

BILL NO. 2 OF 2018

ORDINANCE NO. 1907

ORDINANCE NO. 1907 BILL NO. 2 OF 2018

AN ORDINANCE OF CITY OF WASHINGTON RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF CITY EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE FIREFIGHTER EMPLOYEES OF SAID CITY AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM

WHEREAS, City Council for the City of Washington is desirous of amending certain provisions of the pension plan or program applicable to the Firefighter Employees of said City and to restate in its entirety such pension plan or program.

Whereas, City Council for the City of Washington deems that it is in the best interest of the citizens and residents of the City of Washington to amend certain provisions of the pension plan or program applicable to the firefighter employees of said City and to restate in its entirety such pension plan or program.

This Ordinance shall become effective upon **FINAL PASSAGE** and shall be applicable for the year 2018.

FIRST READING: January 11, 2018

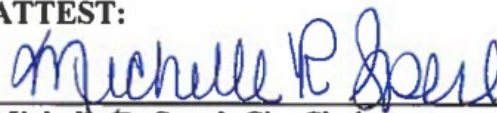
FINAL READING: February 1, 2018

CITY OF WASHINGTON, PENNSYLVANIA



Scott J. Putnam, Mayor

ATTEST:



Michelle R. Sperl, City Clerk





CITY OF WASHINGTON
CITY CLERK'S OFFICE
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Scott J. Putnam, Mayor

City Council
Joe Manning, Councilman
Ken Westcott, Councilman
Monda Williams, Councilwoman
Matthew Staniszewski, Councilman

EXCERPT FROM MINUTES

A motion was made by Councilman Manning, Seconded by Councilman Westcott, and unanimously carried to approve the **FINAL READING of ORDINANCE 1907 BILL No. 2 of 2018**

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AN ORDINANCE OF CITY OF WASHINGTON RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF CITY EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE FIREFIGHTER EMPLOYEES OF SAID CITY AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM.

CERTIFICATION

I, Michelle R. Sperl, City Clerk of the City of Washington, Washington County, Pennsylvania, do hereby certify that the foregoing is a true and correct Excerpt from the Minutes of February 1, 2018 Regular Meeting of Washington City Council.



Michelle R. Sperl
 Michelle R. Sperl, City Clerk

CITY OF WASHINGTON
ORDINANCE NO. 1907 BILL NO 2 of 2018

A ORDINANCE OF CITY OF WASHINGTON RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF CITY EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE FIREFIGHTER EMPLOYEES OF SAID CITY AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM.

BE IT ORDAINED AND ADOPTED by the Council of the City of Washington ("City") and it is HEREBY ORDAINED AND ADOPTED by authority of the same:

The City of Washington Firefighter's Pension Plan ("Plan"), which was established under the provisions of the Third Class City Code, Pub. Law 923, as amended for the benefit of the City's full time firefighters, and which has been amended and restated by ordinances of the City Council thereafter, shall be, and hereby is, amended and supplemented in the following respects.

Any Ordinances or Resolutions or parts of Ordinances or Resolutions conflicting with the provisions of this Ordinance shall be, and hereby are repealed so far as the same affect this Resolution; however, such repeal shall not affect any act done or any right or liability accrued under such Ordinance or Resolution herein repealed or superseded and all such rights or liabilities shall continue and may be enforced in the same manner as if such repeal or supersession had not been made but only to the extent otherwise permitted under the laws of the Commonwealth of Pennsylvania.

Effective January 1, 2016, the Plan shall be amended by entirely deleting the provisions of said Plan and substituting the following in its place:

**CITY OF WASHINGTON
FIREFIGHTER'S PENSION PLAN**

Amended and Restated
Effective as of: January 1, 2016

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PREAMBLE

WHEREAS, City of Washington, Washington County, Pennsylvania, established a retirement program effective May 23, 1945, pursuant to Ordinance No. 1356 and the provisions of the Third Class City Code, Pub. Law 923, as amended (the "Plan") for the benefit of the City's Firefighters and their beneficiaries; and

WHEREAS, the Plan has been amended thereafter from time to time pursuant to various Ordinances; and

WHEREAS, the City retained the right to amend the Plan; and

WHEREAS, certain plan provisions were modified through collective bargaining which may not have been formally incorporated into the City's pension ordinances and/or the City's codified ordinance; and

WHEREAS, the City wants to facilitate the administration of the Plan by completely amending and restating the Plan to set forth the provisions thereof in a single document for purposes of incorporating certain changes as a result of collective bargaining negotiations and ordinance consolidation and clarity; and

WHEREAS, the City intends that the Plan shall meet the requirements for government plans pursuant to the Internal Revenue Code of 1986, as amended, including, but not limited to, the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the Pension Protection Act of 2006 ("PPA"), and the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART" or "Heroes' Act") and the applicable laws of the Commonwealth of Pennsylvania;

NOW, THEREFORE, the Plan now known as the "City of Washington Firefighter's Pension Plan" is hereby amended and restated in its entirety, effective January 1, 2016, as follows:

ARTICLE I DEFINITIONS

The following words and phrases as used in this Plan shall have the meaning set forth in this Article, unless a different meaning is otherwise clearly required by the context:

- 1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under section 4.02, calculated on the basis of Final Monthly Average Salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the projected Aggregate Service of the Participant as if the Participant continues in Employment until attainment of Normal Retirement Age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one (1.0).

The Accrued Benefit shall include any Service Increment Benefit determined pursuant to section 4.04 attributable to the Participant's Aggregate Service as of the determination date. The Accrued Benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under section 4.07. All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the Plan prior to the actual payment thereof.

- 1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Fund or its predecessor by way of payroll deduction or otherwise, without interest or other accretion.
- 1.03 "Act" shall mean the Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. Sec. 895.101 et seq.
- 1.04 "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and seven percent (7%) interest unless otherwise specifically provided herein.
- 1.05 "Actuary" shall mean the person, partnership, association or corporation, which at any given time is serving as Actuary; provided that such Actuary must be an "Approved Actuary" as defined in the Act.
- 1.06 "Aggregate Service" shall mean the total period or periods of the Participant's Employment with the Employer whether or not interrupted. Notwithstanding the preceding sentence, should any such Participant receive a distribution of Accumulated Contributions with respect to a period of Employment for which Employee Contributions are required, such period of Employment shall not be included in Aggregate Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the Fund the amount the Participant received at the time the Participant terminated service with the Employer. Aggregate Service shall be calculated in completed whole years.
- 1.07 "Beneficiary" shall mean the person or entity designated by the Participant to receive a distribution of the Participant's Accumulated Contributions should the Participant die prior to becoming entitled to a retirement benefit. In the event that a Participant does not designate a Beneficiary or the Beneficiary does not survive the Participant, the Beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the Participant had died intestate and a resident of Pennsylvania.
- 1.08 "Board" shall mean the Board of Directors of the Firefighter's Pension Fund as determined pursuant to section 8.02.

