

**Bismarck Firefighter's Relief Association Pension Fund  
Plan Document**

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**Section 1. Purpose.**

To amend and replace Articles XV through XXII of the by-laws pertaining to the pension, pre-retirement death, and disability benefits for members of the Association and provide the Association a plan document containing all necessary provisions related to the Fund. This plan document is incorporated by reference into the amended by-laws under Article XV.

**Section 2. Definitions.**

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

*Accumulated contributions* means a member's own contributions without interest. For those members who purchase credited service, this includes any payment representing interest and any required actuarially calculated payments for the purchase of such credited service.

*Act* means the Employee Retirement Income Security Act of 1974 (PL. 93-406) and any regulations issued thereunder by the Department of Labor and the Internal Revenue Service, as that statute and these regulations shall be amended.

*Association* means the Bismarck Firefighter's Relief Association

*Actuarial equivalent* means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table and an interest rate of seven and one-half percent (7 1/2%) per annum.

*Average final compensation* means, as of the effective date, one twelfth (1/12th) of the average salary for the three (3) years of credited service prior to retirement, termination, or death. A year shall be twelve (12) consecutive months.

*Average first class firefighter salary* means, as of the effective date, one twelfth (1/12th) of the average of first class firefighter salary for the three (3) years of credited service prior to retirement, termination, or death. A year shall be twelve (12) consecutive months.

*Beneficiary* means the person or persons entitled to receive benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the board. If no such designation is in effect, or if no person so designated is living, at the time of death of the member, the beneficiary shall be the estate of the member.

*Board* means the board of trustees, which shall administer and manage the Fund herein provided and serve as trustees of the Fund.

*By-laws* means the Association's Constitution and By-laws.

*City* means City of Bismarck, North Dakota.

*Code* means the Internal Revenue Code of 1986, as amended from time to time.

*Credited service* means, as of the effective date, the total number of years and fractional parts of years of service as a firefighter with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter. A member may voluntarily leave his accumulated contributions in the Fund for a period of five (5) years after leaving the employ of the department pending the possibility of being reemployed as a firefighter, without losing credit for the time that he was a member of the Fund. If a vested member leaves the employ of the department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter with the department within five (5) years, his accumulated contributions shall be returned. Upon return of member's accumulated contributions, all of his rights and benefits under the Fund are forfeited and terminated. Upon any reemployment, a firefighter shall not receive credit for years or completed months of service for which he has withdrawn his accumulated contributions from the Fund, unless the firefighter repays into the Fund the contributions he has withdrawn, with interest, as determined by the board, within ninety (90) days after his reemployment. The years or fractional parts of a year that a member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, after separation from employment as a firefighter with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- a) The member must return to his employment as a firefighter within one (1) year from the earlier of the date of his military discharge or his release from active service.
- b) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L.103-353).
- c) The member contributes to the Fund the amounts he would have contributed had he remained a firefighter through the period of military service.
- d) The maximum credit for military service pursuant to this paragraph shall be five (5) years.

*Department* means the City of Bismarck Fire and Inspections Department

*Effective date* means January 1, 2006.

*Firefighter* means any person who is regularly entered on the payroll of the department serving on active duty and engaged in the hazards of firefighting. The term includes a probationary firefighter but does not include a substitute firefighter or any person employed irregularly by the department.

*First class firefighter salary* means the annual base salary of the highest paid firefighter.

*Fund* means the Bismarck Firefighter's Relief Association Pension Fund as contained herein and all amendments thereto.

*Masculine gender.* The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

*Member* means an actively employed firefighter who fulfills the prescribed membership requirements as set forth in the by-laws.

*Plan year* means the twelve (12) month period beginning January 1 and ending December 31 of each year.

*Retiree* means a member who has entered retirement status.

*Retirement* means a member's separation from employment with eligibility for immediate receipt of benefits under the Fund.

*Rule of 80* means the date upon which a member's age plus credited service equals 80.

