

**DENISON FIREMEN'S RELIEF
AND RETIREMENT FUND**

Plan Document Effective

May 1, 2024

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DENISON FIREMEN'S RELIEF AND RETIREMENT FUND

This Adoption agreement is adopted by the Board of Trustees as follows:

WITNESSETH:

WHEREAS, the Board of Trustees, has heretofore adopted the Denison Firemen's Relief and Retirement Fund herein referred to as the Plan or the Fund pursuant to Vernon's Annotated Civil Statutes, Article 6243e, the Texas Local Fire Fighters Retirement Act; and

WHEREAS, the Board of Trustees now desires to amend and restate the Plan.

NOW, THEREFORE, to carry such amendment and restatement into effect, the Board of Trustees does hereby adopt the amended and restated Denison Firemen's Relief and Retirement Fund, the terms and conditions of which are fully set out in the attached Sections 1 through 12, which are incorporated by reference.

Except as otherwise specifically designated in the Plan, the Effective Date of the Plan as hereby amended and restated is May 1, 2024.

The provisions of the Plan set out below shall be applicable to all Members of the Denison Firemen's Relief and Retirement Fund who are active Members of the Fund as of May 1, 2024, and to those who become Members of the Fund on or after that date. The benefits of each Member who had retired, become disabled, or terminated, as well as each beneficiary whose benefits had already been determined as of April 30, 2024, shall be as specified under the Fund provisions in effect prior to this amendment.

Signed this 9th day of May, 2024.

TRUSTEES OF THE DENISON FIREMEN'S RELIEF AND RETIREMENT FUND

M. J. [Signature]
[Signature]
Janet Gott
Laurie AlSabbagh

[Signature]
[Signature]
[Signature]

Section 1 Definitions

The following terms used in this document shall have the meanings stated below unless a different meaning is clearly required by the context.

- 1.01 "Act" shall mean the Texas Local Fire Fighters Retirement Act, Vernon's Annotated Civil Statutes, Article 6243e.
- 1.02 "Board" or "Trustees" shall mean the Board of Trustees of the Denison Firemen's Relief and Retirement Fund. The Board shall be the plan administrator.
- 1.03 "City" shall mean the City of Denison, a political subdivision established within the State of Texas.
- 1.04 "Code" shall mean the Internal Revenue Code of 1986 as amended from time to time.
- 1.05 "Compensation" shall mean a Member's total pay including regular, longevity, and overtime pay and pay received during a period of sick leave or vacation but excluding lump sum distributions for unused sick leave or vacation pay. Back pay awards shall be credited as Compensation in the period(s) the pay should have been paid. The annual compensation of each Member taken into account under the Plan for any year shall not exceed the limitations of Code §401(a)(17). In determining benefit accruals in Plan Years beginning after December 31, 2001, the annual compensation limit for determination periods before January 1, 2002, shall be \$200,000. For Plan Years beginning on or after January 1, 2002, Compensation in excess of \$200,000 shall be disregarded for all purposes. Such amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year. If a determination period consists of fewer than twelve (12) months, the \$200,000 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is twelve (12). Effective for Plan Years beginning on or after January 1, 2001, Compensation shall include elective amounts that are not included in the gross income of the Member under Code §132(f)(4). For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; and (ii) the differential wage payment is treated as Compensation.
- 1.06 "Credited Service" will equal the period of employment during which a Member pays into, and keeps on deposit in the Fund, the contributions required by the Fund. Credited Service will be calculated in completed months.

Credited Service shall also include periods of leave from covered employment by reason of service in the armed forces of the United States during a war or national emergency but only if such service is required to be included by reason of the provisions of the Act or as a condition of qualification under the Code. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and Credited Service with respect to qualified military service will be provided in accordance with Code §414(u). In the case of a death occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in Code §414(u)), the Member's beneficiary is entitled to any additional benefits (other than benefit accruals

relating to the period of qualified military service) provided under the Fund as if the Member had resumed employment and then terminated employment on account of death. The Fund will credit the Member's qualified military service as service for vesting purposes, as though the Member had resumed employment under USERRA immediately prior to the Member's death.

If a Member terminates Credited Service, the Member will be treated in the same manner as a new employee if later reemployed. Absence from active service of the department by reason of a leave of absence will not terminate a Member's service provided the Member returns to active employment prior to the expiration of the leave of absence. However, if the Member withdraws contributions from the Fund the Member will be treated in the same manner as though service had been terminated even though the Member returns to active employment prior to the expiration of the leave. Periods of leave of absence determined by the policy of the City shall be deemed continuous employment.

- 1.07 "Fund" or "Plan" shall mean the Denison Firemen's Relief and Retirement Fund.
- 1.08 "Highest 24-Month Average Salary" will be equal to a Member's average total Compensation for the 24 consecutive months with the fire department during which total pay was highest.

If at the time of death or disability, a Member has less than twenty-four (24) months of Credited Service, the Highest 24-Month Average Salary will be computed over the Member's total period of Credited Service.

- 1.09 "Member" shall mean each employee of the Denison Fire Department and any other person designated by the Board in accordance with Section 9(c)(2) of the Act. Employees covered by the Texas Municipal Retirement System (TMRS) or any other system or plan shall be excluded from the Fund as approved by the Board.
- 1.10 "Plan Year" shall mean the twelve (12) month period ending December 31st of each year.
- 1.11 "Spouse" shall mean the lawful wife or husband of a Member. "Surviving Spouse" shall mean a Member's Spouse who was married to such Member before the first to occur of the Member's date of retirement or termination of Credited Service and who is married to such Member at the Member's death.

Section 2
Service Retirement Benefits

2.01 Eligibility for a Service Retirement Benefit. A Member will be eligible for a service retirement benefit on or after meeting both of the following requirements:

- a. attainment of age 50; and
- b. completion of twenty (20) years of Credited Service.

A Member shall become fully vested in the Member's service retirement benefit on the date the Member meets both of the requirements set forth above. The date the Member meets both of the requirements set forth above shall be the Member's Normal Retirement Age.

