

APPENDIX H

BLOOMINGTON FIRE DEPARTMENT RELIEF ASSOCIATION

DEFINED BENEFIT MONTHLY RETIREMENT PLAN

As Amended and Restated effective January 1, 2009

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BLOOMINGTON FIRE DEPARTMENT RELIEF ASSOCIATION
DEFINED BENEFIT MONTHLY RETIREMENT PLAN

The Board of Trustees of the Relief Association amends and restates its existing defined benefit pension plan for the benefit of its eligible members.

ARTICLE I
NAMES, PURPOSE AND OTHER GENERAL INFORMATION

- 1.1 Name of Municipality: City of Bloomington
- 1.2 Name of Fire Department: Bloomington Fire Department
- 1.3 Name of Relief Association: Bloomington Fire Department Relief Association
Address: 10 West 95th Street, Bloomington, MN 55420
- 1.4 Federal Taxpayer Identification Number: 41-6026092
- 1.5 Name of Plan: Bloomington Fire Department Relief Association Defined Benefit Monthly Retirement Plan
- 1.6 Original Effective Date of Plan: July 2, 1948
- 1.7 Purpose. The purpose of the Plan is to provide benefits to eligible members of the Relief Association (Participants) and their lawful Beneficiaries.

ARTICLE II
DEFINITIONS AND INTERPRETATION

- 2.1 General Definitions. The following words and phrases when used herein shall have the following meanings except as otherwise required by the context:
- (a) **“Accrued Benefit”** of a Participant shall mean the benefit determined under the terms of the Plan, as of a specified date.
 - (b) **“Active Service”** shall mean active service as defined by the Fire Department, as stated in its policies and procedures.
 - (c) **“Beneficial Interest”** shall mean the amount of a Participant’s Accrued Benefit that is distributable to the Participant or the Participant’s Beneficiary in accordance with the terms of the Plan.

- (d) **“Beneficiary”** shall mean any person entitled to receive benefits which may be payable upon or after a Participant’s death.
- (e) **“Board of Trustees”** or **“Board”** shall mean the Board of Trustees of the Relief Association.
- (f) **“Break in Service”** shall mean a period of day(s) during which the Participant does not perform the minimum Active Service requirements as defined by the Fire Department, as stated in its policies and procedures. Participants shall not accrue Active Service for each day of the period of the Break in Service. A Break in Service does not include a military service leave described in Section 7.1. A Participant’s Years of Active Service shall not include Breaks in Service.
- (g) **“Bylaws”** shall mean the duly adopted bylaws of the Relief Association.
- (h) **“Code”** shall mean the Internal Revenue Code of 1986, and amendments thereto.
- (i) **“Disability”** or **“Disabled”** shall mean the inability of a Participant to engage in the performance of his or her duties by reason of a medically determinable physical or psychological impairment, which can be expected to last for a continuous period of not less than seven days. Disability shall be applicable to duty and non line-of-duty causes. A Participant’s Disability shall be determined by the Board in its sole discretion.
- (j) **“Disability Benefit”** shall mean the benefit, if any, pursuant to Section 4.3.
- (k) **“Duty Related Disability”** shall mean an injury or illness arising out of and in the course of employment as a firefighter as defined by the Fire Department, as stated in its policies and procedures,
- (l) **“Effective Date”** shall mean the effective date of the Plan listed on the first page hereof.
- (m) **“Entry Date”** shall mean the date of hire as defined in the Fire Department policies and procedures.
- (n) **“Index Salary”** shall mean the average of the monthly salary for the current and two preceding calendar years of a patrol officer of the highest grade, not including officers or other persons above the rank of patrol officer according to present designations, in the employ of the Municipality, payable from time to time during the period in which the benefit is paid to Participant, Surviving Spouse or Surviving Children. To the extent required under the Code, a participant’s Index Salary for a Plan Year shall not exceed the annual compensation limit under Section 401(a)(17) of the Code which is Two Hundred thirty-five Thousand

Dollars (\$235,000) (as adjusted under the Code by the Secretary of the Treasury for cost-of-living increases).

- (o) **“Participant”** shall mean a member of the Relief Association who accrues or has accrued benefits under the Plan.
- (p) **“Plan Year”** shall mean the calendar year.
- (q) **“Physician’s Report”** shall mean the report completed by a physician that describes the diagnosis and prognosis of a Disability, disease or injury of the Participant and its probable duration of permanence.
- (r) **“Plan Statement”** shall mean the document pursuant to which the “Bloomington Fire Department Relieve Association Defined Benefit Monthly Retirement Plan” was restated effective as of January 1, 2009, as the same may be amended from time to time thereafter.
- (s) **“Retirement Benefit”** shall mean the benefit paid to a Participant pursuant to Section 4.1.
- (t) **“Separation Date”** shall mean the date of: i) Disability; or ii) retirement or termination as defined in the Fire Department policies and procedures.
- (u) **“Special Fund”** shall mean the fund established pursuant to Minn. Stat. 424A.05 used to fund benefits under the Plan and for other purposes permitted by statute. The assets of the Special Fund shall be invested only in securities authorized by Minn. Stat. 69.775.
- (v) **“Surviving Children”** shall mean any natural or adopted child of a deceased Participant who is under the age of 18 and is unmarried. The term also includes any child of the Participant who was conceived during the lifetime of, and who was born after the death of the Participant.
- (w) **“Surviving Spouse”** shall mean the spouse of a deceased Participant who was legally married to the Participant at the time of death.
- (x) **“Survivor Benefit”** shall mean the benefit paid to a Participant’s Beneficiary pursuant to Section 4.6 and 4.7.
- (y) **“Volunteer Firefighter”** shall mean any person who:
 - (i) is engaged in providing emergency response services or delivering fire education or prevention services as a firefighter for the Fire Department or Municipality;