*Salary* means, as of the effective date, the greater of the annual compensation paid to a member for services rendered on which the member contribution is based or first class firefighter salary. Compensation in excess of limitations set forth in § 401 (a)(17) of the Code shall be disregarded.

*Spouse* means the lawful wife or husband of a member or retiree at the time benefits become payable.

### **Section 3. Membership.**

(1) *Conditions of eligibility.* All firefighters who meet the qualifications contained in Article II, Section B of the by-laws.

(2) *Beneficiary designation.* All members shall complete a form designating a beneficiary or beneficiaries.

(3) *Annual certification of eligibility for benefits.* On or before January 30 of each year, any person receiving benefits from the Fund may be required to submit to the board a sworn certificate of continuing eligibility for benefits, on forms to be provided by the board. If the sworn certificate is not received on or before January 30 of each year, the board may suspend benefits until such time as the completed certificate has been received.

### **Section 4. Board of trustees.**

(1) The Board of Directors of the Association shall be the board of trustees for the Fund. The sole and exclusive administration of and responsibility for the proper operation of the Fund and for making effective the provisions of this plan document is hereby vested in a board of trustees. The board is hereby designated as the plan administrator.

(2) The duties and responsibilities of the board are prescribed and maintained in Article XII of the by-laws.

## **Section 5. Contributions.**

- (1) Member contributions.
  - (a) *Amount.* Members of the Association are required to make contributions as prescribed and maintained in Article II, Section C of the by-laws. The contributions made by each member to the Fund shall be designated as employer contributions pursuant to § 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the members' gross income for federal income tax purposes. For all other purposes of the Fund, such contributions shall be considered to be member contributions.
  - (b) *Method.* Such contributions shall be made by payroll deduction.
- (2) *State contributions.* Any monies received or receivable by reason of laws of the State of North Dakota, for the express purpose of funding and paying for retirement benefits for firefighters of the City shall be immediately deposited in the Fund.
- (3) *City contributions.* So long as this Fund is in effect, the City shall make contributions, at least monthly, to the Fund in an amount equal to the difference in each year, between the total aggregate member contributions for the year, plus state contributions for such year, and the total cost for the year, as shown by the most recent actuarial valuation of the Fund. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded actuarial accrued liability.
- (4) *Other.* Private donations, gifts and contributions may be deposited to the Fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required City contributions.

## **Section 6. Benefit amounts and eligibility.**

- (1) *Normal retirement date.* A member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age fifty-five (55) and the completion of ten (10) years of credited service or the Rule of 80 but in no event earlier than age fifty (50). A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become one hundred percent (100%) vested in his accrued benefit on the member's normal retirement date.
- (2) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with one hundred forty-four (144) monthly payments guaranteed in any event (also called a twelve-year certain and life annuity). The normal retirement benefit accrues at the rate of 2% for each of the first 15 years of credited service and 3% for each additional year of credited service. The amount of monthly retirement benefit is equal to the sum of A) the benefit percentage accrued prior to the effective date multiplied by average first class firefighter salary and B) the benefit percentage accrued after the effective date multiplied by average final compensation. A member's normal

retirement benefit after the effective date shall not be less than the benefit earned by the member as of the effective date as calculated under the plan provisions in effect prior to the effective date.

(3) *Early retirement date.* A member may retire on his early retirement date which shall be the first day of any month coincident with or next following the earlier of the attainment of age fifty (50) and the completion of ten (10) years of credited service. Early retirement is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(4) *Early retirement benefit.* A member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life as follows:

(a) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that credited service and average final compensation shall be determined as of his early retirement date; or

(b) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (a) above, which is reduced by six percent (6%) for each year by which the commencement of benefits precedes the date which would have been the member's normal retirement date had he continued employment as a firefighter.

