

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

*Effective January 1, 2014*

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## **IRVING FIREMEN'S RELIEF AND RETIREMENT FUND**

*Effective January 1, 2014*

The participating members of the Irving Firemen's Relief and Retirement Fund held an election by secret ballot as required under Section 7 of Article 6243e, Vernon's Texas Civil Statutes, which may be cited as the Texas Local Firefighters Retirement Act (TLFFRA) on December 16, 2013, with 222 of the 311 participating members (71.4 percent of the total) voting in the election (TLFFRA requires at least 50 percent of the participating members must vote in the election). The additions or changes considered in the election are described in the election ballot. Thus, the proposed changes were approved by a majority of those voting in the election (214 participating members voted to approve the changes compared with 14 that voted against the changes, with one participating member abstaining from the vote) and the Plan document has been restated to reflect the proposals approved at the election.

The Board of Trustees of the Fund has approved the changes elected by the Members as described above effective January 1, 2014, unless otherwise provided herein. The benefits payable under the Fund to each Member and beneficiary as of December 31, 2013 that have been determined as of January 1, 2014, shall not change unless specifically provided for in this amended and restated Plan document. This Plan document supersedes the Plan document that was effective March 24, 2008.

The following provisions are applicable to all Members of the Fund on the Effective Date of the Fund as set forth above and to those who enter the Department thereafter.

When appropriate, the masculine gender shall include the feminine and vice versa. In addition, unless otherwise specified, any reference to months or years shall mean calendar months or calendar years.

### **A. DEFINITIONS**

The following terms used in this document shall have the meanings stated below, or under TLFFRA, unless a different meaning is clearly required by the context:

1. "Affiliated Employer": shall mean an employer which is a member of the same controlled group of corporations within the meaning of Section 414(b) of the Code, which is a trade or business (whether or not incorporated) that is under common control (within the meaning of Section 414(c) of the Code), which is a member of an affiliated service group (within the meaning of Section 414(m) of the Code) with the City or which is within any arrangement described in Section 414(o) of the Code. All Affiliated Employers, including the City, shall be aggregated and treated as a single employer as provided for under the rules of the Code as applied to a governmental plan. However, only those individuals who are eligible for membership in the Fund and are enrolled as Members of the Fund are eligible for benefits under the Fund.

2. “Average Salary”: shall mean a Member’s total Compensation over the seventy-eight (78) consecutive two-week pay periods during which the Member’s Compensation was highest, divided by thirty-six (36).

If a Member retires under the Deferred Retired Option Program (DROP), the above definition shall be applied as if the Member had separated from service on his DROP Eligibility Date.

If at the time a Member retires, becomes disabled, dies, or terminates with a vested benefit, the Member has been paid for less than seventy-eight (78) consecutive two-week pay periods, his Average Salary will be computed as though he had been employed for the seventy-eight (78) pay periods immediately preceding his separation from service. For the portion of this period prior to his actual employment, the Member’s pay will be assumed to be the amount he would have received as Compensation based on the rank at which he entered the Department.

3. “Beneficiary”: shall mean any person or entity designated by a Member who is or may become entitled to receive benefits under the Fund following the death of the Member. The identification and designation of a Beneficiary shall be valid only if made in accordance with the rules and procedures that are established by the Board and incorporated into the Fund by reference.
4. “Board”: shall mean the Board of Trustees of the Irving Firemen’s Relief and Retirement Fund. The Board of Trustees shall be the Fund administrator.
5. “Child”: means an unmarried person who is recognized as a “child” of a Member under the laws of the State of Texas and who received over half of his financial support from such Member during either the last calendar year immediately prior to the death of the Member or during the calendar year of the Member’s death. In order to be characterized as a Child by the Fund, the individual (a) must not have reached age eighteen (18); (b) must be a full time student (as defined in Section H.3.b.ii.) and not have reached age twenty-two (22); or (c) must have been determined by the Board to be disabled pursuant to Section H.3.b.iii. prior to reaching age eighteen (18) or age twenty-two (22), as applicable.
6. “City”: shall mean the City of Irving, Texas.
7. “Code”: shall mean the Internal Revenue Code of 1986, as amended.
8. “Compensation”: shall mean a Member’s total bi-weekly pay, including regular, longevity and overtime pay, and pay received during a period of sick leave or vacation, but excluding lump sum distributions for unused sick leave and/or unused vacation time and pay received for services performed at the request or direction of other agencies, municipalities, and departments for which the City and/or the Department receives reimbursement.

9. “Credited Service”: shall mean the period of employment, covered by the Fund, during which a Member pays into, and keeps on deposit in the Fund, the contributions required by the Fund. Credited Service will be calculated in years and completed months. One twelfth (1/12) of a year of Credited Service will be credited for each full month of employment completed in excess of whole years.

Credited Service shall include periods during which a Member received a Disability Retirement Benefit from the Fund in excess of \$200.00 per month, but Credited Service granted during a period of disability shall not cause a Member’s total Credited Service to exceed twenty (20) years. If a Member begins receiving a Disability Retirement Benefit after having completed more than twenty (20) years of Credited Service, such service in excess of twenty (20) years shall be preserved, but the Member will not earn any additional years of Credited Service for the period during which a Disability Retirement Benefit is paid from the Fund.

Credited Service shall also include any credit required to be provided for any period of absence to serve in any qualifying uniformed service pursuant to either TLFFRA or the Uniformed Services Employment and Reemployment Rights Act (“USERRA”).

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

10. “Department”: shall mean the City of Irving, Texas Fire Department.
11. “DROP Account”: shall mean the hypothetical account that is established on behalf of a Member who upon retirement (or whose surviving Spouse or other Beneficiary upon the death of the Member) elects to receive his benefit under the DROP and will be credited with the amounts that will be used to determine the value of the Member’s lump-sum DROP payment.
12. “DROP Date”: shall mean the date selected by the Member or surviving Spouse or other Beneficiary, which may not be earlier than the later of a or b, where:
- a. Is the date on which the Member first satisfies the DROP eligibility criteria under Section D.2.; and
  - b. Is the date that is 108 calendar months prior to the Member’s retirement date.
13. “Fund” or “Plan”: shall mean the Irving Firemen’s Relief and Retirement Fund.

14. “Member”: shall mean any employee of the Department, excluding those employees that are eligible to participate in the Texas Municipal Retirement System (TMRS) or any other system or plan. Subject to the terms and limitations of the Fund, any person who has become a Member will remain a Member until such Member’s entire interest in the Fund has been distributed or forfeited.
15. “Fund Year”: shall mean the calendar year.
16. “QDRO”: shall mean a domestic relations order that is determined by the Board to be a qualified domestic relations order, as defined under Section 414(p) of the Code.
17. “Spouse”: shall mean a husband or wife, as recognized under the laws of the State of Texas, of a Member, who was married to such Member on the date of the Member’s death, and, if earlier, also on the date of the Member’s retirement or termination of employment with the Department.
18. “TLFFRA”: shall mean the Texas Local Fire Fighters Retirement Act (Article 6243e., V.T.C.S.), as amended from time to time.

**B. SERVICE RETIREMENT BENEFIT**

1. Eligibility for a Service Retirement Benefit: A Member will be eligible for a Service Retirement Benefit on or after the date he has met both of the following requirements:
  - a. Attainment of age 50; and
  - b. Completion of 20 years of Credited Service.
2. Amount of Service Retirement Benefit: A Member who qualifies for a Service Retirement Benefit will receive a monthly retirement income equal to the sum of a. and b., where:
  - a. Is a standard monthly benefit equal to 3.175 percent of the Member’s Average Salary multiplied by the Member’s years Credited Service not in excess of twenty-one (21) years of Credited Service; and
  - b. Is an additional service benefit in an amount equal to \$60.00 per month for each year of Credited Service in excess of twenty-one (21) years of Credited Service.

