

**GREENVILLE FIREFIGHTERS' RELIEF  
AND RETIREMENT FUND**

**Plan Document Effective**

**December 8, 2020**

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## GREENVILLE FIREFIGHTERS' RELIEF AND RETIREMENT FUND

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

### W I T N E S S E T H:

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

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


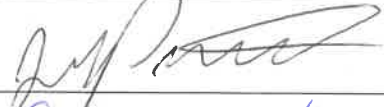


NOW, THEREFORE, to carry such amendment and restatement into effect, the Board of Trustees does hereby adopt the amended and restated Greenville Firefighters' Relief and Retirement Fund, the terms and conditions of which are fully set out in the attached Sections 1 through 13, which are incorporated by reference.

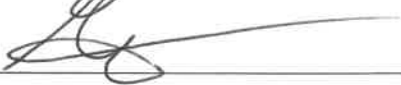
Except as otherwise specifically designated in the Plan, the Effective Date of the Plan as hereby amended and restated is December 8, 2020.

The provisions of the Plan set out below shall be applicable to all Members of the Greenville Firefighters' Relief and Retirement Fund who are active Members of the Fund as of December 8, 2020, 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 December 8, 2020, shall be as specified under the Fund provisions in effect prior to this amendment.

Signed this 8th day of December, 2020.

TRUSTEES OF THE GREENVILLE FIREFIGHTERS' RELIEF AND RETIREMENT FUND

## **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 Greenville Firefighters' Relief and Retirement Fund. The Board of Trustees shall be the plan administrator.
- 1.03 "City" shall mean the City of Greenville, 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 include all compensation, wages and other earnings paid to a Member by reason of employment including regular, longevity and overtime pay, as limited below, and pay received during a period of sick leave or vacation.

"Compensation" shall not include any of the following for any purpose:

- a. Payments for accrued but unused leave, including sick leave, vacation pay, holiday pay or comp time covering periods for which salary, compensation or benefits are paid.
- b. Effective for amounts earned after December 8, 2020, any payments for service performed outside the scope of the Member's regular employment including but not limited to specialty team deployment call back pay; call back pay while serving under contract with another agency (TEMAT, Task Force, Texas forest service, TIFMAS, etc.).
- c. Compensation in excess of 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 amount 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 but shall not be included for the purposes of determining the Highest 36-Month Average Salary.

The Board shall have the authority to determine whether any compensation, wages or earnings not enumerated in this definition is included in Compensation.

- 1.06 "Fund" or "Plan" shall mean the Greenville Firefighters' Relief and Retirement Fund.
- 1.07 "Highest 36-Month Average Salary" will be equal to a Member's average total Compensation (as defined in Section 1.05) for the seventy-eight (78) consecutive full pay periods which produces the highest average, during the Member's entire period of Service, multiplied by 2.167.

If a Member retires under the Deferred Retirement Option Plan (DROP), the above definition shall be applied as if the Member had Terminated Service on his DROP Eligibility Date.

If at the time of his death or disability, a Member has less than seventy-eight (78) pay periods, his average salary will be computed as though he had been employed for the previous seventy-eight (78) pay periods. For the period prior to his employment, the Member will be deemed to have held the rank or employment grade at which he entered the department. His pay, based upon such rank or grade above, will be assumed to have been the amount he would have received if he had been employed by the fire department during that period.

- 1.08 "Member" shall mean each employee of the Greenville Fire Department and each employee of the Public Safety Communications Department of the City of Greenville, Texas, if such employee is younger than thirty-six (36) years of age on the date the individual is certified under civil Service as eligible for a beginning position with the Department. 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 of Trustees.
- 1.09 "Plan Year" shall mean the twelve month period ending December 31 of each year.
- 1.10 "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. Service will be calculated in completed months. Solely for the purpose of determining a Member's eligibility for a Vested Termination Benefit, Service also includes periods during which the Member received a disability retirement benefit from the Fund, not to exceed the number of years of Service to bring a Member's Service to twenty (20) years. If a disabled Member recovers to the extent that his disability benefits are terminated and he returns to employment covered by the Fund, his Service will include such periods during which the Member received disability benefits although such periods shall not cause the Member's total Service to exceed twenty (20) years as of the date of his return to employment covered by the Fund. If a Member has twenty (20) or more years of Service at the time he becomes disabled, Service will equal the number of years that the Member had worked on the date that he or she became disabled.