- 1.09 "Chief Administrative Officer" shall mean the person designated by the City who has the primary responsibility for the execution of the administrative affairs for the Plan.
- 1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.11 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.12 "Compensation" shall mean the total amount of a Participant's earnings, received or receivable during the Participant's Employment with the City as an Employee.
- 1.13 "Council" shall mean the Council of the City of Washington.
- 1.14 "Dependent Child or Children" shall mean any natural-born child or legally-adopted child of a Participant.
- 1.15 "Disability Date" shall mean the date when a Participant is determined by the Plan Administrator to be incapacitated due to Total and Permanent Disability, or the date when the Participant's Employment terminates due to such Total and Permanent Disability, if later.
- 1.16 "Eligible Spouse" shall mean the spouse to whom a Participant is legally married as of the Participant's date of death.
- 1.17 "Employee" shall mean any individual employed by the Employer on a regular, full-time basis as a firefighter of the Employer's Fire Department. Any firefighter appointed to a provisional, temporary, or emergency position shall not be an eligible Employee under this plan.
- 1.18 "Employer" or "City" shall mean the City of Washington, Washington County, Pennsylvania.
- 1.19 "Employment" shall mean for the purpose of determining Aggregate Service:
- (a) The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as a firefighter;
 - (b) Any period of time for which an Employee is paid, either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws); and
 - (c) Any period of qualified military service as determined under the requirements of chapter 43 of title 38, United States Code, provided that the Participant returns to

Employment following such period of qualified military service, and the Participant makes payment to the Plan in an amount equal to the Participant Contributions that would otherwise have been paid to the Plan during such period of qualified military service. The amount of Participant Contributions shall be based upon an estimate of the Compensation that would have been paid to the Participant during such period of qualified military service as determined by the average Compensation paid to the Participant during the twelve (12) months immediately preceding the period of qualified military service. The amount of Participant Contributions calculated must be paid into the Plan before the end of the period that begins on the date of reemployment and ends on the earlier of the date that ends the period that has a duration of three (3) times the period of qualified military service or the date that is five (5) years after the date of reemployment.

- 1.20 "Final Monthly Average Salary" shall mean the rate of monthly Compensation of the Participant as of the date of retirement or the highest average annual Compensation which the Participant received during any five (5) Years of Aggregate Service preceding his termination of active Employment, whichever is the greater amount.

Compensation used to determine Final Monthly Average Salary shall be limited on an annual basis to the amount specified for government plans in accordance with Code Section 401(a)(17), as adjusted under Code Section 415(d).

- 1.21 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.
- 1.22 "Normal Retirement Age" shall mean for any Participant hired before January 1, 1994, the date on which the Participant has attained age fifty (50) and completed twenty (20) years of Aggregate Service with the Employer. For Participants hired on or after January 1, 1994, Normal Retirement Age shall mean the date on which the Participant has attained age fifty-three (53) and completed twenty (20) years of Aggregate Service with the Employer.
- 1.23 "Notice" or "Election" shall mean a written document prepared in the form specified by the Plan Administrator. If such notice or election is to be provided by the Employer or the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the Employer or the Plan Administrator, it must be received by the intended recipient on or before the last day of the specified notice or election period.
- 1.24 "Participant" shall mean an Employee who has met the eligibility requirements to participate in the Plan as provided in section 2.01 and who has not for any reason ceased to be a Participant hereunder.
- 1.25 "Pension Fund" shall mean the Firefighter's Pension Fund, aggregated with other pension funds maintained by the Employer to create a single pension trust fund, which shall

thereafter serve as the single funding mechanism for all pension plans connected with the aggregation. Each pension plan subject to the aggregation shall have an undivided participation in the assets of the combined pension trust fund. For accounting purposes, the value of the participation by each plan shall be calculated annually, in accordance with the requirements of § 607 of the Act. The Pension Fund shall be administered under the terms of this Plan and which shall include all money, property, investments, Policies and Contracts standing in the name of the Plan.

- 1.26 "Plan" shall mean the Plan set forth herein, as amended from time to time and designated as the City of Washington Firefighter's Pension Plan.
- 1.27 "Plan Administrator" shall mean the committee or the individual appointed for the purpose of supervising and administering the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Board.
- 1.28 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.29 "Restatement Date" shall mean January 1, 2016, the date upon which this amendment and restatement of the Plan becomes effective.
- 1.30 "Service Increment" shall mean the amount calculated pursuant to section 4.03 on behalf of a Participant for each completed year of Aggregate Service in excess of twenty (20) years, not to exceed four hundred dollars (\$400), nor shall such increment reflect any Employment after the Participant has attained age sixty-five (65).
- 1.31 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform the usual and customary duties of Employment and which is reasonably expected to continue to be permanent for the remainder of the Participant's lifetime.

ARTICLE II PARTICIPATION IN THE PLAN

- 2.01 Eligibility Requirements - Each Employee who is employed as a regular, full-time permanent member of the fire department of the Employer shall participate herein as of the date on which such Employee's Employment first commences or recommences provided such Employee shall have attained age eighteen (18) and all prerequisites to participation under this Plan shall have been fulfilled, including but not limited to, completion of all forms required by the Plan Administrator.

Each Employee who was a Participant in the Plan on the day prior to the Restatement Date shall continue to be a Participant on and after the Restatement Date subject to the terms and conditions of the Plan as set forth herein.

