

ORDINANCE #66511
Board Bill No. 245

An Ordinance pertaining to the Employees Retirement System of the City of St. Louis (the "Retirement System") repealing Section Twenty Seven of Ordinance No. 64954 and all of Ordinance Nos. 64833, 64905, 64942, 65065, 65070, 65666, 65734 and 66230, presently codified as Chapter 4.16 of the Revised Code of the City of St. Louis and enacting new language relating to the same subject matter; authorizing and directing the Comptroller of the City of St. Louis, with the concurrence of the City Counselor, to enter into and execute, on behalf of the City of St. Louis (the "City"), the "Closing Agreement on Final Determination Covering Specific Matters" (hereinafter referred to as the "Agreement") with the Commissioner of the Internal Revenue Service (the "Internal Revenue Service"), an agency of the federal government, in substantially the same form which is attached hereto as ATTACHMENT "1", and made a part hereof, and with those terms and conditions more fully described in Section One of this Ordinance and to execute such other documents and take such other actions as may be necessary to carry out this ordinance and are fair, equitable and reasonable and in the best interests of the City; and containing a severability clause.

WHEREAS, the City established the Retirement System by City ordinance effective April 1, 1960 pursuant to that state statute currently codified as Section 95.540 of Missouri Revised Statutes 2000, as amended, in order to provide for the pensioning of certain City employees and the employees of certain other governmental entities providing services to the inhabitants of the City;

WHEREAS, it is desirable for the Internal Revenue Service to determine that the Retirement System meets the applicable requirements of a "Qualified Plan" as defined by the Internal Revenue Code of 1986, as amended, (the "Code") and is in compliance with the applicable provisions and requirements of Section 401(a) of the Code in order for the Retirement System to maintain its income tax exempt status and for certain of its beneficiaries to obtain favorable income tax treatment for certain "Qualified Distributions," as defined by the Code, from the Retirement System pursuant to the Deferred Retirement Option Plan ("DROP") provided by Ordinance No. 64942 and any return of Accumulated Contributions pursuant to Ordinance No. 64833;

WHEREAS, the Internal Revenue Service requires the City to enter into the Agreement and make certain changes to the City ordinances governing the Retirement System as a condition precedent to its determining that the Retirement System is a Qualified Plan;

WHEREAS, the City and the Retirement System have determined that the Agreement set forth herein as ATTACHMENT "1" is in the best interest of the City and the Retirement System;

WHEREAS, the Internal Revenue Service, through its authorized representatives, has determined that said Agreement is also in its best interest; and

WHEREAS, the City ordinances governing the Retirement System must be amended in order to conform to the Agreement,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS, MISSOURI AS FOLLOWS:

SECTION ONE. The City of St. Louis, Missouri (the "City") does hereby find that the terms of the "Closing Agreement on Final Determination Covering Specific Matters" between the City and the Commissioner of the Internal Revenue Service (the "Internal Revenue Service"), an agency of the federal government, (hereinafter referred to as the "Agreement") which is marked ATTACHMENT "1", affixed hereto and made a part hereof, serve a public purpose and are in the best interests of the City.

SECTION TWO. The Comptroller of the City of St. Louis is hereby authorized and directed, with the advice and concurrence of the City Counselor, to enter into and execute the Agreement on behalf of the City and to execute such other documents and take such other actions as may be necessary to carry out this ordinance and are fair, equitable and reasonable and in the best interests of the City.

SECTION THREE. Section Twenty Seven of Ordinance No. 64954 and all of Ordinance Nos. 64833, 64905, 64942, 65065, 65070, 65666, 65734, and 66230 are hereby repealed and enacted in lieu thereof is the following:

SECTION FOUR. DEFINITIONS.

The following words and phrases as used in this ordinance shall have the following meaning, unless a different meaning is plainly required by the context.

1. Accumulated Contributions.

“Accumulated Contributions” means the sum of all amounts deducted from the compensation of a member and credited to the fund together with interest thereon.

2. Actuarial Equivalent.

“Actuarial Equivalent” means a benefit of equal value when computed upon the basis of such mortality tables and interest rate as shall be adopted by the Board of Trustees.

3. Beneficiary.

“Beneficiary” means any person entitled to or in receipt of a benefit from the Retirement System as a result of the death of a Member or a Retiree.

4. Benefit Compensation Base.

“Benefit Compensation Base” means the amount of annual compensation with respect to which old age and survivor’s insurance benefits would be provided to the Member under the Social Security Act in effect on the date the Benefit Compensation Base is determined. The Benefit Compensation Base shall be computed for each Member on the earlier to occur of (a) his or her Normal Service Retirement Date, or (b) the date of termination of his or her employment. The Benefit Compensation Base shall be determined as though for each year prior to and including the year of computation the Member’s annual compensation was at least equal to the maximum amount of earnings subject to tax in each year under the Federal Insurance Contributions Act, and for each year after the date of computation until the Member’s Normal Service Retirement Date, his or her annual compensation is equal to the maximum amount of earnings subject to tax in the year of computation under the Federal Insurance Contributions Act.

5. Board of Trustees.

“Board of Trustees” means the board provided for in this ordinance to establish policy and rules for the administration of the Retirement System.

6. City.

“City” means the City of St. Louis, Missouri.

7. Compensation.

“Compensation” means the basic wage or salary paid an Employee for any period excluding bonuses, any sick pay paid upon retirement by the Employer, overtime pay, expense allowances and other extraordinary compensation. Compensation for a Member shall not exceed the limitation in effect under IRS § 401(a)(17). Such amount shall be adjusted at such time and in such manner as permitted under IRC § 415(d). The limits of IRC § 401(a)(17) shall apply to an Employee who becomes a member on or after October 1, 1996. Compensation for periods of Qualified Military Service after December 12, 1994 or while a Member is receiving worker’s compensation benefits shall be at the rate of Compensation the Member received at the time he entered Qualified Military Service or commenced receiving worker’s compensation benefits, increased for Compensation adjustments which are universally applied to all Employees who are in the same employment classification as the Member during the Member’s period of absence on account of Qualified Military Service or an injury for which worker’s compensation is awarded.

8. Creditable Service.

“Creditable Service” means the period of service which is creditable in accordance with Section Six of this ordinance.

9. DROP.

“DROP” means the Deferred Retirement Option Program provided for in this ordinance.

10. Early Service Retirement Date.

“Early Service Retirement Date” means the date of actual retirement of a Member pursuant to Section Seven, Subsection 3.

11. Employee.

“Employee” means any appointive or elective employee of an Employer, including a member of the Board of Aldermen of the City, whether performing city or county functions, except those employees remunerated at hourly rates, per performance rates, or employees in limited term, temporary, or training positions as determined by the Department of Personnel of the City, members of other retirement systems established by ordinance and/or state statute or part-time employees on less than a half-time basis. In case of doubt as to whether any person is an Employee within the meaning of this ordinance, the decision of the Board of Trustees shall be final.

12. Employer.

“Employer” means the City as a city and as a county, any public utility owned by the City, the Retirement System, or any administrative board or board of control organized and existing under the general laws of the State of Missouri for the purpose of furnishing library services or maintaining and operating an art museum or a zoological park or similar public service to the inhabitants of the City, which elects to participate in this Retirement System.

13. Final Average Compensation.

A. “Final Average Compensation” is equal to one-half of the sum of (i) and (ii) below:

- (i) The annual Compensation received by a Member for the two (2) consecutive years of Creditable Service in which the highest Compensation was received preceding the termination of his or her employment, and
- (ii) The balance of a Member’s sick leave pay as accrued on the date of retirement less sick leave hours paid to the Member upon termination of his or her employment and less sick leave hours considered as Creditable Service for the purpose of determining eligibility for and/or calculation of retirement benefits, except that said balance cannot exceed twenty-five percent (25%) of a Member’s total sick leave as accrued on the date of retirement.