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.

To "Terminate Service," a participating Member shall be required to terminate employment from the City fire department and from any position of employment with the City in an emergency, medical or fire-department related capacity. The Board of Trustees in its sole discretion will determine whether any position of employment with the City is an emergency, medical or fire department related capacity. The Board of Trustees shall have the sole power and discretion to determine if a participating Member has Terminated Service and shall determine all questions arising in connection with the interpretation of whether a participating Member has Terminated Service.

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

- 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 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 if he Terminates Service on or after he has met both of the following requirements:

- a. attainment of age 50; and
- b. completion of twenty (20) years of 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 3.15% of the Member's Highest 36-Month Average Salary multiplied by his number of years of Service at Termination of Service not in excess of twenty (20) years; plus
- b. an additional service benefit equal to \$63 per month multiplied by his number of years of Service at retirement in excess of twenty (20) years. A partial year of Service will be given based on the Member's number of months of Service completed in excess of whole years.
- c. The service retirement benefit specified above shall be paid through the month in which the Member's death occurs.

The accrued service retirement benefit of each Member of the Fund who was an active Member on December 31, 2003, shall not be less than such Member's accrued service retirement benefit as of December 31, 2003.

2.03. Early Retirement Benefits:

- a. Eligibility for Early Retirement. A Member will be eligible to elect early retirement benefits if his Termination of Service occurs on or after the date he has met both of the following requirements:
  - 1. attainment of age 45; and
  - 2. completion of twenty (20) years of Service.
- b. Amount of Early Retirement Benefit. The monthly amount of benefit payable to a Member who elects early retirement will be calculated in the same manner as a regular Service retirement benefit under Section 2.02, except that the benefit shall be multiplied by the factor from Table A below based on the Member's attained age at Termination of Service.

TABLE A

Years	-MONTHS-											
	0	1	2	3	4	5	6	7	8	9	10	11
45	69.90%	70.32%	70.73%	71.15%	74.56%	71.98%	72.40%	72.81%	73.23%	73.64%	74.06%	74.47%
46	74.89%	75.35%	75.81%	76.27%	76.73%	77.19%	77.65%	78.10%	78.56%	79.02%	79.48%	79.94%
47	80.40%	80.90%	81.40%	81.90%	82.40%	82.90%	83.40%	83.90%	84.40%	84.90%	85.40%	85.90%
48	86.40%	86.94%	87.48%	88.02%	88.56%	89.10%	89.65%	90.19%	91.27%	91.27%	91.81%	92.35%
49	92.89%	93.48%	94.08%	94.67%	95.26%	95.85%	96.45%	97.04%	98.22%	98.22%	98.82%	99.41%

Once a Member has begun receiving early retirement payments, his election to take early retirement benefits may not be changed. A Member who terminates prior to age 50 with at least twenty (20) years of Service may elect to receive his retirement benefits under this Section 2.03 in lieu of receiving a full retirement benefit at age 50. Such early retirement benefits may begin once the vested terminated Member has attained age 45.

- 2.04 Commencement of Service or Early Retirement Benefits. Payment of service retirement benefits and early retirement benefits will be made in the last seven (7) days of the month for which the payment accrues or the first day of the month following the month for which the payment accrues. Payments will first accrue for the month following the month in which occurs the later of (i) the Member's Termination of Service, or (ii) the Member's application for a retirement benefit. A partial monthly benefit will accrue in the month in which occurs the later of (i) the Member's Termination of Service, or (ii) the Member's application for a retirement benefit. The partial month benefit is equal to the monthly benefit, multiplied by the number of days from the date described above 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**  
**The Deferred Retirement Option Plan (DROP)**