In no event shall the Service Retirement Benefit exceed the maximum amount permitted under Section 415 of the Code, the provisions of which are incorporated herein by reference.

3. Commencement and Form of Service Retirement Benefit:

- a. The distribution of a Service Retirement Benefit will commence as of the last day of the month during which the Member retires, or as soon thereafter as administratively practicable, in the form of an annuity payable for the life of the Member. Please refer to Section H for provisions regarding the payment of death benefits under the Fund. An election to receive a Service Retirement Benefit under this Section B shall be irrevocable.
- b. No Member may begin receiving a Service Retirement Benefit while actively employed by the Department in a capacity that is covered under TLFFRA. Subject to the Member electing an optional form of payment under Section E, a Member's Service Retirement Benefit will begin as soon as administratively possible following the date on which the Member's employment terminates. Notwithstanding the previous sentence, however, a Member will not be considered to have terminated employment with the Department, and Service Retirement Benefit payments will be suspended, if, in the sole and absolute discretion of the Board, the Member's termination of employment was not made in good faith. A Member will be deemed to not have terminated employment in good faith if he resumes employment with the Department in a capacity covered under TLFFRA within six months of the date on which the Member originally terminated employment. In the event a Member's Service Retirement Benefit is suspended in accordance with this paragraph, payments to the Member will recommence upon his subsequent good faith termination of employment in accordance with rules and procedures established by the Board.

**C. SERVICE RETIREMENT BENEFIT WITH COST OF LIVING ADJUSTMENT**

1. Eligibility for a Service Retirement Benefit with Cost of Living Adjustment: In lieu of the Service Retirement Benefit provided under Section B.2., a Member who qualifies for a Service Retirement Benefit may elect to receive his benefit under the cost of living adjustment option described in this Section C. Once a Member has begun receiving payments under the cost of living adjustment option, his election may not be revoked or changed in any way.
2. Amount of Service Retirement Benefit with Cost of Living Adjustment: The monthly benefit payable to a Member who elects the Service Retirement Benefit with Cost of Living Adjustment will be calculated in the same manner as the Service Retirement Benefit under Section B.2., above, except that the appropriate percentage from the table below, based on the Member's attained age at retirement, will replace the percentage specified in Section B.2.a. Likewise, the additional Service Retirement Benefit under Section B.2.b. for a Member who elects the cost of living adjustment option will be calculated using the dollar amount provided in the table below rather than the dollar amount specified in Section B.2.b.

<u>Age at Retirement</u>	<u>Standard Service Percentage</u>	<u>Additional Monthly Benefit for Years in Excess of 20</u>
50	57.20%	\$54.08
51	57.30%	\$54.15
52	57.40%	\$54.22
53	57.45%	\$54.28
54	57.50%	\$54.35
55	57.60%	\$54.42
56	57.70%	\$54.50
57	57.80%	\$54.58
58	57.85%	\$54.67
59	57.90%	\$54.75
60	58.00%	\$54.83
61	58.10%	\$54.92
62	58.20%	\$55.00
63	58.30%	\$55.08
64	58.40%	\$55.17
65	58.50%	\$55.25

3. Annual Cost of Living Increase: The monthly retirement benefit of a Member who elects to receive his Service Retirement Benefit under this Section C will be increased one percent (1%) annually as follows. Increases will be made each year, effective with the payment due January 31 of each calendar year. Effective with the payment due the January 31 immediately following the Member's retirement date, a Member will receive a pro rata increase equal to one percent (1%) multiplied by the ratio of the number of full monthly retirement payments received during the prior twelve (12) calendar months, divided by twelve (12). The first full one percent (1%) adjustment will take place after the Member has been retired for at least one full year and has received a minimum of twelve (12) full monthly retirement benefit payments.

**D. DEFERRED RETIREMENT OPTION PROGRAM (DROP)**

1. General Rules: In lieu of receiving a Service Retirement Benefit distributed in accordance with Sections B or C above, a Member who has satisfied the applicable age and Credited Service requirements may elect to receive the distribution of his benefit in the form of the Deferred Retirement Option Program (DROP), as described in this Section D. A Member's election to receive his benefit in the form of the DROP must be made in accordance with the procedure set forth under the Fund and any rules, policies, or procedures established by the Board for making such an election, the terms of which will be incorporated into the Fund by reference.

2. Eligibility for the DROP: A Member will be eligible to elect to receive his benefit under the DROP if his retirement occurs on or after the date he has met both of the following requirements:
  - a. Attainment of age fifty-one (51); and
  - b. Completion of twenty (20) years of Credited Service.
3. How the DROP Works:
  - a. Under the DROP, the Member may elect to have his Service Retirement Benefit calculated as if he had retired on his DROP Date. Under no circumstances may an election to receive benefits under the DROP be revoked once distribution of the monthly benefit under the DROP or all or a portion of the DROP Account has commenced.
  - b. The monthly benefit of a Member who elects to receive the distribution of his Service Retirement Benefit under the DROP will be based on his Average Salary and Credited Service as of his DROP Date. The formula under which the Member's benefit will be calculated, however, will be the applicable Service Retirement Benefit formula under the Plan document in effect on the earlier of (i) the Member's retirement date or (ii) the date that is four (4) years after his DROP Date.
  - c. In addition to his monthly retirement benefit, a Member who retires under the DROP will be eligible to receive a payment(s) equal to the Member's DROP Account.
4. The DROP Account:
  - a. Upon the Member's election of the DROP, the DROP Account will be credited with the sum of i, ii, and iii, where:
    - i. Is the Member's monthly Service Retirement Benefit calculated as of his DROP Date multiplied by the number of full calendar months between the DROP Date and the Member's retirement date **(in no event may the multiplier exceed 108)**;
    - ii. Is the amount of Member contributions that the Member made to the Fund under Section J.1. between his DROP Date and his retirement date; and
    - iii. Is assumed interest, compounded annually, from the Member's DROP Date through the Member's retirement date at a rate equal to two percent (2%) less than the greater of A or B, where:

- A. Is the rate used by the Fund's actuary in the last valuation report prepared for the Fund before the Member's DROP Date; and
- B. Is the rate used by the Fund's actuary in the last valuation report prepared for the Fund before the Member's retirement date.

The Member's DROP Account will continue to be credited with assumed interest in the amount determined under this paragraph until the date on which the balance of the DROP Account is distributed in full.