- 2.02 Participation Requirements - The Board shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder. Each Participant hereunder shall be required to make contributions to the Plan, as provided in section 3.01 hereof, and shall execute and complete any enrollment or application forms as required by the Plan Administrator.
- 2.03 Designation of Beneficiary - Any new, full-time Employee who becomes a Participant hereunder shall provide a written notice in the manner prescribed by the Plan Administrator which designates a Beneficiary at the time participation commences. The Participant's election of any such Beneficiary may be rescinded or changed, without the consent of the Beneficiary, at any time provided the Participant provides the written notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a Beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.
- 2.04 Change in Status - A Participant who remains in the service of the Employer but ceases to be an Employee eligible for participation hereunder, or ceases or fails to make any contributions which are required as a condition of participation hereunder, shall have no further benefit accruals occur until the individual again qualifies as a Participant hereunder eligible to resume such accrual of benefits.
- 2.05 Recordkeeping - The Employer shall furnish the Plan Administrator with such information as will aid the Plan Administrator in the administration of the Plan. Such information shall include all pertinent data on Employees for purposes of determining their eligibility to participate in this Plan.

ARTICLE III CONTRIBUTIONS

- 3.01 Participant Contributions - Each Participant hired prior to January 1, 2003 shall, as a requirement of participation, pay regular contributions to the Pension Fund in an amount equal to five percent (5.0%) of the Participant's Compensation. Each Participant hired on or after January 1, 2003 shall, as a requirement of participation, pay regular contributions to the Pension Fund in an amount equal to six and one-half percent (6.5%) of the Participant's Compensation.

In addition to the amount of participant contributions above, all Participants shall contribute four dollars (\$4.00) per month as a service increment contribution, but in no case, however, shall contributions that are attributable to service increments be required after the date when a Participant has attained age sixty-five (65).

Each Participant shall complete the necessary forms to authorize the payment of Participant contributions by way of payroll deduction.

- 3.02 State Aid - General Municipal Pension System State Aid, or any other amount of State Aid received by the Employer in accordance with the Act from the Commonwealth may be deposited into the Pension Fund governed by this Plan in amounts determined by the Board, and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.03 Gifts - The Board is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held as a part of the Pension Fund. The care, management, investment and disposal of such amounts shall be vested in the Board or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the Plan.
- 3.04 Employer Reversion - At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, including payment of any reasonable Plan expenses. Notwithstanding the foregoing, any contributions made by the Employer may be returned to the Employer if the contribution was made due to a mistake and the contribution is returned within one (1) year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made or the Plan is terminated, as provided in Article X.

ARTICLE IV RETIREMENT BENEFITS

- 4.01 Normal Retirement - Each Participant shall be entitled to a Normal Retirement Benefit after retirement on or after the Participant has attained Normal Retirement Age.
- 4.02 Normal Retirement Benefit - Each Participant who shall become entitled to a benefit pursuant to section 4.01 shall receive a benefit paid monthly in an amount equal to fifty percent (50%) of the Participant's Final Monthly Average Salary as determined herein. No applicant for a Normal Retirement Benefit shall be received or considered unless it shall first affirmatively appear that the applicant has received an honorable discharge from the City.
- 4.03 Service Increment - Notwithstanding anything contained herein to the contrary, each Participant who shall retire upon completion of twenty (20) or more years of Aggregate Service, may be entitled to receive a monthly Service Increment benefit. Such service increment shall be an amount equal to the number of completed years of Aggregate Service in excess of twenty (20) years multiplied by one-fortieth (1/40) of the Participant's pension benefit which he is entitled to receive, not to exceed four hundred dollars (\$400.00), nor reflect any Employment after the Participant has attained age sixty-five (65), and shall be paid monthly in addition to the amount of Normal Retirement Benefit calculated pursuant to section 4.02.

- 4.04 Payment of Benefits - Retirement benefit payments shall be payable as of the Participant's retirement date and the first day of each month thereafter during the Participant's lifetime. A Participant must complete an application for benefit in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least thirty (30) days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the date that is thirty (30) days after the date the Plan Administrator receives the application for benefits. Payment of benefits hereunder shall cease as of the date of death of the Participant.
- 4.05 Reemployment - Each Employee who had previously been employed by the Employer and thereafter terminated Employment shall, upon reemployment, have prior years of Aggregate Service recredited for all purposes under the Plan upon repayment to the Pension Fund of any amount of Accumulated Contributions which had been distributed pursuant to section 7.02.
- 4.06 Maximum Benefit Limitations - Notwithstanding any provision of this Plan to the contrary, no benefit provided under this Plan attributable to contributions of the Employer shall exceed, as an annual amount, the amount specified in Code Section 415(b)(1)(A) as adjusted pursuant to Code Section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this section 4.06 shall be governed by the following conditions and definitions:
- (a) benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the Employee contributes to the Plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to determine the limitation contained herein;
 - (b) in the case of a benefit which commences prior to the attainment of age sixty-two (62) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to this section commencing at age sixty-two (62); however, in the case of a qualified Participant (a Participant with respect to whom a period of at least fifteen (15) years of service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not apply;
 - (c) in the case of a benefit which commences after attainment of age sixty-five (65) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to the amount determined commencing at age sixty-five (65);
 - (d) benefits paid to a Participant which total less than ten thousand dollars (\$10,000.00) from all defined benefit plans maintained by the Employer

expressed as an annual benefit shall be deemed not to exceed the limitation of this section provided that the Employer has not at any time maintained a defined contribution plan in which the Participant has participated; however, in the case of a Participant who is not receiving a Disability Retirement Benefit pursuant to section 5.01 or a Survivor Benefit pursuant to section 6.02, with fewer than ten (10) years of participation the limitation expressed in this subsection (d) shall be reduced by one-tenth (1/10) for each year of participation less than ten (10) but in no event shall this limitation be less than one thousand dollars (\$1,000.00);

- (e) the limitations expressed herein shall be based upon Plan Years for calculation purposes, shall be applied to all defined benefit plans maintained by the Employer as one (1) defined benefit plan and to all defined contribution plans maintained by the Employer as one (1) defined contribution plan, and shall be applied and interpreted consistent with Code Section 415 and regulations thereunder as applicable to government plans in general and this Plan in particular;
- (f) in the case of a Survivor Benefit under section 6.02 or a Disability Retirement Benefit under section 5.01, the adjustment under subsection (b) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient;
- (g) to the extent applicable, the Plan will comply with the provisions of Code Section 415(n) regarding the purchase of permissive service credits; and
- (h) effective for distributions with annuity starting dates beginning on or after December 31, 2008, notwithstanding any other Plan provisions to the contrary, the applicable mortality table used solely for purposes of adjusting any benefit or limitation under 415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in the applicable Maximum Benefit Limitations section of the Plan is the applicable mortality table under Code Section 417(e)(3)(B).