- 3.01 Eligibility for the Deferred Retirement Option Plan. A Member will be eligible to elect to receive his benefits under the Deferred Retirement Option Plan (DROP) if his Termination of Service occurs on or after the date he has met both of the following requirements:
- a. attainment of age 53; and
  - b. completion of twenty-three (23) years of Service.
- 3.02 Amount of Deferred Retirement Option Plan Benefits:
- a. Under the Deferred Retirement Option Plan, a Member elects to have his benefits calculated as if he had Terminated Service on his DROP Eligibility Date. A Member's DROP Eligibility Date is the latest of (i) the date he meets the eligibility requirements specified in Section 3.01 above, or (ii) the date two (2) years prior to the date he Terminates Service with the fire department, or (iii) a later date selected by the Member.
  - b. The monthly benefit of a Member who elects to receive his benefits under the Deferred Retirement Option Plan will be based on his Highest 36-Month Average Salary and his years of Service as of his DROP Eligibility Date. The benefit formula under which the Member's benefit will be calculated, however, will be the service retirement formula of the plan document in effect on his actual date of Termination of Service.
  - c. In addition to his monthly retirement benefit, a Member who retires under the DROP will also be entitled to receive a lump sum amount (the "DROP payment"). The DROP payment will equal the sum of 1 and 2, below, where:
    1. is the Member's monthly retirement benefit as of his DROP Eligibility Date multiplied by the number of months between the Member's DROP Eligibility Date and his date of Termination of Service under the DROP option; and
    2. is equal to (A) minus (B), where (A) equals the amount of the Member's accumulated contributions as of his date of Termination of Service and (B) equals the amount of the Member's accumulated contributions as of his DROP Eligibility Date.
- 3.03 General Rules for Election of the Deferred Retirement Option:
- a. Election of the Deferred Retirement Option Plan is in lieu of service retirement benefits.
  - b. The Member must give thirty days written notice of his intention to elect the Deferred Retirement Option Plan to the Board of Trustees of the Fund. Otherwise, his DROP payment may be delayed up to thirty (30) days.
  - c. If a Member dies while in active Service after giving the thirty (30) days written notice to receive benefits under the Deferred Retirement Option Plan, his

Spouse will receive the DROP payment which the Member would have received had he retired on the date of his death. The monthly survivor's benefit paid under Section 6 will be based on the Member's Highest 36-Month Average Compensation and Service as of the Member's DROP Eligibility Date.

3.04 Form of Payment of Deferred Retirement Option Plan Benefits:

- a. A Member who elects to receive benefits under the Deferred Retirement Option Plan shall irrevocably elect to receive the DROP payment in a single installment by giving written notice to the Board of Trustees of the Fund at the time the Member's election of the Deferred Retirement Option Plan is made.
- b. The DROP payment shall be made to the Member or, if the Member is not living at the time the DROP payment is made, as set forth below, according to the Member's election, without regard to whether the Member or the Member's Spouse is living at the time the payment is made. In the event the Member's Spouse is not living at the time of the Member's death, the DROP payment shall be made in equal amounts to any children eligible for benefits under Section 6.02. In the event no children are eligible for benefits under Section 6.02 at the time of the Member's death, the DROP payment not yet made shall be made to the recipient as determined pursuant to Section 6.03 and 6.04.
- c. The monthly retirement benefit specified above shall be paid through the month in which the Member's death occurs.