- b. The Member's DROP Account may be distributed at any time after the Member retires in the form of (i) a single lump-sum payment; (ii) installments; or (iii) any other form that is elected by the Member and approved by the Board, provided that the method of distribution satisfies the requirements of Section K.3. and Section 401(a)(9) of the Code.
  - c. If a Member dies prior to receiving the entire balance of his DROP Account, his surviving Spouse or other Beneficiary may receive a distribution of the Member's remaining DROP Account in accordance with this Section D.4. If distribution of the remaining balance of the DROP Account to the surviving Beneficiary has not been completed prior to the date on which the Member would have attained age 70-1/2, the distribution of the remaining balance of the Member's DROP Account will be made in a manner that complies with Section K.3. and Section 401(a)(9) of the Code. Any distribution of the remaining balance of the Member's DROP Account to a Child must be made in accordance with Section H.3.a.iii.
5. Beneficiary's Election: The surviving Spouse, Child, or other Beneficiary of a Member who dies prior to retirement but after (a) satisfying the eligibility criteria under Section D.2. and (b) the earliest date that could have been selected as the DROP Date may, in lieu of receiving the standard monthly Death Benefit under Section H, elect to receive a distribution of the DROP Account and, to extent a death benefit is payable under Section H, a reduced death benefit calculated as though the Member had elected, on the date of his death, to receive his benefit in the form of the DROP. Such an election by the surviving Spouse, Child, or other Beneficiary shall be irrevocable. In the event the election under this Section D.5. is made by a Beneficiary other than the Member's surviving Spouse or Child, the Beneficiary will only be entitled to receive a distribution of the DROP Account, and no additional reduced monthly death benefit will be payable.
6. Revocation of Prior DROP Election: Any Member who previously elected to enter the "Forward DROP" (as set forth under Section L hereof), but has not yet retired and commenced receiving distributions from the Fund, may make a one-

time, irrevocable election to cancel his prior election to enter the “Forward DROP” and may once again be eligible to receive a Service Retirement Benefit calculated in accordance with Sections B or C above or make a subsequent election to enter the DROP in accordance with this Section D. Any such revocation must be made in accordance with any and all rules and procedures established by the Board, and the period for making such a revocation shall begin on February 1, 2012 and end on July 31, 2012.

#### **E. EARLY RETIREMENT BENEFIT**

1. Eligibility for Early Retirement Benefit: If a Member has completed at least twenty (20) years of Credited Service but has not attained age forty-five (45) at the time his service terminates, he will be eligible to elect the Early Retirement Benefit commencing at the end of the month in which he attains age forty-five (45). However, in order to be eligible to receive an Early Retirement Benefit, the Member must leave his contributions in the Fund. Member contributions are not required after termination of service in order to receive an Early Retirement Benefit.

A Member who terminates service with the Department prior to attaining age fifty (50) but after completing at least twenty (20) years of Credited Service may elect to receive his retirement benefit under this Section E in lieu of receiving a normal Service Retirement Benefit at age fifty (50). Distribution of such Early Retirement Benefit may begin once the vested terminated Member has attained at least age forty-five (45).

Once a Member has begun receiving an Early Retirement Benefit, his election will be irrevocable.

2. Amount of Early Retirement Benefit: The monthly amount of benefit payable to a Member who elects the Early Retirement Benefit will be calculated in the same manner as the Service Retirement Benefit under Section B, except that the percentage from Table A below, based on the Member’s attained age (in full years and months) at early retirement, will replace the percentage otherwise specified in Section B.2.a. Likewise, the additional Service Retirement Benefit amount, if any, for a Member who elects the Early Retirement Benefit will be calculated using the dollar amount specified in Table B below, based on the Member’s attained age (in full years and months) at early retirement, rather than the dollar amount specified in Section B.2.b.

**Table A: Early Retirement Percentages**

Age	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
45	1.650%	1.670%	1.690%	1.710%	1.730%	1.750%	1.775%	1.795%	1.815%	1.835%	1.855%	1.875%
46	1.895%	1.920%	1.940%	1.965%	1.985%	2.010%	2.035%	2.055%	2.080%	2.100%	2.125%	2.145%
47	2.170%	2.195%	2.220%	2.245%	2.270%	2.295%	2.325%	2.350%	2.375%	2.400%	2.425%	2.450%
48	2.475%	2.505%	2.530%	2.560%	2.585%	2.615%	2.640%	2.670%	2.695%	2.725%	2.750%	2.780%
49	2.805%	2.835%	2.865%	2.900%	2.930%	2.960%	2.990%	3.020%	3.050%	3.085%	3.115%	3.145%

**Table B: Additional Service Benefit Amounts**

Age	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
45	\$38.22	\$38.52	\$38.81	\$39.11	\$39.40	\$39.70	\$39.99	\$40.29	\$40.58	\$40.88	\$41.17	\$41.47
46	\$41.76	\$42.09	\$42.41	\$42.74	\$43.06	\$43.39	\$43.71	\$44.04	\$44.36	\$44.69	\$45.01	\$45.34
47	\$45.66	\$46.02	\$46.38	\$46.74	\$47.10	\$47.46	\$47.82	\$48.17	\$48.53	\$48.89	\$49.25	\$49.61
48	\$49.97	\$50.37	\$50.76	\$51.16	\$51.56	\$51.95	\$52.35	\$52.75	\$53.14	\$53.54	\$53.94	\$54.33
49	\$54.73	\$55.17	\$55.61	\$56.05	\$56.49	\$56.93	\$57.37	\$57.80	\$58.24	\$58.68	\$59.12	\$59.56

**F. DISABILITY RETIREMENT BENEFIT**

1. Eligibility for a Disability Retirement Benefit: An active Member will qualify for a Disability Retirement Benefit if he becomes disabled from any cause whatsoever for either physical or mental reasons before he satisfies the eligibility requirements necessary to qualify for a Service Retirement Benefit, as described in Section B above. For the first two and one-half (2-1/2) years following the commencement of a Disability Retirement Benefit, a Member need only be disabled to the extent that he is unable to perform the duties of a position offered to him in the Department providing the Member with pay that is greater than or equal to the pay the disabled Member would have received had his disability not occurred and had he continued in his former position with the Department. To receive disability benefits under the Fund after the completion of such two and one-half (2-1/2) year period, such Member must be unable to perform the duties of any occupation for which he is reasonably suited by education, training, or experience.

2. Commencement of a Disability Retirement Benefit: The disability benefit will commence after the Member's regular salary, including vacation pay, has ceased as a result of his disability. Once disability benefits have commenced, they will continue for as long as the Member is living and remains eligible for benefits under this Section F.
3. Amount of the Disability Retirement Benefit: The Member's Disability Retirement Benefit will equal the sum of a. and b., where:
  - a. Is a monthly benefit equal to sixty-three and one-half percent (63.5%) of the Member's Average Salary as computed through the last full month in which the Member received regular Compensation; and
  - b. Is an additional benefit in an amount equal to sixty dollars (\$60.00) per month for each year of Credited Service in excess of twenty (20) years of service (a partial year of service will be given based on the Member's number of months of service completed in excess of whole years).
4. Termination, Reduction, or Reinstatement of a Disability Retirement Benefit: The Board shall have the power to continue, terminate, reduce, or reinstate a Member's Disability Retirement Benefit, subject to the following:
  - a. During the first two and one-half (2-1/2) years in which a Disability Retirement Benefit is paid, the Board may periodically review the situation of the disabled Member to determine the status of his disability. The Board may terminate the Member's benefit if the Member recovers to the extent that he is able to perform the duties of the job for which he was hired by the Department, including the duties of any job the Member has been offered in the Department pursuant to the Americans with Disabilities Act.
  - b. After the Member has received a Disability Retirement Benefit from the Fund for two and one-half (2-1/2) years or more, the Board may periodically review the situation of the disabled Member to determine the status of his disability.
    - i. The Board may terminate the Member's benefit if the Member has recovered to the extent that he is able to perform the duties of a job outside the Department, including the duties of any job for the City that he may have been offered by the City pursuant to the Americans with Disabilities Act, and, in the Board's opinion, he is able to earn at least as much money in his new job as he would have earned as a member of the Department.

- ii. If the Member has recovered to the extent that he is able to perform the duties of a job outside the Department but is not able to earn as much money in his new job as he would have as a member of the Department, then the Board may, in its sole discretion:
  - A. Continue to pay a full Disability Retirement Benefit to the Member; or
  - B. Elect to pay the Member a reduced Disability Retirement Benefit equal to one-half (1/2) of the original Disability Retirement Benefit calculated under Section F.3. above.
- c. The Board shall have the power to reinstate, on a prospective basis only, any Disability Retirement Benefit which has been previously terminated or reduced, provided the Member's condition has worsened due to the same cause for which he was originally determined to be disabled.