- (ii) is trained in or is qualified to provide fire suppression duties or to provide fire prevention duties under Minn. Stat. 424A.001, Subd. 8; and
- (iii) meets any other minimum firefighter and service standards established by the Fire Department or Municipality.
- (z) **“Year of Active Service”** shall mean each 12-month period of Active Service commencing with a Participant’s Entry Date whether or not consecutive. This definition shall be used for the purposes of calculating the minimum funding requirements and computing benefits or service pensions payable. Service pensions will not be prorated monthly for fractional Years of Active Service pursuant to Minn. Stat. 424A.02, Subd. 1.

2.2 Interpretation. The words defined in this Article 2 shall have the meanings assigned to them except where specified otherwise in this instrument. Whenever appropriate, words used herein in the singular shall include the plural, the plural may be read as the singular, and the masculine shall include the feminine.

ARTICLE III VESTING

3.1 Full Vesting of Accrued Benefit. A Participant shall have a fully vested and non-forfeitable interest in the Participant’s Accrued Benefit upon completion of 20 Years of Active Service.

3.2 Maximum Years of Active Service for Benefit. A maximum of twenty (20) Years of Active Service shall be taken into account for purposes of determining a Participant’s Accrued Benefit, including Years of Active Service with the Fire Department prior to the Effective Date.

3.3 Forfeiture of Accrued Benefit. In the event a Participant with an Accrued Benefit that is 0% vested (a) ceases Active Service with the Fire Department, and (b) is not eligible for a Retirement Benefit or Disability Benefit, the Participant will be deemed to have received a distribution of the Participant’s entire Accrued Benefit and shall forfeit such Accrued Benefit when the Participant has not been credited with any Active Service with the Fire Department for a period not shorter than five years.

ARTICLE IV BENEFITS

4.1 Retirement Benefit. (a) *Eligibility.* To be eligible to receive a Retirement Benefit a Participant must satisfy each of the following requirements:

- (i) Have retired from Active Service or employed by the Municipality in a full-time position with the Fire Department;
 - (ii) Be at least 50 years of age;
 - (iii) Have been a Volunteer Firefighter in the Fire Department;
 - (iv) Have been a member in the Relief Association; and
 - (v) Have 20 Years of Active Service.
- (b) *Amount.* An eligible Participant's monthly Retirement Benefit payment shall be the benefit level amount of one-third (1/3) of the Index Salary. However, if the Participant had a Break in Service, the Participant's benefit level shall be determined as described in the definition of Break in Service.

Subject to the provisions of Section 8.1 of this Appendix H, benefit levels are subject to increase and shall be effective as the agreed upon effect date.

Such Retirement Benefit shall be payable when the Participant completes a valid Retirement Benefit Payment Request form for payment at the time of the Participant's Separation Date or, if later, when the Participant reaches age 50.

Upon the death of a Participant, the Participant's Surviving Spouse shall receive monthly Retirement Benefit payments until death or remarriage determined as follows:

Benefit level in effect for Participant	multiplied by	75%
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In the event of the Surviving Spouse's death, the Surviving Children shall receive an equal share of the monthly Retirement Benefit payments determined as follows:

Benefit level in effect for Participant	multiplied by	100%
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The maximum Survivor Benefit shall not exceed 100% of the Participant's monthly Retirement Benefit amount. Such payment will be paid to the Surviving Spouse and Surviving Children as soon as administratively feasible following the Participant's death and approval of the Retirement Survivor Benefit Payment Request form.

4.2 Retirement Benefit – Partial Service. A Participant whose position in the Fire Department is eliminated by action of the Municipality and has more than ten (10) Years of Active Service will be eligible for a Retirement Benefit for their partial service. A Participant's partial service monthly Retirement Benefit payment shall be determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	divided by	20
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Such partial service Retirement Benefit shall be payable when the Participant completes a valid Retirement Benefit Payment Request form for payment at the time of the Participant's Separation Date or, if later, when the Participant reaches age 50.

4.3 Disability Benefit – Duty. A Participant who becomes Disabled from an injury or illness arising out of or in the course in the line of duty while engaged in Active Service may be eligible for a duty-related Disability Benefit. A Participant's duty-related Disability Benefit shall be determined as follows:

Benefit level in effect for Participant	multiplied by	100%
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For purposes of a Disability Benefit, the Break in Service rules shall not apply, i.e., *a Participant who has received a duty-related Disability Benefit and who returns to Active Service will be considered to have accrued service credit toward a Retirement Benefit for the period of the receipt of the duty-related Disability Benefit.*

The benefit level amount is one-third (1/3) of the Index Salary. Subject to the provisions of Section 8.1 of this Appendix H, such dollar amount is subject to increase and shall be effective as of the agreed upon effective date.