B. If a Member has less than two (2) consecutive years of Creditable Service his or her Final Average Compensation shall be equal to the sum of (i) and (ii) below, divided by (iii) below and then multiplied by (iv) below:

- (i) The sum of monthly Compensation received by the member for each consecutive month of Creditable Service immediately preceding the termination of his or her employment; and
- (ii) The balance of a Member’s sick leave pay as accrued on the date of retirement less sick leave hours paid to the Member upon termination of his/her employment and less sick leave hours considered as Creditable Service for the purpose of determining eligibility for and/or calculation of retirement benefits, except that said balance cannot exceed twenty-five percent (25%) of a Member’s total sick leave as accrued on the date of retirement;
- (iii) The number of consecutive months of Creditable Service immediately preceding the termination of his or her employment; (iv) Twelve (12).

14. IRC.
“IRC” means the Internal Revenue Code of 1986, as amended.
15. Medical Board.
“Medical Board” means the board of physicians provided for in this ordinance.
16. Member.
“Member” means a member of the Retirement System as defined by Section Five of this ordinance.
17. Normal Service Retirement Date.
“Normal Service Retirement Date” means the first day of the month following a Member’s or former Member’s sixty fifth birthday, provided the Member or former Member has vested benefits.
18. Operative Date.
“Operative Date” means the date this Retirement System becomes operative for an Employer; and, as to the City as an Employer, the Operative Date shall be April 1, 1960.
19. Pension.
“Pension” means the annual payments for life or as otherwise provided for by this ordinance which shall be payable in equal monthly installments to a Retiree or to a Beneficiary, including a full monthly payment for the month in which the death of the Retiree or Beneficiary occurs.
20. Plan Year.
“Plan Year” means the annual accounting period for the Retirement System as determined by the Board of Trustees.
21. Qualified Military Service.
“Qualified Military Service” means service in the uniformed services as defined in IRC § 414(u)(5).
22. Retiree.
Retiree means a Member who has retired and is entitled to benefits from the Retirement System.
23. Retirement System.
“Retirement System” means the Employees Retirement System of the City as authorized under an act of the 70th General Assembly of the State of Missouri known as Senate Bill 329, and as set forth in this ordinance.
24. Service Retirement Date.
“Service Retirement Date” means the date of actual retirement of a Member for reasons other than disability.
25. Spouse.
“Spouse” means the lawful spouse of a Member at the date of the Member’s retirement or at the date of the Member’s death if the Member dies before retirement.

26. Terminated Member.

“Terminated Member” means a former Member with a vested benefit who is no longer an Employee of an Employer.

27. Treasury Regulations.

“Treasury Regulations” means Federal income tax regulations as promulgated by the Secretary of Treasury or his or her delegate, as amended from time to time.

SECTION FIVE. MEMBERSHIP.

1. Employment.

All Employees shall become Members upon commencement of employment with an Employer.

2. Enrollment Information.

All Employees shall provide such enrollment information as required by the Secretary of the Board of Trustees to qualify for membership, in addition to meeting other provisions of this Section.

3. Cessation.

Membership ceases on termination of employment by resignation, dismissal, discharge, death, retirement, layoff or if for any other reason, except Qualified Military Service, if the Employee is not on the payroll of an Employer for more than twelve (12) consecutive months.

SECTION SIX. CREDITABLE SERVICE.

1. Calculation.

The years of Creditable Service of a Member shall be the number of years and full calendar months of service during which he or she receives Compensation from the first day of each employment with an Employer until his or her employment is terminated, subject to the provisions of this Section. The years of Creditable Service of an Employee hired after the Operative Date who had attained the age of sixty (60) years at initial employment shall be the number of years and completed months of service during which he or she receives Compensation from October 1, 1988, and hereafter, from the first day on or after October 1, 1988, of the beginning of each employment with an Employer until his or her employment is terminated. No Creditable Service shall be granted for any period of employment before October 1, 1988, after the calendar month in which the member attains age seventy (70). No Creditable Service for prior employment shall be granted an Employee who becomes a Member after April 1, 1960, unless he or she was employed by an Employer on April 1, 1960. A Member's sick leave balance at time of retirement, less the sum of (A) and (B) below, shall be considered as additional Creditable Service in determining eligibility for and calculation of retirement benefits under any provision of this ordinance:

A. sick leave hours paid to the Member upon termination of his or her employment, and

B. sick leave hours used in determining Final Average Compensation.

2. Reemployment.

A. If a Member resumes employment with an Employer within two years after his or her employment is terminated, his or her Creditable Service as of date of termination shall be restored.

B. Except as provided in (C) below, if a Member resumes employment with an Employer more than two years after his or her employment is terminated, he or she may request his or her Creditable Service as of the date of his termination be restored. Using accepted actuarial methods, the Retirement System

shall determine the cost of any change in the benefit obligation to the Member to be incurred by the Retirement System for Creditable Service being restored to a Member and adjust the Member's amount of Creditable Service to reflect said cost. A Member may elect to purchase any period of Creditable Service not restored as a result of the above reduction. The cost shall be determined using accepted actuarial methods by the Retirement System. Payment in full of an amount due by an individual electing to purchase Creditable Service shall be made over a period not to exceed two years, measured from the date of election, or prior to the effective date of retirement benefit payments to the Member, whichever is earlier, with interest compounded annually at the actuarially assumed rate of the Retirement System. If payment in full is not made within this prescribed time period, any partial payments made by the Member because of the election shall be refunded, and no Creditable Service shall be allowed by the Retirement System as a result of the partial payments.

- C. Any Member who resumes employment with an Employer after his or her employment is terminated shall receive Creditable Service for every full calendar month of prior service as a Member upon Member's accrual of five (5) years of continuous Creditable Service following reemployment.

3. Absence Without Pay.

Creditable Service to date of absence shall not be forfeited by reason of any absence without pay due to leave granted by an Employer for up to a one year period, provided the Employee returns to active service with his or her Employer at the expiration of his or her leave.

4. Vested Benefit

A Member with at least five (5) years of Creditable Service will have a vested benefit.

5. Rules and Regulations.

The Board of Trustees shall fix and determine by proper rules and regulations how much service in any year is equivalent to one year of Creditable Service, but in no event shall more than one year of service be creditable for all service in one calendar year, nor shall the Board of Trustees allow credit as service for any period of more than one month's duration during which the Member was absent without pay except as provided otherwise in this Section.

6. Military Service.

Absence from employment with an Employer because of Qualified Military Service shall be considered a leave of absence granted by the Employer, provided the Employee returns to active employment with his or her Employer within the period of time during which he or she has reemployment rights under any applicable federal law or within 90 days from and after discharge from such military service if no federal law is applicable and such service shall be included in Creditable Service.

7. Termination and Reemployment.

If the employment of a Member is terminated and he is employed by any Employer thereafter, he shall be considered a new Employee for all purposes of the Retirement System except as provided by Section Six, Subsection 2 of this ordinance.

8. Claim prior to Operative Date.

Each Member claiming Creditable Service prior to the Operative Date shall at the request of the Secretary of the Board of Trustees file such detailed statement as may be required to establish such claimed Creditable Service.