5. Recovery from Disability:

- a. Prior to the completion of twenty (20) years of Credited Service, if a disabled Member recovers to the extent that his disability benefit is terminated and he does not return to employment with the Department, such Member will be eligible to receive a benefit of two hundred dollars (\$200.00) per month for as long as he is unable to perform the duties of his occupation as a member of the Department or until he is eligible to receive a greater monthly benefit under Section G.2., if earlier.
- b. After both attainment of age fifty (50) and completion of twenty (20) years of Credited Service, a full Service Retirement Benefit will be paid if the Member recovers to the extent that his Disability Retirement Benefit would otherwise be terminated or reduced (either to \$200.00 per month or to one-half (1/2) the full Disability Retirement Benefit).

**G. VESTED TERMINATION BENEFIT**

1. Members with Twenty (20) or More Years of Credit Service:

- a. Eligibility for a Vested Termination Benefit: If a Member has completed at least twenty (20) years of Credited Service but has not attained age fifty (50) at the time his service terminates, he will be eligible to receive a deferred retirement income commencing at the end of the month in which he attains age fifty (50). However, in order to be eligible to receive a Vested Termination Benefit, the Member must leave his contributions in the Fund. Member contributions are not required after termination of service in order to receive a Vested Termination Benefit. As provided in

Section B.1., a Member is fully vested and eligible to receive a Service Retirement Benefit upon the attainment of age 50 and the completion of 20 years of Credited Service. A Member shall vest, regardless of age, for purposes of receiving a Vested Termination Benefit upon the completion of 10 or more years of Credited Service, as described in Section G.2. below.

- b. Amount of Vested Termination Benefit: A Member who qualifies for a Vested Termination Benefit will receive a monthly retirement income equal to the Service Retirement Benefit in Section B above, based on the Member's years of Credited Service and Average Salary as of the day he terminated employment.
  - c. Election to Receive Early Retirement Benefit or Member Contributions: Instead of the Vested Termination Benefit described in this Section, a Member may, if otherwise eligible, elect to receive an Early Retirement Benefit under Section E or the return of his own contributions under Section I. In electing to receive the return of his own contributions, the Member will forfeit all monthly benefits payable under the Fund.
2. Members with at Least Ten (10) but Less than Twenty (20) Years of Credited Service:
- a. Eligibility for a Vested Termination Benefit: If a Member has completed at least ten (10) years of Credited Service, he may elect to leave his contributions in the Fund and receive a portion of his Service Retirement Benefit, commencing on or after the date on which he would have both attained age fifty (50) and completed twenty (20) years of Credited Service had he remained in the continuous service of the Department.
  - b. Amount of Vested Termination Benefit: The monthly amount of such benefit will equal the product of i., ii., and iii., where:
    - i. Is sixty-three and one-half percent (63.5%) of the Member's Average Salary;
    - ii. Is a fraction (not to exceed one), the numerator of which is the Member's number of years of Credited Service and denominator of which is twenty (20); and
    - iii. Is the Member's vested percentage, specified in the following table, based on the number of completed whole years of Credited Service.

<u>Number of Whole Years of Credited Service</u>	<u>Vested Percentage</u>
Less than 10	0%
10	50%
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20 or more	100%

The Vested Termination Benefit will be payable under the same terms and conditions as the benefit under Section G.1. above.

- c. Election to Receive Member Contributions: Instead of the Vested Termination Benefit described in this Section, a Member may elect to receive the return of his own contributions under Section I. In electing to receive the return of his own contributions, the Member will forfeit all monthly benefits payable under the Fund.

## **H. DEATH BENEFITS**

- 1. Surviving Spouse's Death Benefit: In the event of the death of an active Member, a retiree, or a terminated Member who is eligible for a Vested Termination Benefit, the Member's Spouse, if any, will receive an immediate monthly benefit for as long as such Spouse is alive under the conditions and in the amount described below:
  - a. Death of Active Member: If the Member's death occurred while he was an employee of the Department, the surviving Spouse shall receive a standard benefit equal to two-thirds (2/3) of the monthly benefit the Member had earned under Section B as of his date of death, provided that:

- i. The Member's monthly benefit on which the surviving Spouse's standard death benefit described above will be based shall not be less than the Service Retirement Benefit that would be payable to the Member had he completed twenty (20) years of Credited Service as of the date of his death; and
  - ii. If the deceased Member would have been eligible to elect to participate in the DROP on the date of his death and his surviving Spouse makes the election under Section D.5., for purposes of the surviving Spouse's death benefit, Average Salary and Credited Service shall be determined as of the deceased Member's DROP Date, and the surviving Spouse shall be eligible to receive the DROP Account in accordance with Section D.4.b.
- b. Death of a Retiree After Electing a Service Retirement Benefit: If the Member's death occurred after electing a Service Retirement Benefit, the surviving Spouse shall receive a standard death benefit equal to two-thirds (2/3) of the monthly benefit the Member was receiving as of his date of death.
- c. Death of a Retiree After Electing a Service Retirement Benefit with Cost of Living Option: If the Member's death occurred after electing a Service Retirement Benefit with Cost of Living Option, the surviving Spouse shall receive a death benefit equal to two-thirds (2/3) of the Member's monthly benefit under Section C, including any additional service benefit the Member was receiving at the date of his death. Annual increases, as described in Section C.3. will continue to be made to the surviving Spouse's benefit for her lifetime.
- d. Death of a Retiree Under the DROP: If the Member had retired under the DROP:
  - i. The Member's surviving Spouse shall receive two-thirds (2/3) of the monthly Service Retirement Benefit to which the Member was entitled pursuant to Section D; and
  - ii. The Member's surviving Spouse shall receive any unpaid portion of the DROP Account under Section D.4., which remains payable as a result of the Member's participation in the DROP.
- e. Death of a Retiree After Electing an Early Retirement Benefit: If the Member had retired under the Early Retirement Benefit provisions of Section E, the surviving Spouse shall receive a monthly benefit equal to two-thirds (2/3) of the monthly benefit that the Member was receiving from the Fund as of the date of his death.

- f. Death of a Member Receiving a Disability Retirement Benefit: If the Member's death occurred after disability retirement, the surviving spouse shall receive a standard death benefit equal to two-thirds (2/3) of the monthly benefit the Member was receiving at the date of his death.
  - g. Death of a Vested Terminated Member:
    - i. If the Member's death occurred after the date the Member completed twenty (20) or more years of Credited Service and if the Member is receiving or is eligible for a Vested Termination Benefit, the surviving Spouse shall receive a standard death benefit equal to two-thirds (2/3) of the monthly benefit the Member was receiving or was eligible to receive as of his date of death.
    - ii. If the Member was instead eligible for the Vested Termination Benefit under Section G.2., the surviving Spouse shall receive a standard death benefit equal to two-thirds (2/3) of the monthly amount which the Member was eligible to receive under Section G.2.
2. Commencement of Surviving Spouse's Death Benefit: The monthly death benefits described in Sections H.1.a. through H.1.g. above, shall commence as of the first day of the calendar month next following the calendar month in which the Member's death occurs, or as soon thereafter as administratively practicable.
- a. In order for a retired or terminated Member's Spouse to qualify for the death benefit described above, such Spouse must have been married to the Member before the earlier of (i) the Member's date of retirement or (ii) the Member's date of termination of service.
  - b. Unless the terms of a QDRO provide otherwise, if a Member obtains a divorce or is legally separated from the Spouse that would have otherwise been eligible to receive the surviving Spouse's death benefit on or after the earlier of (i) the Member's retirement date or (ii) the Member's date of termination of service, such Spouse will no longer be eligible to receive the death benefit under the terms of this Section H, and no surviving Spouse's death benefit will be paid under the Fund.
3. Child's Death Benefit: Regardless of (a) whether distributions under the Fund have commenced and (b) the optional form of payment, if any, elected by the Member, each eligible Child of a deceased active Member or a deceased terminated Member who, at the time of death, was eligible to receive a monthly pension benefit under the Fund will receive a monthly benefit subject to the conditions and in the amount described below. All distributions to a Child will be made to the guardian of his or her estate.

