustee shall be decided according to the terms of the Trust Agreement.

ARTICLE XIII

AMENDMENT OF THE PLAN

Section 13.01 Amendment by the Employer. The Employer may amend the Plan by action of the Council as evidenced by an instrument in writing duly executed by the Employer.

Section 13.02 Limitations on Power to Amend. The Employer shall not have the power to amend the Plan in such manner that would cause or permit any part of the assets of the Trust Fund to be diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries, or that would cause or permit any portion of assets to revert to or become the property of the Employer. The Employer shall not have the right to modify or amend the Plan retroactively in such manner as to deprive any Participant or Beneficiary of the benefit to which he is entitled under the Plan by reason of contributions made prior to the date of adoption of such modification or amendment, unless such modification or amendment is necessary to conform the Plan to, or to satisfy the conditions of, any law, governmental regulations or rulings.

Section 13.03 Limitation Upon the Right to Amend. Notwithstanding anything contained herein to the contrary, the Employer shall not have the power to amend Section 3.01 to reduce its contribution to the plan without a majority vote of the Participants of the Plan concurring on the amendment thereto.

ARTICLE XIV

TERMINATION OF PLAN

Section 14.01 Termination of the Plan. The Employer has adopted the Plan with the intent and expectations that it will continue indefinitely. However, the Plan may be terminated by the Council provided that said termination will not be effected without a majority vote of the Participants of the Plan having first concurred thereon. Except as provided in Section 3.03, however, in no event shall any assets of the Trust Fund ever revert to or inure to the benefit of the Employer.

Section 14.02 Disposition of Trust Fund Upon Termination. If the Employer terminates this Plan it shall promptly request the Internal Revenue Service to issue a determination as to the effect the termination may have on the continuing tax qualification of the Plan. Upon notification by the Internal Revenue Service of a favorable determination, the Employer shall authorize (a) the immediate distribution of the interest of each Participant in his Accounts, or (b) the continuation of the Trust forming a part of this Plan with distributions from the Trust to occur thereafter in accordance with Article IX. If the Employer does not specify the disposition of the assets of the Trust Fund within a reasonable time following receipt of a favorable determination letter, then the Trustee is authorized to immediately distribute the interest of each Participant.

Section 14.03 Dissolution, Merger, or Consolidation of Employer. In the event of the dissolution, merger, or consolidation, or the sale of substantially all of the assets of the Employer, this Plan shall be considered terminated as of the effective date of such occurrence. The interest of each Participant in his Account shall be disposed of in accordance with the terms of Section 14.02.

However, the resulting or successor person, persons, firm, corporation or other entity to the Employer, by reason of the dissolution, consolidation, merger, or sale of assets, may continue the Plan by appropriate action within 90 days after the effective date of such occurrence. In such a case, this Plan shall not be considered terminated, but shall continue uninterrupted.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.01 Adoption of the Plan is Not an Employment Contract. The adoption and maintenance of this Plan and the extension of participation hereunder shall not be deemed to constitute a contract between the Employer and Employee nor consideration for, the inducement of, or a condition of, the employment of any person. Nothing herein contained shall be deemed to give an Employee the right to be retained by the Employer nor to interfere with the right of the Employer to discharge any Employee at any time nor shall it be deemed to give the Employer the right to require any Employee to remain in its employ nor shall it interfere with an Employee's right to terminate his employment at any time.

Section 15.02 Plan is Established Under the Laws of the State of California. This Plan has been established under the laws of the State of California and, to the extent such laws have not been preempted by Federal statutes, any questions, issues disputes or controversies arising under this Plan and the related Declaration of Trust shall be decided according to the laws, regulations and decisions in the State of California.

Section 15.03 Gender and Plurals. The masculine gender includes the feminine and neuter gender; the masculine pronoun shall include the feminine and neuter; the singular number the plural; and conversely, whenever appropriate.

Section 15.04 Severability of Provisions. In the event that any provision of this Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of this Plan, which shall be fully severable and this Plan shall be construed and enforced as if such illegal or invalid provision had not been inserted.

Section 15.05 Context to Control. The headings of Articles and Sections are included solely for convenience of reference, and if there be any conflict between such headings and the text of this Plan, the text shall control.