9. Transfer of Creditable Service.

The Secretary of the Board of Trustees for the Retirement System, with the approval of the Board of Trustees, is authorized to enter into cooperative agreements to transfer Creditable Service between the Retirement System

and any other retirement plan established by the State of Missouri or any political subdivision or instrumentality of the state when a Member who has been employed in a position covered by one plan is employed in a position covered by another plan. The transfer of Creditable Service shall be in accordance with the provisions of Section 105.691 of the Missouri Revised Statutes (2000) as amended, or as the same may from time to time be amended, or Section 104.1090 of the Missouri Revised Statutes (2000) as amended, or as the same may from time to time be amended.

10. Purchase of Creditable Service

A Member may, effective October 1, 2001, contribute or have transferred to the fund an amount representing his or her benefits in a plan or account qualified under IRC §§ 401(a), 403(b), 408(a) or an eligible plan under IRC § 457(b) which is maintained by a state, political subdivision, or any agency or instrumentality of a state or political subdivision of a state. Such amount shall be utilized to purchase an additional period of Creditable Service determined using accepted actuarial methods by the Retirement System.

SECTION SEVEN. RETIREMENT.

1. Normal Service Retirement

A. Date of Retirement.

The Normal Service Retirement Date of a Member or former Member with vested benefits shall be the first day of the month following his or her sixty-fifth birthday, provided, however, that a Member must have completed at least five years of Creditable Service as of his or her Normal Service Retirement Date to be eligible for a pension benefit under this provision.

B. Written Application.

Any Member or former Member may retire as of his or her Normal Service Retirement Date or as of the first day of any month thereafter upon his or her written application to the Board of Trustees not less than thirty (30) days nor more than ninety (90) days prior to such date, provided that the Member has completed at least five years of Creditable Service as of the date of his or her application.

C. Computation of Pension Amount.

Upon retirement on his or her Normal Service Retirement Date or thereafter, a Member or former Member shall receive a monthly pension beginning on the first day of the month following his or her retirement, equal to his or her number of years of Creditable Service and fractions thereof, multiplied by one-twelfth of the sum of:

- (i) 1.30% of his or her final average compensation up to the Benefit Compensation Base; and
- (ii) 2.05% of that part of his or her Final Average Compensation in excess of the Benefit Compensation Base.

2. Rule of Eighty-Five -- Pension Amount.

- A. A Member of the Retirement System who has satisfied the "Rule of Eighty-Five" at date of termination of employment shall receive a monthly pension computed in the same manner as for normal service retirement, beginning on the first day of the month following his or her retirement subject to the written application provision set forth under normal service retirement:
- B. A Member shall be deemed to have satisfied the Rule of Eighty-Five if the sum of his or her age and Creditable Service at date of termination of his or her employment is equal to or in excess of eighty-five (85).

3. Early Service Retirement

A. Early Service Retirement Date.

The Early Service Retirement Date of a Member or a former Member with vested benefits, shall be the first day of any month after he or she has attained age sixty (60) with at least five (5) years of Creditable Service, age fifty-five (55) with at least twenty (20) years of Creditable Service, or has completed at least thirty (30) years of Creditable Service at any age.

B. Written Application.

Any Member or former Member, who satisfies the requirements for early retirement specified in this Subsection, may retire on his or her Early Service Retirement Date or on the first day of any month thereafter, upon his or her written application to the Board of Trustees not less than thirty (30) days nor more than ninety (90) days prior to such date.

C. Computation of Early Retirement Pension.

Upon retirement because of early service retirement, the Member or former Member shall receive a pension, as computed in Section Seven, Subsection 1(C) of this ordinance, beginning on the first day of any month following his or her retirement and prior to his or her Normal Service Retirement Date, reduced by one-third percent (1/3%) for each month by which the commencement of the pension precedes the Member's Normal Service Retirement Date.

4. Disability Retirement.

A. Eligibility and Written application.

If a Member who has completed five years of Creditable Service is totally disabled, as defined hereafter, prior to his or her Normal Service Retirement Date, he or she will be retired upon written application to the Board of Trustees by him or her or by his or her Employer and he or she will receive a disability retirement pension. A Member must file said written application within one (1) year from the date said Member terminates employment due to said disability.

B. Total Disability Defined.

A Member will be considered totally disabled if the Medical Board certifies he or she is wholly prevented from engaging in any occupation for wage or profit and the Board of Trustees approves his or her application for benefits. The Medical Board will apply as a guideline standards of impairment and disability of the whole person as established by special committees of the various specialists for the American Medical Association. The degree of impairment of part or parts of the body, including mental illness, each or all in relation to the whole person, to be determined by the Medical Board.

C. Pension Calculations.

Upon retirement for disability a member will be entitled to receive a disability retirement pension calculated as for normal service retirement using the benefit compensation base for the year of his or her termination of employment and based on his or her years of Creditable Service and Final Average Compensation as of his or her last day on the payroll of the employer.

D. Determination of Date Benefits are Payable.

The Board of Trustees, in approving the application for disability retirement, shall determine the date from which benefits are payable, which date shall be the first of the month that is not over two months prior to date of approval. No disability benefits shall be payable during any period the Member is receiving compensation from his or her Employer.

E. Medical Examination.

Once each year during the first five years following the retirement of the Member on a disability retirement pension and once in every three-year period thereafter, the Board of Trustees may, and upon his or her application shall, require any Member who has retired because of total disability to undergo a medical examination. Such examination will be made at a place designated by the Medical Board, and by a physician or physicians designated by such Medical Board. Should such Retiree refuse to submit to such medical examination, his or her pension may be discontinued until his or her withdrawal of such refusal and should his or her refusal continue for one year, all rights in and to his or her pension may be revoked by the Board of Trustees.

F. Offset of Pension Benefits.

Any amounts which may be paid or payable by the City under the provisions of any workers' compensation or similar law to a Member on account of any disability shall be offset (deducted from) and payable in lieu of any disability retirement benefits payable to said Member on account of the same disability.

G. Discontinuance of Pension.

Should the Medical Board report and certify to the Board of Trustees that a retired Member receiving a disability pension, at any time before attainment of age sixty-five, is able to engage in a gainful occupation, and should the Board of Trustees concur in such report, the Board of Trustees shall direct that the disability retirement pension be discontinued. Should the Board of Trustees find that a retired Member receiving a disability pension is engaged in a gainful occupation at any time before attainment of age sixty-five, the pension may be reduced or discontinued at the option of the Board of Trustees.

H. Reemployment -- Restoration of Creditable Service.

Should a retired Member receiving a disability pension again become an Employee, his or her disability retirement pension shall cease and he or she shall immediately become a Member of the Retirement System as of the date of reemployment. His or her Creditable Service at the time of his or her disability retirement shall be restored in full force and effect.

SECTION EIGHT. DEATH BENEFITS.

1. In Service Death of Member Eligible for Early Service Retirement Pension.

If the death of a Member occurs after his or her Early Service Retirement Date but prior to his or her actual retirement, his or her spouse shall receive a pension as if he or she had retired on the day of his or her death and elected benefits under the option in Section Eight, Subsection 4(A) of this ordinance.

2. In Service Death of Member before Early Service Retirement Date.

If the death of a Member occurs after completion of five years of Creditable Service but prior to his or her Early Service Retirement Date, his or her Spouse shall receive a pension on the date deceased Member would have reached his or her Early Service Retirement Date. Such pension shall be determined as if the Member had reached his or her Early Service Retirement Date and elected benefits under the option in Section Eight, Subsection 4(A) of this ordinance.

