

A G E N D A

A regular meeting of the Board of Trustees of the Waxahachie Firemen's Relief and Retirement (FR&R) Fund to be held at Waxahachie Fire Station No. 1, 407 Water Street, Waxahachie, Texas, on ***Monday, July 14, 2025, at 8:30 a.m.***

BOARD MEMBERS: Scott Safford, Chairman
 Jeff Aycock, Vice Chairman
 Shane Petty, Secretary
 Chris Wright, Council Member, Place 3
 Chad Tustison, Senior Finance Director
 Lee Statham
 Phillip Young

1. Call to Order
2. ***Public Comments:*** Persons may address the Waxahachie Firemen's Relief and Retirement (FR&R) Fund on any issues. This is the appropriate time for citizens to address the Board on any concern whether on this agenda or not. In accordance with the State of Texas Open Meetings Act, the Board may not comment or deliberate such statements during this period, except as authorized by Section 551.042, Texas Government Code.

3. Consent Agenda

All matters listed under Item 3, Consent Agenda, are considered to be routine by the Board Members and will be enacted by one motion. Approval of the Consent Agenda authorizes the Chairman to execute all matters necessary to implement each item. Any item may be removed from the Consent Agenda for separate discussion and consideration by any Board Member.

- a. Minutes of the regular Firemen's Relief & Retirement Fund meeting of June 9, 2025
 - b. Amended annuity checks for FR&R Retirees and other disbursements for the month of June 2025
 - c. Annuity checks for FR&R Retirees and other disbursements for the month of July 2025
4. Discuss and consider Amendment 15 Changing Section 1.06, Eligible Child
5. Discuss and consider Amendment 16 Changing Section 1.09, Highest 60 Month Salary
6. Discuss and consider Amendment 17 Changing Section 2, Payments
7. Discuss and consider Amendment 18 Changing Section 3.04e, DROP Estate
8. Discuss and consider Amendment 19 Changing Section 4.02, Disability Payments
9. Discuss and consider Amendment 20 Changing Section 4.03, Disability Payments
10. Discuss and consider Amendment 21 Changing Section 5, Vested Termination

11. Discuss and consider Amendment 22 Changing Section 6 Death Benefits
12. Discuss and consider Amendment 23 Changing He/She
13. Discuss and consider Amendment 24 Changing Section 8, Spiking
14. Discuss and consider Amendment 25 Changing Section 2, Benefit Formula
15. Discuss and consider the recodified Plan Document dated July 14, 2025
16. Set next meeting date and time of Firemen's Relief and Retirement Fund Board August 11, 2025
17. Adjourn

The Board reserves the right to go into Executive Session as authorized by Section 551.071(2) of the Texas Government Code, for the purpose of seeking confidential legal advice from legal counsel on any agenda item listed herein. This meeting location is wheelchair-accessible. Parking for mobility-impaired persons is available. Any request for sign interpretive services must be made forty-eight hours ahead of the meeting. To make arrangements, call the City Secretary at 469-309-4006 or (TDD) 1-800-RELAY TX

Notice of Potential Quorum

One or more members of the Waxahachie City Council may be present at this meeting.

No action will be taken by the City Council at this meeting.

A regular meeting of the Board of Trustees of the Waxahachie Firemen's Relief and Retirement (FR&R) Fund was held at Waxahachie Fire Station No. 1, 407 Water Street, Waxahachie, Texas, on Monday, June 9, 2025, at 8:30 a.m.

Members Present: Scott Safford, Chairman
 Jeff Aycock, Vice Chairman
 Chris Wright, Mayor Pro Tem
 Phillip Young

Members Absent: Shane Petty, Secretary
 Chad Tustison, Senior Finance Director
 Lee Statham

1. Call to Order

Chairman Scott Safford called the meeting to order at 8:30 am.

2. Public Comments

None.

3. Consent Agenda

- a. Minutes of the regular Firemen's Relief & Retirement Fund meeting of May 12, 2025
- b. Annuity checks for FR&R Retirees and other disbursements for the month of June 15, 2025

Action

Chris Wright moved to approve all items on the consent agenda. The motion was seconded by Phillip Young and carried unanimously (4-0).

4. Discuss and consider the Audit dated September 30, 2024

Action

Jeff Aycock moved to accept the audit dated September 30, 2024 as presented. The motion was seconded by Phillip Young and carried unanimously (4-0).

5. Discuss and consider the invoice from YWRD for September 30, 2024 Audit in the amount of \$21,254.25

Action

Chris Wright moved to approve and pay the invoice from YWRD in the amount of \$21,254.25. The motion was seconded by Phillip Young and carried unanimously (4-0).

6. Discuss and consider a refund of contributions for Roberto Sanchez in the amount of \$5,721.79

(3a)

Firemen's Relief and Retirement Fund

June 9, 2025

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Action

Jeff Aycock moved to approve a refund of contributions for Roberto Sanchez in the amount of \$5,721.79. The motion was seconded by Phillip Young and carried unanimously (4-0).

7. **Discuss and consider the 2nd quarter invoice from Marnier in the amount of \$7,500.00**

Action

Phillip Young moved to approve and pay the invoice from Marnier in the amount of \$7,500.00. The motion was seconded by Jeff Aycock and carried unanimously (4-0).

8. **Discuss and consider the 2nd quarter invoice from Gary Myers in the amount of \$3,000.00**

Action

Jeff Aycock moved to approve and pay the invoice from Gary Myers in the amount of \$3,000.00. The motion was seconded by Chris Wright and carried unanimously (4-0).

9. **Discuss and consider potential Plan Document changes and amendments**

The Board discussed Amendment #24 over spiking. This amendment has been changed. Neither the City nor the Firefighter shall make contributions on deployment overtime pay.

No action taken.

10. **Set next meeting date and time of Firemen's Relief and Retirement Fund Board July 14, 2025**

11. **Adjourn**

The meeting adjourned at 8:56 a.m.

Respectfully submitted,

Gary Myers
Administrator

MEMORANDUM

(3b)

TO: FR&R Board Members
FROM: Gary Myers, Plan Administrator
DATE: Monday, July 14, 2025
SUBJECT: Amended Annuity Payments for the Month of June 2025 for Retirees/Beneficiaries

Alexander	Donald
Alexander	Jeffery
Banks	Dwight
Bennett	Don
Bratcher	Billy
Carrington	Paul
Chenault	John
Cobb	Sharon
Creclius	Dennis
Creed	Lori
Crow	Len
Evans	Karen
Fuller	Donald
Gilley	Dorothy
Hamilton	Denise
Hamilton	Steven
Irvin	James
Johnston	Randy
Junkin	Pam
Kuykendall	Terry
Lewis	Sammy
Lindsey	Kylie
Lindsey	Karsyn
Lindsey	Kallen
Maeker	David
Marrs	Jeffery
Martin	J
Morgan	Alan
Muirhead	Randal
Myers	Gary
Nunn	Carol
Ogletree	Billy
Potter	Randall
Rodgers	John
Rust	Paul
Skipper	Terry
Slay	Mike
Sport	Jeffery
Sykes	Jerry
Tillery	Daryl Anne
Turner	John Olin
Turner	Sharon
Warren	Lisa
Williams	Sidney
Wilson	Darla
Wilson	Kaleb

\$127,980.54

(3c)

MEMORANDUM

TO: FR&R Board Members
FROM: Gary Myers, Plan Administrator
DATE: Monday, July 14, 2025
SUBJECT: Annuity Payments for the Month of July 2025 for Retirees/Beneficiaries