## **Section 4**

### **Disability Retirement Benefits**

- 4.01 Eligibility for Disability Benefit. An active Member will qualify for a disability benefit if he becomes disabled from any cause whatsoever for either physical or mental reasons before he meets the eligibility requirements necessary to qualify for a service retirement benefit as described in Section 2 above. For the first two and one-half (2½) years, a Member need only be disabled to the extent he is unable to perform the duties of the position which he held at the time he became disabled or another position of covered employment for which he receives equal or greater pay. Thereafter, he must be unable to perform the duties of any occupation for which he is reasonably suited by education, training or experience.
- 4.02 Amount of Disability Retirement Benefit. The disability benefit will equal the sum of:
- a. a standard monthly benefit equal to 63 percent of the Member's Highest 36-Month Average Salary as computed through the last full month in which the Member received a salary; plus
  - b. an additional service benefit in an amount equal to \$63 per month for each year of Service in excess of twenty (20) years of Service. A partial year of Service will be given based on the Member's number of months of Service completed in excess of whole years.
- 4.03 Commencement of Disability Retirement Benefits. Payment of the monthly disability benefit will be made in the last seven (7) days of the month for which the payment accrues. Payments will first accrue after the later of (i) the Member's regular salary, including vacation and sick leave pay, has ceased as a result of his disability; or (ii) if a disabled Member receives a lump sum of accumulated pay, including vacation and sick leave pay, following a period of time which would have passed had the Member received his accumulated pay in regular biweekly installments instead of a lump sum.
- Disability benefits will continue to accrue for as long as the Member is living remains eligible for benefits under Section 4.
- 4.04 Termination, Reduction or Reinstatement of Disability Benefit. The Board of Trustees shall have the power to continue, to terminate, to reduce, or to reinstate a Member's disability benefit, subject to the following limitations:
- a. During the first two and one-half (2½) years of a Member's disability, the Board of Trustees shall terminate the Member's disability benefit if the Member recovers to the extent he is able to perform the duties of the position which he held at the time he became disabled.
  - b. After the Member has received disability benefits from the Fund for at least two and one-half (2½) years, the Board of Trustees shall terminate the Member's disability benefit if the Member has recovered to the extent he is able to perform the duties of any occupation for which he is reasonably suited by education, training or experience.
  - c. The Board of Trustees shall review the situation of a disabled Member periodically to determine the status of his disability.

- d. Notwithstanding subparagraph b above, the Board may, at 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 ( $\frac{1}{2}$ ) of the original disability 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 he was originally granted a disability benefit.
- f. Notwithstanding the above, if the Board of Trustees determines that a disabled Member is receiving disability benefits as a result of any of the following disabilities, the Member's disability benefit shall not be subject to the power of the Board of Trustees to terminate or reduce the disability benefits provided hereinabove:
  - (i) Loss of sight in both eyes;
  - (ii) Loss of the use of both hands;
  - (iii) Loss of the use of both feet;
  - (iv) Loss of the use of one hand and one foot; or
  - (v) Loss of hearing or loss of speech.

#### 4.05 Recovery from Disability:

- a. Prior to the completion of twenty (20) years of Service, if a disabled Member recovers to the extent his disability benefit is terminated and does not return to Service, the Member will receive the excess, if any, of his own contributions (without interest) over the total amount paid to him or on his behalf from the Fund. Such amount shall be paid in a lump sum.
- b. After both attainment of age 50 and completion of twenty (20) years of Service, a full disability benefit will be paid if the Member recovers to the extent that his disability benefit would otherwise be terminated or reduced.
- c. After completion of twenty (20) years of 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 4.04. However, the Member will be entitled to receive a monthly benefit equal to the full disability benefit he was receiving prior to his recovery, with payments beginning at the end of the month in which he attains age 50. Such Member may also elect to receive early retirement benefits (once he has attained age 45).

#### 4.06 Pre-existing Condition. The foregoing notwithstanding, an employee who first becomes an active Member after May 19, 1997, or who re-enters Service following Termination of Service after May 19, 1997, will not qualify for a disability benefit if his disability results from a pre-existing condition. A disability shall be considered to result from a pre-existing condition if the Board of Trustees determines the primary cause of the

disability is a pre-existing condition. A condition shall be considered a pre-existing condition if the Board of Trustees 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 Service. A determination of the Board of Trustees hereunder shall be made in the sole discretion of the Board of Trustees by majority vote of the Trustees present at a meeting at which a quorum is present, and such determination shall be binding and conclusive.

4.07 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 of Trustees.
- 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 two and one-half (2½) year period of a Member's disability in accordance with procedures adopted by the Board of Trustees.