3. Pre-retirement Death benefit coverage for Spouse and Beneficiary of Terminating Member.

Within six months of termination of employment, a Terminated Member, who has completed at least five (5) years of Creditable Service, may elect a joint and survivor annuity death benefit for his or her Surviving Spouse or ten (10) year certain and life annuity coverage as described in Section Eight, Subsection 4 of this ordinance. Such election shall remain in full force and effect until the date of the Terminated Member's death, reemployment by an Employer, or revocation of such election. The retirement and survivor benefits of a

Terminated Member who elects survivor coverage under this Subsection (Section Eight, Subsection 3) shall be reduced by a survivor reduction percentage per year or portion thereof in which the Surviving Spouse or ten (10) year certain beneficiary death benefit coverage was in effect prior to the Terminated Member's date of death. If a Terminated Member fails to elect survivor coverage pursuant to this Section Eight, Subsection 3, no survivor benefits shall be paid. For purposes of Section Eight, Subsection 3 "Surviving Spouse" shall be the spouse who was legally married to the Terminated Member on such Terminated Member's date of death and who survived such Terminated Member's death. Survivor benefits under this Section Eight, Subsection 3 shall be paid as follows:

- A. If the death of such Terminated Member occurs after he or she would otherwise be entitled to retire under the Retirement System, such Member's Surviving Spouse, or ten (10) year certain designated beneficiary, shall receive a pension as if Terminated Member had retired on the day of his or her death and elected benefits under the surviving spouse or ten (10) year certain option in Section Eight, Subsection 4 of this ordinance, subject to the survivor reduction percentage provided in this Section Eight, Subsection 3.
- B. If the death of a Terminated Member occurs prior to his or her Early Service Retirement Date, his or her Surviving Spouse, or 10 year certain designated beneficiary, shall receive a pension on the date the deceased Member would have reached his or her Early Service Retirement Date. Such pension shall be determined as if the Member had reached his or her Early Service Retirement Date and elected benefits under the option in Section Eight, Subsection 4 of this ordinance, subject to the survivor reduction provided in this Section Eight, Subsection 3.

4. Post Retirement Death Benefit.

Upon application for service or disability retirement, a Member or former Member may elect, prior to his or her Service Retirement Date or disability retirement date, to receive a reduced pension payable in one of the benefit payment forms as specified herein. Monthly payment of the retirement pension shall commence on the Member's applicable retirement date and shall continue as provided below:

- A. "Joint and survivor annuity" shall mean an actuarially reduced pension payable for the life of the Member and continuing on after the Member's death to his or her Spouse, for such Spouse's life. The amount of the monthly pension payable to the surviving spouse shall be an amount equal to one hundred percent (100%) of the monthly pension payable to the Member; or
- B. "Ten (10) year certain and life annuity" shall mean a monthly pension for the life of the Member, but in no case less than one hundred and twenty (120) monthly payments. If the Member dies before one hundred and twenty (120) monthly payments have been paid to him or her, payment of such monthly payments will continue to be paid to the Member's ten (10) year certain beneficiary until a total of one hundred and twenty (120) payments have been made to the Member and his or her ten (10) year certain beneficiary.

If a Member elects one of the above optional benefit payment forms, the amount of the retirement pension under such other form shall be the Actuarial Equivalent determined on the date such pension is to commence. If the Member fails to make an election, no optional form of benefits will be paid.

SECTION NINE. GENERAL DISTRIBUTION RULES.

1. Rollover Distribution.

- A. Notwithstanding any other provision of this ordinance, if an Eligible Rollover Distribution becomes payable to a Distributee, the Distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any of the Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- B. For purposes of this Section the following terms mean:

- (i) “Direct Rollover,” a payment by the Board of Trustees from the Fund to the Eligible Retirement Plan specified by the Distributee.
- (ii) “Distributee,” a Member or his or her surviving spouse.
- (iii) “Eligible Retirement Plan,” an individual retirement account described in IRC § 408(a), an individual retirement annuity described in IRC § 408(b), a qualified trust described in IRC § 401(a), or effective October 1, 2001, an annuity or account described in IRC § 403(b) or an eligible plan under Code § 457(b) 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 which accepts the Distributee’s Eligible Rollover Distribution.
- (iv) “Eligible Rollover Distribution,” any distribution of all or any portion of a Member’s benefit, other than:
 - a. A distribution that is one of a series of substantially equal periodic payments, made not less frequently than annually, for the life or life expectancy of the Distributee or for the joint lives or joint life expectancies of the Distributee and the Distributee’s beneficiary, or for a specified period of ten years or more;
 - b. The portion of a distribution that is required under IRC § 401(a)(9); or
 - c. The portion of any distribution that is not includable in gross income determined without regard to the exclusion of for net unrealized appreciation with respect to employer securities.
 - d. A hardship distribution described in Code § 401(k)(2)(B)(i)(IV).
- C. The Board of Trustees shall, at least thirty (30) days, but not more than ninety (90) days, before making an Eligible Rollover Distribution, provide a written explanation to the Distributee in accordance with the requirements of IRC § 402(f).
- D. Such Eligible Rollover Distribution may be made less than thirty (30) days after Distributee has received the notice described in Subsection C of this Section, provided that:
 - (i) The Board of Trustees clearly informs the Distributee of the Distributee’s right to consider whether to elect a Direct Rollover, and if applicable, a particular distribution option, for at least thirty days after the Distributee receives the notice; and
 - (ii) The Distributee, after receiving the notice, affirmatively elects a distribution.

This Section Nine, Subsection 1 is applicable to Eligible Rollover Distributions occurring after December 31, 1992.

2. Cost of Living Factor.

The pension of a Retiree or of his or her Beneficiary, if any, including benefits payable to a Member’s Spouse pursuant to this ordinance, will be adjusted as of January 1 of each year beginning with the second January 1 following the date benefits were first payable, using the cost of living factor adopted by the Board of Trustees. The Consumers Price Index (U.S. city average index) as compiled by the U.S. Department of Labor for the twelve-month period ending September 30 of each year shall be used. The cost of living factor shall be the change in the specified Consumers Price Index since the previous adjustment in benefits, to the nearest one-tenth of one percent; provided, that if the change is an increase less than one percent the factor shall be zero, and if the change is an increase greater than five percent the factor shall be five percent. If the change is a decrease, the factor shall be zero unless the change is five percent or more. The cumulative cost of living percentage increases applied to the benefit earned by a Member cannot exceed twenty-five percent. The cost of living factor may not be used if it would result in a benefit lower than the initial benefit payable to a Retiree or Beneficiary.

The cost of living factor as of September 30 of each year shall be applied to the monthly benefit for December of such year to obtain the monthly benefit payable in the following year to Retirees and Beneficiaries who are eligible.

3. Laws Governing Benefits.

The law as in effect the date a Member ceased to be an Employee shall govern as to any benefits paid thereafter to him or her or to his or her Beneficiaries.

4. Suspension of Pension.

A Member who has retired under the early or normal service retirement provisions or the Rule of Eighty-Five or under the retirement windows as provided for in Ordinance No. 60877 or Ordinance No. 61976 and again becomes an Employee of an Employer shall have his or her pension suspended until his or her termination of employment, except as provided in Section Sixteen, Subsection 4 of this ordinance.

5. Rule of 80 retirement window.

A. Persons who elected to retire under the retirement window as provided for in Ordinance No. 60877 and who later return to work for an Employer under said System as an employee-regular, temporary, per performance, for limited term or under contract with the Employer whether designated as a consultant or otherwise, shall have their subsequent retirement benefits under this ordinance reduced by the actuarial value of the lump sum payment provided for in Ordinance No. 60877. In such event subsequent retirement benefits of such person will also be reduced in accordance with Section Seven, Subsection 3 of this ordinance, if applicable.