2.02 Amount of Service Retirement Benefit. A Member who qualifies for service retirement benefit will receive a monthly retirement income equal to the sum of:

- a. a standard monthly benefit equal to 2.65% of the Member's Highest 24-Month Average Salary multiplied by number of years of Credited Service at termination of Credited Service not in excess of twenty (20) years; plus
- b. an additional service benefit equal to three percent (3%) of the Member's Highest 24-Month Average Salary multiplied by number of years of Credited Service at termination of Credited Service in excess of twenty (20) years.
- c. The maximum service retirement benefit payable under the Fund was \$7,250 per month if the Member retired on or after April 8, 2021, but before May 1, 2024. Prior to April 8, 2021, the maximum service retirement benefit payable under the Fund was \$5,150 per month.

2.03 Commencement. Payment of service retirement benefits will be made on the first business day of the month following the month for which the payment accrues. Payments will first accrue for the month following the date the Member terminates Credited Service. A partial monthly benefit will accrue for the month in which the Member terminates Credited Service. The partial benefit is equal to the benefit selected above, multiplied by the number of days from the date the Member terminates Credited Service to the end of the month, divided by the total number of days in the month. Payments will continue to accrue through the month in which the Member dies.

Section 3
Disability Retirement Benefits

- 3.01 Eligibility for Disability Benefit. An active Member will qualify for a disability benefit if the Member becomes disabled for either physical or mental reasons except as provided in Section 3.06 before meeting the eligibility requirements necessary to qualify for a service retirement benefit as described in Section 2. For the first one and one-half (1½) years, a Member will be determined to be disabled if unable to perform the duties of any position in the fire department for equal or greater pay as compared to the Member's former position with the fire department. Thereafter, a Member will be determined to be disabled if unable to perform the duties of any occupation for which the Member is reasonably suited by education, training or experience, and for which the Member may earn income equal to or greater than the pay the Member would have received in the position held at the time of disability.
- 3.02 Commencement of Disability Retirement Benefit. Payment of the monthly disability benefit will be paid on the first business day of the month following the month for which the payment accrues. Payments will first accrue after the later of: (i) the cessation of payments of the Member's regular salary, including vacation and sick leave pay, and any City provided disability benefits; or (ii) if the Member receives a lump sum of accumulated pay, including vacation and sick leave pay, following the period of time which would have passed had the Member received accumulated pay in regular semi-monthly installments instead of a lump sum plus any period during which the Member receives any City provided disability benefits. Disability benefits will continue to accrue as the Member is living and remains eligible for benefits under this Section 3.
- 3.03 Amount of Disability Retirement Benefit:
- a. If a disabled Member is not eligible for service retirement at the time disability benefits are to start, then the amount of monthly benefit that will be provided to such Member will equal fifty percent (50%) of the Member's Highest 24-Month Average Salary. The maximum disability benefit payable under the Fund was \$7,250 per month if the Disability Retirement Benefit commenced on or after April 8, 2021, but before May 1, 2024. Prior to April 8, 2021, the maximum disability benefit payable under the Fund was \$5,150 per month.
 - b. If a disabled Member is eligible for a service retirement benefit under the Plan, then the Member will receive the service retirement benefit to which they are entitled under Section 2 of the Fund in lieu of the benefit specified in Section 3.03.a above.
- 3.04 Termination, Reduction or Reinstatement of Disability Benefit. The Board shall have the power to continue, terminate, reduce, or reinstate a Member's disability benefit, subject to the following limitations:
- a. During the first one and one-half (1½) years of a Member's disability, disability benefits shall cease if the Member is able to perform the duties of any position in the fire department for equal or greater pay.
 - b. After the Member has received disability benefits from the Fund for a period of one and one-half (1½) years, disability benefits shall cease if the Member fails to apply for continuing disability benefits.

- c. After the Member has received disability benefits from the Fund for a period of one and one-half (1½) years, disability benefits shall cease if the Member is able to perform the duties of any occupation for which they are reasonably suited by education, training or experience and for which the Member may earn equal or greater income.
- d. If the Member has recovered to the extent they are able to perform the duties of any occupation for which they are reasonably suited by education, training or experience, but does not earn income equal to or greater than the pay the Member would have received in the position held at the time of disability, the Board may in its discretion:
 - 1. continue to pay a full disability benefit to the disabled Member, or
 - 2. elect to pay the disabled Member a partial disability benefit equal to one-half (½) of the original benefit.
- e. The Board shall have the power to reinstate any disability benefit which has been previously terminated or reduced, provided the disabled Member's condition has worsened due to the same cause for which the disability benefit was originally granted.
- f. The Board may terminate the disability benefit of a Member who does not cooperate with the Board, comply with examinations required by the Board, or provide all financial and medical information as required by the Board in order to establish continued eligibility for disability benefits.

3.05. Recovery from Disability:

- a. Prior to the completion of ten (10) years of Credited Service, if a disabled Member recovers to the extent that the disability benefit is terminated, and the Member does not return to employment covered by the Fund, the Member will receive the excess, if any, of their own contributions (without interest) over the total amount paid to the Member or on the Member's behalf from the Fund. Such amount shall be paid in a lump sum.
- b. After completion of ten (10) years of Credited Service but prior to attainment of age 50, the disability benefit may be terminated or reduced if the Member recovers in accordance with the terms of Section 3.04. However, the Member will be entitled to receive a monthly vested termination benefit described in Section 4, with payments beginning at the end of the month in which the Member attains age 50 and would have completed twenty (20) years of Credited Service had the Member remained in Credited Service.
- c. If a Member begins drawing disability benefits prior to attaining age 50 but after completing twenty (20) years of Credited Service, the monthly disability benefit will end with the payment for the calendar month which precedes the calendar month in which the Member attains age 50. Beginning at the end of the calendar month in which the Member attains age 50, such Member will receive the monthly vested termination benefit described in Section 4 below.