Alexander	Donald
Alexander	Jeffery
Banks	Dwight
Bennett	Don
Bratcher	Billy
Carrington	Paul
Chenault	John
Cobb	Sharon
Crececius	Dennis
Creed	Lori
Crow	Len
Evans	Karen
Fuller	Donald
Gilley	Dorothy
Hamilton	Denise
Hamilton	Steven
Irvin	James
Johnston	Randy
Junkin	Pam
Kuykendall	Terry
Lewis	Sammy
Lindsey	Kylie
Lindsey	Karsyn
Lindsey	Kallen
Maeker	David
Marrs	Jeffery
Martin	J
Morgan	Alan
Muirhead	Randal
Myers	Gary
Nunn	Carol
Ogletree	Billy
Potter	Randall
Rodgers	John
Rust	Paul
Skipper	Terry
Slay	Mike
Sport	Jeffery
Sykes	Jerry
Tillery	Daryl Anne
Turner	John Olin
Turner	Sharon
Warren	Lisa
Williams	Sidney
Wilson	Darla
Wilson	Kaleb

\$128,143.30

(4-14)

AMENDMENT 15 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made on this 14 day of July 2025 by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 1.06 shall be added and all following number renumber according to read as follows:

1.06 "Eligible Child" shall mean a child who is unmarried and is a dependent of a deceased Firefighter. A child is either the Firefighter's natural-born child or legally adopted child. For a natural-born child to be eligible, the child's date of birth must be no later than ten (10) months following the first to occur of the date the Firefighter retires or dies or terminates service with a vested benefit. For an adopted child to be eligible, the child must have been adopted prior to the first to occur of the date the Firefighter retires or dies or terminates service with a vested benefit.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(4-14)

AMENDMENT 16 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made on this 14 day of July 2025 by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 1.09 "Highest 60 Month Average Salary" be replaced in its entirety with the following:

1.09 "Highest 60-Month Average Salary" will be equal to the sum of (a), (b) and (c) divided by 60, where:

- (a) is equal to total Compensation during the calendar year in which the Firefighter Terminates Service,
- (b) is equal to the sum of the total Compensation during the four calendar years within the ten (14) calendar years prior to the year in which the Firefighter Terminates Service in which the Firefighter earned his/her highest compensation,
- (c) is equal to total Compensation during the calendar year in which the Firefighter earned his/her fifth highest annual compensation within the ten (10) calendar years prior to the year in which the Firefighter Terminated Service multiplied by a fraction, the numerator of which is 365 reduced by the number of paid days of Service in the year in which the Firefighter Terminated Service including days worked in the previous calendar year but paid in the year of Termination of Service and the denominator of which is 365.

If at the time of death or disability, the Firefighter has been paid for less than ten (10) years, but at least five (5) years prior to the year in which the Firefighter Terminated Service, the five (5) calendar years prior to the year in which the Firefighter Terminates Service shall be used in items (b) and (c) above will be determined over the actual number of calendar years prior to the year in which the

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Firefighter Terminated Service rather than ten (10) years.

If at the time of death or disability, the Firefighter has been paid for less than 60 months, the Firefighter's highest 60-month average will be the monthly average of his/hers service time.

The calculation of Highest 60-Month Average Salary is made as of the earliest of the Firefighter's death, disability, Termination of Service or DROP Benefit Calculation Date.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

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AMENDMENT 17 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 2.02c shall be removed and replaced with Section 2.03 to read as follows:

2.03 Payment of the monthly service retirement benefit will begin on the 15th day of the calendar month following the month in which the Firefighter Terminates Service. In addition, for the month in which the Firefighter Terminates Service, a partial monthly benefit will also be paid on the 15th day of the month following the month in which the Firefighter Terminates Service. This partial benefit is equal to the benefit described above multiplied by a fraction, the numerator of which is the number of days from the date of the Firefighter's Termination of Service to the end of the month, and the denominator of which is the total number of days in the month of the Firefighter's Termination of Service. The firefighter will receive a benefit for the month the Firefighter dies. The firefighter's benefit shall cease the month following the month the Firefighter dies.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

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AMENDMENT 18 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 3.04.e be replaced in its entirety with the following:

- e. If a Firefighter who elects the Reverse DROP dies after Termination of Service but before the Reverse DROP lump sum amount described in Section 3.02.d has been completely paid to the Firefighter, then the Firefighter's beneficiary or if there is no beneficiary, the Firefighter's estate will receive the remaining portion of the Reverse DROP lump sum payment.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(4-14)

AMENDMENT 19 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 4.02.f the words "last day of the calendar" be removed.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(4-14)

AMENDMENT 20 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 4.03 be replaced in its entirety with the following:

4.03 Amount of Disability Retirement Benefit, First Two Years:

- a. When a Disability is Considered "Duty Related":
 - i. If the Board has determined that the impairment which caused a Firefighter to be terminated from active duty with the fire department resulted from the performance of that Firefighter's duties as a Firefighter,
 - ii. And the Firefighter was an active paid firefighter at the time of termination of service with the fire department,

Then the Firefighter's initial disability benefit will be a standard monthly benefit equal to the benefit as calculated in Section 2.02. For a duty related disability, the years of service will be equal to a minimum of twenty (20) years.

- b. When a Disability is Not Considered "Duty Related":

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- i. If the Board has determined that the impairment which caused a Firefighter to be terminated from active duty with the fire department was not from the performance of that Firefighter's duties as a Firefighter,
- ii. And the Firefighter was an active paid firefighter at the time of termination of service with the fire department,

Then the Firefighter's initial disability benefit will be a standard monthly benefit equal to the benefit as calculated in Section 2.02. The Firefighter's actual years of service will be used.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

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AMENDMENT 21 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on July 14, 2025, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 5.01.a be removed and section 501. b and 501.c be re-lettered.

Section 5.01.b the words "on or after August 1,1997, but" be removed

Section 5.03 the words "this Section" be replaced with the words "Section 5.01 above"

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

AMENDMENT 22 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 6 be replaced in its entirety with the following:

Section 6
Death Benefits

- 6.01 Conditions and Amounts of Benefits payable to Surviving Spouse. A Surviving Spouse is defined in Section 1.12. The Firefighter's Surviving Spouse will receive a benefit subject to the conditions and in the amounts described below:
- a. If a Firefighter's death occurred while he was in active employment covered under the Fund the Surviving Spouse shall receive a monthly benefit. This benefit will be equal to two-thirds (2/3) of the service retirement benefit the Firefighter would have received if he had retired on the day of his death as calculated in Section 2.02.
 - b. If the Firefighter's death occurred following the Firefighter's service retirement, disability retirement, or vested retirement the Surviving Spouse shall receive a monthly benefit. This benefit will be equal to two-thirds (2/3) of the service, disability, or vested retirement benefit the Firefighter was receiving at the date of death.
 - c. The benefits payable to a Surviving Spouse shall be payable for as long as the Surviving Spouse lives and does not remarry. The benefits shall terminate upon remarriage of the Surviving Spouse.
 - d. Each Surviving Spouse claiming death benefits must certify by February 1 of each year, in a form and manner acceptable to the Board, that said spouse has not

remarried since the death of the Firefighter and is not married as of the time of said declaration. The failure to provide such certification as set out herein shall be grounds for discontinuance of benefits.

- e. The death benefits payable to a Surviving Spouse are not a vested accrued benefit and may be amended.