## **Section 5**

### **Vested Termination Benefits**

- 5.01 Eligibility and Amount. If a Member has completed at least twenty (20) years of Service but has not attained age 50 at the time his Service terminates, he will be entitled to receive a deferred retirement income beginning at the end of the month in which he attains age 50. The amount of the deferred benefit will be equal to the retirement benefit specified in Section 2, determined as if the Member has retired on the day he terminated Service.
- 5.02 Commencement of Benefits. Payment of the vested termination benefit will be made in the last seven (7) days of the month for which the payment accrues or on the first day of the month following the month for which the payment accrues. Payments will first accrue for the month following the month in which occurs the later of (i) the date the Member attains age 50, or (ii) the Member's application for a vested termination benefit. A partial payment will accrue for the month in which occurs the later of (i) the date on which the Member attains age 50, or (ii) the Member's application for a vested termination benefit. The partial monthly benefit is equal to the benefit described in Section 5.01, multiplied by the number of days from the date described above 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's death occurs.
- 5.03 Return of Contributions. Instead of the vested termination benefit described in this Section, a Member may elect to receive the return of his own contributions under Section 7. In electing to receive the return of his own contributions, the Member will forfeit all monthly benefits payable under the Fund.

## **Section 6**

### **Death Benefits**

6.01 In the event of a Member's death, the Member's Surviving Spouse will receive an immediate monthly benefit for as long as she is alive under the conditions and in the amounts described below:

- a. if the Member's death occurred before Termination of Service, the sum of (i) a standard benefit equal to forty-two percent (42%) of the Member's Highest 36-Month Average Salary; plus (ii) two-thirds (2/3) of any additional Service benefit the Member had earned as of the date of his death;
- b. if a Member who has Terminated Service with a vested benefit dies prior to the date his benefits commence, a standard death benefit equal to two-thirds (2/3) of the benefit the Member was entitled to receive at age 50;
- c. if the Member's death occurred after service retirement, disability retirement, early retirement or after the commencement of vested termination benefits, a monthly benefit equal to two-thirds (2/3) of the monthly amount the Member was receiving from the Fund as of the date of his death.

The monthly death benefits will be paid during the last seven (7) days of the month for which the payment accrues or on the first day of the month following the month for which the payment accrues. The payments accrue in the month following the month in which the Member's death occurs. For the monthly death benefit described in Section 6.01.a, a partial monthly benefit accrues in the month in which the Member dies equal to the monthly death benefit, multiplied by the number of days from the Member's date of death to the end of the month, and divided by the total number of days in the month. The payments will continue to accrue through the month for the Surviving Spouse's death.

6.02 The child's benefit payable upon the death of an Member who had not Terminated Service, a Member who was receiving service or disability retirement benefits, or a Member who Terminated Service with twenty (20) or more years of Service is as follows:

- a. each unmarried child will receive a monthly benefit of 8.40% of the Member's Highest 36-Month Average Salary;
- b. if the deceased Member's Surviving Spouse dies after being entitled to a death benefit or if there is no Surviving Spouse, each unmarried child will receive a monthly benefit of 16.80% of the Member's Highest 36-Month Average Salary.
- c. The benefits described in this Section 6.02 will be paid during the last seven (7) days 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. Payment will continue to accrue through the last full calendar month prior to the child's eighteenth (18<sup>th</sup>) birthday. An increase pursuant to subsection b above, if after the payment initially commenced, will accrue for the month following the month in which the deceased Member's Surviving Spouse dies.