## **Section 7. Pre-retirement death.**

(1) *Service-connected.* A death benefit shall be payable on behalf of any member who dies as a direct result of the performance of his duty as a firefighter, as follows:

(a) To the spouse, until death, the greater of seventy-five percent (75%) of the monthly benefit calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death, or 37.5% of the deceased member's average final compensation as of the date of his death. If there are also unmarried children, a benefit equal to 50% of the amount payable to the spouse will be paid until the youngest child reaches the age of eighteen (18), or until age twenty-two (22) if a full-time student in a fully accredited high school, college, or university.

(b) If the member is survived only by a child, the amount payable to a spouse is payable to the child until the age of eighteen (18), or until age twenty-two (22) if a full-time student in a fully accredited high school, college, or university. If the member is survived only by two or more children, the amount payable to a spouse and child shall be combined and paid in equal shares to the children until the age of eighteen (18), or until age twenty-two (22) if a full-time student in a fully accredited high school, college, or university. Legally adopted children shall be eligible the same as natural children. The trusteeship and disbursements of the pension to any child or children shall be determined by the board.

(c) If the member is not survived by a spouse or child, the beneficiary of the deceased member shall receive a benefit payable for twelve (12) years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for twelve (12) years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date. A beneficiary may, in lieu of any benefit provided for above, elect to receive a refund of the deceased member's accumulated contributions.

(2) *Nonservice-connected.* A death benefit shall be payable on behalf of a member becoming deceased, but not in the performance of duty as a firefighter, as follows:

(a) *Prior to vesting.* The only benefit payable shall consist of a refund of the deceased member's accumulated contributions.

(b) *Vested members or members eligible for retirement.* To the spouse, until death, a benefit equal to fifty percent (50%) of the monthly benefit calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death, but not less than twelve and one half percent (12.5%) of the deceased member's average final compensation as of the date of his death. If the member is not survived by a spouse, the beneficiary shall receive a benefit payable for twelve (12) years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for twelve (12) years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date. A spouse or beneficiary may, in lieu of any benefit provided for in this subsection (b), elect to receive a refund of the deceased member's accumulated contributions.

(3) *Funeral benefit.* A benefit in the amount of five thousand dollars (\$5,000) shall be paid in the event of the death of any active, retired, and vested inactive member of the Association to defray the expense of the burial of the deceased member with proper honors of the department.

## **Section 8. Disability.**

(1) *Disability benefits in line of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to perform the duties the firefighter was assigned at the time of the impairment and is unable to perform the duties of another position with the department which the City makes available to him in a similar job classification and rank at no reduction in salary for which the firefighter is qualified by reason of training, education or experience, which disability was directly caused by and attributable to the performance of his duty as a firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to the monthly benefit calculated as

for normal retirement based on the disabled member's credited service and average final compensation, but not less than fifty percent (50%) of the average final compensation of the member. The form of payment for married members is a 75% joint and contingent annuity. The form of payment for single members is a twelve year certain and life annuity. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.

(2) *In-line of duty presumptions.*

(a) *Presumption.* Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(b) *Additional presumption.* The presumption provided for in this subparagraph shall apply only to those conditions described in this subparagraph (b), that are diagnosed on or after January 1, 2006.

1. *Definitions.* As used in this subsection (2)(b), the following definitions apply:

a. *Body fluids* means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.

b. *Emergency rescue or public safety member* means any member employed full time by the City as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity.

c. *Hepatitis* means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

d. *High risk of occupational exposure* means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment:

(i) Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;

(ii) At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;

(iii) Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or

(iv) Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while

on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.

e. *Occupational exposure*, in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.

2. *Presumption*. Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit, verify by written declaration that, to the best of his knowledge and belief:

a. In the case of a medical condition caused by or derived from hepatitis, he has not:

(i) Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;

(ii) Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;

(iii) Engaged in unsafe practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had relations with a person known to him to have engaged in such unsafe practices or other high-risk behavior; or

(iv) Used intravenous drugs not prescribed by a physician.

b. In the case of meningococcal meningitis, in the 10 days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.

c. In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he has not been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.