B. Persons who elected to retire under the retirement window as provided for in Ordinance No. 61976 and who later return to work for an Employer under said System as an employee in a permanent position working thirty or more hours per week on a regular basis shall have their subsequent retirement benefits under the Retirement System reduced by the actuarial value of the cash supplement provided for in Ordinance No. 61976. In such event, subsequent retirement benefits of any such person will also be reduced in accordance with Section Seven, Subsection 3 of this ordinance, if applicable.

C. The Board of Trustees of the Retirement System is hereby vested with authority to adopt such rules and procedures for the administration of the provisions of this Subsection.

6. Commencement of Benefits.

Notwithstanding any provision of this ordinance to the contrary, effective for distributions commencing on or after December 31, 1983, distributions under the Retirement System shall be made in accordance with IRC § 401(a)(9) and the Treasury Regulations under such section, including the minimum incidental death benefit requirements.

7. Annual Benefit not to Exceed Certain Amount.

A. In no event shall a Member's annual benefit paid under the Retirement System exceed the amount specified in IRC § 415(b) as adjusted for any applicable increases in the cost-of-living, as in effect on the last day of the Plan Year, including any increases after the Member's termination of employment.

B. In no event shall the annual additions to the Retirement System on behalf of the Member, including the Member's own contributions, exceed the lesser of:

(i) One hundred percent of the Member's compensation, as defined for purposes of IRC § 415(c); or

(ii) Forty thousand dollars, as adjusted for increases in the cost of living.

- C. For purposes of this Section, IRC § 415 is incorporated in this ordinance by reference, and this Section Nine, Subsection 7 is effective January 1, 1984.

SECTION TEN. MEMBER CONTRIBUTIONS

1. Member Contribution Rates

Each Employer shall cause to be deducted from the Compensation of each Employee who is currently making contributions a contribution equal to three percent (3%) multiplied by the Compensation received by each Member on each payroll period until the total Compensation received while an Employee during the calendar year equals the maximum annual taxable earnings under the federal social security act as in effect on January 1 of the calendar year. Thereafter, such Member shall contribute six percent (6%) multiplied by the Compensation received by him or her during the remainder of the calendar year. A Member may continue contribution at the rates set forth in this Section in order to increase his or her pension as provided in Section Ten, Subsection 6 of this ordinance. Members not making continuous contributions from January 15, 1978 will not be allowed to make contributions.

2. Deductions.

The deductions provided for in this Section Ten of this ordinance shall be made notwithstanding that the minimum compensation provided by law for any Member shall be reduced thereby. Every Member shall be deemed to consent to the deduction made and provided for herein. Each Employer shall certify to the Board of Trustees on each and every payroll or in such other manner that the Board of Trustees shall prescribe, the total amount deducted and such amount shall be paid into the fund and shall be credited to the Member from whose salary or wages such deduction was made.

3. Interest Credited to Accumulated Contributions.

The Board of Trustees shall annually determine the rate of interest and shall credit each Member's Accumulated Contributions based on the largest balance on deposit for the entire calendar year.

4. Payment to Former Members.

Should the membership of an Employee be terminated by reason other than his or her death or retirement, he or she shall be paid the amount of his or her Accumulated Contributions upon application therefor. In the event of the death of a former Member entitled to payment of his or her Accumulated Contributions, and prior to receiving his or her Accumulated Contributions, his or her Accumulated Contributions shall be paid to his or her designated beneficiary, or if no such beneficiary is living or designated, to the estate of the former Member. No credit for interest will be allowed after the date of termination of membership.

5. Refund of Accumulated Contributions on Retirement -- Before Retirement

A. When an Employee retires, or when a Member, who hereafter elects a deferred annuity retires, the Board of Trustees shall refund to him or her, if any, his or her regular Accumulated Contributions and interest credited to the day of his or her retirement. This amount is in addition to any retirement benefits to which he or she is entitled.

B. An Employee may elect prior to retirement to have his or her regular Accumulated Contributions refunded by filing a written application with the Board of Trustees. Such refund to any Member shall be paid to such Member in a lump sum.

C. Should the membership of an Employee be terminated by reason of death, his or her Accumulated Contributions shall be paid to his or her designated beneficiary, or if no beneficiary is living or designated, to the estate of the deceased Employee.

6. Purchase of Additional Pension Income in Lieu of Benefits.

A Member or surviving Spouse having regular Accumulated Contributions and interest thereon due at time of retirement may elect to use this sum to purchase additional pension income based on the interest rate, mortality, and other actuarial tables adopted by the Board of Trustees.

7. Payment of Accumulated Contributions After Death

If there are no further benefits otherwise payable under this ordinance and the total amount of benefits received by a Member, Retiree or Beneficiary up to the date of the death of the last survivor is less than an amount equal to the Member's Accumulated Contributions at his or her death or at his or her actual retirement date, whichever occurs first, the difference shall be paid to the Beneficiary named to receive such amount, or if no such Beneficiary is living, to the estate of the person last receiving benefits, or, if no benefits have been received, to the estate of the Member.

SECTION ELEVEN. EMPLOYER CONTRIBUTIONS.

1. Established.

Each Employer shall on account of its Employees who are Members of the Retirement System pay annually into the fund an amount equal to a certain percentage of the Compensation of the Employees to be known as the "Normal Contribution" for the Employer and an additional amount equal to a percentage of the Compensation of the Employees to be known as the "Unfunded Accrued Liability Contribution."

2. Normal Contribution Rate.

The Normal Contribution rate percentage shall be determined annually by the actuary from the liabilities of the Retirement System as shown by actuarial valuations which are based on the interest rate and such mortality and other tables as shall be adopted by the Board of Trustees. The normal cost percentage shall equal the normal cost amount determined under the projected unit credit actuarial cost method based on service proration divided by the Compensation of Employees who are Members.

3. Unfunded Accrued Liability Contributions -- Determination.

The unfunded accrued liability represents the liability for normal and Member contributions not paid in the year prior to the effective date, for the increased contributions not paid in the years prior to a benefit increase and for accumulated increases/decreases in liabilities/assets caused by variation of actual plan experience from assumptions underlying past contributions. The Unfunded Accrued Liability Contribution shall be determined by the actuary annually, as a part of the actuarial valuation. Said annual Unfunded Accrued Liability Contribution shall represent the amount, expressed as a level dollar amount which should be contributed and shall be determined each year by amortizing the unfunded accrued liability over thirty (30) years.

4. Unfunded Accrued Liability Contribution -- Percentage Rate.

The Unfunded Accrued Liability Contribution rate percentage at the discretion of the Board of Trustees may be calculated separately for each Employer, and the Board of Trustees may require different contributions based on such calculations.

SECTION TWELVE. DEFERRED RETIREMENT OPTION PROGRAM.

1. Eligibility.

A Member who is eligible for the Rule of Eighty-Five, early or normal service retirement may elect to participate in the Deferred Retirement Option Program ("DROP") beginning on the first day of any month upon his or her application to the Board of Trustees not less than thirty (30) days nor more than ninety (90) days prior to such date.

2. Period of Participation.

The maximum period of participation in the DROP is five (5) years.

3. Election to Terminate Participation.

No Member may elect to participate in the DROP more than once. A Member who has elected to participate in the DROP may terminate such participation by giving written notice to the Board of Trustees at least thirty (30) days in advance of such termination.

4. Creditable Service.

A Member shall not earn Creditable Service for periods he or she participates in the DROP. Service rendered to the Employer before and after such participation shall be Creditable Service.