4.07 Required Distributions

- (a) Notwithstanding any other provision of this Plan, the entire benefit of any Participant who becomes entitled to benefits prior to death shall be distributed either:
 - (1) not later than the Required Beginning Date, or
 - (2) over a period beginning not later than the Required Beginning Date and extending over the life of such Participant or over the lives of such Participant and a designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant, or the joint life expectancies of such Participant and a designated Beneficiary).

If a Participant who is entitled to benefits under this Plan dies prior to the date when the entire interest has been distributed after distribution of the benefits has begun in accordance with paragraph (2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (2) as of the date of the death.

- (b) If a Participant who is entitled to benefits under this Plan dies before distribution of the benefit has begun, the entire interest of such Employee shall be distributed within five (5) years of the death of such Employee, unless the following sentence is applicable. If any portion of the Employee's interest is payable to (or for the benefit of) a designated Beneficiary, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary), and such distributions begin not later than one (1) year after the date of the Employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the Beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated Beneficiary is the surviving spouse of the Participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the Employee would have attained age seventy and one-half (70½) and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the Employee.
- (c) For purposes of this section, the following definitions and procedures shall apply:
- (1) "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the Employee attains age seventy and one-half (70½), or the calendar year in which the Employee retires.
 - (2) The phrase "designated Beneficiary" shall mean any individual designated by the Employee under this Plan according to its rules.
 - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
 - (4) For purposes of this section, the life expectancy of an Employee and/or the Employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
- (d) General Rules. The requirements of this section 4.07 will take precedence over any inconsistent provisions of the Plan. All distributions required under this section 4.07 will be determined and made in accordance with Section

401(a)(9) of the Internal Revenue Code and the Treasury regulations thereunder, and the Employer's good faith interpretation of such Code and Regulations.

- 4.08 Assignment - The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the Participant or designated Beneficiary and shall not be subject to assignment or transfer unless the subject of a domestic relations order, mandated by a court of competent jurisdiction, that clearly provides for proper distribution of a portion of the pension benefit payments to an alternate payee (former spouse of the Participant) and does not require any benefit to be paid in excess of the available earned and accrued under the Plan.
- 4.09 Retired Participants - Any Participant who shall have retired prior to the Restatement Date shall not have the benefit altered in any way by the provisions of this amended and restated Plan, except where otherwise expressly provided herein. Such retired Participants shall continue to have their benefits governed by the terms of the Plan in effect on the day preceding the Restatement Date.
- 4.10 Limitation of Liability - Nothing contained herein shall obligate the Employer, the Plan Administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any Participant or Beneficiary which cannot be provided from the assets available in the Pension Fund, whether such benefits are in pay status or otherwise payable under the terms of the Plan. The Board retains the right to amend or terminate this Plan consistent with applicable law at any time, with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the Plan or in pay status, and without liability to any person for any such action.
- 4.11 Personal Right of Participant - The right to receive any benefits under this Plan is a personal right of the Participant and shall expire upon the death of the Participant. No heir, legatee, devisee, Beneficiary, assignee or other person claiming by or through a Participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this Plan or the provisions of applicable law. A Participant's Election, failure to make an Election or revocation of an Election hereunder shall be final and binding on all persons.
- 4.12 Nonduplication of Benefit - To avoid any duplication of benefits, a Participant who is receiving a retirement benefit under the Plan and who shall resume Employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such Employment shall cease. Upon resumption of benefit payments, such Participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon Final Monthly Average Salary and Aggregate Service as of the date that such period of resumed Employment shall cease.

4.13 Direct Rollovers

- (a) This section 4.13(a) applies to distributions made on or after December 31, 2001. 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 Plan Administrator, to have any portion of an eligible rollover distribution that is equal to at least five-hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.
- (b) This section 4.13(b) shall apply to distributions made on or after January 1, 2006. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, if a distribution in excess of one-thousand dollars (\$1,000.00) is made and the Distributee does not make an election under section 4.13(a) and does not elect to receive the distribution directly, the Plan Administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer pursuant to section 8.03(i). The Plan Administrator shall notify the Distributee in writing, within a reasonable period of time and as otherwise prescribed by law, that the distribution may be transferred to another individual retirement plan.
- (c) For purposes of this section, the following definitions shall apply:
- (1) "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 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

For purposes of the direct rollover provisions in this section of the Plan, a portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may only be paid to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code (effective for distributions on or after January 1, 2007, any qualified trust or Code Section 403(b) plan) that agrees to separately account for amounts so transferred, including separately accounting for the portion of

such distribution which is includible in gross income and the portion which is not includible.

- (2) "Eligible Retirement Plan" is a qualified trust described in Code Section 401(a), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible deferred compensation plan described in Code Section 457(b), which is maintained by a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.
 - (3) "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.
 - (4) "Direct Rollover" is a payment by the Plan to the eligible retirement plan specified by the Distributee or the Plan Administrator, if the Distributee does not make an election.
 - (5) Effective January 1, 2008, direct rollovers may be made to a Roth IRA described in Section 408A of the Internal Revenue Code to the extent that the applicable requirements of Code Section 408A are satisfied with respect to any direct rollover to such Roth IRA.
- (d) This section applies to distributions made on or after January 1, 2010. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Nonspouse Beneficiary's election under this section, a Nonspouse Beneficiary may elect to have any portion of a Plan distribution (that is payable to such Nonspouse Beneficiary due to a Participant's death) paid in a direct trustee-to-trustee transfer to an individual retirement account described in Code Section 408(a) or to an individual retirement annuity described in Section 408(b) (other than an endowment contract) that has been established for the purposes of receiving the distribution on behalf of such Nonspouse Beneficiary. For these purposes, a "Nonspouse Beneficiary" is an individual who is a designated beneficiary (as defined by Section 401(a)(9)(E) of the Internal Revenue Code) of a Participant and who is not the surviving spouse of such Participant.

**ARTICLE V
DISABILITY RETIREMENT**

5.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability in the line of duty before attaining Normal Retirement Age, regardless of the number of completed years of Aggregate Service, shall be eligible for a disability retirement benefit equal to fifty percent (50%) of the Participant's base salary as of the Disability Date or the highest average base salary of the last five (5) years.

No applicant for a disability retirement benefit shall be received or considered unless it shall first affirmatively appear that the applicant has received an honorable discharge from the City.

