

RESOLUTION FOR ADOPTION  
BY THE BOARD OF TRUSTEES  
OF  
ORANGE FIREMEN'S RELIEF AND RETIREMENT FUND

A copy of the amendment and restatement to the Orange Firemen's Relief and Retirement Fund plan document was presented to the Board of Trustees of the Orange Firemen's Relief and Retirement Fund. After discussion of the amendment and restatement, the following motions were duly made, seconded and adopted:

RESOLVED, that the amendment and restatement to the Orange Firemen's Relief and Retirement Fund effective January 1, 2014, as presented to the Board of Trustees, be adopted by the Orange Firemen's Relief and Retirement Fund.

I, Jody Cowart <sup>Vice</sup>, Chairman of the Board of Trustees of the Orange Firemen's Relief and Retirement Fund, certify that the above is a true and correct copy of a portion of the minutes of the meeting of the Board of Trustees held on January 21, 2014.

Date: January 21, 2014

  
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Jody Cowart, CHAIRMAN OF  
THE BOARD OF TRUSTEES, ORANGE  
FIREMEN'S RELIEF AND RETIREMENT FUND

**ORANGE FIREMEN'S RELIEF & RETIREMENT FUND**

**Plan Document Effective**

**January 1, 2014**

**Orange Firemen's Relief & Retirement Fund**

**Plan Document Effective January 1, 2014**

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## ORANGE FIREMEN'S RELIEF & RETIREMENT FUND

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

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

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

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

NOW, THEREFORE, to carry such amendment and restatement into effect, the Board of Trustees does hereby adopt the amended and restated Orange Firemen's Relief & Retirement Fund, the terms and conditions of which are fully set out in the attached Sections 1 through 14, which are incorporated by reference.

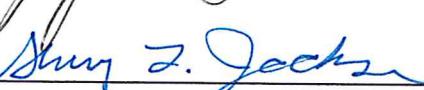
Except as otherwise specifically designated in the Plan, the Effective Date of the Plan as hereby amended and restated is January 1, 2014.

The provisions of the Plan set out below shall be applicable to all Firefighters of the Orange Firemen's Relief & Retirement Fund who are active Firefighters of the Fund as of January 1, 2014, 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 January 1, 2014, shall be as specified under the Fund provisions in effect prior to this amendment.

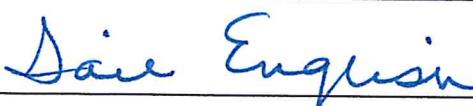
Signed this 21st day of January, 2014.

TRUSTEES OF THE ORANGE FIREMEN'S RELIEF & RETIREMENT FUND

  
\_\_\_\_\_  
Jeff Clegg

  
\_\_\_\_\_  
Sherry Z. Jackson

  
\_\_\_\_\_  
Mark R. McRae

  
\_\_\_\_\_  
Dave Engusin

  
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Tom Hulse

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## **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 Orange Firemen's Relief & Retirement Fund. The Board of Trustees shall be the plan administrator.
- 1.03 "City" shall mean the City of Orange, 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 "Firefighter" shall mean any actively employed employee of the Orange Fire Department and any other person designated by the Board of Trustees in accordance with Section 9(c)(2) of the Act. Employees covered by the Texas Municipal Retirement System (TMRS) or any other system or plan shall be excluded from the Fund as approved by the Board of Trustees.
- 1.06 "Fund" or "Plan" shall mean the Orange Firemen's Relief & Retirement Fund.
- 1.07 "Highest 60-Month Average Salary" will be equal to average biweekly pay multiplied by 2.167. Average biweekly pay is the average of the Firefighter's total pay for the highest 130 biweekly pay periods out of the 208 biweekly pay periods immediately prior to the Firefighter's date of employment termination. A lump sum distribution for unused sick leave or vacation upon termination will not be considered as pay for Service and will be excluded from total biweekly pay for the 130 periods with the highest biweekly pay. If a Firefighter's total biweekly pay has been offset (reduced) by workmen's compensation benefits, then total biweekly pay shall also include the amount by which his total biweekly pay was offset (reduced) as required by §504.051 of the Texas Labor Code.

If at the time of death or disability, the Firefighter has been paid for less than 130 biweekly pay periods, his average salary will be computed as though he had been employed for the 130 biweekly pay periods immediately preceding his death or disability. For the period prior to his employment, the Firefighter is deemed to have held the same rank at which he entered the fire department. His pay, based upon the rank mentioned above, is assumed to be the amount he would have received if he had been employed by the fire department during that period.

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). Effective for Plan Years beginning on or after January 1, 2001, "Total Pay" shall include elective amount that are not included in the gross income of the Firefighter under Code §132(f)(4). For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; and (ii) the differential wage payment is treated as Compensation.

- 1.08 "Plan Year" shall mean the twelve month period ending December 31 of each year.
- 1.09 "Service" will be equal to the Firefighter's number of years and months of continuous employment with the fire department of the City during which the Firefighter pays into, and keeps on deposit in the Fund, the contributions required by the Fund and those periods during which the Firefighter received a disability retirement benefit from this Fund.

