

City of Irving Supplemental Benefit Plan

2022



Plan Document

**CITY OF IRVING
SUPPLEMENTAL BENEFIT PLAN
TABLE OF CONTENTS**

Name, Effective Date and Purpose of the Plan

1.01	Name and Effective Date	7
1.02	Purpose	7
1.03	Intent	7

Definitions

2.01	Accrued Benefit	7
2.02	Actuarial (or Actuarially) Equivalent	7
2.03	Actuary	7
2.04	Administrative Board	7
2.05	Annual Earnings	7
2.06	Beneficiary	8
2.07	Benefit Service	9
2.08	One Year Break-In-Service	9
2.09	City	9
2.10	City Council	9
2.11	Code	9
2.12	Effective Date	9
2.13	Employee	9
2.14	Employer	9
2.15	Final Average Earnings	9
2.16	Objective Medical Evidence	9
2.17	Participant	10
2.18	Period of Service	10
2.19	Plan	10
2.20	Plan Year	10
2.21	Rehabilitative Employment	10
2.22	Retirement Date	10
2.23	Retirement Benefit	10
2.24	Termination Date	10
2.25	Texas Municipal Retirement System (TMRS)	10
2.26	Trust or Trust Fund	10
2.27	Trust Agreement	10
2.28	Trustee	11
2.29	Word Usage	11
2.30	Alternate Payee	11
2.31	Domestic Relations Order	11
2.32	Qualified Domestic Relations Order	11

2.33	Elimination Period	11
Eligibility and Participation		
3.01	Employee as of the Effective Date	11
3.02	Other Employees	11
3.03	Exclusions from Coverage and Participation	12
Contributions		
4.01	Employer Contributions	12
4.02	Amount and Timing of Contributions	12
4.03	Refund of Employer Contributions	13
4.04	Mandatory Participant Contributions	13
Normal Retirement		
5.01	Normal Retirement Date	14
5.02	Normal Retirement Benefit	14
5.03	Form of Retirement Benefit	15
Postponed Retirement		
6.01	Postponed Retirement Date	15
6.02	Postponed Retirement Benefit	15
Early Retirement		
7.01	Early Retirement Date	15
7.02	Early Retirement Benefit	15
7.03	Manner of Making Election	16
Disability Retirement		
8.01	Definitions of Disability	16
8.02	Determination of Eligibility for Disability Benefits	18
8.03	Disability Retirement Date	19
8.04	Disability Retirement Benefit	20
8.05	Maximum Benefit	20
8.06	Recurrent Disability	20
8.07	Rehabilitative Benefit	21
8.08	Discontinuance of Disability Benefit	21
8.09	Death of a Participant on Disability Retirement	22
8.10	Return to Employment Following Disability Retirement	22
8.11	Benefit Payable to Participant Who Does Not Return to Employment Following Disability Retirement	22
Termination of Employment and Vested Rights		
9.01	Vesting Requirements	23

9.02	Severance Benefit	23
9.03	Deferred Vested Retirement Benefi	23
9.04	Post Termination Death	23

Survivor Benefits

10.01	Definition of Dependent Child	24
10.02	Dependent Child Benefit	24
10.03	Minimum Dependent Child Benefit	24
10.04	Maximum Benefit	25
10.05	Payment of Dependent Child Benefit	25
10.06	Definition of Dependent Spouse	25
10.07	Dependent Spouse Benefit	25
10.08	Refund of Excess Contributions	25

Normal and Optional Forms of Retirement Benefit

11.01	Normal Form of Payment	26
11.02	Election of Optional Form of Payment	26
11.03	Optional Forms of Payment	26
11.04	General Limitation	28
11.05	Suspension of Pension Benefits on Reemployment	28
11.06	Basis of Payment	28
11.07	Cost of Living Increases	29
11.08	Return of Excess Contributions	29
11.09	Direct Rollover Option for Eligible Rollover Distributions	29

Fiduciary Responsibilities

12.01	Allocation of Fiduciary Responsibilities among Fiduciaries for Plan and Fund Administration	30
12.02	Powers and Responsibilities of the City of Irving	31
12.03	Responsibilities of Administrative Board	31
12.04	Responsibilities of the Trustee	31
12.05	Indemnification of Fiduciaries	31

Administration of the Plan

13.01	Appointment of Administrative Board	32
13.02	Meetings	32
13.03	Quorum	32
13.04	Powers, Duties, and Responsibilities of the Board	32
13.05	Expenses	34
13.06	Benefit Claim and Review Procedures	34
13.07	Use of an Actuary	37
13.08	Reliance on Reports and Certificates	37
13.09	Committee Member's Own Benefits	37

13.10	Responsibilities of the Administrative Board	37
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Trust Agreement and Trustee

14.01	Trust Agreement	38
14.02	Payments to Trustee	38
14.03	Assets to be Held in Trust	38
14.04	Exclusive Benefit	38
14.05	Interest of Participants in the Trust	38
14.06	Records and Accounts of Trustee	38
14.07	Annual Reports	39

Amendment of Termination

15.01	Right to Amend or Terminate	39
15.02	Distribution of Funds Upon Termination	39

General Provisions

16.01	No Guarantee of Employment	39
16.02	Payments to Minors and Incompetents	40
16.03	Nonalienation of Benefits	40
16.04	Purchase of Annuities	40
16.05	Evidence of Survivor	40
16.06	Governing Law	40
16.07	Uniform Administration	40
16.08	Special Rule Relating to Veterans Reemployment Rights Under USERRA	41
16.09	Restricted Prior Service Credit	41

Qualified Domestic Relations Orders and Spousal Consent Requirements

17.01	Qualified Domestic Relations Orders	42
17.02	Termination of Interest in the Plan	43
17.03	Tax Considerations	43

Governmental Requirements Effecting Benefits

18.01	Maximum Annual Additions and Benefits	43
18.02	Commencement of Distributions	44
18.03	Limits on Settlement Options	44
18.04	Death Distribution Provisions	44
18.05	Required Distributions	45
18.06	Required Beginning Date	45

Appendix A - History of Plan Changes	47
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**ARTICLE 1
NAME, EFFECTIVE DATE, AND
PURPOSE OF THE PLAN**

- 1.01 Name and Effective Date. This Plan shall be known as the “Supplemental Benefit Plan” (hereinafter referred to as the “Plan”). The effective date of the Plan is March 1, 1984. The effective date of this most recent amendment and restatement of the Plan is February 20, 2022, except as otherwise provided herein.
- 1.02 Purpose. The purpose of this Plan is to provide eligible Employees with a Retirement, Disability, and Death Income Benefit which, when combined with the Texas Municipal Retirement System benefits and with any other benefits to which the Employee may be entitled, will provide periodic income to an Employee and his survivors during retirement or disability or after death.
- 1.03 Intent. It is the intention of the City that this Plan shall qualify as a defined benefit pension plan under Section 401(a) of the Internal Revenue Code and be exempt from federal income taxation under Section 501(a) of the Internal Revenue Code, as amended from time to time.

**ARTICLE 2
DEFINITIONS**

- 2.01 Accrued Benefit. The Retirement Benefit a Participant would receive at his Normal Retirement Date as provided in Section 5.02 of this Plan but based on his Final Average Earnings and years of Benefit Service as of the date of determination.
- 2.02 Actuarial (or Actuarially) Equivalent. Equality in value of the aggregate amounts expected to be received under different forms of payment, based on an interest assumption of six and seventy-five hundredths percent (6.75%) and based on the PUB(10) Public Safety Mortality Table and the PUB(10) General Employee Mortality Table for pre-retirement and the Municipal Retirees of Texas mortality tables post-retirement.
- 2.03 Actuary. The independent consulting actuary selected by the Administrative Board.
- 2.04 Administrative Board. The committee selected to administer the Plan.
- 2.05 Annual Earnings. The total cash remuneration to an Employee during a

calendar year by his Employer for personal services rendered, as reported on the Employee's Federal Income Tax Withholding Statement (Form W-2 or its subsequent equivalent), including any reduction in earnings by virtue of a salary reduction agreement between the Employer and the Employee pursuant to a plan described under the applicable sections of the Code.

Effective as of January 1, 1996, the Annual Earnings of any Employee who first becomes a Participant in the Plan on or after such date shall not exceed, for any given Plan Year or other specified 12-consecutive-month period, the maximum annual compensation that may be taken into account under Section 401(a)(17) of the Code and regulations issued with respect thereto (the "IRC Section 401(a)(17) Annual Earnings Limit").

The IRC Section 401(a)(17) Annual Earnings Limit with respect to any given calendar year or other specified 12-consecutive-month period beginning after 2012 shall be equal to \$255,000 or such increased or decreased amount, as the case may be, that applies as of the January 1 coincident with or immediately preceding the beginning of a later calendar year or other specified 12-consecutive-month period, pursuant to the provisions of Section 401(a)(17) of the Code, as amended, and regulations issued with respect thereto.

In the event that Annual Earnings under the Plan is determined based on a period of time that contains fewer than 12 calendar months, the IRC Section 401(a)(17) Annual Earnings Limit for that period of time shall be equal to the IRC Section 401(a)(17) Annual Earnings Limit for the calendar year during which such period of time begins multiplied by the fraction in which the numerator is the number of full months in such period of time and the denominator is 12.

2.06 **Beneficiary.** The person or persons designated by the Participant to receive benefits from the Plan in the event of his death, or, in the absence of an effective designation, or if such designated person or persons shall have died, the first of the following classes of successive preference beneficiaries then surviving. The Participant's:

- (a) surviving spouse;
- (b) descendants, per stirpes;
- (c) parents, in equal shares;
- (d) brothers and sisters, in equal shares, or;
- (e) executors or administrators.