3.06 Exclusions for Disability Retirement Benefits. An active Member will not be eligible to receive a disability retirement benefit if the disability is the result of:

- a. excessive and habitual use by the Member of drugs, intoxicants, or narcotics;
- b. injury or disease sustained by the Member while willfully and illegally participating in fights, riots, civil insurrections, or while committing a felony;
- c. injury or disease sustained by the Member while serving in the armed forces;
- d. injury or disease sustained by the Member diagnosed or discovered subsequent to the date employment has terminated;
- e. any attempt at suicide while sane or insane, or by injuries intentionally self-inflicted;
- f. a pre-existing condition the Member had on the date the Member became an employee of the fire department. A disability shall be considered to result from a pre-existing condition if the Board determines the primary cause of the disability is a pre-existing condition. A condition shall be considered a pre-existing condition if the Board determines the condition commenced, or the cause leading to the condition occurred, before the first day of the Member's most recent continuous and uninterrupted period of active Membership in the Fund.

3.07 General Rules for Application for Disability Benefits:

- a. A Member, an individual, or institution maintaining custody of the Member, or the Member's guardian or other representative, must make an application for initial eligibility for disability benefits in accordance with procedures adopted by the Board.
- b. A Member, an individual, or institution maintaining custody of the Member, or the Member's guardian or other representative, must make an application for continuing eligibility for disability benefits before the end of the first one and one-half year (1½) period of a Member's disability in accordance with procedures adopted by the Board.
- c. The Board shall review the Member's eligibility for disability benefits. The Board may request medical opinions and/or medical examinations of the Member, vocational rehabilitation examinations of the Member, or financial information from the Member to determine if the Member remains eligible to receive disability benefits. The Board shall review the Member's eligibility for disability benefits biennially after the application for continuing disability benefits is approved. The Board may review the Member's eligibility more frequently if the Board believes the Member's condition has changed.

Section 4
Vested Termination Benefits

- 4.01 Eligibility for a Vested Termination Benefit. If a Member has completed at least ten (10) years of Credited Service but is not eligible for service retirement under Section 2 at the time Credited Service is terminated, the Member will be entitled to receive a deferred retirement income beginning at the later of the following: (i) the end of the month in which age 50 is attained, or (ii) the end of the month in which twenty (20) years of Credited Service would have been completed had the Member remained an employee of the Denison Fire Department. However, in order to be eligible to receive a vested termination benefit, the Member must leave their contributions in the Fund. Member contributions are not required after termination of Credited Service in order to receive a vested termination benefit.
- 4.02 Amount of Vested Termination Benefit. A Member who qualifies for a vested termination benefit will receive a monthly benefit equal to the sum of:
- a. A standard service benefit equal to 2.65% of the Member's Highest 24-Month Average Salary multiplied by number of years of Credited Service at date of termination not in excess of twenty (20) years; plus
 - b. an additional service benefit equal to three percent (3%) of the Member's Highest 24-Month Average Salary multiplied by number of years of Credited Service at date of termination in excess of twenty (20) years.
 - c. The maximum accrued termination benefit payable under the Fund is \$7,250 per month if the date of termination is on or after April 8, 2021, but before May 1, 2024. Prior to April 8, 2021, the maximum accrued termination benefit payable under the Fund was \$5,150 per month.
 - d. The accrued termination benefit of each Member of the Fund who was an active Member on May 13, 1998, shall not be less than such Member's accrued termination benefit as of May 13, 1998.
- 4.03 Commencement of Benefits. Payment of the vested termination benefit will be paid on the first business day of the month following the month for which the payment accrues. Payments will first accrue for the month following the later of: (i) the date on which the Member attains age 50 and would have completed twenty (20) years of Credited Service, or (ii) the date on which the Member applies for a vested termination benefit. Payments will continue to accrue through the month in which the Member dies.
- 4.04 Instead of the vested termination benefit described in this paragraph, a Member may elect to receive the return of their own contributions under Section 6. In electing to receive the return of their own contributions, the Member will forfeit all monthly benefits payable under the Fund.

Section 5 Death Benefits

- 5.01 In the event of a Member's death, the Member's Surviving Spouse will receive a monthly benefit for as long as the Surviving Spouse is alive under the conditions set forth in this Section and in the amounts described below:
- a. If the Member's death occurred while in active employment covered under this Fund, the sum of (i) a standard benefit equal to 39.75% of the Member's Highest 24-Month Average Salary; plus (ii) three-fourths (3/4) of any additional service benefit the Member had earned as of the date of death. The maximum monthly death benefit payable under the Fund is \$5,437.50 if the Member's death occurred on or after April 8, 2021, but before May 1, 2024. Prior to April 8, 2021, the maximum monthly death benefit payable under the Fund was \$3,862.50.
 - b. If the Member's death occurred after electing a service retirement, and such service retirement was effective on or after July 27, 1995, three-fourths (3/4) of the monthly benefit the Member was receiving as of the date of death.
 - c. If the Member's death occurred after disability retirement, and such disability retirement was effective on or after July 27, 1995, three-fourths (3/4) of the monthly disability benefit the Member was receiving as of the date of death.
 - d. If the Member terminated service after July 27, 1995, and if the Member was eligible for or receiving a vested termination benefit under Section 4, above, on the date of death, three-fourths (3/4) of the monthly benefit the Member was entitled to receive or was receiving as of the date of death.

The monthly death benefits described in paragraphs a through d, above, will be paid on the first business day of the month following the month for which payment accrues. Payments will first accrue for the month following the month in which the Member's death occurs. Payments will continue to accrue through the month in which the Surviving Spouse dies.