5.02 Payment of Disability Benefits - Disability payments shall be made monthly as of the Participant's Disability Date and continuing until the earliest of the death of the Participant or cessation of Total and Permanent Disability.

5.03 Verification of Disability - The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a up to three (3) physicians acceptable to the Plan Administrator. If the Plan Administrator shall determine that a Participant who is Totally and Permanently Disabled has recovered sufficiently to resume active Employment as a firefighter or if a Participant refuses to undergo a medical examination as directed by the Plan Administrator (such a medical examination may not be required more frequently than once in any given twelve (12) month period), the payment of Disability Retirement Benefits shall cease.

5.04 Cessation of Disability - A Participant who is receiving payment of Disability Retirement Benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a Participant fails to provide immediate notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the Participant is not entitled, then the Plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date, shall not be entitled to any distribution of Accumulated Contributions pursuant to section 7.02 to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the Disability Date, and shall not be entitled to any other benefits under the Plan on account of any Aggregate Service as of the Disability Date.

**ARTICLE VI
DEATH BENEFITS**

- 6.01 Death of Participant - Upon the occurrence of the death of a Participant, there shall be benefits payable in accord with the following sections of this Article VI.
- 6.02 Survivor Benefit - If a Participant shall die in the line of duty, after commencement of retirement benefit payments under Article IV or V hereunder, or after becoming eligible to receive retirement benefit payments under section 4.01 and before retirement benefits commence, a Survivor Benefit shall be paid to the Eligible Spouse or Dependent Child(ren) of the Participant, if any, pursuant to section 6.03 in an amount equal to one hundred percent (100%) of the benefit the Participant was receiving or was eligible to receive as of the date of death.
- 6.03 Payment of Survivor Benefit - The Survivor Benefit commences as of the first day of the month immediately following the date of death of the Participant. The Survivor Benefit shall be paid monthly to the Eligible Spouse of the Participant, if any, until the death of the Eligible Spouse. Upon the death of the Eligible Spouse or if there is no Eligible Spouse, the Survivor Benefit shall be paid monthly in equal shares to the surviving Dependent Child(ren) of the deceased Participant until attainment of age eighteen (18). The shares payable to the surviving Dependent Child(ren) shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder.
- 6.04 Death of Participant Prior to Retirement - If a Participant shall die before payment of a benefit has commenced and without eligibility for payment of a Survivor Benefit under section 6.02, the Beneficiary shall be eligible to receive a distribution in an amount equal to the Accumulated Contributions of the Participant as of the date of death of the Participant. If the Participant has received Disability Retirement Benefits hereunder, the amount of distribution of Accumulated Contributions shall be reduced by the amount of Disability Retirement Benefits, which have been paid hereunder.
- 6.05 Veterans' Survivor Benefits - Notwithstanding any other provision of the Plan to the contrary, in the case of the death of a Participant who dies on or after January 1, 2007 while performing qualified military service (as defined in Code section 414(u)), the survivors of the Participant are entitled to any additional benefits under the Plan (if any) had the Participant resumed and then terminated employment on account of death.

**ARTICLE VII
TERMINATION OF EMPLOYMENT**

- 7.01 Rights of Terminated Employees - A Participant who shall cease to be an Employee except as otherwise hereinbefore provided shall have all interest and rights under this Plan limited to those contained in the following sections of this Article. Termination shall be by resignation dismissal or layoff in excess of twelve (12) months.

- 7.02 Distribution of Accumulated Contributions - A Participant whose Employment with the Employer shall terminate for any reason other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to receive a distribution of Accumulated Contributions. Upon receipt of such Accumulated Contributions, said Participant and Beneficiary shall not be entitled to any further payments from the Plan.
- 7.03 Forfeiture - Rights under this Plan shall be subject to forfeiture as provided by the act of July 8, 1978 (P.L. 752, No. 140), known as the Public Employee Pension Forfeiture Act.

ARTICLE VIII ADMINISTRATION

- 8.01 Plan Administrator - The Plan Administrator shall be the Board or the individual appointed by the Council who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, the Board shall be the Plan Administrator.
- 8.02 Board of Directors - Construction, Election and Term of Office - The Board of Managers of the Firefighter's Pension Fund shall be composed of seven (7) members, and this membership shall include the Mayor, Director of Accounts and Finance, Director of Public Safety, the City Controller, the Fire Chief as an ex-officio member, and two (2) Employees chosen by the Employees.

The term of office for Employee representatives shall be four (4) years, which shall be staggered such that one term will expire every two years. In the event of the termination, resignation or removal of a board member before the expiration of four (4) years, a special election shall be held to fill the remainder of the four (4) years.

- 8.03 Authority and Duties of the Plan Administrator - The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon the Board's review and approval thereof, be final and conclusive upon all parties hereto, whether Employees, Participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:

- (a) to construe this Plan;
- (b) to determine all questions affecting the eligibility of any Employee to participate herein;

- (c) to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
- (d) to authorize any and all disbursements;
- (e) to prescribe any procedure to be followed by any Participant or other person in filing any application or Election;
- (f) to prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
- (g) to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan;
- (h) to appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws; and
- (i) to select an individual retirement plan provider (either the state or a federally regulated financial institution) and invest the funds in connection with the rollover of mandatory distributions as described in section 4.13(b).

The Plan Administrator shall have no power to add to, subtract from or modify the terms of the Plan or change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Plan Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any Trustee or to determine or require any contributions to the Plan, said powers being exclusively reserved to the Board.

- 8.04 Board of Directors - Purpose - The purpose of the Board of Managers of the Firefighter's Pension Fund shall be to provide a forum for meetings and discussions between representatives of the City and the Fire Department Employees relative to pensions. In addition, the Board shall receive and review actuarial reports and other relevant reports on the status and/or the condition of the Firefighter's Pension Fund and other matters relevant to the actuarial reports and reports on the status and condition of the Firefighter's Pension Fund. The Board shall organize and adopt such rules and regulations as it may deem necessary for performance of its duties. The Board shall meet as needed.
- 8.05 Plan Administrator Costs - The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Board in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists, and other costs of administering the Plan, may be paid from the Pension Fund upon approval by the Board to the extent permitted under applicable law and not otherwise paid by the Employer.