Absence from the active Service of the fire department by reason of leave of absence, including a leave of absence due to active military service by a participant reservist called to duty during national emergencies, will not terminate a Firefighter's Service provided he returns to active employment prior to the expiration of his leave except that if he withdraws his contributions from the Fund, he will be treated in the same manner as though his Service had been Terminated even though he returns to active employment prior to the expiration of his leave. Periods of leave of absence, determined by the policy of the City shall be deemed continuous employment with Service credited for such period. Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and Service with respect to qualified military service will be provided in accordance with Internal Revenue Code §414(u). In the case of a death occurring on or after January 1, 2007, if a Firefighter dies while performing qualified military service (as defined in Code §414(u)), the Firefighter'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 Firefighter had resumed employment and then terminated employment on account of death. The Fund will credit the Firefighter's qualified military service as service for vesting purposes, as though the Firefighter had resumed employment under USERRA immediately prior to the Firefighter's death.

To "Terminate Service", a Firefighter shall be required to terminate employment from the 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 participating Firefighter has Terminated Service. If a Firefighter's Service is Terminated he will be treated in the same manner as a new employee if he is later reemployed.

- 1.10 "Spouse" shall mean the lawful wife or husband of a Firefighter. Surviving Spouse shall mean the Firefighter's Spouse on the earlier of his date of retirement or his Termination of Service and who is also the Firefighter's Spouse at the time of the Firefighter's death.

## **Section 2** **Normal Service Retirement Benefits**

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

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

A Firefighter shall become fully vested in the Firefighter's service retirement benefit on the date the Firefighter meets both of the requirements set forth above. The date the Firefighter meets both of the requirements set forth above shall be the 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 benefit beginning the first day of the calendar month following the month in which the Firefighter Terminates Service equal to the sum of:

- a. a standard retirement benefit equal to two and six tenths percent (2.6%) of his "Highest Average 60-Month Salary", times his years and partial years of Service, not to exceed twenty (20) years; plus
- b. an additional benefit in an amount per month for each whole year of Service in excess of twenty (20) years of Service of \$91 per month for Firefighters terminating on or after February 1, 2006. A partial year of Service will be given partial credit based on number of months completed in excess of whole years.

2.03 Each Firefighter who was an active Firefighter on December 31, 2007, shall have a preserved prior plan benefit of 52% of his "Highest Average 60-Month Salary" calculated as of December 31, 2007.

2.04 Commencement of Benefits. Payment of service retirement benefits will be made on the first day of the month for which the payment accrues. Payments will first accrue for the month following the date the Firefighter Terminates Service. A partial monthly benefit will accrue for the month in which the Firefighter Terminates Service. The partial benefit is equal to the benefit described above multiplied by the number of days from the date of Termination of Service to the end of the month divided by the total number of days in the month of Termination of Service. Payments will continue to accrue until the Firefighter's death.

### **Section 3** **The Deferred Retirement Option Plan (DROP)**

3.01 Eligibility for the Deferred Retirement Option Plan. A Firefighter can elect at Termination of Service a DROP benefit calculation date. The DROP benefit calculation date is the later of the following: (a) thirty-six (36) months prior to the first day of the month following the date of his Termination of Service occurs, and (b) the date of attainment of age 53 and completion of twenty-three (23) years of Service. The Firefighter may elect a DROP benefit calculation date which is later than the above.

3.02 Amount of DROP Benefit. A Firefighter who qualifies for and elects the DROP will receive the following:

- a. monthly retirement benefit equal to the amount determined in Section 2.02 as of the DROP benefit calculation date and based on the plan provisions in effect on the DROP benefit calculation date. This benefit will not include any ad hoc retiree benefit increases provided between the DROP benefit calculation date and the date of the Firefighter's Termination of Service. These payments will begin on the first day of the calendar month following the month in which the Firefighter Terminates Service; plus
- b. an amount determined on the last day of the calendar month in which the Firefighter Terminates Service equal to:
  1. Firefighter's contributions between the DROP benefit calculation date and the date of the Firefighter's Termination of Service; plus
  2. the total of the monthly retirement benefits described in Section 3.02.a which would have been received between the DROP benefit calculation date and the last day of the month in which the Firefighter Terminates Service. These benefits will not include any ad hoc retiree benefit increases provided between the DROP benefit calculation date and the date of the Firefighter's Termination of Service.
- c. To the extent permissible under federal tax laws, payment of the amount determined in Section 3.02.b can be made in one of the following two forms:
  1. a lump sum distribution of the total amount payable at the end of the first full calendar month after a Benefit Distribution Form is accepted by the Fund's administrative office, or
  2. a maximum of five payments as requested by the Firefighter within thirty-six (36) months of the Firefighter's date of Termination of Service.

3.03 Surviving Spouse DROP:

- a. If a married Firefighter dies after becoming eligible to make a DROP election, but before electing to participate in the DROP or receiving his first monthly retirement benefit, the Firefighter's Surviving Spouse shall be entitled to elect to have the benefits determined as though the Firefighter had retired the day before his death. Application for the election of the DROP option by the Surviving Spouse can be made no later than thirty (30) days following the Firefighter's date of death.

b. A Surviving Spouse who qualifies for and elects a DROP will receive the following:

1. the monthly death benefit equal to the amount determined in Section 7.01.a as of the DROP benefit calculation date and based on the plan provisions in effect on the DROP benefit calculation date. This benefit will not include any ad hoc benefit increases provided between the DROP benefit calculation date and the Firefighter's date of death. These payments will begin on the first day of the calendar month following the month in which the Firefighter died and will continue for as long as the Surviving Spouse is alive and does not remarry under the conditions in Section 7.01; plus
2. an amount determined on the last day of the calendar month in which the Firefighter died equal to:
  - i. Firefighter's contributions between the DROP benefit calculation date and the date of the Firefighter's date of death; plus
  - ii. the total of the monthly retirement benefits described in Section 3.02.a which would have been received between the DROP benefit calculation date and the last day of the month in which the Firefighter died. These benefits will not include any ad hoc retiree benefit increases provided between the DROP benefit calculation date and the date of the Firefighter's death.