6.02 Conditions and Amounts of Benefits Payable to an eligible Child:

An eligible child is defined in Section 1.06. An eligible child may receive a benefit under the conditions and amounts described below:

- a. A death benefit may be paid to each eligible child upon the death of a Firefighter, a service retired Firefighter, a disabled retired Firefighter or a vested retired Firefighter in the amount described below.
 - i. If a Surviving Spouse is also receiving a benefit, each Eligible Child will receive a monthly benefit of ten percent (10%) of the service retirement benefit the Firefighter was receiving or would have received if he had retired on the day of his death as calculated in Section 2.02
 - ii. If no Surviving Spouse is receiving a benefit, each Eligible Child will receive a monthly benefit of fifteen percent (15%) of the service retirement benefit the Firefighter was receiving or would have received if he had retired on the day of his death as calculated in Section 2.02
 - b. The benefits defined in Section 6.02 are payable until the child reaches the age of 18. The benefits defined in Section 6.02 are payable from age 18 to age 25 as long as the child remains a full-time student between these ages. The Board in its sole discretion, shall determine if a Child is a full time Student.
 - c. If the child becomes totally disabled as a result of a physical or mental illness, injury or retardation, the benefits defined in Section 6.02 are payable after age 17 and for as long as the child remains totally disabled. The Board of Trustees, in its sole discretion, shall determine if the Child is Disabled.
 - d. The death benefits payable to a child are not a vested accrued benefit and may be amended.
- 6.03 When all of the Death Benefits described in Section 6 above have ceased a lump sum amount equal to the excess, if any, of the Firefighter's contributions (without interest) over the amount of payments made on behalf of the Firefighter will be paid to the Firefighter's Estate. No other death benefits will be payable.
- 6.04 The sum of all monthly benefits being paid or payable at any point in time shall not exceed:
- a. for a service, disabled, or vested retired Firefighter, the amount of service, disability or vested retirement benefit the Firefighter was receiving.
 - b. for a Firefighter who was not retired but was eligible for service retirement at his/her time of death, the service retirement benefit the Firefighter

(4-14)

would have received had the Firefighter retired on the date of death; and

- c. for a Firefighter who was actively employed with Fire Department at the time of his death the benefit will be the service retirement benefit the Firefighter would have received had the firefighter retired on the day of his death.

If the sum of all benefits payable on behalf of the Firefighter'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 benefit 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 this plan or a larger pro-rata share of those benefits if the sum of the benefits still exceeds the above-mentioned limit.

- 6.05 Payment of monthly benefits will begin the calendar month following the Firefighter's death.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(4-14)

AMENDMENT 23 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Throughout the entire Plan Documents

He has been replaced with He/She. This accrued 27 times.

His has been replaced with His/Her. This accrued 52 times.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(4-14)

AMENDMENT 24 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 1.05 "Compensation" shall be amended to include:

Effective July 14, 2025, overtime on deployment pay received by a Firefighter for the performance of disaster response services for the Texas Intrastate Fire Mutual Aid System ("Deployment Duties") will not be treated as Compensation for the purposes of the Fund, except as otherwise provided in Section 8.03. For the avoidance of doubt, Compensation will continue to include any overtime pay that is earned from the Waxahachie Fire Department, even if such overtime pay is earned as a result of a Firefighter taking the shift of, or otherwise filling in for, another Firefighter who is performing Deployment Duties.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(4-14)

AMENDMENT 25 TO
WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

This Amendment is made this 14 day of July 2025, by
The Board of Trustees, hereafter the Board.

WITNESSETH:

WHEREAS, the Board did heretofore adopt on May 8, 2023, a restated plan document of the WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND (herein referred to as "the Fund"); and

WHEREAS the Board now desires to amend the provisions of the Fund Plan Document effective immediately.

NOW, THEREFORE, to carry such Amendment into effect, the Board does hereby amend said Fund and all instruments thereof heretofore executed effective immediately, as follows:

I.

Section 2.02 "Amount of Normal Service Retirement Benefit" shall be replaced in its entirety with the following:

2.02. Amount of Normal Service Retirement Benefit. A Firefighter who qualifies for a normal service retirement benefit will receive a monthly service retirement benefit as follows:

a. a standard monthly retirement benefit is equal to the sum of:

- i. 2.60% of the Firefighter's Highest 60-Month Average Salary multiplied by the lesser of (A) his/her years of Service before January 1, 2020 (including fractions), or (B) twenty-seven (27) years.

Plus

- ii. 2.50% of the Firefighter's Highest 60 Month Average Salary, multiplied by the first (1) through tenth (10) years of Service earned on or after January 1, 2020 (including fractions)

Plus

- iii. 2.50% of the Firefighter's Highest 60 Month Average Salary Multiplied by the eleventh (11) through twenty seventh (27) years of service earned on or after January 1, 2020 (including fractions).

(4-14)

Plus

- iv. 1.30% of the Firefighter's Highest 60-Month Average Salary, multiplied by the Years of Service in excess of twenty-seven (27) Years of Service (including fractions)
 - b. A partial Year of Service will be given partial credit based on the number of whole days completed in excess of whole years.
- 2.03 Payment of the monthly service retirement benefit will begin on the 15th day of the calendar month following the month in which the Firefighter Terminates Service. In addition, for the month in which the Firefighter Terminates Service, a partial monthly benefit will also be paid on the 15th day of the month following the month in which the Firefighter Terminates Service. This partial benefit is equal to the benefit described above multiplied by a fraction, the numerator of which is the number of days from the date of the Firefighter's Termination of Service to the end of the month, and the denominator of which is the total number of days in the month of the Firefighter's Termination of Service. The firefighter will receive a benefit for the month the Firefighter dies. The firefighter's benefit shall cease the month following the month the Firefighter dies.

II.

The Fund, as amended hereinabove and all instruments thereof heretofore executed, be and are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Board has called these presents to be executed on the day and year first written above.

(15)

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

Plan Document Effective

July 14, 2025

Waxahachie Firemen's Relief and Retirement Fund**Plan Document Effective May 8, 2023**

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WAXAHACHIE 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 on May 8, 2023, the Waxahachie Firemen's Relief and Retirement Fund Plan 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 Waxahachie Firemen's Relief and Retirement Fund Plan, 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 July 14, 2025

The provisions of the Plan set out below shall be applicable to all Firefighters of the Waxahachie Firemen's Relief and Retirement Fund who are active Firefighters of the Fund as of July 14, 2025, and to those who become Firefighters of the Fund on or after that date. The benefits of each Firefighter who had retired, become disabled, or terminated, as well as each beneficiary whose benefits had already been determined as of July 14, 2025, shall be as specified under the Fund provisions in effect prior to this amendment.

Signed this **14** day of **July 2025**.

TRUSTEES OF THE WAXAHACHIE FIREMEN'S RELIEF AND RETIREMENT FUND

Scott Safford

Chris Wright

Jeff Aycock

Chad Tustison

Shane Petty

Phillip Young

Lee Statham

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 Waxahachie Firemen's Relief and Retirement Fund. The Board of Trustees shall be the plan administrator.
- 1.03 "City" shall mean the City of Waxahachie, 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 Firefighter's total pay. Total pay includes all elements of 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 upon termination. If a Firefighter's total pay has been offset (reduced) by Worker's Compensation benefits, then total pay shall also include the amount by which the total pay was offset (reduced) as required by the Texas Labor Code. The annual Compensation of each Firefighter 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). 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.

Effective July 14, 2025, overtime on deployment pay received by a Firefighter for the performance of disaster response services for the Texas Intrastate Fire Mutual Aid System ("Deployment Duties")¹ will not be treated as Compensation for the purposes of the Fund. For the avoidance of doubt, Compensation will continue to include any overtime pay that is earned from the Waxahachie Fire Department, even if such overtime pay is earned as a result of a Firefighter taking the shift of, or otherwise filling in for, another Firefighter who is performing Deployment Duties.