- 8.06 Hold Harmless - No member of the Board, the Plan Administrator, nor any other person involved in the administration of the Plan (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the Employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
- 8.07 Approval of Benefits - The Plan Administrator shall review and approve or deny any application for retirement benefits within thirty (30) days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
- 8.08 Appeal Procedure - Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
- (a) Any Claimant shall file a Notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.
 - (b) If the claim is denied in whole or in part, the Plan Administrator shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, mail Notice of such denial to the Claimant. Such ninety (90) day period may be extended by the Plan Administrator if special circumstances so require for up to ninety (90) additional days by the Plan Administrator's delivering Notice of such extension to the Claimant within the first ninety (90) day period. Any Notice hereunder shall be written in a manner calculated to be understood by the Claimant and, if a Notice of denial, shall set forth (i) the specific Plan provisions on which the denial is based, (ii) an explanation of additional material or information, if any, necessary to perfect such claim and a statement of why such material or information is necessary, and (iii) an explanation of the review procedure.

- (c) Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by the Board of the initial determination. Such request for review must be made by Notice to the Board within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Board shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the Board in its sole discretion holds a hearing, within one hundred and twenty (120) days of receipt of such Notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
- (d) Any Notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.
- (e) A Claimant who does not submit a Notice of a claim or a Notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- (f) Nothing contained herein is intended to abridge any right of a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. Section 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this section 8.08 of the Plan has been exhausted.

ARTICLE IX THE PENSION FUND

- 9.01 Operation of the Pension Fund - The Board is hereby authorized to hold and supervise the investment of the assets of the Pension Fund, subject to the provisions of the laws of the Commonwealth and of this Plan and any amendment thereto.

The Pension Fund shall be used to pay benefits as provided in the Plan and, to the extent not paid directly by the Employer, to pay the expenses of administering the Plan pursuant to authorization by the Employer.

The Employer intends the Plan to be permanent and for the exclusive benefit of its Employees. It expects to make the contributions to the Pension Fund required under the Plan. The Employer shall not be liable in any manner for any insufficiency in the Pension Fund; benefits are payable only from the Pension Fund, and only to the extent

that there are monies available therein. The Pension Fund will consist of all funds held by the Employer under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The Pension Fund shall be held, managed, and administered pursuant to the terms of the Plan. Except as otherwise expressly provided in the Plan, the Employer has exclusive authority and discretion to manage and control the Pension Fund assets. The Employer may, however, appoint a trustee, custodian or investment manager, at its sole discretion.

9.02 Powers and Duties of Employer - With respect to the Pension Fund, the Employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the Plan or by law, unless such duties are delegated.

- (a) To retain in cash so much of the Pension Fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
- (b) To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries in accordance with Chapter 73 of the Pennsylvania Probate Estates and Fiduciaries Code, or as the same may be subsequently modified or amended.
- (c) To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- (d) To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- (e) To exercise all conversion and subscription rights pertaining to property held in the fund.
- (f) To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- (g) To place money at any time in a deposit bank deemed to be appropriate for the purposes of this Plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- (h) In addition to the foregoing powers, the Employer shall also have all of the powers, rights, and privileges conferred upon trustees in accordance with Chapter 73 of the Pennsylvania Probate Estates and Fiduciaries Code, or as the same may

be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the Employer may deem necessary to administer the Pension Fund.

- (i) To maintain and invest the assets of this Plan on a collective and commingled basis with the assets of other pension plans maintained by the Employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- (j) To invest the assets of the Pension Fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this Plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled trust fund by the Plan.
- (k) To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that if a trustee is appointed by the Employer, such trustee shall make such distribution only at the direction of the Employer.
- (l) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- (m) To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- (n) To pay, and to deduct from and charge against the Pension Fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Pension Fund, the income, property or transfer thereof, or in any matter or thing connected therewith.
- (o) To appoint any persons or firms (including but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the Fund; to the extent not prohibited by applicable law, the Employer shall be entitled to rely conclusively upon and shall be fully

protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the Employer, taking into account the interests of the Participants and Beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.

- (p) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the Employer shall follow the directions of such Investment Manager or Managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such Investment Manager or Managers, nor shall it be under any obligation to review or otherwise manage any Fund assets which are subject to the management of such Investment Manager or Managers. If the Employer appoints a trustee, the trustee shall not be permitted to retain such an Investment Manager except with the express written consent of the Employer.

- 9.03 Common Investments - The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account, but may invest contributions and any profits or gains therefrom in common investments.
- 9.04 Compensation and Expenses of Appointed Trustee - If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the Employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out its functions, shall constitute a charge upon the Employer or the Pension Fund, which may be executed at any time after thirty (30) days written notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the Pension Fund.
- 9.05 Periodic Accounting - If a trustee is appointed, the Pension Fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the Fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the Employer, showing the condition of the Fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
- 9.06 Value of the Pension Fund - All determinations as to the value of the assets of the Pension Fund, and as to the amount of the liabilities thereof, shall be made by the Employer or its appointed trustee, whose decisions shall be final and conclusive and

binding on all parties hereto, the Participants and Beneficiaries and their estates. In making any such determination, the Employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

ARTICLE X AMENDMENT AND TERMINATION

- 10.01 Amendment of the Plan - The Employer may amend this Plan at any time or from time to time by an instrument in writing executed in the name of the Employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Board provided, however:
- (a) that no amendment shall deprive any Participant or any Beneficiary of a deceased Participant of any of the benefits to which each is entitled under this Plan with respect to contributions previously made;
 - (b) that no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in section 10.05, ever revert to or be used or enjoyed by the Employer; and
 - (c) that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 11.03 has been prepared and presented to the Board in accordance with the Act.
- 10.02 Termination of the Plan - The Employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.
- 10.03 Automatic Termination of Contributions - Subject to the provisions of the Act governing financially distressed municipalities, the liability of the Employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
- 10.04 Distribution Upon Termination - In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected Participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the Plan, the Employer shall direct either (a) that the Plan Administrator continue to hold the vested Accrued Benefits of Participants in the Pension Fund in accordance with the provisions of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or (b) that the Plan Administrator immediately distribute

to each Participant an amount equal to the vested Accrued Benefit to the date of Plan termination.

If there are insufficient assets in the Pension Fund to provide for all vested Accrued Benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary Employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.

All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which effects such termination.

- 10.05 Residual Assets - If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.
- 10.06 Exclusive Benefit Rule - In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

ARTICLE XI FUNDING STANDARD REQUIREMENTS

- 11.01 Actuarial Valuations - The Plan's Actuary shall perform an actuarial valuation at least biennially. Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985 and shall be prepared and certified by an approved Actuary, as such term is defined in the Act.