3.04 General rules for DROP participation:

- a. A Firefighter's election to participate in DROP is irrevocable.
- b. The DROP benefit calculation date will always be on a first day of a month.
- c. An election to participate in the DROP must be in writing on an election form approved by the Board of Trustees.
- d. Application for retirement with election to participate in the DROP can be made no earlier than sixty (60) days prior to the Firefighter's termination of employment with the City.
- e. An elect to receive a benefit distribution must be made by filing a completed Benefit Distribution Form with the Fund's administrative office. The Benefit Distribution Form can be amended at any time.
- f. Should a Benefit Distribution Form not be filed with the Fund's administrative office by the time the DROP participant attains age 70½, such participant will be deemed to have elected to receive his or her DROP benefits in the form of annual payments over three years and payments will begin at age 70½.
- g. Any filing of a Benefit Distribution Form, whether an original filing or an amendment to an earlier filing, will not take effect until the end of the first full month following acceptance of the form by the Fund's administrative office. A benefit distribution will be made at the end of the first full calendar month after a Benefit Distribution Form has been received and accepted by the Fund's administrative office.

h. If a Firefighter who elects the DROP dies after Termination of Service but before the DROP lump sum amount described in Section 2.07.b above has been completely paid to the Firefighter, then the remaining portion of the DROP lump sum payment will be paid to the Firefighter's Surviving Spouse, or if there is no Surviving Spouse, to the Firefighter's estate. The Surviving Spouse must have been married to the Firefighter at the time of the Firefighter's Termination of Service to be eligible to receive this payment.

An additional death benefit equal to two-thirds of the monthly retirement benefit described in Section 3.02.a will be paid to the Firefighter's Surviving Spouse with payments beginning on the first day of the calendar month following the month in which the Firefighter dies. The Surviving Spouse is eligible for this benefit if married to the Firefighter at the time of the Firefighter's Termination of Service. If there is an Eligible Child or Children, each will receive the benefit described in Section 7.02. If there is no Surviving Spouse and no Eligible Child, then the amount the Spouse would have received will be payable to the Firefighter's dependent parents.

If there is no Surviving Spouse, Eligible Child or dependent parent, an amount will be paid to his estate equal to the excess, if any, of the Firefighter's accumulated contributions to the Fund (without interest) as of the DROP benefit calculation date over (i) the amount of the payment described in Section 3.02.b.2, and (ii) the amount of monthly payments which have been made to the Surviving Spouse, Eligible Child or dependent parent.

i. If a Surviving Spouse who elects the DROP dies after making the election but before the lump sum amount described in Section 3.03.b.2 has been completely paid to the Surviving Spouse, then the Surviving Spouse's estate will receive the remaining portion of the lump sum payment.

If there is no Surviving Eligible Child, then the monthly benefit amount the Surviving Spouse was receiving will be payable to the Firefighter's dependent parent. If there is no Surviving Eligible Child or dependent parent, an amount will be paid to the Surviving Spouse's estate equal to the excess, if any, of the Firefighter's accumulated contributions (without interest) as of the DROP benefit calculation date over (i) the amount of the payments described in Section 3.03.b.2.ii, and (ii) the amount of monthly payments which have been made to the Surviving Spouse, any eligible child or dependent parent.

j. A Firefighter electing to participate in DROP will not be eligible to receive the normal service retirement benefit described in Section 2.01 and 2.02.

A Surviving Spouse electing to participate in the DROP will not be eligible to receive the death benefit in Section 7.01.

## **Section 4** **Social Security Leveling Option**

- 4.01 A Firefighter who is provided Social Security coverage by the City and who retires prior to attaining age 62 may elect to receive at retirement an actuarially equivalent benefit in the form of a Social Security Leveling Option. Under this option the Firefighter will receive a higher monthly benefit from the Firefighter's date of retirement until he reaches age 62. After the Firefighter's sixty-second birthday, his benefit from this plan will be reduced to a monthly benefit that was determined at date of retirement. The purpose of this option is to provide the Firefighter at retirement an expected future total monthly retirement income from this plan and Social Security which is approximately level.
- 4.02 The Firefighter electing this option will pay for the actuarial fees incurred to calculate the actuarially equivalent benefit, which will be based on an interest rate of eight percent (8%) and the mortality rates of the UP-1994 Table, Male Rates, with no projection. An estimated future Social Security amount is used at the Firefighter's date of retirement assuming no future earnings in order to determine the plan's benefits under this option.
- 4.03 If the Firefighter dies prior to attaining age 62 and is survived by a Surviving Spouse, the Surviving Spouse will receive two-thirds (2/3) of the benefit the Firefighter was receiving on his date of death until the Firefighter would have attained age 62. Thereafter, the Surviving Spouse will receive two-thirds of the benefit the Firefighter would have received after his 62<sup>nd</sup> birthday. If the Firefighter dies after attaining age 62 and is survived by an Surviving Spouse, the Surviving Spouse will receive two-thirds (2/3) of the benefit the Firefighter was receiving on his date of death.
- 4.04 The Board has the right to provide post-retirement ad hoc monthly benefit increases to a Firefighter who has chosen a Social Security Leveling Option in any manner the Board chooses, regardless of whether the ad hoc monthly benefit increases maintain the "approximately level" aspect of the benefits. Further, the Fund is not obligated to pay additional monthly benefits if the actual amount of the Social Security monthly benefit payable at age 62 is less than the estimated monthly Social Security benefit at retirement or if the actual amount of Social Security benefit payable at age 62 and the reduced monthly benefit payable from the Fund are less than the monthly benefit payable from the Fund immediately prior to attainment of age 62.