5.02 Remarriage of Surviving Spouse:

- a. If the deceased Member's Surviving Spouse remarries and such remarriage occurs prior to November 20, 2008, the death benefits payable to the Surviving Spouse will cease. After payment of the last monthly child's benefit under the Fund, an amount equal to the excess, if any, of the Member's own contributions (without interest) over the amount of monthly payments which have been made on behalf of the Member, Spouse, and children will be paid to the Surviving Spouse in a lump sum. If the deceased Member's Surviving Spouse is not living at that time, such payment shall be made to the deceased Member's dependent parents, or estate. No City contributions will be refunded.
- b. If the deceased Member's Surviving Spouse remarries and such remarriage occurs on or after November 20, 2008, the death benefits payable to the Surviving Spouse will continue subject to the other terms of the Fund.

5.03 The child's benefit payable upon the death of a Member occurring on or after July 27, 1995.

- a. Each unmarried child of a Member whose death occurs on or after July 27, 1995, will receive a monthly benefit of \$100.
 - b. If the Member's Surviving Spouse dies after becoming entitled to benefit, or if there is no Surviving Spouse, each unmarried child will receive a monthly benefit of \$200.
 - c. The child's benefit will be paid on the first business day of the month following the month for which the payment accrues. Payments will first accrue for the month in which the Member's death occurs. Payments will continue to accrue through the last full calendar month prior to the child's eighteenth (18th) birthday. An increase pursuant to Section b above, if after the payment initially commenced, will accrue for the month in which the deceased Member's Surviving Spouse dies.
 - d. In order for a natural child to be eligible to receive a death benefit under this Section, the child's date of birth must be no later than ten (10) months following the first to occur of the date the Member retires, dies, or terminates service with a vested benefit. In order for an adopted child to receive a death benefit under this Section, the child must have been adopted prior to the first to occur of the date the Member retires, dies, or terminates service with a vested benefit. For the purposes of the benefits described in this Section 5, a child shall be defined as the unmarried, dependent offspring, either natural-born or adopted of a Member.
- 5.04 If no Surviving Spouse or child is entitled to a benefit under Sections 5.01 or 5.03, at the time of the Member's death, the amount the Surviving Spouse would have received will be paid to the Member's dependent parent(s). For the purposes of this Section, a dependent parent is the parent of a deceased Member which such Member was eligible to treat as a dependent for federal income tax purposes for either (i) the calendar year preceding such Member's death; or (ii) the calendar year of such Member's death.
- 5.05 If no Surviving Spouse, child or dependent parent is entitled to a benefit under Sections 5.01, 5.03 or 5.04, an amount equal to the excess, if any, of the Member's own contributions (without interest) over the total amount of payments which have been made or are payable to the Member, Surviving Spouse, child, and/or dependent parents, will be paid to the Member's estate. No City contributions will be refunded.

Section 6
Return of Member's Own Contributions

- 6.01 If a Member terminates Credited Service and is not entitled to a benefit as described above, the Member will receive an amount equal to the excess of their own contributions to the Fund over the amount of benefits which the Member has previously received from the Fund. A Member who terminates Credited Service may elect to receive, at the time of termination, the excess of their own contributions to the Fund over the amount of benefits which the Member has previously received from the Fund; however, the Member will forfeit right to all benefits which they otherwise would have been entitled to receive if such election is made. The amount of the refund shall not include any interest accumulated on account of the Member's contributions.
- 6.02 If a former Member who has previously terminated Credited Service and received a refund of their own contributions under the preceding provisions of this Section is subsequently re-employed by the City Fire Department and again becomes a Member of this Fund, such Member may re-establish under the Fund the Credited Service for previous employment by re-depositing with the Fund an amount determined by the Board that is equal to the full amount of the previous refund to the Member from the Fund plus interest thereon at the rate of eight percent (8%) per annum, compounded annually, from the date of the previous refund to the date of the redeposit. Such redeposit must be made in a single payment actually received by the Fund before the earlier of (1) the date the Member dies or again terminates Credited Service or (2) the date the Member first begins drawing benefits from the Fund. Only the amount of the previous refund that a Member re-deposits into the Fund and not the interest thereon, will be considered a contribution to the Fund by the Member for purposes of any subsequent refund to the Member under the preceding provisions of this Section when the Member again terminates Credited Service. A Member may not purchase Credited Service under this Section for service under another retirement system.

Section 7
Contributions

7.01 Each active Member of the Denison Firemen's Relief & Retirement Fund will make contributions of thirteen and twenty five hundredths percent (13.25%) of his total Compensation or the percentage rate determined by a majority vote of active Members as required in Section 29(a) of the Act. A Member's contribution shall be "picked up" by the City as permitted under Internal Revenue Code §414(h) and excluded from the taxable income of the Member. The contribution "picked up" by the City shall continue to be considered as contributions by the Member for purposes of relevant provisions of the Fund. Any reduction in Compensation of a Member corresponding to the Member's contribution being picked-up by the City shall continue to be taken into consideration in determining the Member's Highest 24-Month Average Salary for purposes of relevant provisions of the Fund.

7.02 The City will make contributions of eighteen percent (18%) of each Member's Compensation.

Section 8

Maximum Benefit

8.01 Annual Benefit:

- a. Effective date. The limitations of this Section apply in Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.
- b. The Annual Benefit otherwise payable to a Member under the Fund at any time shall not exceed the Defined Benefit Dollar Limitation.
- c. Adjustment if in two defined benefit plans. If the Member is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the City, the sum of the Member's Annual Benefits from all such plans may not exceed the Defined Benefit Dollar Limitation. Where the Member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Defined Benefit Dollar Limitation applicable at that age, the Member's benefit shall be limited in accordance with the terms of the plans.
- d. Other rules applicable. The limitations of this Section shall be determined and applied taking into account the rules in Section 8.03.