If an active Employee shall die before retirement, benefits, if any, to the Beneficiary shall be in accordance with Article 10. If a Participant eligible for deferred vested retirement shall die after termination, but before retirement,

benefits, if any, to the Beneficiary shall be in accordance with Article 9.04, provided that a surviving spouse shall have the option to choose any benefit the Participant would have been eligible for. If a Participant shall die after retirement for reasons other than disability, then the benefits, if any, to the Beneficiary shall be in accordance with Article 11.

- 2.07 **Benefit Service.** On and after March 1, 1984, a full-time, regular Employee will be credited with one-twelfth (1/12th) of a year of Benefit Service for each calendar month in which he makes contributions to the Plan. On and after July 1, 1993, each full-time employee will be credited with one-twelfth (1/12th) of a year of Benefit Service for each calendar month in which he was continuously employed prior to March 1, 1984.
- 2.08 **One Year Break-In-Service.** A Participant incurs a One Year Break-In-Service when the Employee, does not perform any service as an employee of the Employer during 12 consecutive months following a termination of employment unless such termination of employment was as a result of either: a Disability Retirement, or qualified military service which is counted as Benefit Service as provided at Section 16.08.
- 2.09 **City.** The municipal government of the City of Irving, Texas.
- 2.10 **City Council.** The City Council of the City of Irving, Texas.
- 2.11 **Code.** The Internal Revenue Code, as amended from time to time.
- 2.12 **Effective Date.** March 1, 1984.
- 2.13 **Employee.** Any person employed by the Employer other than an individual who is a nonresident alien temporarily working in the United States under a visa.
- 2.14 **Employer.** The City of Irving, Texas.
- 2.15 **Final Average Earnings.** The average of Annual Earnings for the three consecutive calendar years of highest Annual Earnings of a Participant (or during his total Employment if less than three (3) years) preceding the earliest of the Participant's Retirement Date, Termination Date, or the date he was granted a leave of absence for sickness or disability, whichever is applicable.
- 2.16 **Objective Medical Evidence.** That which can be seen, heard, felt or touched, either through physical or psychiatric examination or other diagnostic examinations, as conducted by certified professionals.

- 2.17 Participant. Any Employee who participates in this Plan pursuant to Article 3 and any terminated or retired Employee entitled to or receiving benefits from the Plan.
- 2.18 Period of Service. On and after March 1, 1984, a full-time, regular Employee will be credited with one-twelfth (1/12th) of a year for Period of Service for each calendar month in which he makes contributions to the Plan. On and after July 1, 1993, each full-time employee will be credited with one-twelfth (1/12th) of a year for Period of Service for each calendar month in which he was continuously employed as a full-time regular employee prior to March 1, 1984.
- 2.19 Plan. The City of Irving Supplemental Benefit Plan as set forth herein and as it may be amended from time to time.
- 2.20 Plan Year. Each twelve-month period ending on December 31 of each calendar year.
- 2.21 Rehabilitative Employment. Any occupation of employment for wage or profit which is part of a rehabilitative program approved by the Administrative Board, engaged in by a Participant while disabled.
- 2.22 Retirement Date. A Participant's Normal, Postponed, Early, or Disability Retirement Date as defined in Articles 5 through 8, whichever is applicable.
- 2.23 Retirement Benefit. The amount of monthly benefit payable under the Plan to a retired Participant.
- 2.24 Termination Date. The date on which an Employee ceases to be an Employee other than by reason of Disability, Retirement, or death.
- 2.25 Texas Municipal Retirement System (TMRS). The Texas Municipal Retirement System (TMRS) in which all full-time eligible employees, except elected officials and volunteer firefighters, of the City of Irving participate
- 2.26 Trust or Trust Fund. The total fund established and maintained under the Plan, to which all contributions are paid and from which all benefits are disbursed as provided for herein.
- 2.27 Trust Agreement. The trust instrument entered into between the Employer and the Trustee, named in the trust instrument, establishing the rights and duties of the parties and other matters related to the creation and maintenance of the trust, for the purpose of funding benefits under the Plan.

- 2.28 Trustee. The person or persons acting at any time as trustee under the Trust Agreement, and may include any entity that may be a custodian under Section 802.205 of the Texas Government Code.
- 2.29 Word Usage. Wherever appropriate, the masculine pronoun as used herein shall include the feminine, and the singular shall include the plural.
- 2.30 Alternate Payee. An Alternate Payee is a spouse, former spouse, child, or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by The City of Irving Supplemental Benefits Plan (the Plan) with respect to such Participant.
- 2.31 Domestic Relations Order. A Domestic Relations Order is any judgment, decree, or order including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.
- 2.32 Qualified Domestic Relations Order. A Qualified Domestic Relations Order is a Domestic Relations Order which creates or recognizes the existence of an Alternate Payee's right, or assigns to an Alternate Payee the right, to receive all or a portion of the benefits payable with respect to a Participant in the Plan, which directs the Plan to disburse benefits to the Alternate Payee, and which meets the requirements of Article 17.
- 2.33 Elimination Period. The Elimination Period is the six (6) month period of absence immediately following a Participant's last day worked for reason of disability.

ARTICLE 3 ELIGIBILITY AND PARTICIPATION

- 3.01 Employee as of the Effective Date. Subject to Section 3.03, each person who, as of March 1, 1984, is an active full-time regular Employee and is eligible to participate in TMRS shall become a Participant in this Plan as of March 1, 1984.
- 3.02 Other Employees. Subject to Section 3.03, any new Employee or any person who is not eligible to participate in the Plan under Section 3.01 shall become a Participant on the date such person becomes an active full-time regular Employee and is eligible to participate in TMRS.

3.03 Exclusions from Coverage and Participation.

- (a) Any person who is a Fire Civil Service Employee.
- (b) Any Employee who is a member of a legally recognized collective bargaining unit and who is otherwise eligible to become a Participant shall be eligible to participate in the Plan only if the collective bargaining agreement expressly provides for the participation of such Employee in the Plan.
- (c) In accordance with Section 410(b)(3) of the Code, any Employee who is a nonresident alien and who receives no earned income from the Employer which constitutes income from sources within the United States.

**ARTICLE 4
CONTRIBUTIONS**

4.01 Employer Contributions. The Employer, acting under the advice of the Actuary for the Plan, intends to make contributions to the Trust in such amounts and at such times as are required to fund the Plan. Such contributions shall be based upon the recommendation of the Actuary, in view of the amount of the Trust Fund at any time in the hands of the Trustee. Such contributions recommended by the Actuary shall not exceed the maximum amount as defined by the formula in the City of Irving Charter, Article IX, Section 8. All such contributions shall be paid to the Trustee and held by it pursuant to Article 14.

4.02 Amount and Timing of Contributions.

- (a) The Employer shall make contributions to the Trust in such amounts as are deemed by it to be in accordance with the funding method and policy. Contributions shall be entirely discretionary with the Employer to the extent permitted by law.
- (b) Effective as of July 1, 1993, any actuarial gains arising from actuarial experience under the Plan and any forfeitures arising due to the termination of employment of a Participant shall be used to reduce future Employer contributions or to defray the expenses of the operation of the Plan, or, in the case of actuarial gains, to increase benefits payable to Participants or Beneficiaries in the Plan as recommended by the Administrative Board and

approved by the City Council. Forfeitures shall not be used to increase any benefits otherwise payable to Participants or Beneficiaries in the Plan.

- (c) In making a determination of Employer contributions, the Actuary shall value all assets of the Trust on a reasonable actuarial basis, taking into account the current market value of the assets of the Trust as of the date of valuation. All costs, liabilities, and other factors under the Plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which reflect the Actuary's estimate of anticipated experience under the Plan.

4.03 Refund of Employer Contributions. Once contributions are made to the Plan by the Employer on behalf of the Participants, they may not be refunded to the Employer unless the contribution:

- (a) was made under a mistake of fact, or
- (b) was made conditioned upon a favorable IRS ruling for which application was made in a timely manner, and such ruling is not received.

The permissible refund under (b) must be made within one year from the date of the denial of tax qualification. In the case of (a) above, any such refund shall include any earnings of such contribution payable as of the date of payment of such refund, determined on the basis of the average earnings of the Fund from the date of such contribution.

4.04 Mandatory Participant Contributions. A Participant shall make contributions to the Plan equal to two and one-half percent (2.50%) of his Annual Earnings. Such mandatory Participant contributions shall be made on behalf of the Participant directly by the Employer on a pre-tax basis through employer "pick-up" under Section 414(h)(2) of the Code until such time as the Employer revokes its pick-up resolution, at which time Participant contributions shall be made by payroll deduction on an after-tax basis. Mandatory Participant contributions shall be remitted to the Trustee as soon as administratively practicable after the end of each payroll period and shall be accounted for separately for each Participant but commingled with other assets in the Trust Fund.

ARTICLE 5

NORMAL RETIREMENT

- 5.01 Normal Retirement Date. The Normal Retirement Age of a Participant is the later of his 65th birthday or completion of a five (5) year Period of Service at which time he shall be one hundred percent (100%) vested in his accrued benefit. The Normal Retirement Date of a Participant shall be the first day of the month coincident with or next following the later of his 65th birthday and the completion of a five (5) year Period of Service. Payment of a Normal Retirement Benefit shall commence on his Normal Retirement Date.
- 5.02 Normal Retirement Benefit.
- (a) Participants Employed Before February 20, 2022 Who Do Not Incur a One Year Break-In-Service. The monthly Retirement Benefit for a Participant who was employed before February 20, 2022 and who has not incurred a One Year Break-In-Service, whose benefit payments commencing at Normal Retirement Date under this Plan is equal to one-twelfth (1/12th) of six tenths of one percent (.6%) of the Participant's Final Average Earnings multiplied by the Participant's years of Benefit Service.
 - (b) Participants Employed On and After February 20, 2022. The monthly Retirement Benefit for a Participant first employed on and after February 20, 2022 whose benefit payments commencing at Normal Retirement Date under this Plan is equal to one-twelfth (1/12th) of five tenths of one percent (.5%) of the Participant's Final Average Earnings multiplied by the Participant's years of Benefit Service.
 - (c) Participants Hired Before February 20, 2022 Who Have Incurred a One Year Break-In-Service. If a Participant employed before February 20, 2022 and earning an accrued Retirement Benefit under Section 5.02(a) above incurs a One Year Break-In-Service on or after February 20, 2022, such Participant's Retirement Benefit shall be determined by adding the amount of the Participant's Retirement Benefit accrued up until the termination of employment at the commencement of such One Year Break-In-Service under Section 5.02(a) plus any additional accrual of Retirement Benefit under Section 5.02(b) for years of Benefit Service starting on or after February 20, 2022 and after such Participant's return to employment.