- 1.06 "Eligible Child" shall mean a child who is unmarried and is a dependent of a deceased Firefighter. A child is either the Firefighter's natural-born child or legally adopted child. For a natural-born child to be eligible, the child's date of birth must be no later than ten (10) months following the first to occur of the date the Firefighter retires or dies or terminates service with a vested benefit. For an adopted child to be eligible, the child must have been adopted prior to the first to occur of the date the Firefighter retires or dies or terminates service with a vested benefit.

- 1.07 "Fund" or "Plan" shall mean the Waxahachie Firemen's Relief and Retirement Fund.
- 1.08 "Firefighter" shall mean any actively employed employee of the Waxahachie Fire Department and any other person designated by the Board of Trustees in accordance with 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 of Trustees.
- 1.09 "Highest 60-Month Average Salary" will be equal to the sum of (a), (b) and (c) divided by 60, where:
- (a) is equal to total Compensation during the calendar year in which the Firefighter Terminates Service,
 - (b) is equal to the sum of the total Compensation during the four calendar years within the ten (10) calendar years prior to the year in which the Firefighter Terminates Service in which the Firefighter earned his/her highest compensation,
 - (c) is equal to total Compensation during the calendar year in which the Firefighter earned his/her fifth highest annual compensation within the ten (10) calendar years prior to the year in which the Firefighter Terminated Service multiplied by a fraction, the numerator of which is 365 reduced by the number of paid days of Service in the year in which the Firefighter Terminated Service including days worked in the previous calendar year but paid in the year of Termination of Service and the denominator of which is 365.

If at the time of death or disability, the Firefighter has been paid for less than ten (10) years, but at least five (5) years prior to the year in which the Firefighter Terminated Service, the five (5) calendar years prior to the year in which the Firefighter Terminates Service shall be used in items (b) and (c) above will be determined over the actual number of calendar years prior to the year in which the Firefighter Terminated Service rather than ten (10) years.

If at the time of death or disability, the Firefighter has been paid for less than 60 months, the Firefighter's highest 60 month average will be the monthly average of his/her service time.

The calculation of Highest 60-Month Average Salary is made as of the earliest of the Firefighter's death, disability, Termination of Service or DROP Benefit Calculation Date.

- 1.10 "Plan Year" shall mean the twelve-month period ending September 30 of each year.
- 1.11 "Service" will be equal to the Firefighter's number of years of continuous employment (computed to completed days) with the Fire Department of the City of Waxahachie during which a Firefighter pays into and keeps on deposit in the Fund, the contributions required by the Fund.

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 other provision to the contrary, contributions, benefits and Service with respect to qualified military Service will be provided in accordance with Code §414(u). In the case of a death or disability occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Firefighter are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military

service) provided under the Fund as if the Firefighter had resumed and then re-terminated employment on account of death. 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 Firefighter 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 Firefighter has Terminated Service and shall determine all questions arising in connection with the interpretation of whether a Firefighter has Terminated Service.

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

- 1.12 "Spouse" shall mean the lawful wife or husband of a Firefighter. Surviving Spouse shall mean the Firefighter's Spouse on the earlier of his/her date of retirement or his/her Termination of Service and at the date of the Firefighter's death.
- 1.13 "Termination Date" is the date the firefighter leaves the employment of The City of Waxahachie's Fire Department.
- 1.14 The "Reverse DROP Benefit Calculation Date" will be the date of the payroll ending immediately prior to the Firefighter's date of Termination of Service minus the DROP period elected.

Section 2
Service Retirement Benefits

2.01 Eligibility for Normal Service Retirement Benefit. A Firefighter will be eligible for a normal service retirement benefit after he/she has met all of the following requirements:

- a. Firefighters employed before July 1, 2005:
 - 1. Attainment of age 50,
 - 2. Completion of twenty (20) years of Service, and
 - 3. Termination of Service.
- b. Firefighters employed on or after July 1, 2005:
 - 1. Attainment of age 55,
 - 2. Completion of twenty (20) years of Service, and
 - 3. Termination of Service.

A Firefighter shall become fully vested in the Firefighter's service retirement benefit on the date the Firefighter meets the applicable age and service requirements set forth above. The date the Firefighter meets the applicable requirements set forth above shall be such Firefighter's normal retirement age.

2.02. Amount of Normal Service Retirement Benefit. A Firefighter who qualifies for a normal service retirement benefit will receive a monthly service retirement benefit as follows:

- a. a standard monthly retirement benefit is equal to the sum of:
 - i. 2.60% of the Firefighter's Highest 60-Month Average Salary multiplied by the lesser of (A) his/her years of Service before January 1, 2020 (including fractions), or (B) twenty-seven (27) years.

Plus
 - ii. 2.50% of the Firefighter's Highest 60 Month Average Salary, multiplied by the first (1) through tenth (10) years of Service earned on or after January 1, 2020 (including fractions)

Plus
 - iii. 2.50% of the Firefighter's Highest 60 Month Average Salary Multiplied by the eleventh (11) through twenty seventh (27) years of service earned on or after January 1, 2020 (including fractions).

Plus
 - iv. 1.30% of the Firefighter's Highest 60-Month Average Salary, multiplied by the Years of Service in excess of twenty-seven (27) Years of Service (including fractions)
- b. A partial Year of Service will be given partial credit based on the number of whole days completed in excess of whole years.

- 2.03 Payment of the monthly service retirement benefit will begin on the 15th day of the calendar month following the month in which the Firefighter Terminates Service. In addition, for the month in which the Firefighter Terminates Service, a partial monthly benefit will also be paid on the 15th day of the month following the month in which the Firefighter Terminates Service. This partial benefit is equal to the benefit described above multiplied by a fraction, the numerator of which is the number of days from the date of the Firefighter's Termination of Service to the end of the month, and the denominator of which is the total number of days in the month of the Firefighter's Termination of Service. The firefighter will receive a benefit for the month the Firefighter dies. The firefighter's benefit shall cease the month following the month the Firefighter dies.

Section 3
The Reverse Deferred Retirement Option Provision (Reverse DROP)

3.01 Eligibility for the Reverse Deferred Retirement Option Provision. A Firefighter can elect to receive his/her benefits under a Reverse Deferred Retirement Option Provision (Reverse DROP) as follows:

- a. A Firefighter who was hired before July 1, 2005 and has attained the age of Fifty-Two (52) may elect a Reverse DROP Benefit Calculation Date which is One (1) to Thirty-Six (36) whole months prior to the Firefighter's Termination of Service. The DROP Calculation Date shall not be before the Firefighter's 52 birthday and shall not be before the Firefighter's 20th anniversary with the Fire Department.
- b. A Firefighter who was hired after July 1, 2005, and before August 15, 2018 and has attained the age of Fifty-Five (55) may elect a Reverse DROP Benefit Calculation Date which is One (1) to Thirty-Six (36) whole months prior to the Firefighter's Termination of Service. The DROP Calculation Date shall not be before the Firefighter's 52 birthday and shall not be before the Firefighter's 20th anniversary with the Fire Department.
- c. A Firefighter who was hired on or after August 15, 2018, and has attained the age of Fifty-Five (55) may elect a Reverse DROP Benefit Calculation Date which is One (1) to Thirty-Six (36) whole months prior to the Firefighter's Termination of Service. The DROP Calculation Date shall not be before the Firefighter's 55 birthday and shall not be before the Firefighter's 20th anniversary with the Fire Department.
- d. The Reverse DROP is not a vested accrued benefit, and the provisions of the Reverse DROP may be amended.