- d. The benefits described in this Section 6.02 are payable from age 18 to age 22, as long as the child remains a full-time student between those ages. If a child becomes totally disabled as a result of physical or mental illness, injury or retardation, prior to the date that he ceases to be eligible for the death benefits described above, monthly benefits shall be continued to such child after age 17 for as long as the child remains totally disabled.
  - e. 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 6.02, a child shall be defined as the unmarried, dependent offspring, either natural-born or adopted of a Member.
- 6.03 If no Surviving Spouse or child is entitled to a benefit under Sections 6.01 or 6.02, 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.
- 6.04 If no Surviving Spouse, child or dependent parent is entitled to a benefit under Sections 6.01, 6.02 or 6.03, 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.
- 6.05 The sum of all monthly benefits being paid or payable at any point in time shall not exceed:
- a. for a Member who Terminated Service under the regular service retirement or the disability provisions, the benefit the Member was receiving as of the date of his death;
  - b. for a Member who Terminated Service under the early retirement provisions, the total amount of the early retirement benefit the Member was entitled to receive at the date he Terminated Service;
  - c. for a Member who had not Terminated Service but was eligible for service retirement at the time of his death, the service retirement benefit the Member would have received had he Terminated Service on the date of his death; and
  - d. for a Member who had not Terminated Service and was not eligible for service retirement at the time of his death, the disability retirement benefit the Member would have received had he become disabled on his date of death.

If the sum of all benefits payable on behalf of the Member's Surviving Spouse and children would otherwise exceed the limits set forth above, then the benefit attributable to the Surviving Spouse and each child shall be reduced by the same percentage, so that the sum of the reduced benefits equals the applicable limit. If the



benefits for the Surviving Spouse or one or more of the children should subsequently be terminated, then the benefits for the remaining beneficiaries shall be recalculated to provide the full benefits specified in the Plan or a larger pro rata share of those benefits, if the sum of the benefits still exceeds the above limits.

These limitations shall not apply to post-death benefit increases provided after the initial benefit has commenced.

- 6.06 If the Member's Surviving Spouse remarries, no further monthly payments will be made to such Surviving Spouse after the date of remarriage. If no children's benefits are being paid at the time of the remarriage, 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, Surviving Spouse and children will be paid to the Surviving Spouse in a lump sum.

**Section 7**  
**Return of Member's Own Contributions**

If a Member Terminates Service and is not entitled to a benefit as described above, he will receive an amount equal to the excess of his own contributions to the Fund over the amount of benefits which he has previously received from the Fund. A Member who Terminates Service may elect to receive, at the time of his termination, the excess of his own contributions to the Fund over the amount of benefits which he has previously received from the Fund; however, if the Member makes such an election, he will forfeit his right to all benefits which he otherwise would have been entitled to receive. The amount of the refund shall not include any interest accumulated on account of the Member's contributions.

## **Section 8**

### **Contributions**

- 8.01 Each Member of the Fund will make contributions of 16.3 percent of his Compensation (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 and vacation pay and any payments for service performed outside the scope of the Member's regular employment including but not limited to specialty team deployment call back pay; call back pay while serving under contract with another agency (TEMAT, Task Force, Texas forest service, TIFMAS, etc.)) or the percentage rate determined by a majority vote of active Members as required in Section 29(a) of the Act. A Member's contributions shall be "picked up" by the City, as permitted under 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 the 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 36-Month Average Salary for purposes of relevant provisions of the Fund.
- 8.02 The City will make contributions of 21.3 percent of Compensation (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 and vacation pay and any payments for service performed outside the scope of the Member's regular employment including but not limited to specialty team deployment call back pay; call back pay while serving under contract with another agency (TEMAT, Task Force, Texas forest service, TIFMAS, etc.)).

## **Section 9**

### **Maximum Benefit**

#### **9.01 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. Annual Benefit. 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 9.03.

#### **9.02 Definitions.** For purposes of this Section, the following definitions apply.

- a. Annual Benefit. "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 the following:

- (1) "Limitation Years" beginning before July 1, 2007. For "Limitation Years" beginning before July 1, 2007, the actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date that 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 9.02.g.
- (2) "Limitation Years" beginning on or after July 1, 2007. For "Limitation Years" beginning on or after July 1, 2007, 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 9.02.g.