Upon the death of a Participant, the Participant's Surviving Spouse shall receive monthly Disability Benefit payments until death or remarriage determined as follows:

Benefit level in effect for Participant	multiplied by	75%
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In the event of the Surviving Spouse's death, the Surviving Children shall receive an equal share of the monthly Disability Benefit payments determined as follows:

Benefit level in effect for Participant	multiplied by	100%
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The maximum Survivor Benefit shall not exceed 100% of the Participant's monthly Disability Benefit amount. Such payment will be paid to the Surviving Spouse and Surviving Children as soon as administratively feasible following the Participant's death and approval of the Disability Survivor Benefit Payment Request form.

4.4 Disability Benefit – Nonduty. A Participant who becomes Disabled while engaged in Active Service may be eligible for a nonduty-related Disability Benefit. A Participant’s nonduty-related Disability Benefit shall be determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	divided by	20
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For purposes of a Disability Benefit, the Break in Service rules shall apply.

The benefit level amount is one-third (1/3) of the Index Salary. Subject to the provisions of Section 8.1 of this Appendix H, such dollar amount is subject to increase and shall be effective as of the agreed upon effective date.

Upon the death of a Participant, the Participant’s Surviving Spouse shall receive monthly Disability Benefit payments until death or remarriage determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	divided by	20	Multiplied by	75%
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In the event of the Surviving Spouse’s death, the Surviving Children shall receive an equal share of the monthly Disability Benefit payments determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	divided by	20	Multiplied by	100%
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The maximum Survivor Benefit shall not exceed 100% of the Participant’s monthly Disability Benefit amount. Such payment will be paid to the Surviving Spouse and Surviving Children as soon as administratively feasible following the Participant’s death and approval of the Retirement Survivor Benefit Payment Request form.

4.5 Disability Benefit Approval Process. The Participant shall be eligible to receive the Disability Benefit upon approval of the Participant’s completed Disability Benefit and Payment

Request Form and accompanying Report of a physician of the Participant’s choice. No benefits shall be paid for any disability of less than seven days. Participants who have become disabled after ceasing Active Service shall not be eligible for a Disability Benefit. The Board of Trustees reserves the right to review the status of all Participants receiving Disability Benefits on a monthly basis.

A Disability Benefit Payment Request Form shall be submitted to the Board of Trustees within seven days after such Participant is determined by a physician approved by the Board to be Disabled. The Disability Benefit Payment Request Form and a Report, by a physician approved by Board of Trustees, shall describe the nature, date and cause of such Disability. The determination of Disability may be tabled until the next Board meeting to allow the Board to obtain a second opinion from a physician of their choice. The Board of Trustees has the discretion to request that a third physician, selected by the Board of Trustees, examine the Participant. Final determination of Disability will be based on the physician’s report(s), and determined by the Board of Trustees at the subsequent Board meeting.

If the Participant who applied for a Disability Benefit disagrees with the Board’s determination, the Participant may, within sixty (60) days from notice of such action of the Board of Trustees, file a written appeal of the Board of Trustees’ determination pursuant to the Plan’s appeal procedures described in Article V.

4.6 **Survivor Benefit – Duty.** If a Participant in Active Service dies of an injury or illness arising out of or in the course of the line of duty:

- (a) The Participant’s Surviving Spouse shall receive a monthly benefit until death or remarriage determined as follows:

Benefit level in effect for Participant	multiplied by	75%
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- (b) Surviving Children shall each receive the monthly benefit payments until the earlier of age eighteen (18) or marriage determined as follows:

Benefit level in effect for Participant	multiplied by	12%
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- (c) In the event of the Surviving Spouse’s death, the Surviving Children shall receive an equal share of the monthly Survivor Benefit payments determined as follows:

Benefit level in effect for Participant	multiplied by	100%
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- (d) The amount of duty-related Survivor Benefit paid pursuant to 4.6(a) and 4.6(b) shall not exceed 100% of the Participant’s monthly benefit amount. If the

Surviving Spouse is receiving a benefit under 4.6(a), the amount of 4.6(b) shall be limited to 25% of the Participant's monthly benefit amount.

- (e) Such payment will be paid to the Surviving Spouse and Surviving Child as soon as administratively feasible following the Participant's death and approval of the Survivor Benefit Payment Request form.

4.7 **Survivor Benefit – Nonduty.** If a Participant in Active Service dies in an injury or illness not arising out of or in the course of the line of duty:

- (a) The Participant's Surviving Spouse shall receive a monthly benefit until death or remarriage determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	Divided by	20	multiplied by	75%
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- (b) The Surviving Children shall each receive the monthly Survivor Benefit payments until the earlier of age eighteen (18) or marriage determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	Divided by	20	multiplied by	12%
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- (c) In the event of the Surviving Spouse's death, the Surviving Children shall receive an equal share of the monthly Survivor Benefit payments determined as follows:

Lesser of 20 or Years of Active Service credited to Participant	multiplied by	Benefit level in effect for Participant	Divided by	20	multiplied by	100%
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- (d) The non duty-related Survivor Benefit paid pursuant to 4.7(a) and 4.7(b) shall equal 100% of the Participant's monthly benefit amount. If the Surviving Spouse is receiving a benefit under 4.7(a), the amount of 4.7(b) shall be limited to 25% of the Participant's monthly benefit amount. If the Surviving Children are receiving less than 25% of the Participant's monthly benefit amount, the Surviving Spouse's monthly amount will need to be adjusted in order to comply with this provision.