- 5.03 Form of Retirement Benefit. Unless a Participant elects an optional form of payment as provided under Article 11, his Retirement Benefit shall be in the form of a life annuity, with payments made monthly during the Participant's lifetime and no further payments on his behalf after his death.

ARTICLE 6 POSTPONED RETIREMENT

- 6.01 Postponed Retirement Date. If a Participant remains in Employment beyond his Normal Retirement Date, the Postponed Retirement Date is the first day of the month following his last day of work. Payment of a Postponed Retirement Benefit shall commence on his Postponed Retirement Date.
- 6.02 Postponed Retirement Benefit. The Participant's monthly Retirement Benefit with payments commencing at the Participant's Postponed Retirement Date under this Plan is equal to the monthly Retirement Benefit calculated under whichever is applicable of Section 5.02 (a), (b) or (c).

ARTICLE 7 EARLY RETIREMENT

- 7.01 Early Retirement Date. A Participant may retire on the first day of any month:
- (a) provided he has completed a Period of Service of at least twenty (20) years, or
 - (b) the attainment of his 60th birthday, provided he has then completed a Period of Service of at least five (5) years, any such date being his Early Retirement Date.
- 7.02 Early Retirement Benefit. A Participant who retires on his Early Retirement Date shall be entitled to receive a reduced Retirement Benefit. The amount of such reduced Retirement Benefit shall, at his election:
- (a) commence on his Normal Retirement Date, in which case it shall equal one-twelfth (1/12th) of such Participant's Accrued Benefit as of his Early Retirement Date, or
 - (b) commence on his Early Retirement Date or on the first of any month following his Early Retirement Date but prior to his Normal Retirement Date, in which case it shall equal one-twelfth (1/12th) of such Participant's Accrued Benefit

as of his Early Retirement Date, reduced by 1/180th for each of the first sixty (60) months and reduced by 1/360th for each month in excess of sixty (60), by which the commencement of the Retirement Benefit payments precedes the Participant's Normal Retirement Date.

- 7.03 Manner of Making Election. A Participant will be deemed to have elected to begin receiving the Retirement Benefit as of his Normal Retirement Date, unless such Participant notifies the Employer in writing that he elects to begin receipt of such Retirement Benefit on his Early Retirement Date or some other date subsequent to his Early Retirement Date and no later than his Normal Retirement Date.

ARTICLE 8 DISABILITY RETIREMENT

- 8.01 Definitions of Disability.

- (a) Initial Determination. Upon a Participant's application for disability benefits, the Participant will be considered disabled initially for a period not exceeding eighteen (18) months (including the Elimination Period specified in Section 8.03) if the Participant is unable to perform the duties of his occupation with the Employer by reason of any determinable physical or mental impairment. Disability must be supported by Objective Medical Evidence. A Participant will not be considered disabled if he or she is performing work of any kind for remuneration or profit unless with the prior approval of the Board as allowed under Section 8.07.
- (b) Interim Determination. At the end of the eighteen (18) month period of disability under subsection (a) above, a Participant will continue to be considered disabled for an additional period not exceeding twenty-four (24) months only if the Participant is unable to perform the duties of any occupation for which the Participant is reasonably qualified by education, training, or experience. Disability must be supported by Objective Medical Evidence. A Participant will not be considered disabled if he or she is performing work of any kind for remuneration or profit unless with the prior approval of the Board as allowed under Section 8.07.

- (c) Final Determination. At the end of the twenty-four (24) month period of disability under subsection (b) above, a Participant will continue to be considered disabled only if the Participant is unable to perform the duties of any occupation, regardless of education, training, or experience. Disability must be supported by Objective Medical Evidence. A Participant will not be considered disabled if he or she is performing work of any kind for remuneration or profit unless with the prior approval of the Board as allowed under Section 8.07.

- (d) Continued Eligibility Required. Completion of the review process described in subsection (a), (b) or (c) above does not guarantee Disability Retirement Benefits for any period. The Participant must meet the applicable standard to receive Disability Retirement Benefits and is subject to periodic reexamination and recall as provided in Section 8.08.

- (e) Ineligibility. A Participant shall not be found eligible for Disability Benefits if the disability occurred as a result of:
 - (1) An illness or injury to which a contributing cause was his commission or attempted commission of a felony, or his malicious engagement in a violent disorder, assault, or an illegal occupation; or

 - (2) An intentionally self-inflicted injury, while sane or insane or attempted suicide, while sane or insane, or the use of hallucinogenic or narcotic drugs, except those taken in accordance with the directions of the Physician who legally prescribed them; or

 - (3) For any period of Disability caused or contributed to by alcoholism or drug addiction after monthly benefits have been payable for thirty-six (36) months, except while the Participant is continuously confined in a legally constituted hospital for fourteen (14) days or more or during the three (3) month period immediately following any such confinement.

8.02 Determination of Eligibility for Disability Benefits.

- (a) A Participant must make application for Disability Benefits no later than their Disability Retirement Date. Upon receipt of application, the Board will notify the Participant of any additional documentation required to make determination of eligibility for benefits. The Participant must submit all additional required documentation no later than six (6) months after the Participant's Disability Retirement Date. If the Participant fails to submit the required documentation within six (6) months of their Disability Retirement Date, the Board will make a determination of eligibility based on the actual received documentation, and the Participant forfeits the right to submit additional documentation at a later date.
- (b) Upon a Participant's application for Disability Benefits, a determination of eligibility for benefits will be made under the definition in Section 8.01(a). If the Participant meets this definition, and if the Participant has filed with TMRS for any Disability or Retirement benefits to which the Participant is entitled, he is eligible for Disability Benefits under this Plan.
- (c) Eighteen (18) months after the Initial Determination of disability, the Board shall, at its next meeting, review the determination of disability. Failure of the Board to review a determination shall result in cessation of disability benefits. Either the Participant or the Board may place the matter on the Board's agenda. At this review by the Board, a determination of whether or not the participant is eligible for further disability benefits will be made under the definition in Section 8.01(b). If the Participant meets this definition, he is eligible for benefits.
- (d) Twenty-four (24) months after the Interim Determination of disability set out in (c) above, the Board shall, at its next meeting, review the determination of disability. Failure of the Board to so review the Participant's determination of disability under Section 8.01(b) shall result in cessation of disability benefits. Either the Participant or the Board may place the matter on the Board's agenda. At this review by the Board, a determination of whether or not the Participant

is due further benefits will be made under Section 8.01(c). If the Participant meets this definition, he is eligible for benefits.

- (e) To help in determining a Participant's disability, the Board may, at its discretion, direct the Participant to be examined by a physician or physicians chosen by the Board at the Participant's expense. The Board may direct said examination(s) prior to any or all of the mandatory reviews set out above, as well as at six (6) month reviews during any disability period or at any reasonable time.
- (f) In order to make a determination of disability, the Board may elect any reasonable method to help make such determination, including but not limited to: recommendations from a doctor, or from more than one doctor; from an administrator hired by the Board; or for the initial determination under Section 8.01(a), the Board may look to the determination of Texas Municipal Retirement System as to whether or not the Participant has been found to be disabled and eligible for disability retirement under that program.
- (g) If a Participant has been found to be totally and permanently disabled (pursuant to Section 8.01(c)) under the procedures set forth above, and after such finding, the Participant is discovered carrying out tasks or functions inconsistent with the finding of total and permanent disability, including but not limited to: working at another job; working at a business in his home; engaging in tasks requiring physical strength or dexterity; and/or carrying out any other task or function that would be inconsistent with a finding of disability, then the finding of disability will be reviewed at the next Board meeting and the Participant shall appear before the Board and show cause as to why his benefits should not be discontinued. If the Board finds that a Participant has been engaging in tasks that are inconsistent with a finding of disability after having been found to be totally and permanently disabled, the Board shall discontinue or reduce the Participant's benefits as appropriate.

8.03 **Disability Retirement Date.** The Disability Retirement Date of a Participant shall be the first day of the month coincident with or next following the end

of the disability Elimination Period. The Elimination Period ends on the date the Participant has been absent from work due to disability for a period of six (6) months. All periods of absence due to disability shall be accumulated for purposes of completing the Elimination Period, provided that the entire six (6) months of absence must have occurred within the first twelve (12) months following the date on which the Participant was first absent from work due to disability. During the Elimination Period, benefits may be payable to the Participant under any sick leave or similar program sponsored by the Employer. If sick leave benefits are payable beyond the six (6) month period, the Elimination Period is extended to the date of the last sick leave payment to avoid duplication of benefits from multiple Employer-sponsored programs.

8.04 Disability Retirement Benefit. A Participant who is eligible for disability retirement shall be entitled to receive a Disability Retirement Benefit equal to one-twelfth (1/12th) of 70% of his annualized base salary or wage rate at time of disability, less any other monthly disability income benefits as follows:

- (a) disability retirement or service retirement under TMRS;
- (b) disability retirement under the Federal Social Security Act, including benefits payable on account of the presence of dependents; and
- (c) any amount payable under the Worker's Compensation Act or similar law for loss of time on account of disability.