5. Continuation of Employment.

A Member electing to participate in the DROP shall continue in active employment of an Employer and shall not directly be paid his or her pension during such period. Notwithstanding the foregoing, a Member participating in DROP shall be eligible to receive a benefit during participation in DROP, provided said Member is otherwise eligible to receive a benefit as the result of the Member being the surviving Spouse or designated Beneficiary of another Member.

6. DROP Account.

During the Member's participation in the DROP, the amount of the pension which he or she would have received had he or she retired upon commencing participation in the DROP, determined in accordance with Section Seven of this ordinance, shall be credited to the Member's DROP Account, which shall be established by the Board of Trustees in the Member's name. A Member's DROP account shall not be adjusted for any cost of living increases during the Member's participation in the DROP. For a Member who entered DROP prior to February 1, 2003 such Member's DROP Account shall be credited with interest at the actuarial valuation rate of return as determined by the Board of Trustees. For a Member who entered DROP on or after February 1, 2003, interest, at the rate of return equal to the yield on the ten year Treasury Bond as of the most recent plan year end, shall be credited to the Member's DROP Account. The interest shall be credited annually to the Member's account beginning with the start of the second Plan Year following participation based on the account balance at the beginning of the previous Plan Year. If a total withdrawal occurs during a plan year, interest will be determined pro rata for the final partial Plan Year of the DROP account's existence based on the beginning balance for the Plan Year.

7. Termination of DROP Participation.

When a Member terminates participation in the DROP:

- A. The amount of the monthly pension stops being credited to the DROP account; and
- B. The Member resumes earning Creditable Service.

8. Payment of DROP Account on Retirement.

Upon retirement, the Member shall receive, in addition to his or her pension, the amount credited to his or her DROP account which shall be paid to the Member in accordance with Section Twelve, Subsection 10 of this ordinance.

9. Payment of DROP Account on Death.

If a Member dies prior to termination of employment with the Employer or prior to receiving payment of all amounts in the DROP account, the balance of the funds in the DROP account shall be paid in a single lump sum to the Member's Beneficiary or, if the Beneficiary predeceases the Member or there is no Beneficiary, to the Member's estate.

10. Form of Payment of DROP Account.

Payment, at the election of the Member, shall be made in one of the following forms:

- A. A lump sum distribution of the balance of the DROP account; or
- B. Substantially equal monthly installments for ten (10) years. Interest, at the rate prescribed in Section Twelve, Subsection 6 of this ordinance, shall continue to be credited to the DROP account during the installment distribution period.

In the event the balance of a Member's DROP account is less than \$5,000 at the time it is first payable or in the event a Member fails to make a distribution election under this Subsection, the DROP account shall be paid in a single lump sum.

11. Status of DROP Payments.

Payment of a Member's DROP account shall be in addition to payment of the Member's other benefits under this ordinance.

12. Administration of DROP.

The Board of Trustees may establish rules and regulations for the administration and operation of the DROP.

SECTION THIRTEEN. FUND.

1. Established.

For the purpose of funding the benefits provided for herein, the Retirement System has established the Employees Retirement System of the City of St. Louis Savings Fund (hereinafter "Fund"). All employer contributions and Member Accumulated Contributions, if applicable, shall be credited to this Fund. There shall be no diversion of any portion of the assets of the Fund other than for the exclusive benefit of Members and their beneficiaries for the satisfaction of all liabilities with respect to Members and their Beneficiaries under the Retirement System. The total amount payable in each year by each Employer to the Fund shall not be less than the Normal Contribution plus the Unfunded Accrued Liability Contribution. If any Employer shall fail to make the required contributions when due, the Board of Trustees may reduce the benefits payable to Employees and former Employees of such Employer until all required contributions are paid. All money provided to pay the administration expenses of the Retirement System shall be credited to the Fund and all necessary expenses in connection with the administration and operation of the Retirement System shall be paid from the Fund.

All investment income shall be put in this Fund.

2. Amounts Due and Payable.

On or before the first of April each year, the Board of Trustees shall certify to the Employers the amounts which will become due and payable during the year next following to the Fund. The amounts so certified shall be included by the Employers in their annual budget estimate. Such amount shall be appropriated by the Employers and transferred to the Retirement System for the ensuing year.

3. Employer Obligations.

The creation and maintenance of reserves in the Fund as provided for, and the payment of all benefits granted under the provisions of this ordinance, and expenses in connection with the administration and operation of the Retirement System are hereby made obligations of the Employer.

4. Payment Vouchers.

All payments from the Fund shall be made only upon vouchers signed by two persons designated by the Board

of Trustees. No vouchers shall be drawn unless it shall have previously been allowed by the Board of Trustees.

5. Investment.

The Board of Trustees shall be the trustees of the Fund created by this ordinance and shall have full power to invest and reinvest the funds, subject to all the terms, conditions, limitations and restrictions imposed by law upon a corporate trustee in the State of Missouri in making and disposing of its investments, and subject to like terms, conditions, limitations and restrictions the trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which the Fund created in this ordinance shall have been invested, as well as of the proceeds of the investments and any moneys belonging to the Fund. Any securities obtained by the Board of Trustees may be held in the name of a nominee in order to facilitate investments.

6. Personal Gains by Trustee or Employee.

Except as provided, no trustee and no employee of the Retirement System shall have any direct interest in the gains or profits of any investment made by the Board of Trustees, nor as such receive any pay or emolument for his services. No trustee or employee of the Retirement System shall directly or indirectly for himself or as an agent in any manner use the assets of the Retirement System except to make current and necessary payments as authorized by the Board of Trustees, nor shall any trustee or employee of the Retirement System of the City become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the Board of Trustees.

7. Allocation of Interest.

The interest and other earnings on the moneys and other assets of the Retirement System shall belong to and be credited to the Fund.

SECTION FOURTEEN. BOARD OF TRUSTEES.

1. Members.

There shall be a Board of Trustees of six members who shall be responsible for the establishment of policy and rules as may be necessary for the administration and operation of the Retirement System. The Board shall be constituted as follows:

- A. The Comptroller of the City, *ex officio*;
- B. Two members, one of whom may be the Director of Personnel, to be appointed by the Mayor. Appointments for the two members shall be for terms of two years beginning April 1 of even dated years.
- C. Two members to be elected by and from the membership of the Retirement System. Such members shall hold office for terms of two years only while Members of the Retirement System. The two year terms for the two members shall begin April 1 of odd dated years.
- D. One retired member to be elected by the Retirees of the Retirement System. Such member shall be a Retiree of the Retirement System who shall reside in the City of St. Louis. Elections for this member shall be for terms of two years and shall be held in odd dated years. Such member shall hold office for a term of two years beginning April 1 of odd dated years.
- E. The trustees serving on the Board of Trustees upon passage of this ordinance shall be entitled to serve the remainder of their term provided that they continue to meet the requirements set forth above.
- F. The Board of Trustees shall promulgate and adopt rules and regulations for the election of trustees.

2. Vacancy.

If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

3. Compensation.

The trustees and Secretary shall serve without compensation from the Retirement System, but they shall be reimbursed for all necessary expenses which they may incur through service on the Board of Trustees.

4. Oath of Office.

Each trustee shall within ten days after his or her appointment or election, take an oath of office before the register, that, so far as it devolves upon him or her, he or she will diligently and honestly administer the affairs of the Board of Trustees and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the Retirement System. The oath shall be subscribed to by the member making it and certified by the register and filed in the Register's Office.

5. Voting.

Each trustee shall be entitled to one vote in the Board of Trustees. A majority of four votes shall be necessary for a decision by the trustees at any meeting of the Board of Trustees.