3. *Immunization*. Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the department to undergo the immunization or prophylaxis unless the member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.

4. *Record of exposures*. The City shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety member in its employ to the

disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the City of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.

5. *Required medical tests; preemployment physical.* In order to be entitled to the presumption provided by this section:

- a. An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.
- b. An emergency rescue or public safety member may be required to undergo a preemployment physical examination that tests for any evidence of hepatitis or tuberculosis.

(3) *Disability benefits not-in-line of duty.* Any vested member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to perform the duties the firefighter was assigned at the time of the impairment and unable to perform the duties of another position with the department which the City makes available to him in a similar job classification and rank at no reduction in salary for which the firefighter is qualified by reason of training, education or experience, wherein such disability is not directly caused by and attributable to the performance of his duties as a firefighter shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to the monthly benefit calculated as for normal retirement based on the disabled member's credited service and average final compensation of his average final compensation multiplied by his total years of credited service, but in no event shall the total amount paid to the member be less than twenty-five percent (25%) of the average final compensation of the member. The form of payment is a twelve year certain and life annuity. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.

(4) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

- (a) Excessive or habitual use of any drugs, intoxicants or narcotics.
- (b) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
- (c) Injury or disease sustained while serving on active duty in any branch of the Armed Forces.
- (d) Injury or disease sustained after his employment as a firefighter with the City shall have terminated.

(5) *Physical examination requirement.* A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so. Any retiree receiving disability

benefits under provisions of this document may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the City that the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, he shall forfeit the right to his pension. The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the Fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the Fund. If the retiree recovers from disability and reenters the service of the City as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the City will not be considered as credited service for the purposes of the Fund. The board shall have the power and authority to make the final decisions regarding all disability claims.

*Maximum disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, a member may not receive a disability pension for the days the member was reimbursed by the city for accumulated sick leave. Disability payments made to the member from the Fund, together with any other sources of earned income, shall not exceed 100% of first class firefighter salary. The Board may require each disability benefit recipient to file with the Board, an annual statement of earnings and any other information required in rules adopted by the Board. If the requested information is not received, disability payments may be suspended until the requested information is provided to the Board. The disability benefit amount paid by the Fund shall be directly offset by disability benefit recipient's income (earned income and disability benefit payments) in excess of first class firefighter salary to the extent that the amounts received by the member are within the maximum of this subsection or the amount of disability benefit paid from the Fund is 100% offset. The Board may prospectively reduce an individual member's disability benefit in order to recoup amounts overpaid in a prior year(s).

### **Section 9. Cost of living adjustments.**

(1) Beginning on the first January 1st following the attainment of age sixty-two (62), and on each subsequent January 1st thereafter, the monthly benefit of each retiree (or their beneficiary or joint annuitant) who is receiving a normal, early or disability retirement benefit, shall be increased by the annual rate of increase in the Consumer Price Index – All Urban Consumers (CPI-U) as of the latest October 31<sup>st</sup> not to exceed two percent (2%). Beneficiaries and joint annuitants of deceased service retirees shall receive adjustments as provided for herein based on the age of the deceased retiree.

(2) The board will determine if an ad-hoc COLA can be afforded to those receiving a normal, early or disability retirement benefit. The amount of the ad-hoc COLA may be based upon factors as determined by the Board. This is to be determined by the end of the 3rd quarter meeting based on the most recent actuarial valuation report. This ad-hoc COLA will commence on January 1<sup>st</sup> of the following year.

### **Section 10. Vesting.**

If a member terminates his employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits, the member shall be entitled to the following:

(1) If the member has less than ten (10) years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the Fund.

(2) If the member has ten (10) or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to him commencing at the member's otherwise normal or early retirement date, determined as if he had remained employed, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit payable under Section 7, subsection (1) (c).

### **Section 11. Optional forms of benefits.**

(1) *Form of benefit options.* In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(a) *Life annuity.* A retirement income of a larger monthly amount, payable to the retiree for his lifetime only.