In the event a Participant may be entitled to any of the above other monthly disability income benefits but fails to provide to the Board adequate documentation of the status of his eligibility for, or amount of these benefits, the Board will take an estimated reduction for other monthly disability income benefits, until such time that the Participant provides adequate documentation of the status of other monthly disability income benefits. Any reduction taken for estimated other monthly disability income benefits, is not reimbursable to the Participant.

Any single sum payments and any payments received on a basis other than monthly shall be allocated by the Board, with the assistance of the Actuary, to monthly periods.

8.05 Maximum Benefit. There is no maximum monthly Disability Retirement Benefit.

8.06 Recurrent Disability. If, following a period of disability after the Elimination

Period, a Participant shall resume his regular occupation with the Employer for a continuous period of six (6) months or more, any subsequent disability resulting from (1) the same cause or causes or (2) any unrelated cause shall be considered a new period of disability and shall be subject to a new Elimination Period; but, if such period arising from the same cause or causes shall be less than six (6) months, such subsequent disability shall be deemed a continuation of the same disability.

- 8.07 Rehabilitative Benefit. A Participant who is disabled may be required by the Board to engage in Rehabilitative Employment. If the Board requires such Rehabilitative Employment, the Rehabilitative Employment shall be for a period of up to twenty-four (24) months (or any additional period approved by the Board) without the Disability Retirement Benefit being forfeited. The Disability Retirement Benefit will be reduced by seventy-five percent (75%) of his remuneration from gainful occupation during the period of Rehabilitative Employment. The Board shall discontinue the Participant's Disability Retirement Benefit at any time the Participant is found to be behaving in a manner inconsistent with the level of disability necessary for the Participant to receive Disability Retirement Benefits, including noncompliance with attending physician's prescribed medical treatment or rehabilitative treatment.
- 8.08 Discontinuance of Disability Benefit. The Board may, at any time, and from time to time, recall any Participant who is receiving a Disability Retirement Benefit to determine whether the Participant continues to be eligible for Disability Retirement Benefits. To determine the Participant's continued eligibility for Disability Retirement Benefits, the Board may require the Participant to submit additional documentation to support the Participant's continued eligibility. The Board may require the Participant to undergo a medical examination by a physician or physicians and/or a functional capacity evaluation by a vocational or rehabilitation professional designated by the Board and provide such additional evidence of the existence and extent of disability as the Board may deem appropriate. If the Participant fails to submit to a medical and/or functional capacity evaluation or provide such other evidence of disability as the Board may request, the Participant's Disability Retirement Benefit shall be discontinued until he or she undergoes the medical and/or functional capacity evaluation examination or submits the requested evidence. If the Board determines that the Participant is able to perform the duties of his or her occupation with the Employer, the Disability Retirement Benefit shall be discontinued. If the eighteen (18) month period described in Section 8.01(a) has expired, and the Board determines that the Participant is unable by reason of disability to perform the duties of his occupation but can perform the duties of some other occupation for which he is reasonably qualified by education training or experience, the Disability Retirement Benefit shall be discontinued.

If the twenty-four (24) month period described in Section 8.01(b) has expired and the Board determines that the Participant is able to perform the duties of any occupation, regardless of education, training, or experience, the Disability Retirement Benefit shall be discontinued. The Board shall also discontinue the Participant's Disability Retirement Benefit at any time the Participant is found to be behaving in a manner inconsistent with the level of disability necessary for the Participant to receive Disability Retirement Benefits, including noncompliance with attending physician's prescribed medical treatment or rehabilitative treatment. For example, commencing thirty-six (36) months after a Participant's Disability Retirement Date, the Disability Retirement Benefits of a Participant will be discontinued if the Participant is determined to be engaging in any substantial activity for compensation.

- 8.09 Death of a Participant on Disability Retirement. If a Participant should die after termination for a disability retirement but prior to age 65, the dependent spouse, if any, or the dependent children, if any, shall be eligible for survivor benefits under the terms of Article 10. If a Participant should die after termination for a disability retirement but prior to age 65, and should leave no surviving dependent spouse or dependent children, then the Beneficiary shall be paid the excess, if any, of his Employee contribution over the total of Disability Retirement Benefit payments received by the Employee. If a Participant should die after termination for a disability retirement and after age 65, then the Beneficiary shall be paid the excess, if any, of his Employee contribution over the total of Disability Retirement Benefit payments received by the Employee.
- 8.10 Return to Employment Following Disability Retirement. If a participant returns to active employment with the City after recovering from Disability (or after forfeiture of a Disability Retirement Benefit), the participant shall once again be treated as an active participant and shall be entitled to any and all benefits under the Plan, except that the determination of any benefits payable to the participant shall not include any pay or service during the period of time the employee was receiving a Disability Retirement Benefit. Upon subsequent termination, should the participant elect a refund of his contributions the refund amount would be equal to the participant's contributions prior to his Disability Retirement less the total Disability Retirement Benefit payments received by the Employee (but not less than zero) plus any contributions made during the period or employment following the Participant's Disability Retirement.
- 8.11 Benefit Payable to Participant Who Does Not Return to Employment Following Disability Retirement. If a Participant does not return to employment with the City after recovering from a disability (or after forfeiture of a Disability Retirement Benefit), the Participant shall be treated as having terminated employment on his last day of regular employment. If the Participant's Period of Service is less

than five (5) years then the Participant shall be entitled to be paid the excess, if any, of his Employee contribution over the total of the disability retirement benefits the Participant had received. If the Participant had a Period of Service of at least five (5) years, then the participant shall be entitled to a deferred vested benefit payable under Article 9.03. As an alternative to the deferred vested benefit payable under Article 9.03, the Participant may elect to receive a Severance Benefit as described in Section 9.02, in which case he would forfeit eligibility for any and all of his vested Accrued Benefit. If the Participant elects to receive the Severance Benefit under Article 9.02 such benefit shall be reduced for any disability retirement benefits received by the Participant.

ARTICLE 9

TERMINATION OF EMPLOYMENT AND VESTED RIGHTS

- 9.01 Vesting Requirements. A Participant whose Employment is terminated, other than by retirement or disability, prior to having completed a Period of Service of at least five years shall not be entitled to any benefit under the Plan, except as provided in Section 9.02. A Participant whose Employment is terminated, other than by retirement or death, after completing a Period of Service of at least five (5) years shall be fully vested in his then Accrued Benefit and shall be entitled to a benefit under Section 9.03.
- 9.02 Severance Benefit. A Participant whose Employment is terminated, other than by retirement, prior to having completed a five (5) year Period of Service shall receive a refund of his Employee contributions.
- 9.03 Deferred Vested Retirement Benefit. Payment of one-twelfth (1/12th) of the Accrued Benefit shall commence on the terminated Participants Normal Retirement Date, unless the Participant notifies the Employer in writing that he elects to begin receipt of such Retirement Benefit on an Early Retirement Date for which his age and Period of Service would satisfy such eligibility. Such Retirement Benefit shall be reduced in the same manner as an Early Retirement Benefit under Section 7.02(b).
- As an alternative, the Participant may elect to receive a Severance Benefit as described in Section 9.02, in which case he would forfeit eligibility for any and all of his vested Accrued Benefit.
- 9.04 Post Termination Death. When a vested Participant, who has terminated for reasons other than death, retirement, or disability, dies prior to receiving a Retirement Benefit, then the contributions of said Participant shall be paid to the Beneficiary.

ARTICLE 10 SURVIVOR BENEFITS

- 10.01 Definition of Dependent Child. A Dependent Child is a child by blood or marriage, step-child or legally adopted child of an employee who is:
- (a) under age 25;
 - (b) not married;
 - (c) able to produce proof of a parent-child relationship (showing he is a child of the Employee by blood or marriage, or a step-child or a legally adopted child); and
 - (d) if unborn at the time a Participant dies, then provided that a licensed physician's statement is received by the Board within six (6) months of the Participant's death certifying that the child was conceived prior to the Participant's death.
- 10.02 Dependent Child Benefit. A Dependent Child of a Participant who dies while an active Employee, or while receiving a Disability Retirement Benefit under Article 8, shall be entitled to receive a Dependent Child Benefit equal to all or a portion of the Participant's monthly projected Normal Retirement Benefit with payments commencing on the first day of the month following the later of either the Participant's date of death or the live birth of the child, and continuing through the first day of the month of the Dependent Child's twenty-fifth (25th) birthday, or until the first day of the month of the Dependent Child's death or marriage, if earlier. The projected Normal Retirement Benefit shall be computed the same as the Normal Retirement Benefit except, (1) the years of service shall be the time between the Participant's last date of hire and his 65th birthday and (2) the Final Average Earnings shall be figured as of the date of Participant's death. The amount of each Dependent Child's Benefit shall be that portion of one hundred percent (100%) of such projected Normal Retirement Benefit which is the result of dividing such one hundred percent (100%) by the number of the Participant's Dependent Children. When a Dependent Child ceases to be eligible for a Dependent Child Benefit due to age, death or marriage, such person's benefit shall be allocated among the remaining Dependent Children until all of the Dependent Children are no longer eligible for a Dependent Child Benefit.
- 10.03 Minimum Dependent Child Benefit. If the Dependent Child Benefit will be

payable for less than thirty (30) months, the Dependent Child shall be entitled to receive a single sum payment equal to thirty (30) monthly payments of the Dependent Child Benefit as provided in Section 10.02.