## **Section 5** **Disability Retirement Benefit**

### **5.01 Application for Disability Retirement; Determination of Impairment Rating:**

- a. Standard for Degree of Impairment. The doctors evaluating impairment under these provisions shall use for determining both the existence and degree of a Firefighter's impairment 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 (the "applicant") must file an application (or an application must be filed on behalf of the applicant) with the Board. The application shall be on a form provided by the Board. The Board shall furnish the applicant with a written description of the duties of the applicant'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 applicant that would provide the applicant with pay that is at least equal to the pay the applicant 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 the applicant must contain a sworn statement of the applicant's medical condition, signed by a doctor attending the applicant; the statement should assign a whole-body impairment rating as determined by the doctor and state the clinical and/or laboratory tests 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 applicant is (as a result of physical or mental impairment) incapable of performing the duties of the applicant's position or an equivalent position in the fire department.
- d. Statement of Applicant. The application also must contain a sworn statement of the circumstances under which the disability arose, signed by the applicant or by another person who has reason to know those 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 applicant 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 applicant 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 applicant 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 applicant (as a result of physical or mental impairment) is incapable of performing the duties of the applicant'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 applicant.

- f. Conclusive Effect if by Agreed Doctor. If the Board and the applicant mutually agree in writing on the doctor to be so designated, the findings of that doctor shall be conclusive.
- g. Time Within Which Applicant May Dispute Findings. If the applicant did not agree on the doctor to be designated, and disputes the findings of that doctor, the applicant must file a notice to that effect with the Board within 15 days after the finding was mailed to the applicant's address as shown on the application. If the applicant does not file such a notice within that period, the finds of the designated doctor shall be conclusive.
- h. Findings by Third Doctor, When Applicable. If the applicant 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 applicant 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 applicant (as a result of physical or mental impairment) is incapable of performing the duties of the applicant's position or an equivalent position in the fire department. The findings made by the third doctor shall be conclusive.

#### 5.02 Eligibility for Disability Retirement:

- a. Board Action on Application. Regardless of the specific impairment rating, if the conclusive finding under Section 5.01 is that the applicant (as a result of physical or mental impairment) is not capable of performing the duties of the applicant's position or an equivalent position in the fire department, the Board shall approve the application and grant the applicant disability retirement, except as provided in Section 5.02.b. If the conclusive finding under Section 5.01 is that the applicant is capable of performing the duties of the applicant's position or an equivalent position in the fire department, the Board shall deny the application regardless of the specific impairment rating.
- b. 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.
- c. When Benefit Payments Begin. No disability benefit shall be paid hereunder until the applicant's employment has ceased.
- d. Termination of Payments During First 2½ Years. If at any time during the first two and one-half (2½) years during which disability benefit payments are being paid to a person hereunder, the person is offered a position in the fire department with pay that is equal to or greater than the pay the person would have been receiving if the person had continued in the person's former position in the fire department, the Board shall terminate that person's disability retirement benefit. In the event the Board determines the person 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.

e. Termination of Payments After First 2½ Years. All disability retirement payments to a person hereunder shall cease if either:

1. The person fails or refuses to provide income tax returns or other information concerning the person'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 of the benefit once the person complies.
2. At any time after the person has been receiving disability retirement benefit payments for at least two and one-half (2½) years, the monthly benefit payments to that person is reduced to zero (0) under other provisions of this Plan.

5.03 Amount of Disability Benefit, First 2½ Years:

- a. When a Disability Benefit Is Considered "Duty-Related". If (i) the fire department has determined the impairment which caused a person to be terminated from active duty with the fire department resulted from the performance of that person's duties as a Firefighter, and (ii) the person was an active paid Firefighter at the time of termination of service with the fire department, the person's initial disability benefit will be calculated and paid in accordance with Section 5.03.b. If the fire department did not make the determination stated in clause (i), but the person was an active paid Firefighter at the time of Termination of Service with the fire department, the person's initial disability benefit will be calculated and paid in accordance with Section 5.03.c.
- b. Duty-Related Disability Benefit Payments. During the first two and one-half (2½) years a person is receiving a disability retirement benefit under this Section 5.03.b, the person will receive a standard monthly benefit equal to fifty-two percent (52.0%) of "Highest 60-Month Average Salary" for Firefighters terminating on or after February 1, 2006. These payments will begin at the end of the month following the month of termination of employment due to disability. For the month in which the person terminates employment, a partial disability benefit will also be paid on the last day of the calendar month of employment termination. This partial benefit is equal to the benefit described above multiplied by the number of days from the date of employment termination to the end of the month divided by the total number of days in the month of employment termination.
  1. A partial year of Service will be given partial credit based on the number of months completed in excess of whole years, both in calculating the standard benefit and in calculating any additional benefit under 2 below.
  2. If the person has more than twenty (20) years of Service, the person will receive an additional amount per month for each year of Service in excess of twenty (20) years of \$91 per month for Firefighters terminating on or after February 1, 2006.
- c. Benefit Payments Where Not Duty-Related. If a person's disability is determined to be not duty-related and the person has less than fifteen (15) years of Service at the time of disability, then the not duty-related disability

benefit will be a percentage of the duty-related disability benefit as shown below:

Years of Service	Percentage*	Years of Service	Percentage*
0	25%	10	75%
1	25%	11	75%
2	25%	12	75%
3	25%	13	75%
4	25%	14	75%
5	50%	15 or more	100%
6	50%		
7	50%		
8	50%		
9	50%		

\*Not duty-related disability benefits will be this "Percentage" of duty-related disability benefits.