- (e) Such payment will be paid to the Surviving Spouse and Surviving Child as soon as administratively feasible following the Participant's death and approval of the Survivor Benefit Payment Request form.

4.8 Death Benefit. Upon the death of a Participant, the Surviving Spouse shall receive a Death Benefit payment of five hundred dollars (\$500). If the Surviving Spouse is deceased, the Death Benefit amount shall be paid to the Participant's estate.

4.9 Benefit Level Changes. Benefit level increases or decreases shall be applicable only to Participant or Beneficiaries receiving a Retirement, Disability or Survivor Benefit as of the effective date.

4.10 Benefit Payment Requests. Requests for benefit payment shall be in writing and filed with the Relief Association not less than 45 days prior to the date of requested distribution, unless permitted earlier by the Board. Such request shall be made on the appropriate form described below:

<u>Requested Benefit</u>	<u>Required Benefit Form</u>
Retirement	Retirement Benefit Payment Request
Disability	Disability Benefit Payment Request
Survivor	Survivor Benefit Payment Request

Requests for Plan benefits shall be considered valid when approved by the Board. Upon approval of the request, the Relief Association shall provide Special Tax Notice Regarding Plan Payments or any other notices to the Participant as required by state or federal law with respect to pension or benefit payments. The Participant shall receive their benefit payment within 45 days from the date the benefit form's approval.

4.11 Forms of Payment. Plan benefits payable to a Participant or Beneficiary shall be made in monthly payments. The Participant shall specify that the payment be made in the manner of:

- (a) a check payment payable to the Participant or Beneficiary, subject to federal income tax withholding, as may be required; and
- (b) a check payment payable to the Participant's health insurance provider in an amount not to exceed \$3,000 annually as described in Section 402(l) of the Code and permitted by Minn. Statute 424A.05, subd. 3d. This Section shall not be effective until the Board establishes policies and procedures.

To the extent permitted by law, the Board may, on a uniform basis, charge the reasonable and necessary expenses associated with administering payments to a health insurance provider as directed by the Participant.

4.12 Maximum Limitation on Benefits. Notwithstanding any provision of the Plan to the contrary, a Participant's benefit under the Plan shall not exceed the maximum amount permitted under Article VIII of this Appendix H. Service pensions shall be further limited to the maximum amounts payable pursuant to Minn. Stat. 424A.02, Subd. 3.

4.13 Required Distributions. Notwithstanding any provision of the Plan to the contrary, a distribution to a Participant must be made or begin by April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½ or ceases Active Service. Such distributions shall be determined and made in accordance with Section 401(a)(9) of the Code and regulations promulgated thereunder, including the minimum distribution incidental benefit requirement of Treasury Reg. Section 1.401(a)(9)-2, the provisions of which are incorporated herein by reference.

4.14 Abandoned Benefits. In the event the Relief Association is unable with reasonable effort to locate a Participant or Beneficiary entitled to a distribution under the Plan, the benefit distributable to such Participant or Beneficiary shall be forfeited and will be credited to the Special Fund. Such forfeiture shall occur no earlier than six (6) months after the Relief Association's efforts to locate such Participant or Beneficiary began or, if later, the earliest date permitted under Minn. Stat. 356.65.

If a Participant or Beneficiary whose benefit has been forfeited pursuant to this Section later makes a claim for the forfeited benefit, such forfeited amount shall be restored, unadjusted for any gains or losses occurring subsequent to the date of the forfeiture. A claim for a forfeited benefit must be made by a Participant within five (5) years after the last contribution was made for the Participant (or, in the case of a Beneficiary of a deceased Participant, within five (5) years after the Participant's date of death). If the forfeited benefit amount exceeds \$25, the forfeited amount will be restored to the credit of the person.

ARTICLE V APPEALS PROCEDURE

5.1 Right of Appeal. In the event the Board of Trustees denies a written request for a service or ancillary pension benefit, the Participant or Beneficiary whose request was denied (a "claimant") shall be entitled to the right to appeal the determination.

5.2 Denial of Benefits. If a written request is not approved, the Board shall return the form to the claimant within 30 days, noting which requirements the claimant does not meet. Thereafter, the claimant shall be furnished with the opportunity to be heard by the full Board, on the question of whether the claimant meets all of the eligibility requirements. The claimant shall

indicate that he or she intends to appeal by furnishing the Board with a written intent to appeal within 30 days of receiving an adverse determination.

5.3 Review Procedure. Upon receipt of the written intent to appeal, the Board of Trustees shall hold a special meeting within 60 days. Timely notice of the meeting shall be given to the claimant at least 15 days prior to the special meeting. The claimant shall have the reasonable opportunity to be heard by the Board of Trustees at the special meeting with regard to the negative determination. The Board reserves the right to engage the services of an arbitrator or mediator, acceptable to both parties, at any time during the appeal.