- 10.04 **Maximum Benefit.** The maximum Dependent Child Benefit payable in the aggregate to all Dependent Children shall be one hundred percent (100%) of the Participant's projected Normal Retirement Benefit as described in Section 10.02, regardless of the number of the Participant's Dependent Children.
- 10.05 **Payment of Dependent Child Benefit.** The payment of benefits, whether periodic or single sum, will be made to the remaining parent, if any, or legal guardian for the principal benefit of all Dependent Children in reasonably proportionate shares based on the number of Dependent Children. If after all Dependent Child Benefits have been paid, and the total amount paid is less than the total Employee contribution, the balance, if any, shall be paid as provided in this Article 10.
- 10.06 **Definition of Dependent Spouse.** A Dependent Spouse is the spouse of a Participant who is currently legally married or is a spouse by common law marriage, as determined by the legal requirements for such relationship in the jurisdiction in which the Employee lives.
- 10.07 **Dependent Spouse Benefit.** A Dependent Spouse of a Participant who dies while an active Employee shall be entitled to receive a Dependent Spouse Benefit only if there is not any Dependent Child Benefit payable. The Dependent Spouse Benefit is a single sum payment equal to ninety-six (96) monthly payments of twenty-five percent (25%) of the Participant's monthly projected Normal Retirement Benefit. If the total Dependent Spouse Benefit is less than the total Employee contribution, the Dependent Spouse Benefit will be set equal to the Employee contribution as the Dependent Spouse Benefit. If the Participant who died was eligible to retire, but had not yet received a Normal, Postponed, or Early Retirement Benefit, the Dependent Spouse may elect to receive either the Dependent Spouse Benefit as set forth in this Section, or the Participant's retirement benefit, calculated as if the Participant had taken such retirement on the Date of Participant's death, and elected the 100% Contingent Annuitant Option. The Dependent Spouse shall have the option of receiving the monthly survivor annuity or an actuarially equivalent lump sum.
- 10.08 **Refund of Excess Contributions.** If a Participant who is an active Employee dies and there is neither a Dependent Child Benefit payable nor a Dependent Spouse Benefit payable, the deposits of the Employee which would have otherwise been available to the Employee on termination under Article 9.02 shall be paid to the Beneficiary.

ARTICLE 11
NORMAL AND OPTIONAL FORMS OF RETIREMENT BENEFIT

- 11.01 Normal Form of Payment. If a Participant does not make a timely election of one of the optional forms of payment described below, then his Retirement Benefit shall be payable in the form specified under Section 5.03.
- 11.02 Election of Optional Form of Payment. A Participant whose Retirement Benefit is otherwise payable under the Normal Form may, in writing to the Employer, elect to receive his benefit under one of the optional forms set forth in Section 11.03. The Employer shall provide to each active Participant, upon request, and each terminated Participant with a vested Accrued Benefit whose benefits have not yet commenced, an election for such purpose. Such written election must be received by the Employer at least thirty (30) days and not more than ninety (90) days before the retirement is to become effective.
- 11.03 Optional Forms of Payment. The optional forms of benefit payment available shall be the Actuarial Equivalent of the Retirement Income otherwise payable to the Participant under the Normal Form as provided in Sections 5.03 and 11.01.
- (a) Five-Year Certain and Continuous Form. Retirement Benefit payable during the Participant's lifetime, provided that should his death occur before payments have been made for five years, his full Retirement Benefit shall continue to be paid to his Beneficiary until a total of sixty (60) monthly payments have been made, at which time all payments would cease.
 - (b) Ten-Year Certain and Continuous Form. Retirement Benefit payable during the Participant's lifetime, provided that should his death occur before payments have been made for ten (10) years, his full Retirement Benefit shall continue to be paid to his Beneficiary until a total of one hundred and twenty (120) monthly payments have been made, at which time all payments would cease.
 - (c) Fifteen-Year Certain and Continuous Form. Retirement Benefit payable during the Participant's lifetime, provided that should his death occur before payments have been made for fifteen (15) years, his full Retirement Benefit shall continue to be paid to his Beneficiary until a total of one hundred and eighty (180) monthly payments have been

made, at which time all payments would cease.

- (d) 100% Contingent Annuitant Option. Retirement Benefit payable during the Participant's lifetime with the provision that after his death such Retirement Benefit shall be continued in the same amount during the life of the specified Beneficiary.
- (e) 50% Contingent Annuitant Option. Retirement Benefit payable during the Participant's lifetime with the provision that after his death, one-half (1/2) of the Retirement Benefit shall be continued during the life of the specified Beneficiary.
- (f) 100% Contingent Annuitant Option With Pop-Up Option. Retirement Benefit payable during the Participant's lifetime with the provision that after his death such Retirement Benefit shall be continued in the same amount during the life of the specified Beneficiary. If the specified beneficiary predeceases the Participant, or divorces the Participant and there is a Qualified Domestic Relations Order awarding 100% of the Retirement Benefit to the Participant, then the Retirement Benefit shall "Pop-Up" to the amount the benefit would have been if the Participant had elected the normal form of payment under Section 11.01. If it is actuarially determined that a pop-up due to divorce creates an additional cost to the plan, the Participant shall bear such a cost.
- (g) 50% Contingent Annuitant Option With Pop-Up Option. Retirement Benefit payable during the Participant's lifetime with the provision that after his death, one-half (1/2) of the Retirement Benefit shall be continued during the life of the specified Beneficiary. If the specified beneficiary predeceases the Participant, or divorces the Participant and there is a Qualified Domestic Relations Order awarding 100% of the Retirement Benefit to the Participant then the Retirement Benefits shall "Pop-Up" to the amount the benefit would have been if the Participant had elected the normal form of payment under Section 11.01. If it is actuarially determined that a pop-up due to divorce creates an additional cost to the plan, the Participant shall bear such a cost.

- (h) Lump Sum Payment. A single, lump sum payment in full settlement of the Plan's obligations to pay any retirement benefits. Election of this form of payment precludes any participation in other retirement benefits such as cost of living adjustments.

Participants who retired prior to January 1, 1999, who elected the option available under section 11.03(d) of the Plan, and whose designated beneficiary is still alive as of January 1, 1999, shall be considered to have elected the corresponding Pop-Up option available under Section 11.03(f) of the Plan.

Participants who retired prior to January 1, 1999, who elected the option available under section 11.03(e) of the Plan, and whose designated beneficiary is still alive as of January 1, 1999, shall be considered to have elected the corresponding Pop-Up option available under Section 11.03(g) of the Plan.

The designation of a Participant's spouse as a Beneficiary shall become void in the event the Participant and the Beneficiary are divorced unless the Participant ratifies the designation within twenty (20) days after the date of divorce.

- 11.04 General Limitation. Anything in the foregoing to the contrary notwithstanding, no method of distribution of Retirement Benefit may be made under Section 11.03 which would result in the Actuarial Equivalent of a Beneficiary's interest exceeding fifty percent (50%) of the Actuarial Equivalent of the Participant's full Retirement Benefit, both equivalents being determined as of the Participant's actual Retirement Date.
- 11.05 Suspension of Pension Benefits on Reemployment. In the event that a Participant retires on his Normal Retirement Date, Early Retirement Date, or Postponed Retirement Date and is subsequently reemployed by the Employer, the payment of benefits under Article 11 shall be suspended for the period of such reemployment.
- 11.06 Basis of Payment. All monthly Retirement Benefit amounts determined under the provisions of the Plan shall commence on the first day of the month coincident with or following the Participant's actual Retirement Date (or the first day of the month following the Participant's death in the case of a Survivor Benefit) and will continue to be paid on the first day of each month until the Participant's death occurs (or the first day of the month in which the Dependent Child's twenty-fifth (25th) birthday occurs, in the case of a Dependent Child's Benefit, or in which the Contingent Annuitant's death occurs, in the case where a Contingent Annuitant Option is in effect and the Contingent Annuitant is alive following the Participant's death).

Notwithstanding the foregoing, the Administrative Board may elect to make a lump-sum payment in full settlement of a Participant's Beneficiary's or Dependent's rights under this Plan. No consent of the Participant, his Beneficiary, or his Dependent shall be required prior to such distribution unless the monthly benefit payment is greater than \$50.

- 11.07 Cost of Living Increases. The Administrative Board, with the concurrence of the Actuary, may periodically recommend to the City Council for their approval an increase in the Retirement Benefit payable to retirees.
- 11.08 Return of Excess Contributions. If after the payment of all Retirement Benefits under Article 11, the total benefits paid are less than the total Employee's contribution, the balance of the contribution shall be paid to the Beneficiary.
- 11.09 Direct Rollover Option for Eligible Rollover Distributions. Notwithstanding any provision 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 Administrative 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. If an eligible rollover distribution in excess of \$1,000 is made and the distributee does not elect to receive the distribution directly, the distribution shall be made to an individual retirement plan and the distributee notified in writing thereof. The following definitions apply to this section:
- (1) 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:
 - (a) 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 10 years or more;
 - (b) the portion of any distribution to the extent such distribution is required to be paid under Section 401(a)(9) of the Internal Revenue Code; and
 - (c) any other distribution precluded from being rolled

over by law or the Internal Revenue Service.

- (2) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of said Code, an annuity plan described in Section 403(a) of said Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)A), an annuity contract described in Section 403(b) of the Code, or a qualified trust described in Section 401(a) of said Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a designated beneficiary who is not a surviving spouse or spouse or former spouse under a Qualified Domestic Relations Order, an eligible retirement plan is only an individual retirement account or individual retirement annuity.
- (3) **Distributee:** A distributee includes an employee, former employee or designated beneficiary of an employee or former employee. In addition, the employee's spouse or surviving spouse or former spouse, who is the alternate payee under a Qualified Domestic Relations Order, is a distributee with respect 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.

Any options set forth in this section shall automatically become inoperative and of no effect upon a ruling by the Treasury Department that the options set forth herein are no longer required.