(b) *Joint and contingent annuity.* A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, one hundred percent (100%), seventy-five percent (75%), or fifty percent (50%) of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the present value of payments to the retiree shall not be less than fifty percent (50%) of the total present value of payments to the retiree and his joint pensioner.

(2) *Partial lump sum option.* The member may elect to receive 12 months, 24 months, or 36 months of benefit payments in a lump sum paid together with the first monthly benefit payment. Election under this subsection shall be subsequent to an election made as to the form of payment under subsections (1)(a) and (1)(b) above. The reduction in monthly retirement benefits due to election of a partial lump sum will be based upon actuarial equivalence and the form of benefit elected by the member.

- (3) The member, upon electing any option of this section, will designate the joint pensioner (subsection (1)(b), above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may not change his joint pensioner.
- (4) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the Fund shall thereupon cease.
- (5) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
- (a) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 7.
  - (b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.
  - (c) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any form of benefit providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (1), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 12.
  - (d) If a member continues beyond his normal retirement date pursuant to the provisions of section 6, subsection (1), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, a retirement benefit will be paid under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.
- (6) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.
- (7) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000). Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the Fund with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

## **Section 12. Beneficiaries.**

(1) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the Fund shall cease.

(2) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (1), or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable with respect to such deceased member or retiree shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

(3) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the Fund with regard to the deceased member and any other persons with rights under the Fund and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

## **Section 13. Claims procedures.**

(1) The board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("claimant"), including members, retirees, beneficiaries, or any person affected by a decision of the board.

(2) The board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the board's claims procedures. The claimant may request in writing the issuance of subpoenas by the board.

## **Section 14. Maximum pension.**

(1) *Basic limitation.* Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a member under this Fund shall not exceed one hundred sixty thousand dollars (\$160,000). For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by treasury regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this section, the following benefits shall not be taken into account:

- (a) Any ancillary benefit which is not directly related to retirement income benefits;
- (b) Any other benefit not required under § 415(b)(2) of the Code and regulations thereunder to be taken into account for purposes of the limitation of § 415(b)(1) of the Code.

(2) *Participation in other defined benefit plans.* The limitation of this section with respect to any member who at any time has been a member in any other defined benefit plan (as defined in § 414(j))

of the Code) maintained by the City shall apply as if the total benefits payable under all defined benefit plans in which the member has been a member were payable from one plan.

(3) *Adjustments in limitations.*

(a) In the event the member's retirement benefits become payable before age sixty-two (62), the one hundred sixty thousand dollar (\$160,000) limitation prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of § 415(b) of the Code, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).

(b) In the event the member's benefit is based on at least fifteen (15) years of credited service, the adjustments provided for in (a) above shall not apply.

(c) The reductions provided for in (a) above shall not be applicable to disability benefits paid pursuant to section 8, or pre-retirement death benefits paid pursuant to section 7.

(d) In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection (1) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.

(4) *Less than ten (10) years of service.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the City shall be the amount determined under subsection (1) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to section 8, or pre-retirement death benefits paid pursuant to section 7.

(5) *Ten thousand dollar (\$10,000) limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limitations set forth in this section if the benefits payable, with respect to such member under this Fund and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable plan year and for any prior plan year and the City has not at any time maintained a qualified defined contribution plan in which the member participated.

(6) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(7) *Cost-of-living adjustments.* The limitations as stated in subsections (1), (2), (3) and (6) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the secretary of the treasury pursuant to § 415(d) of the Code.

(8) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:

(a) The normal retirement benefit or pension payable to a retiree shall not exceed ninety percent (90%) of his average final compensation.