The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Pension Fund. Such allowable expenses shall include but not be limited to the following:

- (a) investment costs associated with obtaining authorized investments and investment management fees;

- (b) accounting expenses;
- (c) premiums for insurance coverage on Fund assets;
- (d) reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
- (e) legitimate travel and education expenses for Plan officials; provided, however, that the municipal officials of the Employer, in their fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.

11.02 Duties of Chief Administrative Officer - Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer.

The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the Minimum Municipal Obligation of the Employer with respect to funding the Plan for any given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the Minimum Municipal Obligation of the Employer to the Board annually and shall certify the accuracy of such calculations and their conformance with the Act.

11.03 Benefit Plan Modifications - Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan shall provide to the Board a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to the Board the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future Minimum Municipal Obligation of the Employer with respect to the Plan.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.01 Employment Rights - No Employee of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Plan except those expressly granted hereunder. Participation in this Plan shall not give any right to any Employee to be retained in the employ of the Employer, nor shall interfere with the right of the Employer to discharge any Employee and to deal with such Employee without regard to the effect such treatment might have upon participation in this Plan.

- 12.02 Meaning of Certain Words - For purposes of this Plan, the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of Articles and Sections are inserted only for convenience of reference and are not to be considered in the construction of the Plan.
- 12.03 Information to Be Furnished By the Employer - The Employer shall furnish to the Plan Administrator (and where applicable, the trustee) information in the Employer's possession as the Plan Administrator and the trustee shall require from time to time to perform their duties under the Plan.
- 12.04 Severability of Provisions - Should any provisions of this Plan be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted herein.
- 12.05 Incapacity of Participant - If any Participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such Participant is so incapacitated and that another person or institution is maintaining the Participant and that no guardian or committee has been appointed for the Participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining the Participant, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 12.06 Pension Fund for Sole Benefit of Participants - The income and principal of the Pension Fund are for the sole use and benefit of the Participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or Beneficiary.
- 12.07 Benefits for a Deceased Participant - If any benefit shall be payable under the Plan to or on behalf of a Participant who has died, if the Plan provides that the payment of such benefits shall be made to the Participant's estate, and if no administration of such Participant's estate is pending in the court of proper jurisdiction, then the Plan Administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased Participant, or, if there is no surviving spouse, to such Participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the Plan Administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.
- 12.08 Assets of the Fund - Nothing contained herein shall be deemed to give any Participant or Beneficiary any interest in any specific property of the Pension Fund or any right except to receive such distributions as are expressly provided for under the Plan.

- 12.09 Personal Liability - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the Employer or Plan Administrator shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.
- 12.10 Construction of Document - This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.

ARTICLE XIII DEFERRED RETIREMENT OPTION PLAN

- 13.01 Definitions - The following words and phrases when used in this Article XIII shall have the meanings given to them in this section only, unless the context clearly indicates otherwise:
- (a) "DROP" - A deferred retirement option plan established and being operated by the City of Washington, Washington County, Pennsylvania, effective as of January 1, 2012.
 - (b) "DROP Participant" - A Participant of the City of Washington Firefighter's Pension Plan who is eligible to participate in a DROP under section 13.02 and who has elected to participate in a DROP under section 13.03.
 - (c) "Individual DROP Account" - The notional account established for a DROP Participant under section 13.16.
 - (d) "Normal Retirement Benefit" - The retirement benefit payable to a Participant of a defined benefit pension plan at the point in time when the Participant satisfies the age and service requirements for full, unreduced retirement benefits.

ELIGIBILITY AND PARTICIPATION

- 13.02 Eligibility of Employee to Participate in DROP - An Employee who has attained age fifty-three (53) and completed twenty (20) years of Aggregate Service with the Employer is eligible to elect to participate in the DROP by filing a written application with the retirement Plan Administrator at least thirty (30) days before the Employee's effective date of retirement.
- 13.03 Participation in DROP - An eligible Participant may elect to participate in the DROP for a period not to exceed three (3) years. Upon deciding to participate in the DROP, a

Participant must submit, on forms provided by the Plan Administrator, all of the following:

- (a) A binding and irrevocable letter of resignation from regular Employment with the City which discloses the Participant's intent to retire and specifies the Participant's retirement date.
- (b) An irrevocable written election to participate in the DROP which must specify the effective date of DROP participation that shall be one (1) day after the Participant's specified retirement date, and the DROP termination date which satisfies the limitation in section 13.05. It must also detail a DROP Participant's rights and obligations under the DROP and include an agreement to forgo:
 - (i) active membership in the Plan;
 - (ii) any growth in the salary base or other changes in compensation used for calculating the Normal Retirement Benefit;
 - (iii) any additional benefit accrual for retirement purposes;
 - (iv) participation in any benefit enhancements or amendments that may become part of the plan

The DROP Participant shall be required to provide any other information required by the Plan Administrator.

- 13.04 Effective Dates of DROP Participation - A retired Participant's effective date of participation in a DROP shall begin on the day following the effective date of the Participant's regular retirement, and a retired Participant's participation in a DROP shall end on the DROP termination date specified on the election form described in section 13.03(b).
- 13.05 DROP Participation Termination - A DROP Participant may change the DROP termination date to an earlier date within the limitations of section 13.03, but may not change it to a later date than elected at the time of initial DROP participation. No penalty shall be imposed for early termination of DROP participation. Upon either early or regular termination of DROP participation, the DROP Participant shall be separated from Employment with the Employer and the Plan shall pay the balance of the DROP Participant's Individual DROP Account to the terminating Participant as provided in section 13.09. The DROP Participant shall be ineligible to re-enroll in the DROP thereafter even if the former DROP Participant is re-employed by the Employer with renewed active membership in the Plan.
- 13.06 DROP Participant Contributions - DROP Participants shall neither be required nor permitted to pay contributions into the Plan during the DROP participation period.