- a. Amount of the Child's Death Benefit:
- i. If the deceased Member has a surviving Spouse eligible for a death benefit under this Section H, each Child of the Member will receive a monthly benefit equal to 8.47 percent of the Member's Average Salary through the month in which the Child attains age eighteen (18).
  - ii. If the surviving Spouse of the deceased Member dies after becoming eligible to receive a Death Benefit under this Section H, the Member has no surviving Spouse at the date of his death, or the Member's surviving Spouse's death occurs at the same time as the Member's death, in addition to the monthly benefit described in Section H.3.a.i. above, each Child will receive monthly benefit equal to a pro rata share of the benefit which would have been payable to a surviving Spouse under this Section H through the month in which the Child attains age eighteen (18). Subject to Section H.7. below, no Child, however, may receive a total monthly benefit under this Section H.3. which exceeds thirty-one and three-quarters percent (31.75%) of the Member's Average Salary.
  - iii. If the deceased Member would have been eligible to elect to participate in the DROP on the date of his death, there is no surviving Spouse at the date of the Member's death, and his surviving Child makes the election under Section D.5., Average Salary and Credited Service shall be determined as of the DROP Date, and the surviving Child shall be eligible to receive the DROP Account. Notwithstanding the provisions of Section D.4.b., all distributions of a Member's DROP Account to a surviving Child shall be payable to the guardian of the Child's estate, as appropriate, only in the form of equal, annual installments over a period of ten (10) years commencing on the date of the Member's death.
- b. Eligibility for Child's Death Benefit:
- i. The Board shall have the exclusive authority to determine the individual or individuals to whom the benefits under this Section H.3. are to be paid. The Board shall have the exclusive authority to determine whether a Child is disabled under the terms of the Fund. In the event a Child becomes eligible for benefits under the Fund as a result of the death of more than one Member, the only benefit payable shall be the greatest of the benefits to which the Child is eligible to receive on account of one deceased Member.

- ii. The benefits described in this Section H.3. are payable from age eighteen (18) to age twenty-two (22) as long as the Child remains a full-time student between those ages (as certified by the Child's school). A full-time student is a student who is enrolled for the number of hours or courses the school considers to be full-time attendance. The term "school" includes elementary schools, middle schools, junior and senior high schools, colleges and universities, and technical, trade, and mechanical schools. The term "school" does not include on-the-job training courses or correspondence schools.
  - iii. If a Child becomes totally disabled as a result of physical or mental illness, injury or retardation prior to the date that he ceases to be eligible for the Death Benefit described above, monthly benefits shall be continued to such Child after age seventeen (17) for as long as the Child remains totally disabled.
- 4. Payments to Dependent Parents: If no Death Benefit is payable under Sections H.1. through H.3. above, at the time of the Member's death, the amount a surviving Spouse would have received will be paid to the Member's dependent parent(s). For the purposes of this Section H.4., a dependent parent is the parent of a deceased Member which such Member was eligible to treat as a dependent for federal income tax purposes for either (a) the calendar year preceding such Member's death, or (b) the calendar year of such Member's death. If the deceased Member would have been eligible to elect to participate in the DROP on the date of his death and his surviving dependent parent(s) makes the election under Section D.5., for purposes of the surviving dependent parent's death benefit, Average Salary and Credited Service shall be determined as of the deceased Member's DROP Date, and the surviving dependent parent(s) shall be eligible to receive a distribution of the DROP Account in accordance with Section D.4.b.
- 5. Payments to Member's Estate: If no Spouse, Child or dependent parent is eligible for an allowance under Sections H.1 through H.4. above, an amount equal to the excess, if any, of the Member's own contributions (without interest) over the total amount of payments which have been made to the Member, Spouse, Child, and/or dependent parents will be paid to the Member's estate.
- 6. Forfeiture of Spousal Death Benefit: No benefits payable to the Spouse of a deceased Member will be forfeited if the Spouse remarries. However, if a Spouse becomes eligible to receive a benefit as a result of the death of more than one Member, then the only benefit payable shall be the greatest of the benefits otherwise due on account of each individual Member's death.

7. Maximum Benefit: Notwithstanding any provision to the contrary, the sum of all benefits being paid or payable at any point in time shall not exceed:
  - a. For a Member who retired under the Service Retirement Benefit or Disability Retirement Benefit provisions of the Fund, the benefit the Member was receiving as of the date of his death, plus (for the month in which any DROP balance is payable) the DROP distribution;
  - b. For a Member who retired under the Service Retirement Benefit with Cost of Living Option or Early Retirement Benefit, the monthly Service Retirement Benefit the Member was eligible to receive at the day he retired;
  - c. For a Member who was not retired but was eligible for a Service Retirement Benefit at the time of his death, the Service Retirement Benefit the Member would have received had he retired on the date of his death;  
or
  - d. For a Member who was not retired and was not eligible for a Service Retirement Benefit at the time of his death, the monthly Disability Retirement Benefit the Member would have received had he become disabled on his date of death.

If the sum of all benefits payable on behalf of the Member's Spouse and children would otherwise exceed the limits set forth above, then the benefit attributable to each Child shall be reduced by the same percentage, so that the sum of the reduced benefits equals the applicable limit. If the benefits for one or more of the children should subsequently be terminated, then the benefits for the remaining beneficiaries shall be recalculated to provide the full benefits specified in the Fund or a larger pro rata share of those benefits, if the sum of the benefits still exceeds the above limits.

#### **I. RETURN OF A MEMBER'S OWN CONTRIBUTIONS**

If a Member terminates his service and is not eligible for a benefit as described above, he will receive an amount equal to the excess of his own contributions to the Fund over the amount of benefits which he has previously received from the Fund. A Member who 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 the Member makes such an election, he will forfeit his right to all benefits which he otherwise would have been eligible to receive. The amount of the refund shall not include any interest accumulated on account of the Member's contributions.

## **J. MEMBER AND CITY CONTRIBUTIONS**

1. Member Contributions: Each Member will make contributions of ten percent (10%) of his Compensation. If a Member's Compensation has been offset (reduced) by worker's compensation benefits, then the Compensation used to calculate a Member's contributions to the Fund shall be increased so as to include the amount so offset, as required by Section 5(a) of Article 8309h of Vernon's Texas Civil Statutes. A Member's contributions shall be "picked up" by the City as permitted under Section 414(h) of the Code, and excluded from the taxable income of the Member.
2. City Contributions: The City will make contributions of at least twelve percent (12%) of each Member's Compensation. If a Member's Compensation has been offset (reduced) by worker's compensation benefits, then the Compensation used to calculate the City's contributions to the Fund shall be increased so as to include the amount offset.
3. Supplemental Member Contributions:
  - a. In addition to the standard Member contribution under Section J.1 above, each Member will make a supplemental contribution to the Fund as follows:
    - i. Effective as of the first payroll period commencing on or after August 25, 2011, the supplemental Member contribution will equal one percent (1%) of the Member's Compensation; and
    - ii. Effective as of the first payroll period commencing on or after January 1, 2012, the supplemental Member contribution will increase by one percent (1%) to a total of two percent (2%) of the Member's Compensation.
  - b. Supplemental Member contributions under this Section J.3 will be eligible for distribution pursuant to Section I above in the event a Member terminates his service with the Department prior to becoming eligible for a benefit under the terms of the Fund.
  - c. Notwithstanding anything to the contrary, supplemental Member contributions under this Section J.3 will not be aggregated with any standard Member contribution under Section J.1 for purposes of the determination of any benefit under the DROP provisions of the Fund, including, but not limited to, any credit or contribution to a Member's DROP Account.