8.02 Definitions. For purposes of this Section, the following definitions apply.

- a. "Annual Benefit" means a benefit that is payable annually in the form of a "Straight Life Annuity". Except as provided below, where a benefit is payable in a form other than a "Straight Life Annuity," the benefit shall be adjusted to an actuarially equivalent "Straight Life Annuity" that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section. For a Member who has or will have distributions commencing at more than one annuity starting date, the "Annual Benefit" shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new annuity starting date has occurred shall be made without regard to Regulations §1.401(a)-20, Q&A 10(d), and with regard to Regulations §1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a Surviving Spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Member's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this Section, and the Fund provides that the amount payable under the form of benefit in any "Limitation Year" shall not exceed the limits of this Section applicable at the annuity starting date, as increased in subsequent years pursuant to Code §415(d). For this purpose, an automatic benefit increase

feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the "Annual Benefit" shall take into account Social Security supplements described in Code §411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations §1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (1) or (2) below:

- (1) Benefit Forms not Subject to Code §417(e)(3).
 - (i) For Limitation Years beginning before July 1, 2007, the "Straight Life Annuity" which is actuarially equivalent to the Member's form of benefit shall be determined under this subsection (i) for all forms of benefit other than a "Straight Life Annuity". The actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Fund for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table defined in Section 8.02.g.
 - (ii) For Limitation Years beginning on or after July 1, 2007, the "Straight Life Annuity" which is actuarially equivalent to the Member's form of benefit shall be determined under this subsection (ii) if the form of the Member's benefit is either (a) a non-decreasing annuity (other than a "Straight Life Annuity") payable for a period of not less than the life of the Member, or (b) an annuity which decreases during the life of the Member because of (i) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11)). The actuarially equivalent "Straight Life Annuity" is equal to the greater of (I) the annual amount of the "Straight Life Annuity" (if any) payable to the Member under the Fund commencing at the same annuity starting date as the Member's form of benefit; and (II) the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in Section 8.02.g.
- (2) Benefit Forms Subject to Code §417(e)(3).

- (i) Except as provided in (ii), for Limitation Years beginning on and after July 1, 2007, the "Straight Life Annuity" which is actuarially equivalent to the Member's form of benefit shall be determined under this subsection (2) if the form of the Member's benefit is other than a benefit form described in Section 8.02.a(1)(ii) above. The actuarially equivalent "Straight Life Annuity" is equal to the greatest of (I) the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Fund for adjusting benefits in the same form; (II) the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 8.02.g; and (III) the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit, computed using the applicable interest rate defined in Section 8.02.g and applicable mortality table defined in Section 8.02.g, divided by 1.05.
 - (ii) If the annuity starting date of the Member's form of benefit is in a Plan Year beginning in or after 2009, and if the Fund is maintained by an eligible employer as defined in IRC §408(p)(2)(C)(i), the actuarially equivalent Straight Life Annuity is equal to the greatest of (I) the annual amount of the Straight Life Annuity commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified as the Fund for adjusting benefits in the same form, or (II) the annual amount of the Straight Life Annuity commencing at the same annuity starting date which has the same actuarial present value as the Member's form of benefit computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 8.02.g.
- b. "Defined Benefit Dollar Limitation" means, effective for Limitation Years ending after December 31, 2001, \$160,000, automatically adjusted under Code §415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the Defined Benefit Dollar Limitation under Code §415(d) shall apply to Members who have had a separation from employment.

The Defined Benefit Dollar Limitation shall be adjusted as provided below:

- (1) Adjustment for Less Than ten (10) Years of Participation or Service: If the Member has less than ten (10) Years of Participation in the Fund,

the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of Years of Participation in the Fund (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

(2) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the annuity starting date of the Member's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under Section 8.02.b(2)(i), as modified by Section 8.02.b(2)(iii). If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under Section 8.02.b(2)(ii), as modified by Section 8.02.b(2)(ii).

(i) Adjustment of Defined Benefit Dollar Limitation for benefit commencement Before Age 62:

(I) For Limitation Years Beginning Before July 1, 2007, if the annuity starting date for the Member's benefit is prior to age 62, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 8.02.b(1) for Years of Participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Fund; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 8.02.g.

(II) For Limitation Years Beginning on or After July 1, 2007, if the annuity starting date for the Member's benefit is prior to age 62, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the lesser of:

(A) the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 8.02.b(1) for Years of Participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 8.02.g. (and expressing the Member's age based on completed calendar months as of the annuity starting date); or

- (B) the Defined Benefit Dollar Limitation (adjusted under Section 8.02.b(1) for Years of Participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Fund at the Member's annuity starting date to the annual amount of the immediately commencing Straight Life Annuity under the Fund at age 62, both determined without applying the limitations of this Section.
- (ii) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:
 - (I) For Limitation Years Beginning Before July 1, 2007, if the annuity starting date for the Member's benefit is after age 65, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 8.02.b(1) for Years of Participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Fund; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 8.02.g.
 - (II) For Limitation Years Beginning After July 1, 2007, if the annuity starting date for the Member's benefit is after age 65, the Defined Benefit Dollar Limitation at the Member's annuity starting date is the lesser of:
 - (A) the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 8.02.b(1) for Years of Participation less than ten (10), if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 8.02.g (and expressing the Member's age based on completed calendar months as of the annuity starting date); or
 - (B) the Defined Benefit Dollar Limitation (adjusted under Section 8.02.b(1) for Years of Participation less than ten (10), if required) multiplied by the

ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Fund at the Member's annuity starting date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Fund at age 65, both determined without applying the limitations of this Section. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Fund at the Member's annuity starting date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Fund at age 65 is the annual amount of such annuity that would be payable under the Fund to a hypothetical Member who is age 65 and has the same accrued benefit as the Member.