ARTICLE VI CLAIMS AGAINST BENEFICIAL INTEREST

6.1 Nonassignability. No Participant or Beneficiary shall have any transmissible interest in the Plan or in the Participant's separate Beneficial Interest therein, either before or after the vesting thereof, or in any of the assets comprising the same prior to actual payment and distribution thereof, and shall have no power to alienate, dispose of, pledge or encumber the same, while in the possession or control of the Plan, nor shall the Plan recognize any assignment thereof, either in whole or in part, nor shall the interest of any Participant or Beneficiary be subject to attachment, garnishment, execution or other legal process while in the hands of the Plan, except as provided in Minn. Stat. 518.6111 or as otherwise provided herein.

6.2 Charge for Litigation. In the event that any Participant or any person claiming by or through a Participant should commence any equitable or legal proceedings against the Relief Association, the result of which is adverse to the plaintiff, or in the event that the Relief Association should find it necessary to commence any such proceeding against any Participant or any person claiming by or through a Participant, the result of which is adverse to the defendant, the cost to the Relief Association of defending or bringing the proceeding, as the case may be, may be charged, to the extent possible and permitted by law, to the Accrued Benefit of the Participant and only the excess of such cost over the amount of the Participant's Accrued Benefit shall be included as an expense of administration.

6.3 Domestic Relations Orders. Notwithstanding any provision to the contrary herein, the Board of Trustees may assign the interest of a Participant in the Plan to an Alternate Payee pursuant to Article IX.

ARTICLE VII MILITARY SERVICE

7.1 Military Service. Subject to restrictions stated in this section, a Participant who is absent from firefighting service due to service in the uniformed services, as defined in the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), will be granted Active

Service credit under the Plan for the period of the uniformed service, not to exceed five years, unless a longer period is required under USERRA or approved by the Board.

To be eligible for such credit, the Participant must return to firefighting service with coverage by the Relief Association (or by the successor to the Relief Association) upon discharge from service in the uniformed service within the time frame required in USERRA. However, Active Service credit is not authorized if the Participant separates from uniformed service with a dishonorable or bad conduct discharge or under other than honorable conditions.

Active Service credit is not authorized if the Participant fails to provide notice to the Fire Department that the Participant is leaving to provide service in the uniformed service, unless it is not feasible to provide that notice due to the emergency nature of the situation.

7.2 Participation During Leave of Absence. If a Participant is on leave of absence because of uniformed service as described in Section 7.1, the individual shall remain a Participant during the period of such leave of absence. The definition of Break in Service shall determine whether such leave of absence constitutes a Break in Service. If such Participant does not return to Active Service with the Fire Department within the period granted for such uniformed service, it shall be conclusively presumed that the Participant's Active Service terminated as of the date the Participant was absent due to service in the uniformed services. However, if the death of such Participant occurs prior to expiration of the applicable period, Survivor Benefit - Nonduty, if any, shall be payable.

ARTICLE VIII LIMITATION ON ANNUAL BENEFITS

8.1 Limitation on Annual Benefits Definitions. When used in this Article, the following terms shall have the following meanings:

- (a) **Annual Benefit.** Annual benefit means a retirement benefit under a defined benefit plan which is payable annually in the form of a straight life annuity.
- (i) **Straight Life Annuity.** Except as provided below, a benefit payable in a form other than a straight life annuity will be adjusted to the actuarial equivalent straight life annuity before applying the limitations of this Article. This actuarial equivalent straight life annuity shall be determined under the following rules.
 - (1) **Not §417(e)(3) Forms.** If the benefit is paid in a form to which Section 417(e)(3) of the Code does not apply (e.g., lifetime annuity), the actuarially equivalent straight life annuity benefit is the greater of

- (A) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the form of benefit that is payable to the Participant, or
 - (B) the annual amount of straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit that is payable to the Participant, computed using a five percent (5%) interest and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date.
- (2) **§417(e)(3) Forms.** If the benefit is paid in a form to which Section 417(e)(3) does apply (e.g., lump sum), the actuarially equivalent straight life annuity benefit is the greatest of:
- (A) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the form of benefit that is payable to the Participant, computed using the interest rate and mortality table, or tabular factor, specified in the Plan for determining the amount of that form of benefit, or
 - (B) the annual amount of straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit that is payable to the Participant, computed using a five and one half percent (5.5%) interest and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date, or
 - (C) the annual amount of straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit that is payable to the Participant, computed using the applicable interest rate for the distribution under §1.417(e)-1(d)(3) and the applicable mortality table for the distribution under §1.417(e)-1(d)(2), divided by 1.05.
- (ii) **Excluded Contributions.** The annual benefit does not include any benefits attributable to employee contributions, rollover contributions or the assets transferred from a qualified plan that was not maintained by a Controlled Group Member.

- (iii) **Ancillary Benefits.** No actuarial adjustment to the annual benefit is required for: (1) the value of a qualified joint and survivor annuity (to the extent such value exceeds the sum of the value of a straight life annuity beginning on the same date and the value of post-retirement death benefits that would be paid even if the annuity were not in the form of a joint and survivor annuity), or (2) the value of benefits that are not directly related to retirement benefits (such as a pre-retirement disability benefit, a pre-retirement death benefit or a post-retirement medical benefit), or (3) the value of post-retirement cost of living increases made in accordance with regulations under the Code.