6. Jurisdiction.

The Board of Trustees shall have exclusive original jurisdiction in all matters relating to or affecting the Fund provided for in this ordinance, including, in addition to all other matters, all claims for benefits and refunds under this ordinance and its action, decision or determination in any matter shall be reviewable according to law. Subject to the limitations of this ordinance, the Board of Trustees shall from time to time establish rules and regulations for the administration of the Fund created by this law, for the transaction of its business and for the limitation of the time within which claims may be filed.

7. Officers -- Employees.

The Board of Trustees shall elect a chairman from its membership by majority vote and the Director of Personnel shall be Secretary of the Board of Trustees, but he may appoint an employee of the Retirement System to perform necessary duties of the position. The Board of Trustees may engage actuarial, investment, administrative and other services as required or deemed advisable to transact the business of the Retirement System. The Director of Personnel shall appoint in accordance with Article XVIII of the Charter of the City all employees of the Retirement System and direct their work in accordance with the policy and rules established by the Board of Trustees. The compensation of all persons so appointed shall be paid in accordance with the comprehensive compensation plan of the City. All necessary expenses of the board and the staff of the Retirement System shall be paid at such rates and in such amounts as the Board of Trustees shall approve.

8. Data.

The staff of the Retirement System, under the direction of the Director of Personnel, shall keep in convenient form data as necessary for actuarial valuation of the liabilities of the Retirement System and for checking the experience of the Retirement System.

9. Secretary -- Transaction Report.

The Secretary of the Board of Trustees shall be responsible for keeping a record of all its proceedings. The records of the Retirement System, required to be open by state or local law, shall be available for public inspection. The Secretary shall publish annually a report approved by the Board of Trustees showing the fiscal transactions of the Retirement System for the preceding fiscal year, the amount of the accumulated cash and securities of the Retirement System, and the last balance sheet showing the financial condition of the Retirement

System

10. Legal Advisor.

The City Counselor shall be the legal adviser of the Board of Trustees.

11. Medical Board.

The Board of Trustees shall designate a Medical Board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this ordinance, shall investigate all essential statements and certificates made by or on behalf of a Member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusions and recommendations upon all the matters referred to it.

12. Changes in Benefit Compensation Base Table.

Whenever the maximum annual taxable earnings under the Federal Social Security Act are changed, the Board of Trustees, based upon the advice of the actuary shall change the Benefit Compensation Base table for the purpose of maintaining the combined normal service retirement benefits under the Retirement System and Social Security at the same approximate level for equal years of service and equal final average compensation.

13. Limitations.

Except as provided in this ordinance, the Board of Trustees shall have no administrative powers or duties.

SECTION FIFTEEN. ACTUARY.

1. Advisor.

The actuary shall be the technical adviser of the Board of Trustees on matters regarding the status of the Fund created by this ordinance and shall perform other duties as required in connection therewith. He or she shall be qualified by membership as a Fellow of the Society of Actuaries.

2. Actuarial Investigation.

The Board of Trustees shall have made at least every five years an actuarial investigation into the mortality, service and Compensation experiences of the Members, Retirees and Beneficiaries of the Retirement System and, taking into account the results of the investigation and valuation, the Board of Trustees shall establish for the Retirement System mortality, service and other tables as deemed necessary.

3. Valuation of Assets and Liabilities.

On the basis of tables as the Board of Trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the Fund of the Retirement System.

4. Employer Contribution Rates.

On the basis of the valuation the Board of Trustees shall certify the rates of contributions payable by the Employers.

SECTION SIXTEEN. MISCELLANEOUS.

1. Assignment of Benefits.

The right of any person to a benefit, any other right accrued or accruing to any person under the provisions of this ordinance and the moneys in the Fund created hereunder shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically provided in this

ordinance or by state or federal law. The Board of Trustees in its discretion may terminate any benefit in event of execution, garnishment, attachment, other process or assignment.

2. Correction of Errors.

The Board of Trustees may cancel or reduce the benefits of any person who shall make any false statement, or shall falsify or permit to be falsified any record or records in any attempt to defraud this Retirement System. Should any change or error in records result in any Member or Beneficiary receiving from the Retirement System more or less than he or she should have been entitled to receive had the records been correct, the Board of Trustees shall correct the error, and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the Member or Beneficiary was correctly entitled, shall be paid.

3. Special Consultants to Retirement System.

- A. Any Retiree who is receiving benefits as a result of retirement taken prior to October 14, 1977, and any person who is receiving benefits as a result of death of any Retiree, and any Member of the Retirement System who ceased to be a Member prior to October 14, 1977 and has vested retirement benefits, shall upon application to the Board of Trustees, be engaged by the Board of Trustees as a special consultant on the problems of retirement, aging and other matters of concern to the Retirement System, and are to be available to give opinions, orally or in writing, upon request of the Board of Trustees.

Upon acceptance of such application the applicant shall have the option of:

- (i) Securing a refund to applicant of Retiree's regular Accumulated Contributions with interest at date of retirement of Retiree or at date of leaving service with an Employer for those who have vested retirement benefits.
- (ii) An increase of monthly benefits to applicant based on the actuarial benefit due computed on the value of Retiree's regular Accumulated Contributions with interest at date of retirement of Retiree or, in the case of a member who left the service and had vested retirement benefits, at date of separation from service. The value of the services requested in return for such compensation shall not exceed the amount of such compensation.

The employment provided for by this Subsection shall in no way affect any person's eligibility for retirement benefits or in any way have the effect of reducing benefits.

4. Retiree Holding Elective Office -- Benefits to Be Continued.

Retirees of the Retirement System who subsequent to retirement are elected to a City office shall have a continuation of all their retirement benefits as well as other emoluments provided by law for their public office, notwithstanding any other contrary provision of the said Retirement System.

5. Retired Members Designed as Advisors.

- A. Any Retiree who applied for and was granted retirement status by the Retirement System prior to November 3, 1992 and who (1) was employed by an Employer a total of at least thirty-five (35) years at the time of retirement, or (2) enjoyed at the time of retirement a service record greater than the thirty-five (35) years then used to cap retirement benefits, or the eligible surviving spouse of said Retiree, shall, upon application, be designated as an advisor to the Retirement System for the remainder of the Retiree's or eligible surviving Spouse's life on the problems of retirement, aging, and other related matters and shall give an opinion on such matters as requested by the Board of Trustees.
- B. For the additional service as advisor under Section Sixteen, Subsection 5(A) of this ordinance each Retiree or eligible surviving spouse shall receive an increase of monthly benefits based upon the Retiree's actuarial benefit due on the number of years of Creditable Service over 35 years.

- C. The additional services provided for by this Subsection shall in no way affect any person's eligibility for retirement benefits or in any way have the effect of reducing benefits.

6. Additional Payments to Consultants.

The Board of Trustees is directed to retain as a special consultant any current or future Retiree with twelve (12) years or more of Creditable Service who is entitled to receive a monthly benefit from the Retirement System of less than Two Hundred Dollars (\$200.00) or any person receiving or who in the future is entitled to receive a monthly benefit from the Retirement System, as the result of the death of a Retiree with twelve (12) years or more of Creditable Service, who is entitled to receive a monthly benefit from the Retirement System of less than Two Hundred Dollars (\$200.00) and to monthly pay such Retiree or person, at the time their benefits from the Retirement System are paid, the difference between Two Hundred Dollars (\$200.00) and their respective monthly benefit from the Retirement System as compensation for being a consultant to the Board of Trustees on problems of retirement, aging or other matters of concern to the Retirement System. The payment of compensation to a Retiree or person pursuant to this Section Sixteen, Subsection 6 shall cease at the time no further benefits are payable to such Retiree or person from the Retirement System.