DROP BENEFITS

- 13.07 Fixed Retirement Benefits, Retirement Date and DROP Dates - Effective with the date of retirement elected by a DROP Participant, the Participant's monthly retirement benefit, date of retirement and DROP participation date shall be fixed. The monthly retirement benefit shall be determined as of the date of retirement pursuant to section 4.02 and section 4.03. There shall be no further benefit accruals or adjustments to the monthly benefit thereafter for Aggregate Service completed or changes to Final Monthly Average Salary after the retirement date, or for plan amendments or statutory changes enacted after the retirement date.
- 13.08 Normal Retirement Benefit Payments and Accruals - The DROP Participant's monthly retirement benefit pursuant to section 13.07 shall be credited to the DROP Participant's Individual DROP Account in the Fund each month of DROP participation, along with interest. Interest shall be compounded and credited monthly at an annual rate of three percent (3%).
- 13.09 Payment of DROP Benefits - On the effective date of a DROP Participant's termination of Employment with the Employer, participation in the DROP shall cease and the Plan shall calculate and pay to the Participant the total accumulated balance of the DROP Participant's Individual DROP Account subject to the following provisions:
- (a) The terminating DROP Participant or, if the Participant is deceased, the Participant's named Beneficiary shall elect on a form provided by the Plan Administrator to receive payment of the DROP benefits in accordance with one of the following options:
 - (i) The balance in the DROP Participant's Individual DROP Account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid by the Plan within forty-five (45) days of the DROP Participant's termination of Employment to the DROP Participant or surviving Beneficiary; or
 - (ii) The balance in the DROP Participant's Individual DROP Account shall be paid by the Plan within forty-five (45) days of the DROP Participant's termination of Employment, directly to the custodian of an eligible retirement plan as defined in Section 402(c)(8)(B) of the Internal Revenue Code of 1986 or, in the case of an eligible rollover distribution to the surviving spouse of a deceased Participant to an eligible retirement plan which is an individual retirement account or an individual retirement annuity as described in Section 402(c)(9) of the Internal Revenue Code of 1986.
 - (b) If the DROP Participant or Beneficiary fails to elect a method of payment within 60 days after the Participant's termination date, the Plan shall pay the balance

directly to the custodian of an eligible retirement plan as provided in subparagraph (ii).

- (c) The form of payment selected by the DROP Participant or surviving Beneficiary shall comply with the minimum distribution requirements of the Internal Revenue Code of 1986.
- (d) The DROP Participant shall commence receipt of the monthly retirement benefit directly.
- (e) The DROP shall at all times comply with the annual benefit limitations of Code Section 415 and the regulations thereto.

13.10 Pre-retirement Benefits - Except for those benefits specified in section 13.03(b) as forgone by the member, a DROP Participant shall be eligible for any employee benefits provided to active employees before retirement by the City and those otherwise provided by law, including but not limited to, benefits under the act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act; the act of June 28, 1935 (P.L. 477, No. 193), referred to as the Enforcement Officer Disability Benefits Law; the act of December 5, 1936 (2nd Sp. Sess., 1937 P.L. 2897, No. 1), known as the Unemployment Compensation Law; the act of June 24, 1976 (P.L. 424, No. 101), referred to as the Emergency and Law Enforcement Personnel Death Benefits Act; and the Public Safety Officers' Benefit Act of 1976 (Public Law 94-430, 42 U.S.C. § 90 stat. 1347).

DROP DEATH BENEFITS

- 13.11 DROP Benefits for Designated Beneficiary - If a DROP Participant dies, the Participant's designated Beneficiary shall be entitled to apply for and receive the benefits accrued in the DROP Participant's Individual DROP Account as provided in section 13.09.
- 13.12 Final Credited Monthly Retirement Benefit - The monthly retirement benefit accrued in the DROP Participant's DROP Participant Account during the month of a DROP Participant's death shall be the final monthly retirement benefit credited for DROP participation.
- 13.13 DROP Eligibility Terminates upon Participant's Death - A DROP Participant's eligibility to participate in the DROP terminates upon the death of the DROP Participant. If a DROP Participant dies on or after the effective date of participation in the DROP but before the initial monthly retirement benefit of the Participant accrues for the month has accrued in the DROP Participant's Individual DROP Account, the Plan shall pay the monthly retirement benefit as though the Participant had not elected DROP participation and had died after the Employee's effective date of retirement but, before receipt of the first monthly benefit payment.

- 13.14 Survivors Ineligible for Active Employee's Death Benefit - The survivor of a DROP Participant who dies shall not be eligible to receive retirement death benefits payable in the event of the death of an active Employee.
- 13.16 Survivors Eligible for Retired Member's Death Benefit - The survivor of a DROP Participant who dies shall be eligible to receive retirement death benefits normally payable in the event of the death of retired Employee.

ADMINISTRATIVE PROVISIONS

- 13.15 Subsequent Employment and Renewal of Active Membership - After both the termination of the DROP Participant's Employment by the Employer and the expiration of the DROP participation period, a former DROP Participant shall be subject to such re-employment limitations as other retired Employees and shall be eligible for renewed membership as an active Participant in the Plan, but shall be ineligible to re-enroll in the DROP pursuant to section 13.05.
- 13.16 DROP Participant Account - As the City establishes a DROP, it shall establish an Individual DROP Account as a separate interest-bearing, ledger account in its pension trust fund for each DROP Participant. The account balance shall be accounted for separately but will not be physically segregated from other pension trust fund assets.

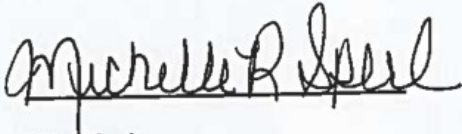
The DROP Participant's Account shall be held in trust for the exclusive benefit of DROP retired Participants who are or were DROP Participants and for the Beneficiaries of these Participants or an alternate payee pursuant to section 13.09.

- 13.17 Reporting of DROP Participants - For purposes of preparing the actuarial valuation reports and Minimum Municipal Obligation calculations for the Plan and for state aid reporting (Form AG-385), DROP Participants shall be considered retired as of the date of DROP retirement.
- 13.18 Other DROP Conditions - There shall be no additional costs, other than administrative costs, to the Employer for providing the DROP. In the event that the Employer incurs or anticipates incurring additional costs as a result of the DROP, other than administrative costs, this Article XIII shall become null and void, at the sole option of the City. Any DROP Participants whose DROP participation date preceded the effective date of when the DROP becomes null and void may continue participation in the DROP as permitted under their original DROP election, but no Participants may enter DROP thereafter.

EXAMINED AND APPROVED this 1st day of February, 2017. 2018

ATTEST:

CITY OF WASHINGTON



City Clerk
Michelle R. Sperl



Mayor

DULY RECORDED in Ordinance Book 2018 on this 1st day of February 2018