- (b) **Controlled Group Member.** Controlled Group Member means the Relief Association and each member of a controlled group of corporations (as defined in Section 414(b) of the Code and as modified by Section 415(h) of the Code), all commonly controlled trades or businesses (as defined in Section 414(c) of the Code and as modified by Section 415(h) of the Code), affiliated service groups (as defined in Section 414(m) of the Code) of which the Relief Association is a part and other organizations required to be aggregated for this purpose under Section 414(o) of the Code.

- (c) **Defined Benefit Plans.** Defined benefit plans shall have the meaning assigned to that term by Section 415(k)(1) of the Code. Whenever reference is made to defined benefit plans in this Article, it shall include all such plans maintained by the Relief Association and all controlled group members including terminated plans, plans maintained by predecessor employers and plans that were formerly maintained by the employer or a related employer but shall not include any multiemployer plan (as defined in Section 414(f) of the Code).

- (d) **Limitation Year.** Limitation year means the Plan Year.

- (e) **Maximum Permissible Benefit.** Maximum permissible benefit means, for any one (1) limitation year, an amount determined as follows:
 - (i) **Age 62 Commencement.** If the annual benefit commences at or after age sixty-two (62) years (but before age sixty-five years), the maximum permissible benefit is the lesser of: (A) One Hundred Sixty Thousand Dollars (\$160,000), or (B) the Participant's highest average compensation.

 - (ii) **Early Commencement.** If the annual benefit commences before age sixty-two (62) years, the maximum permissible benefit may not exceed the actuarial equivalent of a One Hundred Sixty Thousand Dollars (\$160,000) annual benefit beginning at age sixty-two (62) years. This actuarial equivalent (i.e., the pre-age sixty-two actuarial equivalent) shall be the lesser of:

- (1) the equivalent amount computed using the interest rate and mortality table (or tabular factor) specified in the defined benefit plan for determining the amount of the early retirement benefit that is payable under the plan, or
- (2) the equivalent amount computed using five percent (5%) interest and the applicable mortality table as prescribed by the Secretary of the Treasury for these purposes.

Governmental Plans are not subject to the 100% of compensation limitation.

(iii) **Late Commencement.** If the annual benefit commences after age sixty-five (65) years, the benefit may not exceed the actuarial equivalent of a One Hundred Sixty Thousand Dollars (\$160,000) annual benefit beginning at age sixty-five (65) years. This actuarial equivalent (i.e., the post-age sixty-five actuarial equivalent) shall be the lesser of:

- (1) the equivalent amount computed using the interest rate and mortality table (or tabular factor) specified in the defined benefit plan for determining the amount of the late retirement benefit that is payable under the plan, or
- (2) the equivalent amount computed using five percent (5%) interest and the applicable mortality table as prescribed by the Secretary of the Treasury for these purposes.

Governmental Plans are not subject to the 100% of compensation limitation.

- (iv) **Cost of Living Adjustments.** Effective on January 1, 2002 and each January 1 thereafter, the One Hundred Sixty Thousand Dollars (\$160,000) limit and the highest average compensation limit (for Participants who have separated from service) shall be adjusted automatically for increases in the cost of living by the Secretary of the Treasury pursuant to Section 415(d) of the Code. The new amounts will apply to limitation years ending within such calendar year. The new amounts shall also apply to a participant who has had a severance from employment or an annuity starting date.
- (v) **Participation Reduction.** If a Participant has less than ten (10) years of participation in the plan, the One Hundred Sixty Thousand Dollars (\$160,000) limit otherwise defined and adjusted above (but not the highest

average compensation limit) shall be reduced to an amount equal to One Hundred Sixty Thousand Dollars (\$160,000) as otherwise defined and adjusted above multiplied by a fraction: (i) the numerator of which is the number of years (and part thereof) of participation (not less than one), and (ii) the denominator of which is ten (10).

- (vi) **Multiple Annuity Starting Dates.** If a Participant is entitled to benefits under this plan and under defined benefit plans that commenced as of an earlier annuity starting date, the annual benefits due under all such plans must not exceed the maximum permissible benefit at all annuity starting dates.

8.2 Defined Benefit Limitation. Notwithstanding anything to the contrary contained in the Plan Statement, (i) there shall not be paid to any Participant under a defined benefit plan an amount which would cause the annual benefit for any limitation year for such Participant to exceed the maximum permissible benefit, and (ii) no benefit shall accrue for any Participant in excess of the limitations of Section 415(b) of the Code. Subject to the provisions of this Article, the limitations of Section 415(b) of the Code (and regulations issued pursuant thereto) are incorporated by reference in this Article.

8.3 Suspension of Benefits & Accruals. If a Participant's annual benefit for any limitation year or accrued benefit would exceed the maximum permissible benefit, the amount payable from and accrued under all defined benefit plans shall be reduced to the extent necessary to eliminate such excess for that limitation year. If a Participant is entitled to receive benefits from or accrue benefits under more than one (1) defined benefit plan, such reductions shall be made as follows.

- (a) If the benefits payable under such plans commence as of the same time or are accruing concurrently, the reductions shall be made from plans based on the chronological order of the effective dates for such plans (using the original effective date of the plan) beginning with the most recently established plan and proceeding backwards in time.
- (b) If the benefits payable under such plans do not commence as of the same time or are not accruing concurrently, the reductions in benefits payable shall be made from the benefits due under the defined benefit plan which commences later and the reductions in accruals shall be made from the benefits that accrue later.
- (c) Notwithstanding the foregoing, benefits payable from or accrued under defined benefit plans that have been terminated (whether those benefits were paid in a single lump sum or are being paid through a purchased annuity contract), shall be the last benefits or accruals to be reduced.