- d. If a Member's Compensation has been offset (reduced) by worker's compensation benefits, then the Compensation used to calculate a supplemental Member contributions to the Fund will be increased so as to include the amount so offset, as required by Section 5(a) of Article 8309h of Vernon's Texas Civil Statutes.
- e. A supplemental Member contribution shall be "picked up" by the City as permitted under Section 414(h) of the Code, and excluded from the taxable income of the Member for the year contributed.

**K. GENERAL PROVISIONS APPLICABLE TO THE FUND**

- 1. ***Exclusive Benefit:*** It shall be impossible under this Fund and its related trust, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the Fund and trust, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of Members or their beneficiaries.
- 2. ***Use of Forfeitures:*** Forfeitures shall not be applied to increase the benefits any Member would otherwise receive under the Fund.
- 3. ***Required Minimum Distributions:*** All benefit distributions must comply with Section 401(a)(9) of the Code. This section of the Code, together with the final Regulations issued by the Department of Treasury under that section, are hereby incorporated by reference in this Fund. The requirements of Section 401(a)(9) of the Code and the Regulations shall control over any distribution option in this Fund which is inconsistent with Section 401(a)(9) of the Code.

Unless a benefit distribution fits within the exception below, the benefit must begin to be paid NO LATER than the April 1st of the calendar year following the later of (a) the year in which the Member attains age 70-1/2, or (b) the year the Member retires. Once a Member attains age 70-1/2, required payments under this Section must be in an amount which is equal to or greater than the required minimum distribution under Section 401(a)(9) of the Code. If a Member made a designation before January 1, 1984 that complied with Section 401(a)(9) of the Code before its amendment by the Tax Reform Act of 1984, the distribution does not have to be made until the time described in the designation.

In the event a former Member is receiving benefits at the time of his death, and he dies before his entire interest has been distributed, the remaining portion of that interest must be distributed at least as rapidly as under the method of distribution in effect as of the date of his death.

In the event a Member's Beneficiary is anyone other than the Member's surviving Spouse, the benefit must not extend beyond the life of the Beneficiary (or over a period certain not extending beyond the life expectancy of the Beneficiary), and the distribution must begin no later than one year after the death of the Member. A non-spouse Beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Member dies before his or her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution. In the event a Member's Beneficiary is the Member's surviving Spouse, the benefit must not extend beyond the life of the surviving Spouse (or over a period certain not extending beyond the life expectancy of the surviving Spouse), and the distribution must begin no later than the date on which the Member would have attained the age of 70-1/2. If the surviving Spouse dies before the distribution begins, the distribution must not extend beyond the life of the beneficiary of the surviving Spouse (or over a period certain not extending beyond the life expectancy of the beneficiary) and the distribution must begin no later than one year after the death of the surviving Spouse.

4. ***Maximum Pension Provisions:*** The provisions of Section 415 of the Code are hereby incorporated in the Fund by reference. No benefit shall be payable to a Member or Beneficiary in excess of the benefit permitted to be paid under Section 415 of the Code and the regulations issued under that Section.
  - a. **Compensation:** Solely for purposes of Section 415 of the Code, "compensation" shall mean all earned income, wages, salaries and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the City or an Affiliated Employer including but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses, fringe benefits, reimbursements, expense allowances and amounts paid or reimbursed by the City for moving expenses incurred by a Member, but only to the extent that these amounts are not deductible by the Member under Section 217 of the Code; amounts includable in income that are described in Sections 104(a)(3), 105(a) and 105(h) of the Code; the value of a nonqualified stock option grant to the extent the value of the option is includable in income in the year of grant; the amount includable in income upon making an election under Section 83(b) of the Code; and the amount includable in the gross income of an employee under the rules of Sections 409A or 457(f)(1)(A) of the Code or because the amounts are constructively received by the Employee; but excluding the following:

- i. For years beginning prior to 1998, the City's contributions to a plan of deferred compensation which are not included in the Member's gross income for the taxable year in which contributed or the City's contributions to a simplified employee pension plan to the extent the contributions are deductible by the Member or any distributions from a plan of deferred compensation;
- ii. Amounts realized from the exercise of a nonqualified stock option or the value of restricted stock or property held by the Member when it becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- iii. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
- iv. For years beginning prior to 1998, other amounts which receive special tax benefits, or contributions made by the City (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Section 403(b) of the Code whether or not the amounts are actually excludable from the gross income of the Member; and
- v. Other items of remuneration that are similar to any of the items listed in (i) through (iv) of this paragraph.

Compensation means, when used to determine if a person is a highly compensated employee, as defined under Section 414(q) of the Code, the same as it does for purposes of applying Section 415 of the Code as modified by including elective contributions under a cafeteria plan governed by Section 125 of the Code, a qualified transportation fringe benefit plan governed by Section 132(f) of the Code, and contributions to any plan qualified under Section 401(k), 408(k) or 403(b) of the Code.

- b. Limitation Year: For purposes of Section 415 of the Code, the limitation year shall be the calendar year.
- c. Actuarial Assumptions: Effective January 1, 1995, the actuarial assumptions used to determine the limits applicable to the Fund under Section 415 of the Code shall be (i) the interest rate specified in Section K.6. below, and (ii) the applicable mortality table prescribed by the Secretary of the Treasury under Section 415(b)(2)(E)(v) of the Code. Prior to January 1, 1995, the assumptions used to determine the limits under Section 415 of the Code shall be the assumptions specified in Section K.6. below, or the assumptions then specified in the Fund.

Notwithstanding any other Fund provision to the contrary, with respect to 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 section 415(b)(2)(B), (C), or (D) of the Code shall be the table prescribed in Revenue Ruling 2001-62.

d. Notwithstanding anything contained in the Plan to the contrary, the limitations, adjustments, and other requirements prescribed in the Plan shall comply with the provisions of Section 415 of the Code and the final regulations promulgated thereunder, the terms of which are specifically incorporated herein by reference as of the effective date of this Section K.4, except where an earlier effective date is otherwise provided in the final regulations.

5. ***Limits on Considered Compensation:*** In addition to other applicable limitations set forth in the Fund, and notwithstanding any other provision of the Fund to the contrary, for Fund Years beginning on or after January 1, 1994, the annual compensation of each Member taken into account under the Fund shall not exceed the OBRA '93 annual compensation limit as it applies to governmental plans. The OBRA '93 annual compensation limit shall be adjusted for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 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 12.

For Fund Years beginning on or after January 1, 1994 but before January 1, 2002, any reference in this Fund to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision. If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Fund Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Fund Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

Compensation means compensation during the Fund Year or such other consecutive 12-month period over which compensation is otherwise determined under the Fund (the determination period). The \$200,000 limit on Compensation in the preceding paragraph shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment

in effect for a calendar year applies to Annual Compensation for the determination period that begins with or within such calendar year.