3.02. Amount of Reverse Deferred Retirement Option Provision Benefits:

- a. The monthly service retirement benefit of a Firefighter who elects a Reverse DROP payment will be based on his/her Highest 60-Month Average Salary prior to the Reverse DROP Benefit Calculation Date and his/her years of Service as of his/her Reverse DROP Benefit Calculation Date. The benefit formula under which the Firefighter's benefit will be calculated will be the service retirement formula of the plan document as of his/her Termination of Service.
- b. In addition to his/her monthly retirement benefit, a Firefighter who Terminates Service under a Reverse DROP election will also be entitled to receive a Reverse DROP payment. The Reverse DROP payment is a lump sum amount equal to the sum of 1 and 2, below, where:
 1. is the Firefighter's contributions between the Reverse DROP Benefit Calculation Date and the date of the Firefighter's Termination of Service, and
 2. is the Firefighter's monthly retirement benefit as of his/her Reverse DROP Benefit Calculation Date as determined in Section 3.02.a multiplied by the number of whole months between the Firefighter's Reverse DROP Benefit Calculation Date and the first day of the month in which the Firefighter's Termination of Service occurs.

- c. If the Firefighter dies after his/her Reverse DROP election, the death benefit of the Firefighter's Surviving Spouse will be two-thirds (2/3) of the monthly retirement benefit determined in Section 3.02.a.

3.03. Form of Payment of Reverse Deferred Retirement Option Provision Benefits:

A Firefighter who elects to receive a Reverse DROP payment will receive the Reverse DROP payment within one hundred eighty (180) days of receipt by the Fund of an irrevocable Benefit Distribution form signed by the Firefighter.

3.04. General Rules for Election of the Reverse Deferred Retirement Option:

- a. A Firefighter's election to participate in Reverse DROP is irrevocable.
- b. A Firefighter's election to participate must be in writing on an election form prepared by the Board of Trustees.
- c. A Firefighter can elect to receive the Reverse DROP payment by filing a completed Benefit Distribution Form with the fund's administrator. A Firefighter can amend the Benefit Distribution Form at any time prior to the date of a distribution of the Reverse DROP payment. A Firefighter may elect up to two (2) Reverse DROP payments per calendar year.
- d. Should the Firefighter fail to file a Benefit Distribution Form with the Fund's administrator by the time he/she or she attains age 70½, such Firefighter will be deemed to have elected to receive the Reverse DROP payment no later than December 31 of the year the Firefighter attains age 70½.
- e. If a Firefighter who elects the Reverse DROP dies after Termination of Service but before the Reverse DROP lump sum amount described in Section 3.02.d has been completely paid to the Firefighter, then the Firefighter's beneficiary or if there is no beneficiary, the Firefighter's estate will receive the remaining portion of the Reverse DROP lump sum payment.
- e. A Firefighter electing to participate in Reverse DROP will be eligible to receive the Normal Service Retirement Benefit described in Section 2 calculate to the Reverse DROP Benefit Calculation Date.

Section 4 Disability Retirement Benefits

4.01 Application for Disability Retirement: Determination of Impairment Rating:

- a. **Standard for Degree of Impairment.** The doctor's evaluation of impairment under these provisions shall, for determining both the existence and degree of a Firefighter's impairment, use the most recent edition then existing of the Guides to the Evaluation of Permanent Impairment as published by the American Medical Association.
- b. **Application.** To receive disability retirement benefits, a Firefighter must file an application (or an application must be filed on behalf of the Firefighter) with the Board of Trustees (the "Board"). The application shall be on a form provided by the Board. The Board shall furnish the Firefighter with a written description of the duties of the Firefighter's position in the fire department and the duties of any other position (an "equivalent" position) in the fire department that could be offered to the Firefighter that would provide the Firefighter with pay that is at least equal to the pay the Firefighter would have been receiving if the injury or illness had not occurred.
- c. **Statement by Attending Physician.** The application, as filed by or on behalf of a Firefighter, must contain a sworn statement of the Firefighter's medical condition, signed by a doctor attending the Firefighter. The statement should assign a whole-body impairment rating as determined by the doctor and state the clinical and/or laboratory test and results upon which it is based. The statement signed by the doctor should further state whether or not, in the doctor's opinion, the Firefighter is (as a result of physical or mental impairment) incapable of performing the duties of the Firefighter's position or an equivalent position in the fire department.
- d. **Statement of Firefighter.** The application also must contain a sworn statement of the circumstances under which the disability arose, signed by the Firefighter or by another person who has reason to know these circumstances. The application shall also contain such other information as the Board from time to time may require in order to determine the Firefighter's eligibility.
- e. **Certification by Designated Doctor.** The Board shall designate a doctor to determine if the Firefighter meets the requirements for a disability retirement benefit. The doctor selected by the Board should be familiar with illnesses or injuries such as those suffered by the Firefighter and should be trained in the determination of impairment ratings. The doctor may make a determination hereunder solely on the basis of the application and supporting documentation, or may examine or cause the Firefighter to be examined by other health professionals in order to make a determination hereunder. The designated doctor shall assign a whole-body impairment rating to the impairment and shall state whether or not, in the opinion of the designated doctor, the Firefighter (as a result of physical or mental impairment) is incapable of performing the duties of the Firefighter's position or an equivalent position in the fire department. The designated doctor shall certify that rating and opinion to the Board, which shall promptly furnish a copy to the Firefighter.

- f. **Conclusive Effect if by Agreed Doctor.** If the Board and the Firefighter mutually agreed in writing on the doctor to be designated, the findings of the doctor shall be conclusive.
- g. **Time Within Which Firefighter May Dispute Findings.** If the Firefighter did not agree on the doctor to be designated and disputes the findings of the doctor, the Firefighter must file a notice to that effect with the Board within fifteen (15) days after the finding was mailed to the Firefighter's address as shown on the application. If the Firefighter does not file such a notice within the fifteen (15) day time period, the findings of the designated doctor shall be conclusive.
- h. **Findings by a Third Doctor, When Applicable.** If the Firefighter files the notice described in the preceding paragraph within the fifteen (15) day time limit, the designated doctor and the doctor who signed the application shall jointly designate a third doctor who should be familiar with illnesses or injuries such as those suffered by the Firefighter and should be trained in the determination of impairment ratings. The third doctor shall assign a whole body impairment rating to the impairment, shall certify that rating to the Board and shall state whether or not, in the opinion of that doctor, the Firefighter (as a result of physical or mental impairment) is incapable of performing the duties of the Firefighter's position or an equivalent position in the fire department. The findings made by the third doctor shall be conclusive.

4.02 Eligibility for Disability Retirement:

- a. An active Firefighter will qualify for a disability benefit if he/she becomes disabled (whether on-duty or off-duty) for either physical or mental reasons. For the first two (2) years, the Firefighter need only be disabled to the extent of being unable to perform the duties of his/her position or an equivalent position in the fire department. Thereafter, he/she must be unable to perform the duties of any occupation for which he/she is reasonably suited by education, training or experience. If a disabled Firefighter is gainfully employed while drawing a disability benefit, the monthly disability retirement benefit may be reduced or terminated as described in Section 4.04.
- b. The Firefighter will not be entitled to receive any disability retirement benefit if the disability is a result of:
 - i. Excessive and habitual use by the Firefighter of drugs, intoxicants or narcotics.
 - ii. Injury or disease sustained by the Firefighter while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony.
 - iii. Injury or disease sustained by the Firefighter while serving in any armed forces.
 - iv. Injury or disease sustained by the Firefighter diagnosed or discovered subsequent to the date his/her employment has terminated; or
 - v. Any attempt at suicide, while sane or insane, or by injuries intentionally self-inflicted.