ARTICLE 12 FIDUCIARY RESPONSIBILITIES

12.01 Allocation of Fiduciary Responsibilities among Fiduciaries for Plan and Fund Administration.

- (a) The fiduciaries of the Plan shall have only those specific powers, duties, responsibilities, and obligations as are specifically allocated to them under this Plan or the Trust

Agreement or delegated to them pursuant to the terms thereof. Except as otherwise required by applicable federal or state law, no fiduciary shall be responsible for the breach of any obligation or duty by any other party not expressly delegated under the Plan to such fiduciary, unless such fiduciary knowingly participates in or knowingly undertakes to conceal such breach.

(b) Any person or other entity may serve in more than one fiduciary capacity under the Plan.

- 12.02 Powers and Responsibilities of the City of Irving. The City, acting through the Board, shall be responsible for making all required contributions to the Plan and for selecting, approving, and removing members of the Administrative Board, the Trustee or Trustees, and such other agents as it deems necessary for the proper administration and maintenance of the Plan.
- 12.03 Responsibilities of Administrative Board. The Administrative Board shall have such powers, duties, and responsibilities as specified in Article 13. The Administrative Board may allocate or delegate its fiduciary responsibilities among other named fiduciaries and may designate other persons to carry out fiduciary responsibilities under the Plan. All such persons appointed by the Administrative Board shall be deemed to be fiduciaries of the Plan.
- 12.04 Responsibilities of the Trustee. The Trustee(s) shall be the named fiduciary for asset management and shall have exclusive authority and discretion to manage and control the assets of the Plan, except to the extent that such authority and discretion for all or a specified portion of the Plan and its assets is delegated and allocated by the Administrative Board to an investment committee or investment managers. No Trustee shall be responsible or liable for a portion of the Trust managed by other persons.
- 12.05 Indemnification of Fiduciaries. The Employer and the Plan shall indemnify and hold harmless the members of the Administrative Board and any other person who is deemed to be a fiduciary under either statutory or common law and who is also an Employee of the Employer from and against any damages, judgments, settlements, costs, charges, or expenses incurred in connection with the defense of any action, suit, or proceeding to which they may be a party or with which they may be threatened or in connection with any appeal therefrom by virtue of any wrongful act or omission in their respective capacities for the Plan; provided, however, that notwithstanding anything to the contrary herein, the foregoing indemnification shall extend and be effective only to the extent that the same shall be valid and enforceable under all applicable laws.

ARTICLE 13
ADMINISTRATION OF THE PLAN

- 13.01 Appointment of Administrative Board. An Administrative Board (herein after referred to as “Board”) shall have the responsibility for the administration of the Plan. The Board shall be the Plan Administrator under this Plan. The Board shall consist of nine (9) voting members, five (5) of whom shall be active City of Irving employees who contribute to the City of Irving Supplemental Benefit Plan and who are elected at-large from among City of Irving employees, the Chair of the Audit and Finance Committee of the Irving City Council, the City’s Chief Financial Officer, the Human Resources Director, and the City Attorney or designee. The City Council may, by resolution, appoint one of its members to the Board in place of the Chair of the Audit and Finance Committee.
- 13.02 Meetings. The Board shall hold meetings upon such notice, at such place or places, and at such intervals as it may from time to time determine, but not less frequently than twice each calendar year.
- 13.03 Quorum.
- (a) A majority of the members of the Board any time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Board shall be by vote of a majority of those present at the meeting of the Board (including those participating by means of conference telephone or similar communications equipment); or without a meeting by instrument in writing signed by a majority of the members of the Board.
- (b) A member shall be entitled to note his dissent to any action of the Board either by entry of his dissent in the minutes or by forwarding his written dissent to the secretary of the meeting at or immediately after the meeting. Such a member shall not be liable for any act or failure to act of the Board with respect to the subject of dissent.
- 13.04 Powers, Duties, and Responsibilities of the Board. The Board shall recommend a funding policy and method to the City and shall report annually to the City Council concerning the performance of the Trustee. With the approval of the City Council, the Board may appoint an investment manager or managers with respect to the investment of all or a portion of the assets of the Fund. The Board shall not be responsible for the acts or omissions of such investment

manager so long as it did not violate its general fiduciary duty in selecting or retaining such investment manager. The Board shall administer the Plan for the exclusive benefit of the Participants and their Beneficiaries and shall have the power to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Board shall be conclusive and binding upon all persons. Such Board may correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any interpretation or construction shall be made and applied in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a plan under the terms of Section 401(a) of the Code.

The Board shall have such powers and duties as may be necessary to discharge its duties hereunder, including, but not limited to, the power and duty to:

- (a) determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder;
- (b) make and enforce such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (c) interpret the Plan and decide any and all matters arising hereunder, including the right to remedy possible ambiguities, inconsistencies or omissions; provided, however, that all such interpretations and decisions shall be applied in a uniform manner to all Employees similarly situated;
- (d) compute or cause to be computed the amount of Retirement Benefits which shall be payable to any Participant, Beneficiary, or Dependent in accordance with the provisions of the Plan;
- (e) authorize disbursements from the Trust; provided, however, that any instructions of the Board to the Trustee shall be evidenced in writing and signed by a member of the Board delegated with such authority by a majority of the Board.
- (f) employ such advisors (including but not limited to attorneys independent public accountants and Actuaries) and such other technical and clerical personnel as may be required

in the Board's discretion for the proper administration of the Plan;

- (g) designate, by written instrument maintained in the Employer's files, persons to carry out all or part of the fiduciary responsibilities of the Board. Such persons shall have such authority as may be delegated to them in such instruments;
- (h) maintain all necessary records for the administration of the Plan;
- (i) prepare and file, or cause to be prepared and filed, all information and reports of the Internal Revenue Service and the Department of Labor, and to supply such information and notices to Participants, Beneficiaries, and others as may be required by applicable federal and state law;
- (j) consult with the Employer and Trustee regarding the short- and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion in a manner designed to accomplish the objectives of the Plan; and
- (k) assist any Participant regarding his rights, benefits, or elections available under the Plan; and review the activities of any person designed to carry out; the powers or duties of the Board and to report to the City Council at least once each year on the overall administration of the Plan.

13.05 Expenses. The reasonable expenses incident to the operation of the Plan, including but not limited to the compensation of the Trustee, Actuary, attorney, accountant, advisors, and such other technical and clerical assistance as may be required, may be paid from the Plan; but the Employer, in its discretion, may elect at any time to pay part or all thereof directly. The City shall advise the Board as to the extent, if any, which it will pay expenses of the Plan. In the absence of such advice or to the extent that expenses exceed those which the Employer has elected to pay, the Plan shall pay all expenses of the operation of the Plan. Any such election shall not bind the Employer to its right to elect, with respect to the same or other expenses at any time, to have such expenses paid from the Plan.

13.06 Benefit Claim and Review Procedures.

- (a) The Board shall make all determinations as to the right of any such person to a benefit under the Plan. Any Participant, Beneficiary, or the authorized representative of either of the foregoing may file a request for benefits under the Plan. Such requests shall be deemed filed when made in writing addressed or hand-delivered to such Board in care of the City.

- (b) The Board shall determine the entitlement of each claimant to the benefit requested within ninety (90) days after the request is filed unless an extension of time for processing is required. In such event, written notice of the extension shall be furnished to the claimant prior to the expiration of such 90-day period. In no event may an extension exceed an additional ninety (90) days from the expiration of the end of the initial 90-day period. Any such extension notice shall indicate the special circumstances requiring the extension of time and the date by which the Board expects to render its decision. In the event that the Board does not respond to a claimant within the foregoing time limit, including any extension, the claimant's request for a benefit shall be deemed to be denied in full and such claimant shall be entitled to proceed to the review stage described in paragraph (d).

- (c) In the event that a claimant's request for benefits is denied in whole or in part, such claimant shall be furnished with a written notice on the Board's decision which sets forth:
 - (i) the specific reason or reasons for denial;
 - (ii) specific reference to the pertinent Plan provisions upon which the denial is based;
 - (iii) a description of any additional material or information necessary for the claimant to perfect his claim and an explanation of why any such material or information is necessary; and
 - (iv) appropriate information as to the steps to be taken if the claimant wishes to submit his claim for review.

(d) Any claimant whose request for benefit is denied in whole or in part by the Board shall be entitled to request such Board to give further consideration to his claim by filing with such Board (either by himself or through his authorized representative) a written request for such a review. The claimant desiring a review may submit written issues and comments to the Board for its consideration and shall be entitled to review any documents pertinent to such Board's decision. The Board, in its sole discretion, may request a meeting to clarify any matters which it deems appropriate. Subject to the limitations of paragraph (e), the Board shall render its decision on the review as soon as practicable. In the event that no decision is rendered within such limitations, the claimant's request for benefits shall be deemed denied a review.

(e) Any request for a review of the Board's decision must be filed within sixty (60) days after receipt by the claimant or written notification of denial of his request for benefits. If no request is received within such time limit, the denial of benefits determined by the Board shall be final. If a request for review is filed, the Board shall promptly consider such request and shall render its decision thereon within sixty (60) days after the receipt of the request for review, special circumstances (such as the need to hold a hearing), require an extension of time for processing. In no event shall the decision be rendered more than one hundred and twenty (120) days after the receipt of a request for a review. In the event that at the time such a request for review is filed the Board has established a practice of holding regularly scheduled meetings on at least a quarterly basis, such decision shall be made at the next ensuing regular meeting unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such event, a decision may be made by the Board no later than the date of the second ensuing regularly scheduled meeting following the receipt of the request for review, unless special circumstances require a further extension of time for processing.

In no event may the decision be rendered later than the third meeting of the Board following the receipt of the request for review.