These payments will begin on the first day of the calendar month following the month of employment termination. For the month of employment termination, a partial monthly disability benefit will also be paid on the first day of the calendar month following the month of employment termination. This partial benefit is equal to the benefit described above multiplied by the number of days from the date of employment termination to the end of the month divided by the total number of days in the month of employment termination.

#### 5.04 Review of Disability Retirement After First 2½ Years:

- a. **Obtaining Information for Review.** The Board shall review each disability retirement after the first two and one-half (2½) 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 person receiving the benefit written notice that the person must furnish to the Board a true and correct copy of the person's most recent federal income tax return, that the return must be received prior to the review, and that 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 person'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 a person'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 person receiving the disability benefit, advising that person that he 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 a 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 the existing rating is

still applicable, that finding shall be conclusive. If the designated doctor believes the existing rating no longer is applicable, that doctor shall assign a new whole-body impairment rating and advise the Board in writing of that new rating. If the Board and the Firefighter mutually agree in writing on the doctor to be designated, the 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 changed the impairment rating. If the new rating is not conclusive under Section 5.04.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 person's address as shown on the Fund's records. If the person does not file such 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 5.04.c, that person must (at his or her own cost and expense) be examined by a doctor of that person's own choosing 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 5.04.c. The written report must assign a whole-body impairment rating a determined by the doctor and state the clinical and/or laboratory tests and results upon which it is based. If the written report, containing the information set forth in this Section 5.04.d, is not received by the Board within forty (40) days after the notice under Section 5.04.c was received by the Board, the designated doctor's findings shall be conclusive. Likewise, if the written report from the retiree's doctor assigns the same impairment rating as was assigned by the designated doctor, that rating shall be conclusive.
- e. Finds by Third Doctor, When Applicable. If the report from the Firefighter's doctor 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 so notify the Board in writing, and the findings shall be conclusive. If the designated doctor disagrees with those findings, the designated doctor and the Firefighter's doctor 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 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 to a vocational evaluator designated by the Board a written description of the specific nature of the impairment and a copy of the conclusive finds 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.

5.05 Action by Board:

Upon receipt of the relevant report and findings described in Section 5.04, the Board will act upon such information and findings as follows:

- a. Impairment Rating at Least 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 and one-half (2½) years; provided, however, that if 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 person would have been receiving as a Firefighter if the disability had not occurred and the Firefighter had continued in his or 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 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 and one-half (2½) years multiplied by the impairment rating. However, if either the person's actual income for the preceding year of the person's current annual earnings potential as reported by the vocational evaluator equals or exceeds that reduced annual benefit amount, the person shall be conclusively deemed not to be disabled, and the person's disability benefit shall be discontinued.
- c. Return of Account Balance. If a disability retirement benefit is terminated under Section 5.05.b, then a lump sum payment shall be paid to the person equal to the excess (if any) of (i) the Firefighter's own contributions, over (ii) the total of disability retirement benefit payments that have been paid on that person's behalf unless the person returns to employment in the fire department prior to receipt of the lump sum payment.

**Section 6**  
**Vested Termination Benefit**

- 6.01 Eligibility for Vested Termination Benefit. If a Firefighter has completed at least twenty (20) years of Service but has not attained the age of 50 at the time of Termination of his Service, he will be entitled to receive a deferred retirement income. To be entitled to receive this vested termination benefit, the Firefighter is not required to make additional contributions between his date of Termination of Service and the date he begins receiving benefits. The Firefighter must leave his contributions in the Fund.
- 6.02 Amount of Vested Termination Benefit. A Firefighter who qualifies for a vested termination benefit will receive a monthly benefit in an amount equal to the retirement benefit in Section 2.02, determined as if he had retired on the day he Terminated Service.
- 6.03 Commencement of Benefits. Payment of the vested termination benefit will be paid on the first day of the month for which the payment accrues. Payment will first accrue for the month following the date on which the Firefighter attains age 50. Payments will continue to accrue until the Firefighter's death.
- 6.04 Instead of the vested termination benefit described in this Section, a Firefighter may elect to receive the return of his own contributions under Section 7. In electing to receive the return of his own contributions under Section 8. In electing to receive the return of his own contributions, the Firefighter will forfeit all monthly benefits payable under the Fund.

## **Section 7** **Death Benefits**

7.01 The Firefighter's Surviving Spouse will receive a monthly death benefit in the amount and under the conditions described below:

- a. If the Firefighter's death occurred while he was an employee of the fire department:
  - (i) a standard death benefit equal to 34.67% of the "Highest 60-Month Average Salary" if the Firefighter's death was on or after February 1, 2006; plus
  - (ii) an additional death benefit in an amount per month for each year of Service in excess of twenty (20) years of Service that the Firefighter had on the date of death of \$60.67 per month if the Firefighter's death was on or after February 1, 2006. A partial year of Service will be given partial credit based on the number of months completed in excess of whole years.
- b. If the Firefighter's death occurred after service retirement or disability retirement where the retirement was effective on or after November 1, 1999, a benefit equal to two-thirds (2/3) of benefit the retired Firefighter was receiving.
- c. If the Firefighter's death occurred after Termination of Service with twenty (20) or more years of Service where the Termination of Service was effective on or after November 1, 1999, and the Firefighter was entitled to a vested termination benefit in accordance with Section 6, a benefit equal to two-thirds (2/3) of the benefit the Firefighter was entitled to receive or was receiving.
- d. If the Firefighter's Surviving Spouse remarries and the remarriage occurs prior to December 31, 2007, the death benefits payable to the Firefighter's Surviving Spouse will cease. If the new spouse dies or if the Firefighter's Surviving Spouse and the new spouse are later divorced, the Surviving Spouse's death benefits shall be reinstated at the monthly amount the Surviving Spouse would have been receiving had the benefits not terminated. This reinstatement provision will apply only to a Surviving Spouse receiving a monthly benefit on May 2, 1991 and a Surviving Spouse who first became eligible to receive a monthly benefit after May 2, 1991.
- e. If a Firefighter and the Firefighter's Surviving Spouse were married for at least five (5) years and the Firefighter's Surviving Spouse remarries and such remarriage occurs on or after December 31, 2007, the death benefits payable to the Surviving Spouse will continue subject to the other terms of the Fund.
- f. The monthly death benefit described in subsections a through c above will be paid on the first day of the month for which the payment accrues. Payments will first accrue for the month following the month in which the Firefighter's death occurs. A partial payment will accrue for the month in which the Firefighter dies, equal to the applicable monthly death benefit, multiplied by the number of days from the date following the Firefighter's death to the end of the month, divided by the total number of days in the month of the Firefighter's death. The first payment will be reduced by any overpayment of the Firefighter's Service retirement or disability retirement benefit following

the Firefighter's date of death. Payments will continue to accrue as provided above.

7.02 The Surviving Eligible Child's benefit is payable upon the death of an active, vested terminated, service retired or disability retired Firefighter if the death occurred after November 1, 1999. The benefit payable is:

- a. If the Surviving Spouse is also receiving a benefit, each Surviving Eligible Child will receive a monthly benefit until age 18 equal to 6.93% of the Firefighter's "Highest 60-Month Average Salary" if the Firefighter's death is on or after February 1, 2006;
- b. if the Surviving Spouse dies or remarries after being entitled to her allowance or if there is no Surviving Spouse, each Surviving Eligible Child will receive a monthly benefit until age 18 of 13.86% of the Firefighter's "Highest 60-Month Average Salary" if the Firefighter's death is on or after February 1, 2006.
- c. A Surviving Eligible Child is an unmarried child of a Firefighter who is a dependent of the Firefighter. A child is either the Firefighter's natural-born child or legally adopted child. A natural-born child's date of birth must be no later than ten (10) months following the first to occur of the date the Firefighter retires, dies or Terminates his Service with a vested benefit. An adopted child must have been adopted prior to the first to occur of the date the Firefighter retires, dies or Terminates his Service with a vested benefit. The benefits described above are payable from age 18 to age 25 as long as the Surviving Eligible Child remains a full-time student. If the Surviving Eligible Child becomes totally disabled as a result of a physical or mental illness, injury or retardation before age 18, or before age 25 if the child is a full-time student, the benefits described above are payable after age 17 for as long as the Eligible Surviving Child remains totally disabled.
- d. The Surviving Eligible Child's benefit will be paid on the first day of the month for which the payment accrues. Payments will first accrue for the month following the month in which the Firefighter's death occurs. A partial monthly payment will accrue for the month in which the Firefighter dies, equal to the applicable monthly death benefit, multiplied by the number of days from the date following the Firefighter's death to the end of the month, divided by the total number of days in the month of the Firefighter's death. Payments will continue to accrue as provided above. An increase pursuant to subsection b above, if after payment initially commenced, will accrue for the month following the month in which the Surviving Spouse dies or remarries.

7.03 If no Surviving Spouse or child is entitled to a benefit under Section 7.01 or 7.02 at the time of the Firefighter's death, the amount the Surviving Spouse would have received will be paid to the Firefighter's dependent parent. A Firefighter's parent is considered a dependent if the parent was claimed as a dependent on the Firefighter's last Internal Revenue Code tax filing prior to the date of death.

7.04 If the Firefighter's death is determined to be not duty-related and the Firefighter had less than fifteen (15) years of Service at the time of death, then the benefits payable to the survivors will be a percentage of the duty-related death benefit as shown below:

Years of Service	Percentage*	Years of Service	Percentage*
0	25%	10	75%
1	25%	11	75%
2	25%	12	75%
3	25%	13	75%
4	25%	14	75%
5	50%	15 or more	100%
6	50%		
7	50%		
8	50%		
9	50%		

\*Not duty-related disability benefits will be this "Percentage" of duty-related disability benefits.

7.05 The sum of all benefits being paid or payable at any point in time shall not exceed:

- a. for a retired Firefighter, the amount of normal service retirement, early service retirement or disability retirement benefit the Firefighter was receiving;
- b. for a Firefighter who was not retired but was eligible for normal service retirement at his time of death, the normal service retirement benefit the Firefighter would have received had he retired on his date of death; and
- c. for a Firefighter who was not retired and was not eligible for normal service retirement at his time of death, the disability retirement benefit the Firefighter would have received had he become disabled on his date of 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.

7.06 If no Surviving Spouse, child or dependent parent is entitled to an allowance under Sections 7.01, 7.02 or 7.03, an amount equal to the excess, if any, of the Firefighter's own contributions (without interest) over the amount of payments which have been made to the Firefighter, Surviving Spouse, child or dependent parent will be paid to his estate.