- c. **Board Action on Application.** Regardless of the specific impairment rating, if the conclusive finding under Section 4.01 is that the Firefighter (as a result of physical or mental impairment) is not capable of performing the duties of the Firefighter's position or the equivalent position of the fire department, the Board shall approve the application and grant the Firefighter disability retirement, except as provided in Section 4.02.c. If the conclusive finding under Section 4.01 is that the Firefighter is capable of performing the duties of the Firefighter's position or the equivalent position in the fire department, the Board shall deny the application regardless of the specific impairment rating.
- d. **Service Retirement vs. Disability Retirement.** However, if the Firefighter is eligible for a normal service retirement benefit on the date of disability, the Firefighter will receive the normal service retirement benefit to which he/she would be entitled had he/she retired as of the date of disability.
- e. **Disability During Leave of Absence.** A Firefighter who becomes disabled while on a non-paid, voluntary leave of absence from the fire department shall not be considered an "active paid firefighter" and is not eligible to receive a disability retirement benefit.
- f. **When Benefit Payments Begin.** No disability retirement benefit shall be paid hereunder until the Firefighter's employment has ceased. The payments will begin in the month following the month of employment termination. For the month of employment termination, a partial monthly disability retirement benefit will also be paid. This partial benefit is equal to the disability retirement benefit described above multiplied by a fraction, the numerator of which is the number of days from the date of employment termination to the end of the month, and the denominator of which is the total number of days in the month of employment termination. This payment will be paid on the last day of the calendar month following the month of employment termination.
- g. **Termination of Payments During First Two Years.** If at any time during the first two (2) years during which disability retirement benefit payment are being paid to a Firefighter hereunder, the Firefighter is offered a position in the fire department with pay that is equal to or greater than the pay the Firefighter would have been receiving if the Firefighter had continued in the Firefighter's former position in the fire department, the Board shall terminate that Firefighter's disability retirement benefit. In the event the Board determines the Firefighter has submitted or caused false documents to be submitted to the Board in connection with obtaining benefits hereunder, the Board may discontinue or terminate payments hereunder.
- h. **Termination of Payments After First Two Years.** All disability retirement payments to a Firefighter hereunder shall cease if either:
 - i. The Firefighter fails or refuses to provide income tax returns or other information concerning the Firefighter's income, or fails or refuses to submit to an examination by a doctor within thirty (30) days after receiving a request from the Board for such documents or examination; however, the Board may reinstate future payments for the benefit once the Firefighter complies.

- ii. At any time after the Firefighter has been receiving disability retirement benefit payments for at least two (2) years, the monthly benefit payable to that Firefighter is reduced to zero under other provisions of this Plan.
- i. The disability retirement benefit is not a vested accrued benefit and the provisions regarding disability retirement benefits may be amended.

4.03 Amount of Disability Retirement Benefit, First Two Years:

- a. When a Disability is Considered "Duty Related":
 - i. If the Board has determined that the impairment which caused a Firefighter to be terminated from active duty with the fire department resulted from the performance of that Firefighter's duties as a Firefighter,
 - ii. And the Firefighter was an active paid firefighter at the time of termination of service with the fire department,

Then the Firefighter's initial disability benefit will be a standard monthly benefit equal to the benefit as calculated in Section 2.02. For a duty related disability, the years of service will be equal to a minimum of twenty (20) years.

- b. When a Disability is Not Considered "Duty Related":
 - i. If the Board has determined that the impairment which caused a Firefighter to be terminated from active duty with the fire department was not from the performance of that Firefighter's duties as a Firefighter,
 - ii. And the Firefighter was an active paid firefighter at the time of termination of service with the fire department,

Then the Firefighter's initial disability benefit will be a standard monthly benefit equal to the benefit as calculated in Section 2.02. The Firefighter's actual years of service will be used.

4.04 Review of Disability Retirement After First Two Years:

- a. Obtaining Information for Review. The Board shall review each disability retirement after the first two years that the benefit has been paid and annually thereafter. At least sixty (60) days prior to the review, the Board shall send to the Firefighter receiving the benefit written notice that the Firefighter must furnish to the Board a true and correct copy of the Firefighter's most recent Federal income tax return, that the return must be received prior to the review, and failure to furnish a copy of the return will result in the benefit being discontinued. Likewise, the Board will furnish to a doctor designated by the Board a copy of the Firefighter's disability retirement file as maintained by the Fund and ask the doctor to review same in order to determine if a new medical examination would be useful in determining the Firefighter's current degree of whole-body impairment. If the designated doctor believes that a new medical examination would be useful, the Board will send a notice to the Firefighter receiving the disability retirement benefits, advising that Firefighter that he/she or she must have such an examination and that failure to submit to the examination within thirty (30) days after the notice will result in the benefit being discontinued. Upon receipt of the report of such new medical examination, the Board will furnish it to the designated doctor.
- b. Review by Designated Doctor. The doctor designated by the Board shall review

the information provided by the Board and shall advise the Board in writing as to whether or not the existing whole body impairment rating is still applicable. If the designated doctor advises the Board that the existing rating is still applicable, that finding shall be conclusive. If the designated doctor believes that the existing rating is no longer applicable, that doctor shall assign a new whole body impairment rating and advise the Board in writing of this new rating. If the Board and the Firefighter mutually agreed in writing on the doctor to be designated, this new rating shall be conclusive.

- c. **Time Within Which Retiree May Dispute Findings.** The Board shall promptly furnish the Firefighter with a copy of the designated doctor's findings if those findings change the impairment rating. If the new rating is not conclusive under Section 4.04.b, and the Firefighter disputes the new rating, the Firefighter must file a notice to that effect within fifteen (15) days after the finding was mailed to the Firefighter's address as shown on the Fund's records. If the Firefighter does not file a notice within that period, the findings of the designated doctor shall be conclusive.
- d. **Report of Retiree's Own Physician.** If a Firefighter has filed a notice under Section 4.04.c, the Firefighter must (at his/her own cost and expense) be examined by a doctor chosen by the Firefighter and forward to the Board the written report by the doctor regarding that examination within thirty (30) days after the notice was filed under Section 4.04.c. The written report must assign a whole-body impairment rating as determined by the doctor and state the clinical and/or laboratory test and result upon which it is based. If the written report, containing the information set forth in this Section 4.04.d, is not received by the Board within forty (40) days after the notice under Section 4.04.c was received by the Board, the designated doctor's findings shall be conclusive. Likewise, if the written report from the doctor chosen by the Firefighter assigns the same impairment rating as was assigned by the designated doctor, that rating shall be conclusive.
- e. **Findings by Third Doctor, When Applicable.** If the report from the doctor chosen by the Firefighter is timely received by the Board and assigns a higher whole body impairment rating, the Board shall forward a copy to the designated doctor. If the designated doctor concurs in those findings, the designated doctor will notify the Board in writing, and the findings shall be conclusive. If the designated doctor disagrees with those findings, the designated doctor and the doctor chosen by the Firefighter shall jointly designate a third doctor, who should be familiar with illnesses or injuries such as those suffered by the Firefighter and should be trained in the determination of impairment ratings. The third doctor shall assign a body impairment rating to the impairment and shall certify that rating to the Board. The findings made by the third doctor shall be conclusive.
- f. **Determination of Earnings Potential.** If the impairment rating is less than fifty percent (50%), the Board will provide a vocational evaluator designated by the Board a written description of the specific nature of the impairment and a copy of the conclusive findings as to the whole-body impairment rating. The vocational evaluator, after reviewing that documentation, and after examining the Firefighter when the evaluator believes an examination is appropriate, shall issue a written report to the Board, stating what amount of money (if any) a person with that impairment and that impairment rating should be able to earn, taking into account the specific individual's educational and work background.