- 13.07 Use of an Actuary. The Board shall employ or engage an Actuary to make actuarial valuations of the liabilities under this Plan and to recommend the amount of contributions to be made and to perform such other services deemed necessary or advisable in connection with the administration of the Plan. When the amount of any benefit is determined on the basis of actuarial assumptions that are not stated in the Plan or the Code, they shall be based on the factors approved by the actuary and the Board and attached to the Plan.
- 13.08 Reliance on Reports and Certificates. The Board shall be entitled to rely conclusively upon all tables, valuations, certificates, opinions, and reports which may be furnished by an Actuary, accountant, controller, counsel, or other person who is employed or engaged for such purposes.
- 13.09 Committee Member's Own Benefits. No member of the Board may act, vote, or otherwise influence a decision of the Administrative Board specifically relating to his own benefits under the Plan.
- 13.10 Responsibilities of the Administrative Board.
- (a) Members are responsible to attend seventy-five percent (75%) of the Board meetings each year in which they are a member. Failure to do so shall result in the removal from the Board of that member. Permanent members may meet the attendance requirements either personally or through a designated representative approved by the Board. The attendance requirements shall also apply to designated representatives; they must attend seventy-five percent (75%) of the meetings each year in order to fill in as a voting member when the permanent member is absent. The designated representative of the permanent member shall attend as a nonvoting member in those meetings in which the permanent member is in attendance.
 - (b) The attendance requirement does not apply to the City Council member representative.
 - (c) If member's failure to fulfill the attendance requirements is due to an extraordinary hardship, the member may apply to the Board for a waiver. Upon hearing the facts and circumstances of the hardship, the Board may grant a waiver by vote of the majority of the Board.

- (d) If a member is removed due to failure to meet the attendance requirements, the vacancy shall be filled in the same manner as any other vacancy.

ARTICLE 14 TRUST AGREEMENT AND TRUSTEE

- 14.01 **Trust Agreement.** The Employer shall enter into a Trust Agreement with the Trustee, pursuant to the Plan, providing for the administration of the Trust in such form and containing such provisions as the Employer deems appropriate, including provisions granting the Board authority to amend with the consent of the Trustee or terminate the Trust Agreement or adopt a new Trust Agreement and to settle the accounts of the Trustee on behalf of all persons having an interest in the Trust and provisions that at no time will any part of the Trust be used for or diverted to purposes other than the exclusive benefit of the Participants or Beneficiaries except as may be provided herein.
- 14.02 **Payments to Trustee.** The Employer, on behalf of itself and Participants in the Plan, will from time to time make and pay over all contributions to the Trustee. All contributions made to the Trustee, together with any income therefrom, and increases thereof will be held in trust for the exclusive purpose of providing benefits under the Plan, on behalf of all Participants and their Beneficiaries.
- 14.03 **Assets to be Held in Trust.** The assets of the Plan shall be held by the Trustee pursuant to the terms of the Trust Agreement entered into by and between the Employer and such Trustee.
- 14.04 **Exclusive Benefit.** The Trust shall never inure to the benefit of the Employer, but shall be held for the exclusive purpose of providing benefits to Participants, Beneficiaries, and Dependents and deferring the reasonable expenses or administration of the Plan. Assets of the Plan may not revert to the Employer except as provided in Section 4.03 above and as permitted by law upon the termination of the Plan to the extent that assets of the Plan exceed all liabilities thereof as determined under Section 15.02.
- 14.05 **Interest of Participants in the Trust.** No Employee, Participant, Beneficiary, or Dependent under this Plan or any other person shall have any interest in or right to any part of the corpus, income, or earnings of the Trust or any part of the assets of the Plan except to the extent provided by the terms of the Plan.
- 14.06 **Records and Accounts of Trustee.** The Trustee shall maintain accurate and detailed records and accounts of all transactions of the Trust, which shall be available at all reasonable times for inspection or audit by any person

designated by the Employer, the Board, and by any other person or entity to the extent required by law.

- 14.07 Annual Reports. As soon as practicable following the close of each Plan Year and following the effective date of the termination of the Plan, the Trustee shall file with the Board a written report setting forth all transactions with respect to the Trust during such Plan Year or during the period from the close of the last Plan Year to the date of such termination and listing the assets of the Trust and the fair market value thereof as of the close of the period covered by such report. The Trustee shall also provide the Board with such other information in its possession as may be necessary for such Board to conform with any requirements imposed on it by the Plan or by applicable law.

ARTICLE 15 AMENDMENT OR TERMINATION

- 15.01 Right to Amend or Terminate. The City hopes and expects to continue the Plan indefinitely, but reserves the right by action of the City Council to amend, modify, suspend, or terminate the Plan in whole or in part at any time. Any such amendment may be made retroactively effective to the extent permitted by the Code. No amendment may deprive any Participant of any benefit theretofore vested in him.
- 15.02 Distribution of Funds Upon Termination. In the event the Plan shall be terminated or contributions permanently discontinued, then the actuarial present value of accumulated Plan benefits vested in each Participant in accordance with Article 9 shall be determined as of the Plan termination date, and the assets of any Trust then held by the Trustee as reserves for Retirement Benefit for Participants under this Plan shall be allocated among all Participants to the extent that they shall be sufficient, after providing for expenses of administration, and the benefits of the Participants affected thereby shall become fully vested and nonforfeitable to the extent then funded.

ARTICLE 16 GENERAL PROVISIONS

- 16.01 No Guarantee of Employment. The Plan shall not be deemed to constitute a contract between the Employer and any Employee or to be a consideration of inducement for the employment of any Employees by the Employer. Nothing contained in the Plan shall be deemed to give any Employee the right to be retained in the service of the Employer or to interfere with the rights of the Employer to discharge him at any time.

- 16.02 Payments to Minors and Incompetents. If the Board determines that any person to whom a payment is due hereunder is unable to care for his affairs because of physical or mental disability or because he is a minor, the Board shall have the authority to cause the payments to be made to such person's guardian or legal representative without responsibility of the Employer or the Trustee to see the application of such payments. Payments made pursuant to such power shall, to the extent thereof, operate as a complete discharge of the obligations of the Employer, the Trustee, and Trust.
- 16.03 Nonalienation of Benefits. No benefit payable under the Plan shall be subject in any manner to anticipation, assignment, garnishment, or pledge; and any attempt to anticipate, assign, garnish, or pledge the same shall be void; and no such benefits will in any manner be liable for or subject to the debts, liabilities, engagements, or efforts of any Participant or Beneficiary; and if Participant or Beneficiary is adjudicated bankrupt or attempts to anticipate, assign, or pledge any benefits, then such benefits shall, in the discretion of the Board, cease, and in this event, such Board shall have the authority to cause the same or any part thereof to be held or applied to or for the benefit of such Participant, his children, or other dependents, or his Beneficiary, or any of them, in such manner as such Board may deem proper.
- 16.04 Purchase of Annuities. If the Board directs that all or a portion of the payments due to a Participant under the Plan be made through the purchase of an annuity contract, it shall require that any such annuity contract contain provisions to the effect that the contract may not be sold, assigned, discounted, or placed as collateral for a loan or as a security for performance of any obligation or for any other purpose to any person other than the issuer thereof except to the extent specifically provided by applicable federal or state laws.
- 16.05 Evidence of Survivor. If the Board or the Trustee with the assistance of the Board, cannot make payment of any amount to a Participant, Beneficiary, or Dependent within five (5) years after such amount becomes payable because the identity or whereabouts of such Participant, Beneficiary, or Dependent cannot be ascertained, the Board, at the end of such five (5) year period, shall direct that all unpaid amounts which would have been payable to such Participant, Beneficiary, or Dependent be forfeited and treated as actuarial gains under Section 4.02.
- 16.06 Governing Law. The provisions of the Plan shall be construed and enforced according to the laws of the State of Texas, except to the extent that such laws are preempted by applicable federal law.
- 16.07 Uniform Administration. Whenever in the administration of the Plan any

action by the Employer or the Board is required with respect to the eligibility or classification of Employees or to the determination of payment or benefits, such action shall be uniformly applied to all persons similarly situated.

- 16.08 Special Rule Relating to Veterans Reemployment Rights Under USERRA. Notwithstanding any other provision to the contrary, effective on and after December 12, 1994, contributions, benefits and service shall be provided in accordance with Section 414(u) of the Code to any employee or Participant who is reemployed in accordance with the reemployment provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (“USERRA”). If a Participant dies while performing qualified military service as defined in Section 414(u) of the Code, the Participant’s Beneficiaries are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan if the Participant had resumed employment with the City and then died.
- 16.09 Restricted Prior Service Credit. The Administrative Board may allow the purchase of prior service credit by an employee who is currently a member of the Supplemental Benefit Plan for service previously performed:
- (1) as a full-time, paid employee of any public authority or agency created by the United States, or any political subdivision of any state of the United States, and for which the person has not otherwise received service credit in this Plan or any other plan; or
 - (2) as an employee of the state or any branch , agency, or subdivision of the state for which the person received credited service under the Employees Retirement System of Texas, the Teachers Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Texas County and District Retirement System, or this retirement system, and the credit for which was cancelled because of withdrawal of contributions, and such credit has not been reinstated; or
 - (3) as a full-time member of the armed forces for which the employee received an honorable

discharge, if the service is not available under the provisions of Section 16.08. Such military service may not serve as a basis for the receipt of a federal pension other than Social Security.

In this section, “full-time, paid employee” has the meaning assigned “employee” by Section 851.001 of TMRS, except that the services do not have to be performed for a municipality.

To purchase the prior service credit under the Plan, the employee must pay to the Plan the full actuarial cost of such additional service as determined by the Board in consultation with the Actuary. The maximum number of years of prior service credit that may be purchased by an employee is five years.