- (iii) Notwithstanding the other requirements of this Section 8.02.b(2), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Fund does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code §417(c), upon the Member's death.
- (3) Notwithstanding anything else in this Section to the contrary, the benefit otherwise payable to a Member under this Fund shall be deemed not to exceed the Defined Benefit Dollar Limitation if:
- (i) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Member under this Fund and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the City do not exceed \$10,000 multiplied by a fraction – (I) the numerator of which is the Member's number of Years (or part thereof, but not less than one (1) year) of Participation (not to exceed ten (10)) with the City, and (II) the denominator of which is ten (10); and the City has not at any time maintained a defined contribution plan in which the Member participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code §401(h), and accounts for post-retirement medical benefits established under Code §419A(d)(1) are not considered a separate defined contribution plan); or

- (ii) the retirement benefits are payable to a Member whose period of service taken into account in determining the benefit under the Fund includes at least fifteen (15) years of service as a full-time employee of any fire department which is organized and operated by the City to provide firefighting services for any area within the jurisdiction of the City; or
 - (iii) the benefits are payable as a pension, annuity or similar allowance from the Fund as the result of the Member becoming disabled by reason of personal injuries or sickness; or
 - (iv) the benefits are payable from the Fund to a beneficiary as a result of the death of the Member.
- c. "City" means, for purposes of this Section, the City that has adopted the Fund, and all Members of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h), all commonly controlled trades or businesses (as defined in Code §414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code §415(h)), or affiliated service groups (as defined in Code §414(m)) of which the City is a part, and any other entity required to be aggregated with the City pursuant to Code §414(o). For the purposes of this Section, City also includes with respect to a Member, a former employer of such Member if the City maintains a plan that provides a benefit which the Member accrued while performing services for the former employer. A former entity that antedates the City is a "Predecessor Employer" with respect to a Member if, under the facts and circumstances, the City constitutes a continuation of all or a portion of the trade or business of the former entity. For this purpose, the formerly affiliated plan rules in Regulations §1.415(f)-1(b)(2) apply as if the City and Predecessor Employer constituted a single employer under the rules described in Regulations §1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulations §1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the Predecessor Employer relationship, such as a transfer of benefits or plan sponsorship.
- d. "Limitation Year" means the twelve (12) month period ending December 31st of each year. The Limitation Year may only be changed by a Fund Amendment. Furthermore, if the Fund is terminated effective as of a date other than the last day of the Fund's Limitation Year, then the Fund is treated as if the Fund had been amended to change its Limitation Year.
- e. "Straight Life Annuity" means an annuity payable in equal installments for the life of a Member that terminates upon the Member's death.
- f. "Year of Participation" means, with respect to a Member, each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the Member is credited with at least the number of Hours of Service (or Period of Service if the Elapsed Time Method is used) for benefit accrual purposes, required under the terms of the Fund in order to accrue a benefit for the accrual computation period, and (2) the

Member is included as a Member under the eligibility provisions of the Fund for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Member shall equal the amount of benefit accrual service credited to the Member for such accrual computation period. A Member who is permanently and totally disabled within the meaning of Code §415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period.

In addition, for a Member to receive a Year of Participation (or part thereof) for an accrual computation period, the Fund must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any twelve (12) month period.

- g. Applicable Actuarial Assumptions. The actuarial assumptions used to determine Code §415 limits under the Fund shall be the interest rate specified in Section 12.03, and the applicable mortality table prescribed by the Secretary of the Treasury under Code §415(b)(2)(E)(v). Effective for distributions with annuity starting dates on or after December 31, 2002, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code §415(b)(2)(B), (C), or (D) as set forth in the Fund is the table described in Revenue Ruling 2001-62. Effective for distributions with annuity starting dates on or after January 1, 2008, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code §415(b)(2)(B),(C) or (D) as set forth in the Fund or any provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning of Code §417(e)(3)(B), as initially described in Revenue Ruling 2007-67. Effective for distributions with annuity starting dates on or after January 1, 2008, the applicable interest rate for the purposes of adjusting any benefit or limitation under Section 9.02.a(2)(i) shall be the rate of interest described in Code §417(e) after its amendment by the Pension Protection Act of 2006. Specifically, the applicable interest rate shall be the adjusted first, second and third segment rates applied under the rules similar to the rules of Code §430(h)(2)(C) for the second calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second and third segment rules are the first, second and third segment rates which would be determined under Code §430(h)(2)(C) if:
- (1) Code §430(h)(2)(D) was applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section;
 - (2) Code §430(h)(2)(G)(i)(II) was applied by substituting "§417(e)(3)(A)(ii)(II)" for "§412(b)(5)(B)(ii)(II)"; and
 - (3) The applicable percentage under Code §430(h)(2)(G) is treated as being 20 percent in 2008, 40 percent in 2009, 60 percent in 2010, and 80 percent in 2011.

8.03 Other rules:

- a. Benefits under terminated plans. If a defined benefit plan maintained by the City has terminated with sufficient assets for the payment of benefit liabilities of all plan Members and a Member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Member's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this Section. If there are not sufficient assets for the payment of all Members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.
- b. Benefits transferred from the Fund. If a Member's benefits under a defined benefit plan maintained by the City are transferred to another defined benefit plan maintained by the City and the transfer is not a transfer of distributable benefits pursuant Regulations §1.411(d)-4, Q&A-3(c), then the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Member's benefits under a defined benefit plan maintained by the City are transferred to another defined benefit plan that is not maintained by the City and the transfer is not a transfer of distributable benefits pursuant to Regulations §1.411(d)-4, Q&A-3(c), then the transferred benefits are treated by the City's Fund as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the City that terminated immediately prior to the transfer with sufficient assets to pay all Members' benefit liabilities under the plan. If a Member's benefits under a defined benefit plan maintained by the City are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Regulations §1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.
- c. Plans of a Predecessor Employer. If the City maintains a defined benefit plan that provides benefits accrued by a Member while performing services for a Predecessor Employer, then the Member's benefits under a plan maintained by the Predecessor Employer shall be treated as provided under a plan maintained by the City. However, for this purpose, the plan of the Predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the Predecessor Employer relationship with sufficient assets to pay Members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the City and the Predecessor Employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the Predecessor Employer.
- d. Special rules. The limitations of this Section shall be determined and applied taking into account the rules in Regulations §1.415(f)-1(d), (e) and (h).