The annual compensation of each Member taken into account in determining benefit accruals in any Fund Year beginning after December 31, 2001, shall not exceed \$200,000 (as adjusted by the Secretary of Treasury). In determining benefit accruals in Fund Years beginning after December 31, 2001, the annual compensation limit for any prior determination period, shall be \$200,000 (as adjusted by the Secretary of Treasury).

6. **Actuarial Equivalence:** For the purposes of calculating actuarially equivalent benefits, the following assumptions shall be used for all Fund participants unless other factors are specified in the Fund:

Mortality: The rates prescribed in the “applicable mortality table” published by the Internal Revenue Service

Interest: Five percent per annum, compounded annually

Effective for benefits earned under the Fund on and after January 1, 2008, the mortality table and interest rate assumption will be as follows:

Mortality: UP 1994 Table, Male Rates

Interest: Eight percent per annum, compounded annually

7. **Direct Rollovers:** For distributions made on or after January 1, 1993, and notwithstanding any provisions of the Fund 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 Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

a. **Direct Rollover:** A direct rollover is a payment by the Fund of an eligible rollover distribution to the eligible retirement plan specified by the distributee.

b. **Eligible Rollover Distribution:** An eligible rollover distribution is 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:

i. 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;

- ii. Any distribution to the extent that such distribution is required under Section 401(a)(9) of the Code; and
- iii. 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).

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 transferred only to an individual retirement account or annuity described in Sections 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Sections 401(a) or 403(a) of the Code 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.

- c. Eligible Retirement Fund: For distributions made after December 31, 2001, an eligible retirement plan shall mean one of the following plans or other arrangements that accepts the distributee's eligible rollover distribution:
  - i. An individual retirement account described in Section 408(a) of the Code;
  - ii. An individual retirement annuity described in Section 408(b) of the Code;
  - iii. An annuity plan described in Section 403(a) of the Code;
  - iv. A qualified trust described in Section 401(a) of the Code;
  - v. An annuity contract described in Section 403(b) of the Code;
  - vi. An eligible plan under Section 457(b) of the Code 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 Fund; and
  - vii. A Roth IRA described in Section 408A(b) of the Code.

The above 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 QDRO.

- d. **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 QDRO, are distributees with regard to the interest of the Spouse or former Spouse. A non-spouse Beneficiary who is a "designated beneficiary" under Section 401(a)(9)(E) of the Code and the Treasury Regulations thereunder shall also be a distributee but may elect a rollover only if it is a direct rollover from this Fund to an individual retirement account such Beneficiary establishes for the purposes of receiving such distribution. For purposes of the immediately preceding sentence only, an "indirect" rollover, where the distribution is first paid to the Beneficiary and subsequently transferred by the Beneficiary within sixty (60) days to an individual retirement account, is not permitted. If a Member's named Beneficiary is a trust, the Fund may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a "designated beneficiary" within the meaning of Section 401(a)(9)(E) of the Code.
8. ***Right to Amend, Modify, and Terminate:*** The Board reserves the right to amend or terminate the Fund, subject to the provisions and requirements of TLFFRA.
- a. An amendment or other change adopted shall not deprive a Member of the Fund of a right to receive a vested benefit unless that Member gives his written consent or unless the reduction in benefits is made in accordance with Section 16 of TLFFRA.
  - b. All amendments to the Fund shall be made under the procedures prescribed by TLFFRA.
  - c. If the Plan is terminated or partially terminated, then the rights of all affected Members to benefits accrued to the date of such termination or partial termination, as applicable, to the extent funded as of such date shall become vested to the extent required under Section 401(a)(7) of the Code.
9. ***Benefits not Assignable:*** The right of any Member or beneficiary to any benefit or payment under this Fund shall not be subject to voluntary or involuntary transfer, alienation, or assignment;
- a. All amounts in this Fund and all rights accruing or accrued under the Fund to any Member or beneficiary are exempt from garnishment, attachment, execution, state and municipal taxation, sale, levy, and any other process and are unassignable.

- b. The above prohibition shall also apply to the creation, assignment, or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a QDRO.
10. **Severability:** If any provision of this Fund is held to illegal or invalid, such illegal or invalid provision shall not affect the remaining provisions of the Fund, and the Fund shall be construed and enforced as if such illegal or invalid provision had never been in the Fund.
11. **Governing Law:** All provisions of the Fund shall be administered under the laws of the State of Texas unless superseded by federal law. Accordingly, notwithstanding any other provision herein to the contrary, the Fund shall be administered in accordance with TLFRA.
12. **Pro-ration of Certain Payments:** Benefits for the month in which payments commence shall be pro-rated based on the number of days for which the benefit (or for which each benefit) is payable during that month.
13. **Payments to Certain Highly Compensated Employees:** The payments during each Fund Year to any person who on his annuity starting date is one of the 25 highly compensated employees or former highly compensated employees with the greatest annual compensation from the City for that Fund Year are restricted to an amount equal to the payments that would be made on behalf of the Member or former Member under a single life annuity that is the actuarial equivalent of the sum of the Member's or former Member's accrued benefit and the Member's or former Member's other benefits under this Fund. This restriction shall not apply, however, if (i) after payment to the Member or former Member of all loans in excess of the amounts set out in Section 72(p)(2)(A) of the Code, any periodic income, any withdrawal values payable to a living Member or former Member and any death benefits not provided for by insurance on the Member's or former Member's life, the value of Fund assets equals or exceeds 110 percent of the value of current liabilities, as defined in Section 412(l)(7) of the Code, or (ii) the value of the benefits described in (i) above for the Member or former Member is less than one percent of the value of current liabilities.
14. **Applicability of Amendments:** No benefit for any person who died, retired, became disabled or separated prior to the execution of an amendment shall be changed in amount or subject to adjustments provided in the Fund amendment. Instead, those persons who died, retired, became disabled or separated prior to the execution of an amendment shall be eligible to receive the benefit, as adjusted from time to time, as was provided by the Fund at the time the person first became eligible for his benefit unless the amendment specifically provides otherwise.

15. **Authority of Board:** The Board has full and absolute discretion in the exercise of each and every aspect of its authority under the Fund, including without limitation, the authority to interpret the provisions and terms of the Fund, determine any person's right to benefits under the Fund, the correct amount and form of any benefits, the authority to decide any appeal, the authority to review and correct the actions of any prior administrative committee, and all of the rights, powers, and authorities specified in this Fund. Notwithstanding any provision of law or any explicit or implicit provision of this document or, any action taken, or ruling or decision made by the Board in the exercise of any of its powers and authorities under the Fund, its actions shall be final and conclusive as to all parties, including without limitation all Members and beneficiaries, regardless of whether the Board or one or more of its members may have an actual or potential conflict of interest with respect to the subject matter of the action, ruling, or decision. No final action, ruling, or decision of the Board shall be subject to de novo review in any judicial proceeding; and no final action, ruling, or decision of the Board may be set aside unless it is held to have been arbitrary and capricious by a final judgment of a court having jurisdiction with respect to the issue.
16. **Fund Not a Contract:** The adoption and maintenance of the Fund is not to be deemed to constitute a contract between the City and any Member, or to be consideration for, inducement to, or condition of employment of any person. Nothing in this document should be construed to give any Member the right to be retained in the employ of the City or to interfere with the right of the City to terminate the employment of any Member at any time.
17. **Duplication of Benefits:** There is to be no duplication of pension, disability, termination of employment or death benefits payable under the Fund for any reason.
18. **Evidence Furnished Conclusive:** Any person or persons involved in the administration of the Fund may rely upon any representation made or evidence furnished by a Member or beneficiary with respect to his age or other facts required to be determined under any of the provisions of the Fund and shall not be liable on account of the payment of any monies in reliance on those representations. Any representation or evidence shall be binding upon the Member or beneficiary making or furnishing it but not upon the City, the Board, or any other person or persons involved in the administration of the Fund. Any of those parties may contest any representation or evidence. Each Member and beneficiary has a duty to submit satisfactory proof of his age and other facts.