ARTICLE 17

QUALIFIED DOMESTIC RELATIONS ORDERS AND SPOUSAL CONSENT REQUIREMENTS

17.01 Qualified Domestic Relations Orders. The Administrative Board has adopted Subchapters A and C, Chapter 804, of the Texas Government Code.

- (a) The anti-alienation provisions of Section 16.03 shall apply to the creation, assignment, recognition, or enforcement of a right to any benefit payable with respect to a Participant to which the section applies pursuant to a Domestic Relations Order unless the Order is determined to be a Qualified Domestic Relations Order. A Domestic Relations Order will not be a Qualified Domestic Relations Order unless it is submitted to the Plan on the model Domestic Relations Order form required by the Administrative Board and complies with all applicable requirements of Chapter 804 of the Texas Government Code, including Section 804.003(f) and (g).
- (b) The Administrative Board or the Administrative Board's delegate has the exclusive authority to determine whether a Domestic Relations Order is a Qualified Domestic Relations Order.
- (c) A court does not have jurisdiction over the Plan with respect to a divorce or other domestic relations action in which an Alternate Payee's right to receive all or a portion of the benefits payable to a Participant under the Plan is created

or established. A party to such an action who attempts to make the Plan a party to the action contrary to the provision of this subsection shall be liable to the public retirement system for its cost and attorney's fees.

- 17.02 Termination of Interest in the Plan. The death of an Alternate Payee as defined in Article 2 or the death of a spouse of a Participant to which this section applies shall terminate the interest of the Alternate Payee or spouse in the Plan. The subsection shall not affect an interest in the Plan accrued to an individual as a Participant of the Plan.
- 17.03 Tax Considerations. The Alternate Payee shall include all of the taxable portion of benefits received from the Plan in his gross income for the taxable year of receipt. For purposes of Section 402(a) of the Code, the Alternate Payee shall be treated as the distributee of the distribution of payments made to him under this Order. The benefits to the Alternate Payee will not be taxable income or a deduction on the Participant's income tax return. The balance to the credit of the Participant shall not include any amount paid or payable to the Alternate Payee under the Order.

The member's investment in the Plan (cost basis), shall be shared proportionately by the Participant and the Alternate Payee as provided in IRC Section 72(m)(10).

If the Alternate Payee is other than the spouse/former spouse of the Participant then the Participant shall include all of the taxable portion of benefits received by the Alternate Payee for the Plan in his gross income for the year.

ARTICLE 18

GOVERNMENTAL REQUIREMENTS EFFECTING BENEFITS

- 18.01 Maximum Annual Additions and Benefits. A Participant may not accrue a retirement benefit or receive an annual addition, including any credit for a Participant's contribution, that exceeds any limit under Section 415 of the Code, the applicable limits of which are hereby incorporated by reference. If the total benefits or total annual additions under this Plan and the benefits or annual additions to which any member is entitled under any other qualified defined plans maintained by the City of Irving, Texas, would otherwise exceed the applicable limits under Section 415 of the Code, the benefits or annual additions the Participant would otherwise receive from this Plan shall be reduced to the extent necessary to enable the Plan to comply with Section 415 of the Code. The limits shall be adjusted annually in accordance with Section 415(d) of the Code. The annual adjustment shall apply to the benefits of both active and terminated Participants and shall apply without regard to whether a terminated

Participant is receiving benefits. The compensation to be used for purposes of testing whether the limits under Section 415 of the Internal Revenue Code are met is all wages and other compensation paid to the Participant which is required to be reported on Form W-2, determined without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor), plus any amounts that are not includable in the gross income of the Participant by reason of Section 402(g)(3), 125 or 132(f)(4) of the Code. The Limitation Year is the Plan Year.

- 18.02 Commencement of Distributions. The commencement of distributions under the Plan shall begin no later than the 60th day after the close of the Plan Year in which the Participant attains normal retirement age, or, if later, the Participant terminates employment with the Employer.
- 18.03 Limits on Settlement Options. Distributions if not made in a lump sum, may only be made over one of the following periods (or a combination thereof):
- (a) the life of the Participant,
 - (b) the life of the Participant and a designated Beneficiary,
 - (c) a period certain not extending beyond the life expectancy of the Participant, or
 - (d) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- 18.04 Death Distribution Provisions. Upon the death of a Participant, the following distribution provisions shall take effect.
- (a) If the Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.
 - (b) If the Participant dies before distribution of his or her interest commences, the Participant's entire interest will be distributed no later than five (5) years after the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:

- (1) if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated Beneficiary commencing no later than one (1) year after the Participant's death;
 - (2) if the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above shall not be earlier than the date on which the Participant would have attained age 70-1/2, and, if the spouse dies before payments begin, subsequent distribution shall be made as if the spouse had been the Participant.
- (c) For purposes of Subsection (b) above, payments will be calculated by use of the return multiples specified in Section 1.72-9 of the Treasury Regulations. Life expectancy of a surviving spouse may be recalculated annually. In the case of any other designated Beneficiary, life expectancy will be calculated at the time payment first commences and payments for any 12-consecutive-month period will be based on such life expectancy minus the number of whole years passed since distribution first commenced.
- (d) For purposes of this Section 18.05, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

18.05 Required Distributions. Notwithstanding any contrary provisions of this Plan, the distribution of a Participant's benefits, including benefits payable after the Participant's death, shall be made or commence by the Required Beginning Date described in Article 18.06 and shall otherwise comply with Section 401(a) (9) of the code and related regulations, including Regulation Section 1.401(a) (9)-2.

18.06 Required Beginning Date. A Participant's Required Beginning Date shall be April 1st of the calendar year following the calendar year in which occurs the later of the date on which the Participant attains age 70 ½ or the date on which the Participant retires.

IN WITNESS WHEREOF, THE CITY OF IRVING has caused this amendment and restatement of the Plan to be executed to be effective as of February 20, 2022, except as otherwise stated herein.

CITY OF IRVING

By: _____

(SEAL)

ATTEST:

Secretary

APPENDIX A – History of Plan Changes

1. January 1, 1989 – Maximum monthly Disability Retirement benefit increased from \$2,500 to \$3,000.
2. July 1, 1993 – Benefit Service for employment prior to March 1, 1984 granted to all current employees.
3. August 1, 1993 – Cost of Living Increase equal to greater of 70% of the increase in the CPI for each year of retirement or the calculation of the retirement benefits using service for years of employment prior to March 1, 1984.
4. January 1, 1997 – Limit on monthly Disability Retirement benefit is eliminated.
5. January 1, 1997 – Disability Retirement benefit is increased from 60% to 70% of base salary.
6. January 1, 1997 – Cost of Living Increase equal to greater of 3% or 70% of the increase in the CPI since the later of 1993 or the Participant's year of retirement.
7. January 1, 1999 – Benefit Multiplier increased from 0.5% to 0.6%.
8. January 1, 1999 – Current and future benefit recipients who terminated employment prior to January 1, 1999 have their benefits recalculated using the 0.6% multiplier.
9. January 1, 1999 – Dependent Spouse benefit increased from 60 monthly payments to 96 monthly payments of twenty-five percent of the Participant's projected monthly benefit.
10. January 1, 1999 – Addition of Joint Contingent Annuitant Option with Pop-Up feature.
11. January 1, 1999 – All current retirees who elected a Joint Contingent Annuitant Option and whose Joint Annuitant is still alive are granted the Pop-Up feature.
12. January 1, 2001 – Addition of minimum Dependent Spouse death benefit equal to monthly benefit that would have been payable had the Participant retired the day before his death and elected the 100% Contingent Annuitant Option.
13. January 1, 2001 – Addition of Lump Sum Payment option.
14. January 1, 2003 – Granting Cost of Living Increase equal to 70% of the increase in the CPI since the later of January of 1997 or the January 1st following the Participant's year of retirement.

15. January 1, 2003 – Restoring vesting requirement for employees who had five (5) or more years of service prior to January 1, 2003, from ten (10) to five (5) years of service.
16. January 1, 2006 – Vesting changed from a Period of Service of ten (10) years to a Period of Service of five (5) years.
17. January 1, 2006 – Early retirement eligibility changed from a Period of Service of twenty-five (25) years to a Period of Service of twenty (20) years, or a Period of Service of at least five (5) years with an age requirement of 60 years or older.
18. November 2, 2006 – Revised Article 8 on Disability Retirement to require that disability must be supported by Objective Medical Evidence; clarify the requirements for approval at the each of the three levels of disability retirement benefit; establish a deadline for submitting application; and set consequences for not submitting required documentation for ongoing review within a reasonable timeline. The revision also includes the requirement that disability retirement benefit shall be discontinued for noncompliance with attending physician's prescribed medical treatment or rehabilitative treatment.
19. January 1, 2010 – Minor revisions to Articles 1, 5, 11 and 18 to reflect recent changes to Internal Revenue Code qualification requirements.
20. December 8, 2011 – Revised Article 11.03(f) and (g) to add a provision allowing for “Pop-up” annuity option due to divorce and designation of a new beneficiary.
21. September 19, 2013 – Minor revisions to Articles 11, 17 and 18 to reflect change to Texas QDRO statute and qualification requirements.
22. _____, 2014 – Minor revisions to Article 18.06 to reflect recent changes to Internal Revenue Code qualification requirements.
23. March 1, 2016 – Minor revisions to Article 8.02, 8.04 to reflect TMRS service retirement option for disability payment offsets.
24. March 1, 2016 – Minor revision to Article 13.01 to update the listing of the Administrative Board members.
25. February 20, 2022- Updating the Actuarial assumption and the addition of a Second Tier of Retirement Benefits by adding a new definition Section 2.08 and by amending and restating Sections 2.02, 5.02, and 6.02.