7.07 If the Firefighter's Surviving Spouse chooses to receive, upon her remarriage, a refund of the excess, if any, of the Firefighter's contributions to the Fund over the amount of benefits which have been paid on behalf of the Firefighter and then later becomes eligible for a death benefit due to either divorce or death of the Surviving Spouse's spouse, reinstatement of the death benefit will be delayed until the total of the payments not received equals the amount of contributions previously refunded to the Surviving Spouse.

7.08 Each person receiving death benefits must certify by February 1 of each year, in a form and manner acceptable to the Board, that said Surviving Spouse has not remarried since the death of the participant, 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.

**Section 8**  
**Return of a Firefighter's Own Contribution**

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

## **Section 9 Contributions**

- 9.01 Each Orange Firefighter will make contributions of 11.0% of Total Pay (excluding lump sum distributions for unused sick leave or vacation) or the percentage rate determined by a majority vote of active Firefighters as required in Section 29(a) of the Act. If a Firefighter's total pay has been offset by workmen's compensation benefits, then total pay shall also include the amount by which his total pay was offset as required by §504.051 of the Texas Labor Code. 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.
- 9.02 The City will make contributions of fourteen percent (14.0%) of each Firefighter's total pay (excluding lump sum distributions for unused sick leave or vacation) If a Firefighter's total pay has been offset by workmen's compensation benefits, then total pay shall also include the amount by which his total pay was offset as required by §405.051 of the Texas Labor Code.

## **Section 10** **Maximum Benefit**

### 10.01 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 10.03.

### 10.02 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 the following:

- (1) "Limitation Years" beginning before July 1, 2007. For "Limitation Years" beginning before July 1, 2007, the actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date that has the same actuarial present value as the 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) 5% interest rate assumption and the applicable mortality table defined in Section 10.02.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 5% interest rate assumption and the applicable mortality table defined in Section 10.02.g.

b. Defined Benefit Dollar Limitation. "Defined Benefit Dollar Limitation" means, effective for "Limitation Years" ending after December 31, 2001, \$160,000, automatically adjusted under Code §415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a "Straight Life Annuity". The new limitation shall apply to "Limitation Years" ending with or within the calendar year of the date of the adjustment, but a 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 10 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 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 10.02.b(2)(i), as modified by Section 10.02.b(2)(iii). If the annuity starting date is after age 65, the "Defined Benefit Dollar Limitation" shall be adjusted under Section 10.02.b(2)(ii), as modified by Section 10.02.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 10.02.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 10.02.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:

(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 10.02.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 10.02.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 10.02.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 10.02.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 10.02.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 10.02.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 10.02.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 10.02.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 10.02.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 (1) year) of Participation (not to exceed ten (10)) with the City, and (II) the denominator of which is ten (10); and the City has not at any time maintained a defined contribution plan in which the 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, unrelated employers under the rules described in Regulations §1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the "Predecessor Employer" relationship, such as a transfer of benefits or plan sponsorship.
- d. Limitation Year. "Limitation Year" means the twelve-month period ending December 31<sup>st</sup> of each year. The "Limitation Year" may only be changed by a fund amendment. Furthermore, if the Fund is terminated effective as of a date other than the last day of the Fund's "Limitation Year", then the Fund is treated as if the Fund had been amended to change its "Limitation Year."
- e. Straight Life Annuity. "Straight Life Annuity" means an annuity payable in equal installments for the life of a 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.

g. Applicable Actuarial Assumptions. The actuarial assumptions used to determine Code §415 limits under the Fund shall be the interest rate specified in Section 14.03, 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.

#### 10.03 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 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 Firemen's 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 to 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

Firemen's 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 Firemen's benefit liabilities under the plan, and had purchased annuities to provide benefits; the City and the "Predecessor Employer" shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the "Predecessor Employer".
- d. Special rules. The limitations of this Section shall be determined and applied taking into account the rules in Regulations §1.415(f)-1(d), (e) and (h).

## **Section 11** **Distribution of Benefits**

11.01 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).

11.02 Direct Transfers of Eligible Rollover Distributions:

- a. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- b. Definitions:
  1. Eligible rollover distribution. An eligible rollover distribution is any distribution described in IRC §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent that such distribution is required under Code §401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any distribution which is made upon hardship of distributee, and any other distribution reasonably expected to total less than \$200 during a year.
  2. Eligible retirement plan. An eligible retirement plan is an individual retirement account described in Code §408(b), an annuity plan described in Code §403(a), or a qualified trust described in Code §401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
  3. Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code §414(p), are distributees with regard to the interest of the spouse or former spouse.
  4. Direct rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- c. Firefighter notice. A firefighter 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 Firefighters, unless the total amount the Firefighter will receive as a distribution

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

Effective for distributions made after December 31, 2001, for purposes of the direct rollover provisions of the plan, an eligible retirement plan shall also mean an annuity contract described in Code §403(b) and an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code §414(p).

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

Effective for distributions made on or after March 28, 2005, in the event of a distribution of an "eligible rollover distribution" greater than \$1,000 that is made in accordance with the provisions of the Plan, if the 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.

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

The distribution is subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B)), the notice requirements of Code §402(f) and the mandatory withholding requirements of Code §3405(c). If a non-spouse beneficiary

receives a distribution from the Fund, the distribution is not eligible for a sixty (60) day (non-direct) rollover.