4.05 Action by the Board:

Upon receipt of the relevant reports and findings described in Section 4.04, the Board

will act upon such information and findings as follows:

- a. **Impairment Rating at Least Fifty Percent (50%).** If the impairment rating is fifty percent (50%) or greater, the Board shall continue paying a benefit equal to the annual benefit paid during the first two (2) years; provided, however, that the actual income (if any) the Firefighter received during the preceding calendar year, when added to the benefit otherwise payable under this provision would exceed the total compensation the Firefighter would have been receiving as in the Firefighter's position if the disability had not occurred and the Firefighter had continued in his/her former position with the fire department, the Board shall reduce the disability retirement benefit by the amount of the difference on a dollar-for-dollar basis.
- b. **Impairment Rating Less Than Fifty Percent (50%).** If the impairment rating is less than fifty percent (50%), the Board shall reduce the annual benefit to an amount equal to the annual benefit paid during the first two (2) years multiplied by the impairment rating. However, if either the Firefighter's actual income for the preceding year or the Firefighter's current annual earnings potential as reported by the vocational evaluator equals or exceeds that reduced annual benefit amount, the Firefighter shall be conclusively deemed not to be disabled, and the Firefighter's disability retirement benefit shall be discontinued.
- c. **Return of Account Balance.** If the disability benefit is terminated under Section 4.05.b and the Firefighter did not have at least ten (10) years of Service, then an amount equal to the excess (if any) of the Firefighter's contributions over the total of disability benefit payments made shall be paid to the Firefighter in a lump sum payment unless the Firefighter returns to employment in the fire department prior to such lump sum payment. If the Firefighter had at least ten (10) years of Service in the fire department and elects to leave his/her contributions in the Fund after ceasing to receive a disability retirement benefit, the Firefighter will become eligible for the vested termination benefit described in Section 5 upon meeting the requirements of that section.

Section 5
Vested Termination Benefits

5.01 Eligibility for Vested Termination Benefit:

- he/she
- a. If a Firefighter was hired before July 1, 2005, and has completed at least ten (10) years of Service but is not eligible for service retirement under Section 2 at Termination of Service, he/she will be entitled to receive a deferred monthly retirement benefit commencing the month after the later of (i) the date he/she attains age 50, or (ii) the date the Firefighter would have had twenty (20) years of Service but for his/her Termination of Service.
 - b. If a Firefighter was hired on or after July 1, 2005, and has completed at least ten (10) years of Service, he/she will be entitled to receive a deferred monthly retirement benefit commencing the month after the later of (i) the date the Firefighter attains age 55, or (ii) the date the Firefighter would have had twenty (20) years of Service but for his/her Termination of Service.

5.02 Amount of Vested Termination Benefit:

- a. The amount of the Firefighter's deferred monthly retirement benefit pursuant to Section 5.01 will be equal to the normal service retirement benefit in Section 2, determined as if the Firefighter had retired on the day of the Firefighter Terminated Service.
- b. To be entitled to receive this vested termination benefit, the Firefighter is not required to make additional contributions between the date of Termination of Service and the date benefits commence.

5.03 Forms of Payment of Vested Termination Benefits:

- a. Instead of the vested termination benefit described in Section 5.01 above, a Firefighter may elect to receive the return of his/her own contributions under Section 7. In electing to receive the return of his/her own contributions, the Firefighter will forfeit all monthly benefits payable under the Fund.

Section 6 Death Benefits

6.01 Conditions and Amounts of Benefits payable to Surviving Spouse. A Surviving Spouse is defined in Section 1.12. The Firefighter's Surviving Spouse will receive a benefit subject to the conditions and in the amounts described below:

- a. If a Firefighter's death occurred while he/she was in active employment covered under the Fund the Surviving Spouse shall receive a monthly benefit. This benefit will be equal to two-thirds (2/3) of the service retirement benefit the Firefighter would have received if he/she had retired on the day of his/her death as calculated in Section 2.02.
he/she his/her his/her
- b. If the Firefighter's death occurred following the Firefighter's service retirement, disability retirement, or vested retirement the Surviving Spouse shall receive a monthly benefit. This benefit will be equal to two-thirds (2/3) of the service, disability, or vested retirement benefit the Firefighter was receiving at the date of death.
his/her
- c. The benefits payable to a Surviving Spouse shall be payable for as long as the Surviving Spouse lives and does not remarry. The benefits shall terminate upon remarriage of the Surviving Spouse.
his/her his/her his/her
- d. Each Surviving Spouse claiming death benefits must certify by February 1 of each year, in a form and manner acceptable to the Board, that said spouse has not remarried since the death of the Firefighter and is not married as of the time of said declaration. The failure to provide such certification as set out herein shall be grounds for discontinuance of benefits.
- e. The death benefits payable to a Surviving Spouse are not a vested accrued benefit and may be amended.

6.02 Conditions and Amounts of Benefits Payable to a Child: An eligible child is defined in Section 1.06. An eligible child may receive a benefit under the conditions and amounts described below:

- a. A death benefit may be paid to each eligible child upon the death of a Firefighter, a service retired Firefighter, a disabled retired Firefighter or a vested retired Firefighter in the amount described below.
 - i. If a Surviving Spouse is also receiving a benefit, each Eligible Child will receive a monthly benefit of ten percent (10%) of the service retirement benefit the Firefighter was receiving or would have received if he/she had retired on the day of his/her death as calculated in Section 2.02
 - ii. If no Surviving Spouse is receiving a benefit, each Eligible Child will receive a monthly benefit of fifteen percent (15%) of the service retirement benefit the Firefighter was receiving or would have received if he/she had retired on the day of his/her death as calculated in Section 2.02
- b. The benefits defined in Section 6.02 are payable until the child reaches the age of 18. The benefits defined in Section 6.02 are payable from age 18 to age 25 as long as the child remains a full-time student between these ages.
- c. If the child becomes totally disabled as a result of a physical or mental illness,

injury or retardation, the benefits defined in Section 6.02 are payable after age 17 and for as long as the child remains totally disabled. The Board of Trustees, in its sole discretion, shall determine if the Child is Disabled.

- d. The death benefits payable to a child are not a vested accrued benefit and may be amended.
- 6.03 When all of the Death Benefits described in Section 6 above have ceased a lump sum amount equal to the excess, if any, of the Firefighter's contributions (without interest) over the amount of payments made on behalf of the Firefighter will be paid to the Firefighter's Estate. No other death benefits will be payable.
- 6.04 The sum of all monthly benefits being paid or payable at any point in time shall not exceed:
- a. for a service, disabled, or vested retired Firefighter, the amount of service, disability or vested retirement benefit the Firefighter was receiving;
 - b. for a Firefighter who was not retired but was eligible for service retirement at his/her time of death, the service retirement benefit the Firefighter would have received had the Firefighter retired on the date of death; and
 - c. for a Firefighter who was actively employed with Fire Department at the time of his death the benefit will be the service retirement benefit the Firefighter would have received had the firefighter retired on the day of his death.

If the sum of all benefits payable on behalf of the Firefighter'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 benefit 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 this plan or a larger pro-rata share of those benefits if the sum of the benefits still exceeds the above-mentioned limit.

- 6.05 Payment of monthly benefits will begin the calendar month following the Firefighter's death..