ARTICLE IX
QUALIFIED DOMESTIC RELATIONS ORDERS

9.1 General Matters

- (a) **General Rule.** The Plan shall not honor the assignment of any benefit payable with respect to a Participant pursuant to a domestic relations order unless that domestic relations order is determined to be a qualified domestic relations order.
- (b) **Minnesota Law.** This Plan is not subject to ERISA §206(d) nor Code §414(p). This Plan may only pay benefits to an Alternate Payee in accordance with Minnesota Statutes.
- (c) **Alternate Payee Defined.** The only persons eligible to be considered Alternate Payees with respect to a Participant under Minnesota Statutes shall be that Participant's former spouse.
- (d) **DRO Defined.** A domestic relations order is any judgment, decree or order (including an approval of a property settlement agreement) which relates to the provision of marital property rights to a former spouse of a Participant and which is made pursuant to any state's domestic relations law (including a community property law); provided such agreement issued in another state is filed in Minnesota.
- (e) **QDRO Defined.** A qualified domestic relations order is a domestic relations order which creates or recognizes an Alternate Payee's right to receive a portion of the Participant's monthly retirement benefit and which satisfies all of the following requirements.
 - (i) **Names and Addresses.** The order must clearly specify the name and the last known mailing address, if any, of the Participant and the name and mailing address of the Alternate Payee covered by the order.
 - (ii) **Amount.** The order must clearly specify the amount or percentage of the Participant's monthly retirement benefit to be paid by the Plan to the Alternate Payee or the manner in which such amount or percentage is to be determined.
 - (iii) **Payment Method.** The order must clearly specify the period to which the order applies; provided the order does not require payment to the Alternate Payee prior to the date the Participant commences his/her benefit.
 - (iv) **Plan Identity.** The order must clearly specify that it applies to this Plan.

- (v) **Settlement Options.** The order may not require the Plan to provide any payment other than a share of the Participant's monthly retirement benefit.
- (vi) **Increased Benefits.** The order may not require the Plan to provide increased benefits (determined on the basis of actuarial value).
- (vii) **Prior Awards.** The order may not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a qualified domestic relations order.
- (viii) **Payment Date Defined.** The date on which the Participant commences his monthly retirement benefit.

9.2 Procedures

- (a) **Actions Pending Review.** During any period when the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the Relief Association, the Relief Association shall cause the Plan to separately account for the amounts which would be payable to the Alternate Payee during such period if the order were determined to be a qualified domestic relations order.
- (b) **Reviewing DROs.** Upon the receipt of a domestic relations order, the Relief Association shall determine whether such order is a qualified domestic relations order.
 - (i) **Receipt.** A domestic relations order shall be considered to have been received only when the Relief Association shall have received a copy of a domestic relations order which is complete in all respects and is originally signed or certified or otherwise officially authenticated.
 - (ii) **Notice to Parties.** Upon receipt of a domestic relations order, the Relief Association shall notify the Participant and the Alternate Payee that such domestic relations order has been received. The Relief Association shall include with such notice a copy of these procedures.
 - (iii) **Comment Period.** The Participant and the Alternate Payee shall be afforded a comment period of thirty (30) days from the date such notice is mailed by the Relief Association in which to make comments or objections to the Relief Association concerning whether the domestic relations order is a qualified domestic relations order. By the unanimous written consent of the Participant and the Alternate Payee, the thirty (30) day comment period may be shortened.

- (iv) **Initial Determination.** Within a reasonable period of time after the termination of the comment period, the Relief Association shall give written notice to the Participant and the Alternate Payee of its decision that the domestic relations order is or is not a qualified domestic relations order. If the Relief Association determines that the order is not a qualified domestic relations order or if the Relief Association determines that the written objections of any party to the order being found a qualified domestic relations order are not valid, the Relief Association shall include in its written notice:
 - (1) the specific reasons for its decision;
 - (2) the specific reference to the pertinent provisions of this Plan Statement upon which its decision is based;
 - (3) a description of additional material or information, if any, which would cause the Relief Association to reach a different conclusion; and
 - (4) an explanation of the procedures for reviewing the initial determination of the Relief Association.
- (v) **Appeal Period.** The Participant and the Alternate Payee shall be afforded an appeal period of sixty (60) days from the date such an initial determination and explanation is mailed in which to make comments or objections concerning whether the original determination of the Relief Association is correct. By the unanimous written consent of the Participant and the Alternate Payee, the sixty (60) day appeal period may be shortened.
- (vi) **Final Determination.** The final determination shall be communicated in writing to the Participant and all persons claiming to be Alternate Payees and all prior Alternate Payees with respect to the Participant.
- (c) **Final Disposition.** If the domestic relations order is finally determined to be a qualified domestic relations order and all comment and appeal periods have expired, the Plan shall pay all amounts required to be paid pursuant to the domestic relations order to the Alternate Payee entitled thereto. If the domestic relations order is finally determined not to be a qualified domestic relations order and all comment and appeal periods have expired, benefits under the Plan shall be paid to the person or persons who would have been entitled to such amounts if there had been no domestic relations order.