- b. Defined Benefit Dollar Limitation. "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 10 Years of Participation or Service: If the Member has less than 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 9.02.b(2)(i), as modified by Section 9.02.b(2)(iii). If the annuity starting date is after age 65, the "Defined Benefit Dollar Limitation" shall be adjusted under Section 9.02.b(2)(ii), as modified by Section 9.02.b(2)(ii).
- (i) Adjustment of "Defined Benefit Dollar Limitation" for benefit commencement Before Age 62:
- (I) "Limitation Years" Beginning Before July 1, 2007. If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a "Limitation Year" beginning before July 1, 2007, 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 9.02.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 9.02.g.
- (II) "Limitation Years" Beginning on or After July 1, 2007. If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, 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 9.02.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 9.02.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 9.02.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) "Limitation Years" Beginning Before July 1, 2007. If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, 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 9.02.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 9.02.g.
  - (II) "Limitation Years" Beginning After July 1, 2007. If the annuity starting date for the Member's benefit is after age 65 and occurs in a "Limitation Year" beginning on or after July 1, 2007, 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 9.02.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 9.02.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 9.02.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 9.02.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. "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. "Limitation Year" means the twelve-month period ending December 31<sup>st</sup> 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. "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. "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 13.03., 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.

#### 9.03. 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 provided 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 10**

### **Distribution of Benefits**

10.01 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).

10.02 Direct Transfers of Eligible Rollover Distributions.

a. 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.

b. Definitions.

- (1) Eligible rollover distribution: 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 to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent that such distribution is required under Code §401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any distribution which is made upon the hardship of distributee; and any other distribution reasonably expected to total less than \$200 during a year.
- (2) Eligible retirement plan: 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.
- (3) Distributee: 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) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

- c. Member 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 thirty (30) days and no more than one hundred eighty (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.

The provisions of this Section shall be effective January 1, 1993.

Effective for distributions made after December 31, 2001, for purposes of the direct rollover provisions of the plan, 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).

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 includible 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 includible in gross income and the portion of such distribution which is not so includible. 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.

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 of Trustees shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board of Trustees.

- 10.03 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 his or her 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 sixty (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 his or her 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 five (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.

- 10.04 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.
- 10.05 HELPS. 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.
- 10.06 Facility of Payment. If the Board of Trustees 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 of Trustees 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.
- 10.07 Name and Address Changes. Each Member, Spouse, and beneficiary is responsible to notify the Board of Trustees of any change in his name or address to which his 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 of Trustees' records and is returned unclaimed, the Trustee shall discontinue further payments until corrected information is given to the Board of Trustees.
- 10.08 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 of Trustees may require the payee, as a condition precedent to payment, to execute a receipt and release in a form approved by the Board of Trustees.
- 10.09 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 (90<sup>th</sup>) 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 of Trustees 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 (30<sup>th</sup>) 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 11**  
**Amendment and Termination**

- 11.01 The Board of Trustees 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 his 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 to insure 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 12**

### **Board of Trustees**

- 12.01 The duties and responsibilities of the Board of Trustees 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 of Trustees may be performed or carried out by the Board of Trustees through authorized agents provided the Board at all times maintains continuous supervision over the acts of any such agent.
- 12.02 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.
- 12.03 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 his 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 of Trustees 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 his age and other facts.

**Section 13**  
**Miscellaneous Provisions Applicable to the Fund**

- 13.01 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.
- 13.02 Forfeitures shall not be applied to increase the benefits any Member would otherwise receive under the Plan.
- 13.03 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  
Interest: Eight percent per annum, compounded annually
- 13.04 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.
- 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 of Trustees 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.
- 13.05 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.
- 13.06 All provisions of the Fund shall be administered under the laws of the State of Texas unless superseded by federal law.
- 13.07 The Board of Trustees 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.

- 13.08 Any member whose benefits may be affected by a domestic relations order must submit a Qualified Domestic Relations Order(QDRO) to the chairman of the Board or the Plan Administrator. Such QDRO shall comply with Chapter 804 of the Texas Government Code, as amended, and related regulations. All QDRO's are subject to Board approval. Any expenses incurred by the Board to confirm compliance with the Texas Government Code, as amended, and related regulations, including legal fees, shall be paid by the member or the affected spouse if requested by the Board.

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