Section 9 Distribution of Benefits

- 9.01 Required Minimum Distributions. The provisions of Code §401(a)(9) are hereby incorporated in the Plan by reference. All distributions of benefits shall satisfy the minimum distribution requirements of such Code §401(a)(9) if the Fund complies with a reasonable and good faith interpretation of Code §401(a)(9).
- 9.02 Direct Transfers of Eligible Rollover Distributions. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

Effective for distributions made on or after March 28, 2005, in the event of a distribution of an Eligible Rollover Distribution greater than \$1,000 that is made in accordance with the provisions of the Plan, if the Member does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, then the Board shall pay the distribution in a Direct Rollover to an individual retirement plan designated by the Board.

a. Definitions:

- (1) An "Eligible Rollover Distribution" is any distribution described in IRC §402(c)(4) and generally includes any distribution of all or any portion of the balance of the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under IRC §401(a)(9), the portion of any distribution that is not includable in gross income (determined without regard to exclusions for net unrealized appreciation with respect to employer securities); any distribution which is made upon hardship of Distributee; and any other distribution reasonably expected to total less than \$200 during a year.

If this Plan contains after-tax employee contributions, then for purposes of the Direct Rollover provisions of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Code §408(a) or (b), or to a qualified defined contribution plan described in Code §401(a) or Code §403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. For taxable years beginning after December 31, 2006, a Member may elect to transfer employee after-tax contributions by means of a Direct Rollover to a qualified plan or to

a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

- (2) An "Eligible Retirement Plan" is an individual retirement account described in Code §408(b), an annuity plan described in Code §403(a), or a qualified trust described in Code §401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

Effective for distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Code §403(b) and 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, and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a Surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Code §414(p).

- (3) A "Distributee" includes an employee or former employee. In addition, the employee's or former employee's Surviving Spouse and the employee's or former employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Code §414(p), are Distributees with regard to the interest of the Spouse or former Spouse.

- (4) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

- b. Written notice. A Member entitled to an "Eligible Rollover Distribution" must receive a written explanation of the right to a "Direct Rollover", the tax consequences of not making a "Direct Rollover", and if applicable, any available special income tax elections. The notice must be provided no less than 30 days and no more than 180 days before the first day on which the distribution is eligible to be made. The "Direct Rollover" notice must be provided to all Members, unless the total amount the Member will receive as a distribution during the calendar year is expected to be less than \$200.

- 9.03 For distributions after December 31, 2009, a non-spouse beneficiary, only as otherwise permitted by the Fund who is a designated beneficiary under Code §401(a)(9)(E) and the Regulations thereunder, by a direct Trustee-to-Trustee transfer (Direct Rollover), may roll over all or any portion of the distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution under Code §401(a)(31).

The distribution is subject to the Direct Rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B)), the notice requirements of Code §402(f) and the

mandatory withholding requirements of Code §3405(c). If a non-spouse beneficiary receives a distribution from the Fund, the distribution is not eligible for a 60-day (non-direct) rollover.

If the Member's named beneficiary is a trust, the Fund may make a Direct Rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Member dies before the required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

9.04 For distributions made after December 31, 2007, a Member or beneficiary may elect to roll over directly an Eligible Rollover Distribution to a Roth IRA described in Code §408A(b). For this purpose, the term Eligible Rollover Distribution includes employee after-tax contributions, if applicable.

9.05 Notwithstanding Section 5 of the Act, a Member may elect to direct the Fund to directly pay deductions from distributions to an accident or health plan or qualified long-term care insurance.

General Rules for the election under Section 9.05:

- a. The deduction will be made from the monthly benefit paid to a Member.
- b. The deduction must be electronically paid directly to a provider of health insurance or qualified long-term care selected by the Member. Each Member can elect a maximum of two such providers to be paid with respect to a Member.
- c. The deduction will be paid to the insurance providers on the first business day of the month.
- d. The maximum monthly deduction for each Member will be \$250.
- e. The Member is responsible for notifying the Fund of any changes to the insurance provider(s) or any changes in the Member's election of deduction amounts.
- f. The Member must complete an election form and submit such form to the Fund.
- g. Neither the Fund nor the Board will make a determination of whether the deductions meet the requirements for exclusion from the Member's gross income pursuant to Code §402(l).

9.06 Facility of Payment. If the Board receives satisfactory evidence that a person entitled to receive a benefit is physically, mentally or legally incompetent to receive the benefit and to give a valid receipt, that an individual or institution is maintaining or has custody of the person and that no guardian, committee or other representative of the estate of the person has been appointed, the Board may direct the payment to the individual or institution maintaining or having the custody of the person. Receipt of that individual or institution shall be a valid and complete discharge for the payment of the benefit. Also, a deposit to the credit of a Member or beneficiary in any bank or trust company shall be deemed payment to a person.

- 9.07 Name and Address Changes. Each Member, Spouse, and beneficiary is responsible to notify the Board of any change in name or address to which the benefit checks and other communications are to be mailed. If any check in payment of a benefit is mailed by regular United States mail to the last address of the payee as shown on the Board's records and is returned unclaimed, the Trustee shall discontinue further payments until corrected information is given to the Board.
- 9.08 Release of Claims. All payments to Members or former Members or beneficiaries shall, to the amount of the payments, be in full satisfaction of claims against the Plan. The Board may require the payee, as a condition precedent to payment, to execute a receipt and release in a form approved by the Board.
- 9.09 Correction of Payment Error. If any error in payment of benefits occurs, including an overpayment, the Fund shall correct such error and may adjust any future payment so the correct benefit will be paid, except as provided in subsection c below, and the Texas Government Code §802.1024(b). The adjustment for an overpayment or underpayment may be made to one or more future payments at the discretion of the Board and pursuant to Texas Government Code §§802.1024 and 802.1025. If no future payments are due, the Board may recover an overpayment in any manner permitted by Section 8 of the Act and Texas Government Code §§802.1024 and 802.1025. The Board must begin the adjustment of future payment to correct an overpayment or recovery of an overpayment not later than the ninetieth (90th) day after the date the notice described below is delivered or the date the second notice described below is mailed
- a. Notice. Upon discovery of an overpayment error but not later than ninety (90) days after discovery, the Board shall give written notice of the overpayment error to the affected person by certified mail, return receipt requested. If the Board does not receive a signed receipt evidencing delivery on or before the thirtieth (30th) day after the date the notice is mailed, the Board shall send the notice a second time, by certified mail, return receipt requested.
 - b. The written notice will include:
 - (1) the amount of the correction;
 - (2) how the correction was calculated;
 - (3) an explanation of the reason for the correction;
 - (4) a statement that the affected person may file a written complaint with the Fund if the affected person does not agree with the correction;
 - (5) instructions for filing a written complaint with the Fund; and
 - (6) a payment plan option if no future payments are due.
 - c. Any overpayment of benefits may not be corrected or recovered if:
 - (1) the overpayment was made more than three (3) years before the date of the discovery of the overpayment; or
 - (2) if the Board does not adjust future payments or begin recovery within the time prescribed above.
 - d. If the affected person files a written complaint, the Board will follow the procedure as set out in Texas Government Code §802.1025.