(b) No member of the Fund shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

### **Section 15. Distribution of benefits.**

Notwithstanding any other provision of this Fund to the contrary, a form of retirement income payable from this Fund after the effective date of this plan document, shall satisfy the following conditions:

(1) If the retirement income is payable before the member's death,

(a) It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 ½), or the calendar year in which member retires,

(b) The distribution shall commence not later than the calendar year defined above; and a) shall be paid over the life of the member or over the life-times of the member and spouse, issue or dependent, or b) shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the Fund has been distributed, the remaining portion of such interest in the Fund shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(2) If the member's death occurs before the distribution of his interest in the Fund has commenced, the member's entire interest in the Fund shall be distributed within five (5) years of the member's death, unless it is to be distributed in accordance with the following rules:

(a) The member's remaining interest in the Fund is payable to his spouse, issue or dependent;

(b) The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and

(c) Such distribution begins within one year of the member's death unless the member's spouse shall receive the remaining interest in which case the distribution need not begin before the date on which the member would have attained age seventy and one-half (70 ½) and if the spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.

## **Section 16. Miscellaneous provisions.**

(1) *Interest of members in Fund.* At no time prior to the satisfaction of all liabilities under the Fund with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the Fund be used for or diverted to any purpose other than for their exclusive benefit.

(2) *Reduction in benefits.* If at any time the Association's actuary certifies that the actuarial condition of the Fund will be inadequate to provide future prescribed benefits for active, retired, vested inactive members, and their joint pensioners or beneficiaries, the board, by majority vote, may reduce the benefits provided for in any one or more of Sections (6), (7), (8) and (9), in accordance with actuarial recommendations, to assure the solvency of the Fund and subject to the following conditions:

- a) The benefits for existing and future retirees and pension recipients may not be less than the benefit paid in the previous calendar year to an existing retiree of similar status.
- b) The reduction must be based upon actuarial recommendations, which take into consideration pension benefit standards for similarly funded plans.
- c) When the actuarial condition of the Fund is again sufficient to provide the prescribed benefits for active, retired, vested inactive members, and their joint pensioners or beneficiaries, such reduction will be removed. Such action must be recommended by the Association's actuary and approved by a majority vote of the board.

(3) *Decisions of the board.* Board decisions made in good faith and based upon actuarial recommendations with respect to benefit adjustments under this Section, are final and supersede any previous actions or by-laws for any claims or expenses made in good faith and based upon actuarial recommendations under this Section.

(4) *Qualification of Fund.* It is intended that the Fund will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the Fund may be made retroactively, if necessary or appropriate, to qualify or maintain the Fund as a plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

## **Section 17. Termination of Fund.**

(1) This document and the by-laws creating the Fund, and subsequent amendments pertaining to the Fund, may be modified, terminated, or amended, in whole or in part; provided that if this Fund shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby, except to the extent that the assets of the Fund may be determined to be inadequate.

(2) If contributions to the Fund are discontinued, the board shall continue to administer the Fund for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for under the Fund who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the Fund shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

(3) The following shall be the order of priority for purposes of allocating the assets of the Fund as of the date of Fund termination, or if contributions to the Fund are discontinued with the date of such discontinuation being determined by the board.

(a) Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member, and each member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(b) If there be any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each member in the service of the City on such date who is vested and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(c) If there be any asset value after the apportionments under paragraphs (a) and (b), apportionment shall be made in respect of each member in the service of the City on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to member's accumulated contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(d) If there be any asset value remaining after the apportionments under paragraphs (a), (b), and (c), apportionment shall lastly be made in respect of each member included in paragraph (c) above to the extent of the actuarial equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph (c), based on the credited service and average final compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(e) In the event that there be asset value remaining after the full apportionment specified in paragraphs (a), (b), (c), and (d), such excess shall be returned to the Association and, consistent with any governing statute, be apportioned in accordance to the Association's Board of Directors.

(4) The allocation of the Fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. Benefits may be distributed in single sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The Fund may be continued in existence for purposes of subsequent distributions.

#### **Section 18. Exemption from execution, nonassignability.**

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this plan document and the accumulated contributions and the cash securities in the Fund created under this plan document are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution, judgment, attachment, garnishment or any legal process whatsoever and shall be unassignable.