If the Firefighter'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 Firefighter dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the five (5) year rule or the life expectancy rule, pursuant to Treasury Regulations §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

- 11.04 For distributions made after December 31, 2007, a Firefighter 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.
- 11.05 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.
- 11.06 Name and Address Changes. Each Firefighter, spouse, and beneficiary is responsible to notify the Board of Trustees of any change in his name or address to which his benefit checks and other communications are to be mailed. If any check in payment of a benefit is mailed by regular United States mail to the last address of the payee as shown on the Board of Trustees' records and is returned unclaimed, the Trustee shall discontinue further payments until corrected information is given to the Board of Trustees.
- 11.07 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.
- 11.08 HELPS. Notwithstanding the foregoing and Section 5 of the Act, a Firefighter may elect to direct the Fund to directly pay deductions from distributions to a provider of accident or health plan or qualified long-term care insurance contract.
- 11.09 Notwithstanding the foregoing and Section 5 of the Act, a Firefighter may elect to direct the Fund to pay deductions from distributions to the Fund to reimburse the Fund for reasonable expenses incurred in the review of a qualified domestic relations order which relates to the Firefighter's benefits.

11.10 Correction of Payment Error. If any error in payment of benefits occurs, including an overpayment, the Fund shall correct such error and may adjust any future payment so the correct benefit will be paid, except as provided in subsection c below, and the Texas Government Code §802.1024(b). The adjustment for an overpayment or underpayment may be made to one or more future payments at the discretion of the Board and pursuant to Texas Government Code §§802.1024 and 802.1025. If no future payments are due, the Board may recover an overpayment in any manner permitted by Section 8 of the Act and Texas Government Code §§802.1024 and 802.1025. The Board must begin the adjustment of future payment to correct an overpayment or recovery of an overpayment not later than the ninetieth (90<sup>th</sup>) day after the date the notice described below is delivered or the date the second notice described below is mailed

- a. Notice. Upon discovery of an overpayment error but not later than ninety (90) days after discovery, the Board of Trustees shall give written notice of the overpayment error to the affected person by certified mail, return receipt requested. If the Board does not receive a signed receipt evidencing delivery on or before the thirtieth (30<sup>th</sup>) day after the date the notice is mailed, the Board shall send the notice a second time, by certified mail, return receipt requested.
- b. The written notice will include:
  - (1) the amount of the correction;
  - (2) how the correction was calculated;
  - (3) an explanation of the reason for the correction;
  - (4) a statement that the affected person may file a written complaint with the Fund if the affected person does not agree with the correction;
  - (5) instructions for filing a written complaint with the Fund; and
  - (6) a payment plan option if no future payments are due.
- c. Any overpayment of benefits may not be corrected or recovered if:
  - (1) the overpayment was made more than three (3) years before the date of the discovery of the overpayment; or
  - (2) if the Board does not adjust future payments or begin recovery within the time prescribed above.
- d. If the affected person files a written complaint, the Board will follow the procedure as set out in Texas Government Code §802.1025.

**Section 12**  
**Amendment and Termination**

12.01 The Board of Trustees reserves the right to amend or terminate the Fund, subject to the provisions and requirements of the Act.

- a. An amendment or other change adopted shall not deprive a Firefighter of the Fund of a right to receive a vested benefit unless that Firefighter gives his written consent or unless the reduction in benefits is made in accordance with Section 16 of the Act.
- b. All amendments to the Fund shall be made under the procedures prescribed by the Act.
- c. The Board has the power to make any amendment to the Fund to insure the Fund is and remains qualified for purposes of Code §401 and to obtain a favorable determination letter from the IRS.
- d. In the event of termination of the Plan, the rights of all Firefighters 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 Firefighters or their beneficiaries. No assets shall revert to the City.

**Section 13**  
**Board of Trustees**

13.01 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.

13.02 The Board shall establish administrative procedures to be utilized in processing claims or matters which affect the substantial rights of any person, including Participants, retirees, beneficiaries or any person affected by a decision of the Board.

13.03 Any person or persons involved in the administration of the Plan shall be entitled to rely upon any representation made or evidence furnished by a Firefighter or beneficiary with respect to his age or other facts required to be determined under any of the provisions of the Plan and shall not be liable on account of the payment of any monies in reliance on those representations. Any representation or evidence shall be binding upon the 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 Plan. Any of those parties may contest any representation or evidence. Each Firefighter and beneficiary has a duty to submit satisfactory proof of his age and other facts.

## **Section 14** **Miscellaneous Provisions Applicable to the Fund**

14.01 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 non-forfeitable.

14.02 Forfeitures shall not be applied to increase the benefits any Firefighter would otherwise receive under the Plan.

14.03 For the purposes of calculating actuarially equivalent benefits, the following assumptions shall be used for all Plan participants unless other factors are specified in the Plan:

Mortality: UP 1994 Mortality Table, Male Rates

Interest: Eight percent per annum, compounded annually

14.04 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. This provision is expressly intended to comply with and be subject to the provisions of §§42.0021 and 121.055 of Texas Property Code.

b. The above prohibition shall also apply to the creation, assignment, or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order under Subchapter A of Chapter 804 of the Texas Government Code. To the extent a qualified joint survivor annuity benefit is provided, the former spouse of the Firefighter shall be treated as a surviving spouse of Firefighter for such purposes if married for at least one year.

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.

14.05 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.

14.06 All provisions of the Fund shall be administered under the laws of the State of Texas unless superseded by federal law.

14.07 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.

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