7. Termination of System.

Upon termination of the Retirement System the accrued benefit of each Member as of the date of such termination shall be nonforfeitable. In the event of such termination, each such Member shall have recourse toward satisfaction of his nonforfeitable rights to his accrued benefit. Further, in no event shall a Member's Accumulated Contributions be forfeited.

8. Medical Coverage.

- A. The City is hereby authorized to devise and establish by contract or otherwise a medical coverage plan(s) for Retirees of the Retirement System and their dependents. The Director of Personnel shall develop and administer programs for such coverage.
- B. The Director of Personnel, with the concurrence of the Board of Trustees, is authorized to make deductions from the monthly pension benefit of Retirees, at the Retiree's request, for medical coverage as the City may make available.
- C. The Director of Personnel, with the concurrence of the Board of Trustees, is authorized to make deductions from the monthly pension benefit of Retirees, at the Retiree's request, for medical coverage as may be offered through an association of Retirees. Nothing, however, shall require the Director of Personnel or the Board of Trustees to authorize and make such deductions for any association or coverage.

SECTION SEVENTEEN. SEVERABILITY. Each provision of this ordinance shall be severable. In the event any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid, unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision(s) that it cannot be presumed that the Board of Aldermen would have enacted the valid provisions without the void one(s); or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

ATTACHMENT "1"

**CLOSING AGREEMENT ON FINAL DETERMINATION
COVERING SPECIFIC MATTERS**

Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), The City of Saint Louis (the "Employer"), City Hall, 1200 Market Street, Room 314, St. Louis, Missouri 63103, EIN: 43-6003231; Employees Retirement System of the City of Saint Louis #001 (the "Plan" and/or "Trust"), Suite 900, 1114 Market Street, St. Louis, Mo. 63101 and the Commissioner of Internal Revenue (the "Service") make the following Closing Agreement (the "Agreement"):

WHEREAS, the Plan is a governmental plan as defined by Code section 414(d);

WHEREAS, the Employer established the Plan, effective April 1, 1960;

WHEREAS, the Plan and Trust report on a September 30 fiscal year end basis;

WHEREAS, the Employer uses a June 30 fiscal year end basis;

WHEREAS, Code section 401(b) permits certain retroactive amendments, as designated by the Secretary, to maintain the qualified status of a plan;

WHEREAS, Notice 86-3 and Announcement 86-60 required the Plan to be amended by June 30, 1986, to be considered timely amended for compliance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Deficit Reduction Act of 1984 (DEFRA), and the Retirement Equity Act of 1984 (REA);

WHEREAS, Notice 92-36 and Announcement 94-136 required the Plan to be amended by September 30, 1995, to be considered timely amended for compliance with the Tax Reform Act of 1986 (TRA '86), the Unemployment Compensation Amendments of 1992 (UCA '92), and the Omnibus Budget Reconciliation Act of 1993 (OBRA '93);

WHEREAS, Revenue Procedure 99-23 clarified and extended the 401(b) remedial amendment period with respect to the aforementioned law changes for governmental plans to the last day of the plan year beginning on or after January 1, 2001;

WHEREAS, pursuant to a favorable determination letter request submitted by the Employer in 2002, it was determined that the Employer could not document timely amendment for TEFRA, DEFRA, REA, TRA '86, UCA '92 and OBRA '93 in violation of Code section 401(b);

WHEREAS, the Service proposed revoking both the qualified status of the Plan under Code section 401(a) retroactively to the Plan year beginning on or after January 1, 1984, and the exempt status of the Trust under Code section 501(a) retroactively to the Trust year beginning on or after January 1, 1984;

WHEREAS, on **DATE HERE**, the Employer will correct this failure by adopting an ordinance ("Ordinance") to comply retroactively with the current qualification requirements of TRA '86, UCA '92, and OBRA '93;

WHEREAS, the Employer has a procedure to ensure that any changes to the Plan terms made by city ordinance will be timely reflected in a comprehensive plan document;

WHEREAS, the Plan has been making distributions of the sum of all amounts deducted from the compensation of a participant and credited to the Plan fund together with interest thereon (the "Accumulated Contributions"), but has not been giving to terminating employees the notice required under Section 402(f) of the Code;

WHEREAS, the Employer and the Trust have determined that the Agreement set forth herein is in their respective best interests; and

WHEREAS, the Service, through its authorized representative, has determined that said Agreement is also in its best interest.

NOW IT IS HEREBY DETERMINED AND AGREED for Federal Tax purposes that:

1. The total amount due under this Agreement is \$40,000. This amount shall be paid by the Employer, by its check made payable to the United States Treasury, prior to or contemporaneously with the execution of this Agreement by the duly authorized representative of the Service.
2. The Service agrees to treat the Plan document as if it had been timely amended in accordance with Code section 401(b) and as if it qualifies under Code section 401(a) for the Plan years ended September 30, 1985 through September 30, 2002.
3. Neither the Employer nor the Trust will attempt to amortize, deduct, or otherwise recover any portion of the payment described in Paragraph 1 from the Service or to receive any Federal tax benefit on account of such payment.

- 4. No portion of the payment described in Paragraph 1 shall be considered as: (a) compensation to, or the discharge of any obligation or liability of, any employee or former employee of the Employer; or (b) taxable income to any employee or former employee of the Employer.
- 5. This Agreement constitutes a resolution under the Code solely of the specific matters discussed herein. No inference shall be made as to the application of the Code under any facts and circumstances outside this Agreement. No inference shall be made with respect to whether this resolution satisfies other Federal Law, including Title I of the Employee Retirement Income Security Act of 1974.
- 6. The Trust will contact each former participant who received a DROP distribution, giving him or her the right to return such distribution to the Trust and to direct the Trust to treat such returned distribution as a qualified rollover distribution as described in Code section 402(c). The amounts so returned should represent the original DROP distribution and a reasonable estimate of the earnings from the time it was originally distributed, to the time it was returned to the Trust.
- 7. The Trust will contact each former participant who, after 2000, received a distribution of Accumulated Contributions, giving him or her the right to return to the Trust the portion of such distribution which could have been rolled over in accordance with Code section 402(c) at the time of the original distribution and to direct the Trust to treat such returned portion as a qualified rollover distribution as described in Code section 402(c). The amounts so returned should represent the original Accumulated Contribution distribution and a reasonable estimate of the earnings from the time it was originally distributed, to the time it was returned to the Trust.
- 8. The Employer shall adopt the Ordinance as previously submitted to and approved by the Service.
- 9. This Agreement is final and conclusive except:
 - a. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact:
 - b. It is subject to the Code sections that expressly provide that effect be given to their provisions, notwithstanding any other law or rule of law except Code section 7122; and
 - c. If it relates to a taxable period ending after the date of this Agreement, it is subject to any law, enacted after the Agreement date, which applies to that taxable period.

By signing, the parties certify that they have read and agreed to the terms of this Agreement.

CITY OF ST. LOUIS
Entered into pursuant to
Ordinance No.

BOARD OF TRUSTEES OF THE
EMPLOYEE RETIREMENT SYSTEM OF
THE CITY OF ST. LOUIS

By: _____
Comptroller Date

By: _____
Chairman Date

APPROVED AS TO FORM:

ATTEST:

City Counselor Date

Secretary Date

ATTEST:

Register Date

COMMISSIONER OF INTERNAL REVENUE

By: _____
Deane (Pat) Cox Date
Employee Plans Central Mountain

Area Manager

Approved: December 21, 2004