#### **Section 19. Pension validity.**

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this document if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the board.

#### **Section 20. Indemnification and defense of claims.**

(1) To the extent not covered by insurance contracts in force from time to time, the Association shall indemnify, defend and hold harmless members of the board from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The Association reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend and hold harmless any members of the board from the judgment, execution, or levy thereon.

(2) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does

this section waive any provision of law affording the Association immunity from any suit in whole or part, or waive any other substantive or procedural rights the Association may have.

(3) This section shall not apply nor shall the Association be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board which constitute felonies or gross malfeasance or gross misfeasance in office.

#### **Section 21. Purchase of service credit.**

(1) Effective January 1, 2004, all members with at least five (5) years of service may purchase permissive service credit to the full extent provided for under Internal Revenue Code Section 415(n), including any amount of service other than non-qualified service, as described in Section 415(n)(3)(C) of the Internal Revenue Code. Permissive service credit purchased in accordance with this provision will be used to determine the amount of the member's monthly service pension but will not count as years of service for purposes of vesting or eligibility for a service pension. Purchase of permissive service credit must be made by payment of an actuarial equivalent amount via any of the following methods (including a combination thereof): direct rollover, rollover, plan-to-plan transfer, lump sum payment of after-tax monies and pre-tax salary reduction.

(2) The cost to purchase service will be the amount estimated to result in no cost impact to the Fund derived from tables supplied by the actuary.

#### **Section 22. Direct transfers of eligible rollover distributions.**

(1) *Rollover distribution.*

(a) *General.* This section applies to distributions made on or after January 1, 2002.

Notwithstanding any provision of the Fund to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under § 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income. Any portion of any distribution which would be includable in gross income will be an eligible rollover distribution if the distribution is made to an individual retirement account described in § 408(a), to an individual retirement annuity described in § 408(b) or to a qualified defined contribution plan described in § 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

2. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in § 408(a) of the Code, an individual retirement annuity described in § 408(b) of the Code, an annuity plan described in § 403(a) of the Code, an eligible deferred compensation plan described in § 457(b) of the Code which is maintained by an eligible employer described in § 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan, an annuity contract described in § 403(b) of the Code, or a qualified trust described in § 401(a) of the Code, that accepts the distributee's eligible rollover distribution. This definition shall apply in the case of an eligible rollover distribution to the surviving spouse.
3. *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.
4. *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(2) *Rollovers or transfers into the Fund.* On or after January 1, 2002, the Fund will accept, solely for the purpose of purchasing credited service as provided herein, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

- (a) *Transfers and direct rollovers or member rollover contributions from other plans.* The Fund will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Fund will also accept legally permissible member requested transfers of funds from other retirement or pension plans.
- (b) *Member rollover contributions from IRAs.* The Fund will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includable in gross income.

### **Section 23. Family and Medical Leave Act.**

The fractional parts of the twelve (12) month period ending each March 1 that a member is on leave without pay from the department pursuant to the Family and Medical Leave Act (FMLA) shall be added to his credited service provided that:

- (1) The member contributes to the Fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the Fund for the fractional parts of the twelve (12) months ending each March 1 for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the Fund plus payment of costs for all professional services rendered to the board in connection with the purchase of periods of credited service.

- (2) The request for credited service for FMLA leave time for the twelve (12) month period prior to each March 1 and payment of professional fees shall be made on or before March 31.
- (3) Payment by the member of the required amount shall be made on or before April 30 for the preceding twelve (12) month period ending March 1 and shall be made in one lump sum payment upon receipt of which credited service shall be issued.
- (4) Credited service purchased pursuant to this section shall not count toward vesting.

**Section 24. Gain Sharing Plan.**

Actuarial gains as determined in each annual actuarial valuation of the Fund shall be allocated in accordance with the Gain Sharing Plan as maintained in the Board's Policies and Procedures.