19. **Facility of Payment:** If the Board receives satisfactory evidence that a person who is eligible to receive a benefit is physically, mentally or legally incompetent to receive the benefit and to give a valid receipt, that an individual or institution is maintaining or has custody of the person and that no guardian, committee or other representative of the estate of the person has been appointed, the Board may direct the payment to the individual or institution maintaining or having the custody of the person. Receipt of that individual or institution shall be a valid and complete discharge for the payment of the benefit. Also, a deposit to the credit of a Member or beneficiary in any bank or trust company shall be deemed payment to a person.
20. **Name and Address Changes:** Each Member, Spouse and beneficiary is responsible to notify the Board 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's records and is returned unclaimed, the trustee shall discontinue further payments until corrected information is given to the Board.
21. **Release of Claims:** All payments to Members or former Members or beneficiaries shall, to the amount of the payments, be in full satisfaction of claims against the Fund. The Board may require the payee, as a condition precedent to payment, to execute a receipt and release in a form approved by the Board.
22. **HEART Act:**
  - a. **Death Benefits:** In the case of a death occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in Section 414(u) of the Code), the survivors of the Members are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Fund as if the Member had resumed and then terminated employment on account of death.
  - b. **Differential Wage Payments:** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Section 3401(h)(2) of the Code, is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation; and (iii) the Fund is not treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Code by reason of any contribution or benefit which is based on the differential wage payment.

**L. PROVISIONS APPLICABLE TO MEMBERS WITH EXISTING FORWARD DROP ELECTIONS EFFECTIVE PRIOR TO JANUARY 16, 2012**

1. **General Rules:** In lieu of receiving a Service Retirement Benefit calculated in accordance with Sections B or C, a Member who satisfied the applicable age and Credited Service requirements, elected to participate in the Forward DROP prior to January 16, 2012, AND did not revoke that election in accordance with Section D.6., shall have his participation in the DROP determined under this Section L. A Member's election to enter the Forward DROP must have been made in accordance with the procedure set forth under the Fund and any rules, policies, or procedures established by the Board for making such an election, the terms of which continue to be incorporated into the Fund by reference.
2. **Definitions:**
  - a. "Forward DROP Account" shall mean the hypothetical account that was established on behalf of a Member who elected to enter the Forward DROP and is credited with the amounts that will be used to determine the value of the Member's lump-sum Forward DROP payment that will be distributed upon the Member's retirement.
  - b. "Forward DROP Election Date" shall mean the first day of the month next following the date on which a Member files an election with the Board to enter the Forward DROP.
3. **Eligibility for the Forward DROP:** A Member was eligible to elect to receive his benefits under the Forward DROP on or after the date he met both of the following requirements, but no election to participate in the Forward DROP was permitted on or after January 16, 2012:
  - a. Attainment of age fifty-one (51); and
  - b. Completion of twenty (20) years of Credited Service.
4. **Electing the Forward DROP:** Prior to January 16, 2012, a Member was able to elect to enter the Forward DROP at any time after he met the age and Credited Service requirements described in Section L.3. above. A Member's election to enter the Forward DROP must have been made in accordance with the procedures set forth under the Fund and any rules, policies, or procedures established by the Board for making such an election, the terms of which continue to be incorporated into the Fund by reference. Regardless of when the Member became eligible to elect to enter the Forward DROP, the Member's election to enter the Forward DROP, once approved by the Board, was effective and (except as permitted under Section D.6.) irrevocable as of the Member's Forward DROP Election Date.

Upon election of the Forward DROP, the Member became ineligible to receive a Disability Retirement Benefit that he might otherwise have become eligible to receive but for the election to enter the Forward DROP.

5. *How the Forward DROP Works:*

- a. The Member ceased accruing Credited Service as of the Forward DROP Election Date, and Compensation paid to the Member after the Forward DROP Election Date was disregarded for purposes of calculating the Member's Average Salary.
- b. Upon the retirement of a Member under the Forward DROP, he will commence receipt of the monthly Service Retirement Benefit to which he is eligible under either Section B or C, modified by Section L.5.a. above.
- c. In addition to his monthly Service Retirement Benefit, the Member will be eligible to receive a payment equal to the amount credited to the Forward DROP Account.

6. *The Forward DROP Account:*

- a. For each calendar month during the period (**that in no event will exceed 108 calendar months**) beginning on the Member's Forward DROP Election Date and ending on the earlier of (i) the date on which the Member retires or (ii) the date that is 108 calendar months after the Member's Forward DROP Election Date, the Member's Forward DROP Account is credited with an amount equal to the sum of i, ii, and iii, where:
  - i. Is the Service Retirement Benefit payment, determined in accordance with Section B, as modified by Section L.5.a. above, that would have been payable to the Member had he retired on the Forward DROP Election Date;
  - ii. Is the Member contribution actually contributed to the Fund under Section J.1.; and
  - iii. Is assumed interest, compounded annually, from the Forward DROP Election Date through the Member's retirement date at a rate equal to two percent (2%) less than the greater of A or B, where:
    - A. Is the rate used by the Fund's actuary in the last valuation report prepared for the Fund before the Member's Forward DROP Election Date; and

- B. Is the rate used by the Fund's actuary in the last valuation report prepared for the Fund before the Member's retirement date.
- b. The Member's Forward DROP Account will continue to be credited with assumed interest in the amount determined under L.6.a.iii. until the date on which the balance of the Forward DROP Account is distributed in full.
- c. The Member's Forward DROP Account may be distributed at any time after the Member retires in the form of (i) a single lump-sum payment; (ii) installments; or (iii) any other form that is elected by the Member and approved by the Board, provided that the method of distribution satisfies the required minimum distribution rules of Section K.3. and Section 401(a)(9) of the Code.

7. ***Death of a Forward DROP Member:***

- a. In accordance with Section H, the surviving Spouse of a deceased Forward DROP Member shall receive two-thirds (2/3) of the monthly Service Retirement Benefit to which the Member was entitled under Section B or C, as modified by Section L.5.a. above.
- b. If a Member dies prior to receiving the entire balance of his Forward DROP Account, his surviving Spouse or other Beneficiary may receive a distribution of the Member's remaining Forward DROP Account. If distribution of the remaining balance of the Forward DROP Account to the surviving beneficiary has not been completed prior to the date on which the Member would have attained age 70-1/2, the distribution of the remaining balance of the Member's Forward DROP Account will be made in a manner that complies with Section K.3. and Section 401(a)(9) of the Code.
- c. The class of persons who may become eligible to receive a Death Benefit under Section H will not close until the date the Member retires. Thus, a Spouse who marries the Member after the Forward DROP Election Date, but prior to the Member's retirement date, or a Child born after the Forward DROP Election Date but prior to the Member's retirement date, may become eligible for a Death Benefit under Section H.

IN WITNESS WHEREOF, this instrument has been executed this \_\_\_\_ day of December, 2013, to be effective as of the 1st day of January, 2014.

**TRUSTEES OF THE IRVING  
FIREMEN'S RELIEF AND RETIREMENT FUND**

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