Section 10
Amendment and Termination

- 10.01 The Board reserves the right to amend or terminate the Fund, subject to the provisions and requirements of the Act.
- a. An amendment or other change adopted shall not deprive a Member of the Fund of a right to receive a vested benefit unless that Member gives written consent or unless the reduction in benefits is made in accordance with Section 16 of the Act.
 - b. All amendments to the Fund shall be made under the procedures prescribed by the Act.
 - c. The Board has the power to make any amendment to the Fund necessary to assure the Fund is and remains qualified for purposes of Code §401 and to obtain a favorable determination letter from the IRS.
 - d. In the event of termination of the Plan, the rights of all Members to the benefits accrued to the date of such termination (to the extent funded as of such date) shall be non-forfeitable. In such event, the Plan assets will be allocated and paid in accordance with applicable law. No such termination shall cause any part of the corpus or income of the Plan to be used for or diverted to purposes other than the exclusive benefit of Members or their beneficiaries. No assets shall revert to the City.

Section 11
Board of Trustees

- 11.01 The duties and responsibilities of the Board shall include, but not necessarily be limited to, the following:
- a. To construe the provisions of the Fund and determine all questions arising hereunder.
 - b. To determine all questions relating to eligibility and participation.
 - c. To determine and certify the amount of all benefits hereunder.
 - d. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Fund.
 - e. To receive and process all applications for benefits.
 - f. To authorize all payments whatsoever from the Fund and to notify the disbursing agent in writing of approved benefit payments and other expenditures arising through the operation of the Fund.
 - g. To perform such other duties required to administer the Fund.
 - h. To invest and reinvest the assets of the Fund.
 - i. Any powers and functions of the Board may be performed or carried out by the Board through authorized agents provided the Board at all times maintains continuous supervision over the acts of any such agent.
- 11.02 The Board shall establish administrative procedures to be utilized in processing claims or matters which affect the substantial rights of any person, including Participants, retirees, beneficiaries or any person affected by a decision of the Board.
- 11.03 Any person or persons involved in the administration of the Plan shall be entitled to rely upon any representation made or evidence furnished by a Member or beneficiary with respect to age or other facts required to be determined under any of the provisions of the Plan and shall not be liable on account of the payment of any monies in reliance on those representations. Any representation or evidence shall be binding upon the Member or beneficiary making or furnishing it but not upon the City, the Board or any other person or persons involved in the administration of the Plan. Any of those parties may contest any representation or evidence. Each Member and beneficiary has a duty to submit satisfactory proof of age and other facts.

Section 12
Miscellaneous Provisions Applicable to the Fund

- 12.01 It shall be impossible under this Plan and trust, at any time prior to the satisfaction of all liabilities with respect to Members and their beneficiaries under the Plan and trust for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of Members or their beneficiaries. In the event of termination of the Plan or complete discontinuance of contributions under the Plan, the rights of all Members to benefits accrued to the date of such termination or discontinuance (to the extent funded as of such date), shall be nonforfeitable.
- 12.02 Forfeitures shall not be applied to increase the benefits any Member would otherwise receive under the Plan.
- 12.03 For the purposes of calculating actuarially equivalent benefits, the following assumptions shall be used for all Plan participants unless other factors are specified in the Plan:
- Mortality: UP 1994 Mortality Table, Male Rates, set back three years
Interest: Eight percent per annum, compounded annually
- 12.04 The right of any Member or beneficiary to any benefit or payment under this Fund shall not be subject to voluntary or involuntary transfer, alienation, or assignment;
- a. All amounts in the Fund and all rights accruing or accrued under the Fund to any Member or beneficiary are exempt from garnishment, attachment, execution, state and municipal taxation, sale, levy, and any other process and are unassignable. This provision is expressly intended to comply with and be subject to the provisions of §§42.0021 and 121.055 of Texas Property Code.
 - b. The above prohibition shall also apply to the creation, assignment, or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order under Subchapter A of Chapter 804 of the Texas Government Code.
 - c. Payments may be made to an alternate payee under a qualified domestic relations order only if the Board determines an order constitutes a qualified domestic relations order (Qualified Domestic Relations Order) as defined by Subchapter A of Chapter 804 of the Texas Government Code. A Qualified Domestic Relations Order may not (i) require the Plan to provide any type or form of benefits or any option that is not otherwise provided herein, (ii) require the Plan to provide increased benefits, and (iii) require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another Qualified Domestic Relations Order.
- 12.05 If any provision of this Plan is held to be illegal or invalid, such illegal or invalid provision shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal or invalid provision had never been in the Plan.
- 12.06 All provisions of the Fund shall be administered under the laws of the State of Texas unless superseded by federal law.

12.07 The Board has adopted the provisions of Subchapter A and Subchapter C of Chapter 804 of Texas Government Code. This election is intended to comply with the provisions of §804.002 of the Texas Government Code.

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