Section 7
Return of a Firefighter's Own Contributions

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

Section 8
Contributions

- 8.01 Each Firefighter will make contributions of twelve percent (12%) of his/her total Compensation. A Firefighter's contributions shall be "picked up" by the City as permitted under Code §414(h), and excluded from the taxable income of the Firefighter. The contributions "picked up" by the City shall continue to be considered as contributions by the Firefighter for purposes of the relevant provisions of the Fund. Any reduction in Compensation of a Firefighter corresponding to the Firefighter's contribution being picked up by the City shall continue to be taken into consideration in determining the Firefighter's Highest 60-Month Average Salary for purposes of relevant provisions of the Fund.
- 8.02 The City will make contributions of the greater of twelve percent (12%) of each Firefighter's total Compensation or if the City agrees the same percentage of pay that the City contributes to the Texas Municipal Retirement System for other employees.

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 Firefighter under the Fund at any time shall not exceed the "Defined Benefit Dollar Limitation".
- c. Adjustment if in two defined benefit plans. If the Firefighter 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 Firefighter's "Annual Benefits" from all such plans may not exceed the "Defined Benefit Dollar Limitation". Where the Firefighter'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 Firefighter'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 Firefighter 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 Firefighter'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 Firefighter'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 that has the same actuarial present value as the Firefighter'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) five percent (5%) interest rate assumption and the applicable mortality table defined in Section 9.02.g for that annuity starting date.
- (ii) For Limitation Years beginning on or after July 1, 2007, the "Straight Life Annuity" which is actuarially equivalent to the Firefighter's form of benefit shall be determined under this subsection (ii) if the form of the Firefighter'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 Firefighter, or (b) an annuity which decreases during the life of the Firefighter 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 Firefighter under the Fund commencing at the same annuity starting date as the Firefighter'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 Firefighter's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in Section 9.02.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

(15)

equivalent to the Firefighter's form of benefit shall be determined under this subsection (2) if the form of the Firefighter's benefit is other than a benefit form described in Section 9.02.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 Firefighter'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 Firefighter's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 9.02.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 Firefighter's form of benefit, computed using the applicable interest rate defined in Section 9.02.g and applicable mortality table defined in Section 9.02.g, divided by 1.05.

- (ii) If the annuity starting date of the Firefighter'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 Firefighter'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 Firefighter's form of benefit computed using a 5.5 percent 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 Firefighter under the Fund commencing at the same annuity starting date as the Firefighter'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 Firefighter's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table defined in Section 9.02.g for that annuity starting date.

- 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 Firefighter'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 Firefighters who have had a separation from employment.

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

- (1) Adjustment for Less Than Ten Years of Participation or Service: If the Firefighter 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 (1) 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 Firefighter'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 Firefighter'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 Firefighter's annuity starting date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Firefighter'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 Firefighter'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 Firefighter's annuity starting date is the lesser of:

(15)

- (A) the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Firefighter'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 Firefighter'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 Firefighter'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 Firefighter's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for the Firefighter's annuity starting date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Firefighter'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 Firefighter'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 Firefighter'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 Firefighter'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 Firefighter'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 Firefighter'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 Firefighter's annuity starting date is the annual amount of such annuity payable to the Firefighter, computed disregarding the Firefighter'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 Firefighter who is age 65 and has the same accrued benefit as the Firefighter.
- (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 Firefighter'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 Firefighter 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 Firefighter's death if the Fund does not charge Firefighters for providing a qualified preretirement survivor annuity, as defined in Code §417(c), upon the Firefighter's death.
- (3) Notwithstanding anything else in this section to the contrary, the benefit otherwise payable to a Firefighter 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 Firefighter 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 Firefighter's number of Years (or part thereof, but not less than one 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 Firefighter 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 Firefighter 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 Firefighter 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 Firefighter.

- c. City. "City" means, for purposes of this section, the City that has adopted the Fund, and all Firefighters 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 Firefighter, a former employer of such Firefighter if the City maintains a plan that provides a benefit which the Firefighter accrued while performing Services for the former employer. A former entity that antedates the City is a "Predecessor Employer" with respect to a Firefighter 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 (2), 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 (12) month period ending September 30 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 Firefighter that terminates upon the Firefighter's death.
- f. **Year of Participation.** "Year of Participation" means, with respect to a Firefighter, each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the Firefighter 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 Firefighter is included as a Firefighter 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 Firefighter shall equal the amount of benefit accrual Service credited to the Firefighter for such accrual computation period. A Firefighter 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 Firefighter 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.

- h. **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. 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 purposes, 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.

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 Firefighters and a Firefighter in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Firefighter'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 Firefighters' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Firefighter under the terminated plan.
- b. Benefits transferred from the Fund. If a Firefighter'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 Firefighter'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 Firefighters' benefit liabilities under the plan. If a Firefighter'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 Firefighter while performing Services for a "Predecessor Employer", then the Firefighter'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 Firefighters' 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

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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 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 (10) years or more; any distribution to the extent that such distribution is required under Code §401(a)(9); any distribution which is made upon 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 Surviving Spouse or former Surviving 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 Surviving Spouse or former Surviving 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 Surviving Spouse or former Surviving 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) or for taxable years beginning after December 31, 2006, to a 403(b) plan 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.

For distributions made after December 31, 2007, a Firefighter or a beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code §408A(b).

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 Firefighter 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/her 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/her 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 Direct Rollover of Non-Spousal Distribution:

- a. Non-spouse beneficiary rollover right. For distributions after December 31, 2009, a non-spouse beneficiary, only as otherwise permitted by the Plan who is a "designated beneficiary" under Code §401(a)(9)(E), by a direct trustee-to-trustee transfer ("direct rollover"), may rollover all or any portion of his/her or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to rollover the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code §401(A)(31).
- b. 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 §405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a sixty (60) day (non-direct) rollover.
- c. If the Firefighter's named beneficiary is a trust, the Plan 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).
- d. A non-spouse beneficiary may not rollover an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Firefighter dies before his/her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum eligible for rollover, the beneficiary may elect to use either the five-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary distribution.

- 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 Firefighter or beneficiary in any bank or trust company shall be deemed payment to a person.
- 10.07 Name and Address Changes. Each Firefighter, Surviving Spouse, and beneficiary is responsible to notify the Board of Trustees of any change in his/her name or address to which his/her 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 Firefighters or former Firefighters 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 §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 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 (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.

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- 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.

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Section 11
Amendment and Termination

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 Firefighter of the Fund of a right to receive a vested benefit unless that Firefighter gives his/her written consent or unless the reduction in benefits is made in accordance with §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 this document 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.

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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 Firefighters, retirees, beneficiaries or any person affected by a decision of the Board.
- 12.03 Any person or persons involved in the administration of the Fund shall be entitled to rely upon any representation made or evidence furnished by a Firefighter or beneficiary with respect to his/her age or other facts required to be determined under any of the provisions of the Fund 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 Firefighter 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 Fund. Any of those parties may contest any representation or evidence. Each Firefighter and beneficiary has a duty to submit satisfactory proof of his/her 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 Firefighters 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 Firefighters or their beneficiaries. In the event of termination of the Plan or complete discontinuance of contributions under the Plan, the rights of all Firefighters 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 Firefighter 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: PubS-2010 mortality tables projected forward on a generational basis with Scale MP-2019.
Interest: seven percent (7%) per annum, compounded annually
- 13.04 The right of any Firefighter 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 Firefighter 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. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Member or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(HH) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs, or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Member, the joint lives (or joint life expectancy) of the Member and the Member's designated Beneficiary, or for a period of at least ten (10) years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Member or Beneficiary chooses to receive such distributions. Members and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.