- (d) **Orders Being Sought.** If the Relief Association has notice that a domestic relations order is being or may be sought but has not received the order, the Relief Association shall not delay payment of benefits to a Participant which otherwise would be due. If the Relief Association has determined that a domestic relations order is not a qualified domestic relations order and all comment and appeal periods have expired, the Relief Association shall not delay payment of benefits to a Participant which otherwise would be due even if the Relief Association has notice that the party claiming to be an Alternate Payee or the Participant or both are attempting to rectify any deficiencies in the domestic relations order.

9.3 Processing of Award

- (a) **General Rules.** If a benefit is awarded to an Alternate Payee pursuant to a domestic relations order which has been finally determined to be a qualified domestic relations order, the following rules shall apply.
 - (i) **Effect on the Participant's Retirement Benefit.** For all purposes of the Plan, the Participant's Retirement Benefit shall be permanently diminished by the portion of the Participant's Retirement Benefit which is awarded to the Alternate Payee.
 - (i) **After Death.** After the death of an Alternate Payee, all amounts awarded to the Alternate Payee shall cease.
- (b) **Former Alternate Payees.** If an Alternate Payee has received all benefits to which the Alternate Payee is entitled under a qualified domestic relations order, the Alternate Payee will not at any time thereafter be deemed to be an Alternate Payee for any substantive or procedural purpose of this Plan.

ARTICLE X RIGHT TO AMEND, DISCONTINUE OR TERMINATE

10.1 Amendment. Except as herein otherwise limited, the Relief Association shall have the right to amend this Plan, pursuant to Section 12.3 of the Bylaws, at any time to any extent that it may deem advisable. Such amendment will be stated in an instrument in writing executed by the Relief Association. Upon adoption and execution of such instrument, this Plan shall be deemed to have been amended in the manner therein set forth, and Participants shall be bound thereby.

No amendment which would affect the amount of, the manner of payment of, or the conditions for qualification for service pensions or ancillary benefits or disbursements other than administrative expenses authorized pursuant to Minn Stat. 69.80 payable from the Special Fund shall be effective until it has been ratified by the governing body or bodies of the Municipality.

10.2 Consolidation and Plan Benefits. The Relief Association has not been consolidated with another relief association pursuant to Minn. Stat. 424B.02.

10.3 Termination of Plan. Upon dissolution of the Relief Association, after the settlement of nonbenefit legal obligations of the Special Fund, the Board shall transfer the remaining assets of the Special Fund, as securities or in cash, as applicable, to the chief financial official of the Municipality. The Board shall also compile a schedule of Participants to whom a service pension is or will be owed, any Beneficiary to whom a benefit is owed, the amount of the service pension or benefit payable based on the Bylaws and state law and the service rendered to the date of the dissolution, and the date on which the pension or benefit would first be payable under the Bylaws and state law.

The Municipality receiving the remaining assets of the Special Fund shall establish a separate account in the municipal treasury to function as a trust fund for Participants and their Beneficiaries eligible for Plan benefits. Upon submission of the proper form, on or after the initial date on which the service pension or benefit is payable, the municipal treasurer shall pay the pension or benefit due, based on the schedule described above and the other records of the dissolved Relief Association. The trust fund must be invested and managed consistent with Minn. Stat. Section 69.775 and Chapter 356A. Upon payment of the last service pension or benefit due and owing, any remaining assets in the trust fund may be transferred to the general fund of the Municipality. If the Special Fund had an unfunded actuarial accrued liability upon dissolution, the Municipality is liable for that unfunded actuarial accrued liability.

ARTICLE XI MISCELLANEOUS

11.1 Governing Law. This Plan shall be construed, administered, and governed in all respects under the laws of the State of Minnesota, except as preempted by federal law.

If any Minnesota laws are applicable solely to the Relief Association, then an Appendix F will be included to describe such laws.

11.2 Binding Effect. This Plan shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of any and all of the parties hereto.

11.3 Effective Date Application. If a member Separation Date is prior to the Effective Date, the member's status and benefit under the Plan, if any, attributable to Active Service, shall be determined and paid in accordance with the provisions of the Plan in effect at the Separation Date.

If a member had a Separation Date prior to the Effective Date, but returns to complete a Year of Active Service that ends after the Effective Date, the member's status and benefits under the Plan

for all Active Service shall be determined in accordance with the provisions of the Plan in effect at the subsequent Separation Date.

11.4 Authority of Board of Trustees. The Board of Trustees shall have full power and authority to do each and every act and thing which it is specifically required or permitted to do under the provisions of the Plan and to determine conclusively for all parties all questions arising in the interpretation or administration of the Plan.

11.5 Reversion of Special Fund Prohibited. The Special Fund from to time hereunder shall at all times be a trust fund separate and apart from the assets of the Relief Association, and no part thereof shall be or become available to the Relief Association or to creditors of the Relief Association under any circumstances. It shall be impossible for any part of the corpus or income of the Special Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries (except as hereinbefore provided).

11.6 IRS Qualification. This Plan is intended to qualify under Section 401(a) of the Internal Revenue Code as a defined benefit pension plan (and not as a defined contribution profit sharing plan, stock bonus plan or money purchase pension plan).